



March 28, 2019

The Honourable Marc Garneau  
 Minister of Transport Canada  
 330 Sparks Street  
 Ottawa, ON K1A 0N5

Dear Minister Garneau:

The Regional  
 Municipality of  
 Durham

**RE: Proposed Amalgamation of the Oshawa and Hamilton Port  
 Authorities (2019-EDT-5), Our File: D02**

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Corporate Services  
 Department –  
 Legislative Services

Council of the Region of Durham, at its meeting held on March 27, 2019, adopted the following recommendations of the Planning & Economic Development Committee:

605 Rossland Rd. E.  
 Level 1  
 P.O. Box 623  
 Whitby, ON L1N 6A3  
 Canada

“A) That Report #2019-EDT-5 of the Commissioner of Planning and Economic Development be endorsed and submitted to Transport Canada as Durham Region’s preliminary comments on the proposed amalgamation of the Oshawa and Hamilton Port Authorities, including the following key comments and recommendations:

905-668-7711  
 1-800-372-1102  
 Fax: 905-668-9963

durham.ca

- i) The timeline of 30 days to provide comment is insufficient and should be extended by 90 days to adequately and meaningfully consult with the business communities, municipal governments, and indigenous communities that may be affected;
- ii) The proposed name of “Oshawa-Hamilton Port Authority” is most preferable;
- iii) The City of Oshawa, and the Region of Durham each be granted the authority to appoint one member to the Board of Directors of the amalgamated port authority;
- iv) That the amalgamated Port Authority engage in early consultation with the City of Oshawa and Region of Durham prior to any proposed changes to land use at the Port of Oshawa, to ensure any development is appropriate and compatible with surrounding land uses;
- v) That the Durham Regional Chair respectfully requests a meeting with the Minister of Transport to discuss the Region’s objectives and concerns; and

- vi) That as part of any amalgamation, that a recreational boating facility be re-established in the Oshawa basin;
- B) That the Regional Chair be authorized to provide further comments on the proposed amalgamation to Transport Canada, if necessary, as additional information becomes available and meetings take place; and
- C) That a copy of Report #2019-EDT-5 be forwarded to the City of Oshawa and Durham Region's area municipalities, the Oshawa Port Authority, the Greater Oshawa Chamber of Commerce, the City of Hamilton, the Hamilton Port Authority, all Durham MPs and MPPs."

Please find enclosed a copy of Report #2019-EDT-5 for your information.

*Ralph Walton*

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Ralph Walton,  
Regional Clerk/Director of Legislative Services

RW/tf

- c: A. Harras, Acting Clerk, Town of Ajax
- T. Gettinby, CAO/Clerk, Township of Brock
- A. Greentree, Clerk, Municipality of Clarington
- M. Medeiros, Acting Clerk, City of Oshawa
- S. Cassel, Clerk, City of Pickering
- J.P. Newman, Clerk, Township of Scugog
- D. Leroux, Clerk, Township of Uxbridge
- C. Harris, Clerk, Town of Whitby
- D. Taylor, President & CEO, Oshawa Port Authority
- N. Shaw, CEO, Greater Oshawa Chamber of Commerce
- R. Caterini, Clerk, City of Hamilton
- I. Hamilton, President & CEO, Hamilton Port Authority
- Jennifer O'Connell, MP (Pickering/Uxbridge)
- Mark Holland, MP (Ajax)
- Celina Caesar-Chavannes, MP (Whitby)
- Dr. Colin Carrie, MP (Oshawa)
- Erin O'Toole, MP (Durham)
- Jamie Schmale, MP (Haliburton/Kawartha Lakes/Brock)
- Kim Rudd, MP (Northumberland-Peterborough South)
- Peter Bethlenfalvy, MPP (Pickering/Uxbridge)
- Rod Phillips, MPP (Ajax)
- Lorne Coe, MPP (Whitby)

Jennifer French, MPP (Oshawa)

Lindsey Park, MPP (Durham)

Laurie Scott, MPP (Haliburton/Kawartha Lakes/Brock)

David Piccini, MPP (Northumberland-Peterborough South)

B. Bridgeman, Commissioner of Planning and Economic Development



# The Regional Municipality of Durham Report

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To: Planning and Economic Development Committee  
From: Commissioner of Planning and Economic Development  
Report: #2019-EDT-5  
Date: March 5, 2019

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**Subject:**

Proposed Amalgamation of the Oshawa and Hamilton Port Authorities

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**Recommendations:**

That the Planning and Economic Development Committee recommends to Regional Council:

- A) That Commissioner's Report #2019-EDT-5 be endorsed and submitted to Transport Canada as Durham Region's preliminary comments on the proposed amalgamation of the Oshawa and Hamilton Port Authorities, including the following key comments and recommendations:
- i) The timeline of 30 days to provide comment is insufficient and should be extended by 90 days to adequately and meaningfully consult with the business communities, municipal governments, and indigenous communities that may be affected;
  - ii) The proposed name of "Oshawa-Hamilton Port Authority" is most preferable;
  - iii) The City of Oshawa, and the Region of Durham each be granted the authority to appoint one member to the Board of Directors of the amalgamated port authority;
  - iv) That the amalgamated Port Authority engage in early consultation with the City of Oshawa and Region of Durham prior to any proposed changes to land use at the Port of Oshawa, to ensure any development is appropriate and compatible with surrounding land uses; and

- v) That the Durham Regional Chair respectfully requests a meeting with the Minister of Transport to discuss the Region's objectives and concerns.
- B) That the Regional Chair be authorized to provide further comments on the proposed amalgamation to Transport Canada, if necessary, as additional information becomes available and meetings take place; and
- C) That a copy of this report be forwarded to the City of Oshawa and Durham Region's area municipalities, the Oshawa Port Authority, the Greater Oshawa Chamber of Commerce, the City of Hamilton, the Hamilton Port Authority, all Durham MPs and MPP.
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## **Report:**

### **1. Purpose**

- 1.1 On February 5, 2019, the Honourable Marc Garneau, Federal Minister of Transport, announced that the Government of Canada intends to amalgamate the Oshawa and Hamilton Port Authorities ("OPA" and "HPA", respectively) to form a new entity to be named the "Oshawa-Hamilton Port Authority" in an effort to improve port efficiencies and planning in the region. Notice of intent to amalgamate was published in the Canada Gazette on February 9, 2019.
- 1.2 The publication of the notice of intent to amalgamate marked the beginning of a 30-day consultation period, and interested parties have until March 11, 2019 to submit comments on the Government of Canada's proposal.
- 1.3 The purpose of this report is to provide preliminary Regional comments to Transport Canada on the proposed amalgamation.

### **2. Background**

- 2.1 The Federal Government has the authority under the *Canada Marine Act* to amalgamate two or more port authorities. In this case, the newly amalgamated authority would assume the geographical jurisdictions, assets, liabilities and obligations of the OPA and the HPA.
- 2.2 After the consultation period concludes on March 11, 2019, the Government of Canada could decide whether to confirm the amalgamation through the publication of a certificate of amalgamation in the Canada Gazette.
- 2.3 The notice of intent to amalgamate noted that:

- 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) were raised in the 2016 review of the Canada Transportation Act which recommended that work be conducted to further the amalgamation of Port Authorities;
- Canada's national port system is made up of 18 CPAs that are 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 \$25B 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; and
- 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.

2.4 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.

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

### 3. Preliminary Responses to the Proposed Amalgamation

3.1 The City of Oshawa Development Services Committee received a staff report (see Attachment 1) September 24, 2018 which provided responses to the Federal Discussion Paper regarding the Transport Canada Ports Modernization Review. Responses were grouped in 6 themes:

- a. Theme 1: Communication, Building Relationships and Building Trust
- b. Theme 2: Land Use and Environmental Responsibility
- c. Theme 3: Innovation
- d. Theme 4: Safety
- e. Theme 5: Financial Support
- f. Theme 6: Governance

3.2 The City of Oshawa, during their Council meeting February 8, 2019, resolved as follows (see Attachment 2) regarding the proposed amalgamation:

- a. That the Development Services staff be directed to present a report to the February 25, 2019 Development Services Committee regarding the proposal to amalgamate the Oshawa Port Authority and Hamilton Port Authority in order to provide a submission to the Federal Minister of Transport on this matter and that a Special Council meeting be held thereafter to meet the March 11, 2019 deadline for comments;
- b. That:
  - (i) The City re-establish a city working group consisting of the Mayor, Chair of Development Services Committee, a Ward 5 Councillor and a Councillor from another Ward, as determined by Council, and appropriate staff to monitor the evolving governance and land use issues at the Port of Oshawa and adjacent lands and to provide recommendations and advice to City Council through the Development Services Committee.
  - (ii) The Federal Minister of Transport be requested to meet with the Working Group to discuss the Government of Canada's intent to amalgamate the Oshawa Port Authority and Hamilton Port Authority before any final decision is made on the matter; and
  - (iii) Councillors Nicholson and McConkey be appointed to the Working Group.
- c. That Transport Canada be requested to provide the public, the Indigenous community and other stakeholders additional time (90 additional days) to provide comments to the Government of Canada's certificate of intent to amalgamate the Oshawa Port Authority and Hamilton Port Authority and to

allow the City of Oshawa to host a public meeting to obtain comments from its residents and businesses, the Indigenous community and other stakeholders on this important matter to Council and which could influence the Federal Government's final decision on this matter; and

- d. A copy of this resolution be forwarded to the Prime Minister of Canada, the Federal Minister of Transport, Region of Durham, all Durham area municipalities, the Greater Oshawa Chamber of Commerce, all Durham MP's and MPP's, the Oshawa Port Authority, Friends of the Second Marsh and Central Lake Ontario Conservation Authority."

3.3 The City of Hamilton Council received a staff report (see Attachment 3) on February 20, 2019 which recommended:

- 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;
  - (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.

#### **4. Discussion**

4.1 Durham Regional staff are still gathering relevant information and consulting stakeholders to determine potential Regional impacts and draft the response to the

Minister of Transport.

- 4.2 Regional Economic Development staff are supportive of the City of Oshawa's submission to the Federal Minister of Transport, including the request for more time for consultation and comment.
- 4.3 The HPA has considerably more shipping traffic than the OPA. The HPA is 16 times larger in terms of total assets, and in 2017 generated considerably more net income than the OPA.
- 4.4 The proposed amalgamation could present various economic development opportunities:
  - a. The HPA is space-constrained, and growth of certain components of its shipping business and operations depend on being able to access additional development land. In this respect, the OPA lands may offer some opportunities for new development for the newly created port authority. The HPA's customers would be more easily able to access the Eastern & Central Ontario and Durham markets through the Oshawa Port.
  - b. The HPA's size and global industry network is considerable. The HPA may have customers or partners in their network that are prospective investors seeking to establish a new physical presence. If these connections are well suited to the Durham Regional economy, and if there is a strong relationship between the Region, City of Oshawa, and the new port authority, the Region may be able to leverage this large network to generate new investment.
  - c. The HPA, due to space constraints, may be operating at capacity at certain times of year. Diversion of overflow shipping traffic to Oshawa could be a potential outcome, resulting in increased economic activity.
  - d. The HPA has considerable current assets so it is possible that the amalgamation may enable the newly formed port authority to pursue and fund new projects in Durham with greater speed in the future, such as new intermodal capabilities. The HPA generates annual free cash flow of \$12M-\$14M which is continually being reinvested in Port infrastructure and new projects.
  - e. The HPA's significant cash position allows them to commit matching funds for applications for funding from Transport Canada's \$2B National Trade Corridors Fund for infrastructure projects, presenting opportunities to access new infrastructure capital streams for projects at the Oshawa port lands.
  - f. Local Regional businesses may be able to access a broader range of customers and shipping logistics service providers if services are now offered

more broadly across both ports.

4.5 The proposed amalgamation presents certain Regional concerns:

- a. Since the HPA has a much larger administration, it is possible that the centralized office location and registered place of business for the newly-created port authority would be Hamilton. This may result in:
- The relocation of OPA jobs away from Oshawa to Hamilton;
  - Lack of focus or attention by the new port authority on supporting the economic development mandates of the City of Oshawa or the Region, or timely response to requests by Oshawa or the Region;
  - Difficulty in Oshawa maintaining strong relationships with executive-level port authority staff due to the travel distance.

## **5. Conclusion and Next Steps**

5.1 The proposed amalgamation of the Oshawa Port Authority and the Hamilton Port Authority by the Federal Minister of Transport presents concerns as well as potential economic development opportunities.

5.2 A 30-day consultation period is considered inadequate; therefore, it is recommended that the Regional Chair be authorized to provide further comments, if necessary, as additional information becomes available and meetings take place.

## **6. Attachments**

Attachment #1: City of Oshawa staff report dated September 20, 2018

Attachment #2: City of Oshawa correspondence dated February 11, 2019

Attachment #3: City of Hamilton staff report dated February 20, 2019

Respectfully submitted,

Original signed by

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Brian Bridgeman, MCIP, RPP  
Commissioner of Planning and  
Economic Development

Recommended for Presentation to Committee

Original signed by

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Elaine C. Baxter-Trahair  
Chief Administrative Officer



## Public Report

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To: Development Services Committee

From: Paul D. Ralph, BES, MCIP, RPP, Commissioner,  
Development Services Department

Report Number: DS-18-150

Date of Report: September 20, 2018

Date of Meeting: September 24, 2018

Subject: Transport Canada Ports Modernization Review, 2018 -  
Recommended City Comments

File: F-3041-0005

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### 1.0 Purpose

Transport Canada is undertaking a review of Canada Port Authorities to optimize their current and future role in the transportation system. Transport Canada wants to hear from key partners and stakeholders, including Canada Port Authorities and municipal governments and local communities that have a particular interest in port activities.

Transport Canada released a discussion paper to help guide the review of the Canada port's system and to obtain meaningful feedback from stakeholders (see Attachment 1).

The purpose of this report is to obtain Council approval of City comments on the discussion paper for Transport Canada's Ports Modernization Review. The deadline to provide comments is October 26, 2018.

Attachment 1 is a copy of the discussion paper for Transport Canada's Ports Modernization Review.

Attachment 2 is a copy of the main body of Staff Report DS-13-02 dated January 10, 2013, which includes staff comments on the proposed Oshawa Port Authority Draft Land Use Plan at that time.

Attachment 3 is a copy of a letter dated December 22, 2016 forwarding City comments for consideration by the expert panel tasked with reviewing federal environmental assessment processes.

Attachment 4 is a copy of the Oshawa Harbour Land Use, Development and Municipal Services Agreement dated July 15, 2010 between the City and Port Authority, which remains in effect to July 15, 2020 as a result of an extension of term agreement made on July 15, 2015.

## **2.0 Recommendation**

That the Development Services Committee recommend to City Council:

1. That Report DS-18-150, dated September 20, 2018, be endorsed as the City's comments on the discussion paper for Transport Canada's Ports Modernization Review.
2. That a copy of Report DS-18-150, dated September 20, 2018, and the related Council resolution be sent to Transport Canada, the Oshawa Port Authority, the Region of Durham, the Friends of the Second Marsh and the Central Lake Ontario Conservation Authority.
3. That Transport Canada be requested to meet with the Mayor to discuss the City's comments on the discussion paper for the Ports Modernization Review.

## **3.0 Executive Summary**

Not applicable.

## **4.0 Input From Other Sources**

The following have been consulted in the preparation of this report:

- City Manager
- Commissioner, Community Services
- Director of Economic Development

## **5.0 Analysis**

### **5.1 Background - Canada's Port System**

#### **5.1.1 Legislative Framework**

Today's port system is governed by the 1995 National Marine Policy and the 1998 Canada Marine Act.

The National Marine Policy lays out a detailed model for Canada's marine transportation system, whose key principles emphasize accountability to users and the public, business discipline and self-sufficiency to shift port operation costs from the general taxpayer to port users.

The 1998 Canada Marine Act created 18 Canada Port Authorities having national significance, and began the divestiture of other ports owned by Transport Canada to local interests. These changes were intended to promote a more competitive, effectively managed and sustainable port system.

On February 18, 2012 the Port of Oshawa was given its Port Authority status through the issuance of letters of patent under the 1998 Canada Marine Act and its previous status as a Harbour Commission under the Harbour Commissions Act ceased to apply.

### **5.1.2 The Importance of Ports**

Canadian ports play an important role in supporting economic development and global trading. Many Canadians rely on the port system for the goods they use and consume and for delivering their merchandise to domestic and international markets.

The Port of Oshawa is a major economic driver and the City recognizes the importance of the port from an economic development and jobs creation perspective. The role and capabilities of the Port of Oshawa represent significant infrastructure for the City and Region and create a competitive economic advantage.

Canadian Ports are also important community members as they manage land within our municipal boundaries, function as marine security and safety, contribute to environmental protection and contribute to the creation of direct and indirect jobs.

### **5.1.3 Port of Oshawa**

The Port of Oshawa has had a long history of being the centre of trade, and a vital transportation link for industries dating back to the 1800's. From facts and statistics published on-line by the Port of Oshawa, the port has handled more than 500 vessels carrying over 3 million metric tonnes of cargo over the last decade. Further, the same source material indicates the movement of cargo through the port supports 294 jobs.

According to the latest facts and statistics available on-line at the Port of Oshawa's website, the Port of Oshawa on average handles approximately \$23 million worth of cargo annually, including products such as salt, steel, asphalt and grain.

## **5.2 Purpose of Transport Canada's Ports Modernization Review**

Transport Canada indicates that over the last 20 years the operating landscape for Canadian Ports has changed and will continue to change at a greater pace, thereby creating new challenges and opportunities. In order to ensure our country remains well-positioned to innovate and compete within the port industry, Transport Canada feels it necessary to re-examine Canada Port Authorities and how they operate.

Key drivers of change include:

- An evolving marine industry;
- Reconciliation with Indigenous peoples;
- Local communities;
- Environmental protection and climate change;
- Safety and security; and,
- Governance.

Submissions and comments to Transport Canada are due on or before October 26, 2018. The Honourable Marc Garneau, Minister of Transport, launched a roundtable series of meetings for the ports modernization review, with Indigenous peoples, provincial governments, municipalities, etc. To date staff are not aware that the City of Oshawa has been notified by Transport Canada of any roundtable discussions to discuss the review, and staff have not located any online calendars or advertisements related to any roundtable discussions being held by Transport Canada prior to the October 26, 2018 deadline for comment.

### **5.3 Staff Response to Discussion Paper**

Transport Canada prepared a discussion paper (see Attachment 1) including background information as well as a list of 14 questions to lead the discussions and comments from stakeholders.

Staff has reviewed the discussion paper and notes that only certain questions require input from the City as the balance of the questions are more appropriately answered by others, such as the indigenous community or port users. These questions are relevant to the City of Oshawa in its role as a municipal authority and host to a Canada Port Authority, and read as follows:

- Discussion paper Q3. What strategies could link business to research, and research to learners in support of innovative solutions and greater competitiveness?
- Discussion paper Q7. How can ports ensure their operations and future development remain environmentally sustainable and adapt to climate risks?
- Discussion paper Q8. How can Canada Port Authorities contribute to building healthier communities?
- Discussion paper Q13. What models or approaches could be pursued to ensure Canada Port Authorities are more responsive to user and local perspectives?

In developing appropriate responses to these questions, it became apparent that the responses share a variety of commonalities and similar themes. Responding to the questions is therefore most effectively achieved through a thematic approach. On this basis, it is recommended that the following comments be endorsed by Council and forwarded to Transport Canada for their consideration during the Ports Modernization Review.

#### **5.3.1 Theme 1: Communication, Building Relationships and Building Trust**

Fostering and maintaining a collaborative, respectful and trusting relationship between Port Authorities and host municipalities and the public is critical to building a strong relationship and trust. This should be a key objective for all parties. Regularly scheduled, ongoing meetings between Port Authorities and local municipal governments are an important and highly effective way to ensure alignment of the municipality's and the Port Authority's strategic plans and corporate objectives.

Waterfront districts are highly visible, important areas of shoreline communities, and communities having the added advantage of a port stand to benefit from substantial economic opportunities as well as opportunities for well-being and recreation.

Municipalities and Port Authorities can parlay these assets to their mutual advantage provided that they work collaboratively and are in frequent communication. For this reason it is important to recognize that over time, board members, port staff and elected officials change and nothing in the current legislative framework mandates having regular set meetings. As personalities change, previous relationships can diminish or disappear in the absence of a formal communications framework.

The City's relationship with the Port Authority has improved over the years. For example, the City of Oshawa and the Oshawa Port Authority (O.P.A.) staff have committed to meet both quarterly and on an as-needed basis rather than merely comply with the minimum annual meeting requirement. In addition, the Mayor and Councilor Pidwerbecki are invited to attend certain O.P.A. meetings. Communication and interaction between the City and the O.P.A. has been further facilitated recently through arranging bus tours of the port facility for elected representatives.

Both the City and the O.P.A. have benefitted from this collaborative approach to communication, as recently exemplified when the parties came together to successfully amend a long-standing agreement to now allow fishing on the landmark pier under the O.P.A.'s jurisdiction.

In addition to recommending that Port Authorities and their host municipalities formally establish a communications framework that is regular, frequent and multi-faceted in terms of incorporating different opportunities for building relationships and trust, staff agrees with the ideas provided in the discussion paper as examples of communication approaches being employed by leading ports, i.e.:

- Hosting open houses to explain their major projects;
- Starting good neighbor committees; and,
- Talking with Canadians on social media.

The above communication approaches should be mandatory for each Port Authority.

In addition, it is recommended that Port Authorities post agendas and minutes for all their meetings, to be more open and transparent. This would improve on the current situation which requires only the agenda and minutes from the single annual public meeting along with the annual financial statement to be publicly available.

As noted under subsection 5.3.2, regular environmental monitoring to gauge compliance with standards for matters such as noise, vibration, and air and water quality is an important ongoing function. Sharing monitoring results with the community is an ideal opportunity to reinforce positive communication and build trust. Similarly, the posting of incident reports (e.g., spills) for the benefit of the public would augment the efforts of Port Authorities to demonstrate greater transparency and accountability.

### **5.3.2 Theme 2: Land Use and Environmental Responsibility**

Port Authorities should be accountable for their environmental performance as it relates to greenhouse gas emissions, energy use and energy conservation, air quality, water quality, impact on wildlife habitat and provincially significant wetlands etc. It is recommended that

Port Authorities take a leadership role in environmental stewardship by producing a plan for reducing their overall impact on the environment (i.e. greenhouse gas emissions reductions, improved air quality, restoration of certain plant and wildlife habitats, etc.) and publicly reporting on their performance each year.

Port Authorities could produce a climate adaptation plan based on local climate science, to better prepare for the rapidly and ever changing climate. Greater frequency of severe weather events and higher precipitation levels may have significant impact on port operations in years to come.

As an example, Durham Region and all lower-tier Durham municipalities have adopted a Durham Community Climate Adaptation Plan consisting of a number of programs which will address local adaptation measures to protect the residents and infrastructure from the changing climate. The Durham Community Climate Adaptation Plan received national recognition and is the winner of the Federation of Canadian Municipalities 2018 Sustainable Communities Award, in the climate change category.

Port Authorities could also benefit from a greenhouse gas emissions reduction plan to actively pursue climate mitigation and reduce the impact of their operations/activities on the environment. The City of Oshawa has itself committed to reducing its greenhouse gas emissions and energy consumption, and is required to provide a Corporate Facilities Energy Management Plan to Ontario's Ministry of the Environment, Conservation and Parks. As a member of the Federation of Canadian Municipalities Partners for Climate Protection program, the City has successfully completed key milestones in its Corporate Plan aimed at reducing emissions and is now developing a community-based plan to help reduce the impacts of climate change and respond to the goal of Environmental Responsibility as outlined in the Oshawa Strategic Plan.

In addition to being environmentally responsible, Port Authorities can contribute to building healthier and economically robust communities by ensuring land use compatibility and optimizing the use of port lands for activities well-suited to benefit from proximity to port facilities.

In accordance with the Canada Marine Act, 1998, the O.P.A. adopted a Land Use Plan in early 2013. Through Report DS-13-02, the City of Oshawa provided comments to the O.P.A. on the proposed Land Use Plan in January 2013 (see Attachment 2). The City's primary concern was that the O.P.A.'s Land Use Plan did not include a detailed land-use plan or land use map showing land use designations and applicable policies. The City of Oshawa's comments that were expressed in Report DS-13-02 are largely still applicable. It is recommended that Port Authorities work together with local governments and the community to determine appropriate land uses on port lands that have regard for the land use designations and policies contained in their municipal Official Plans, to ensure compatibility and harmony with land uses in the vicinity of the port.

It is recommended that Land Use Plans developed by Port Authorities reference the standards and requirements applicable to users/tenants in terms of site development, erosion control during construction, applicable building code standards, applicable emergency and fire standards, appropriate air and water emissions standards, appropriate

standards for noise and vibration, lighting standards, odour standards, impact studies (i.e. traffic, environmental), etc.

As key environmental stewards of federal Crown land, Port Authorities should adopt the most rigorous standards in place, whether they be Federal or Provincial in origin.

For example, on December 19, 2016 Oshawa Council endorsed comments for consideration of the expert panel tasked with reviewing federal environmental assessment processes (see attachment 3). These comments include a recommendation that projects subject to federal environmental assessment processes should also be subject to compliance with provincial standards and guidelines where they are more rigorous than federal standards and guidelines.

Mechanisms to monitor and enforce the aforementioned standards are likewise recommended.

Land Use Plans also provide an excellent mechanism for Port Authorities to identify strategies to optimize the use of port lands and facilities by targeting development that can make the most advantageous use of a port location, as opposed to uses whose locational needs can be appropriately accommodated elsewhere. It is recommended that consideration be given to requiring Port Authority Land Use Plans to include goals, objectives and strategies in this regard. In addition, Port Authority Land Use Plans should include requirements for due diligence in terms of undertaking archaeological investigations prior to development and sharing the results of such investigations with the public and host municipality. Archeology studies are important given the possibility of indigenous and early settler activity in the area of ports along the waterfront.

It is also recommended that a priority of land offerings protocol be implemented by Port Authorities giving host municipalities the first opportunity to acquire port lands deemed surplus by the Crown, in the event that a Port Authority decides to dispose of lands that no longer serve the needs of the Port Authority.

### **5.3.3 Theme 3: Innovation**

The City of Oshawa Council is committed to economic growth in the City through strategic activities that enhance job growth and create investment opportunities, including actively encouraging the growth of the City's post-secondary educational institutions.

The City of Oshawa is home to four (4) universities and colleges:

- University of Ontario Institute of Technology
- Durham College
- Trent University
- Queen's University

In June 2017 the City of Oshawa teamed up with its educational partners and research partners (Canadian Urban Institute and University of Toronto) to spearhead an initiative called TeachingCity. The partners address Oshawa's urban issues through innovation, collaboration, applied research and shared experiential learning opportunities with the aim

to position Oshawa as a local, national and global community of urban research and learning.

Transport Canada and the Port Authorities could explore a similar model of partnership and collaboration between post-secondary institutions, researchers, local and provincial governments to discover innovative solutions to real life issues in the port industry.

In particular, the Port of Oshawa is encouraged to investigate collaboration with the Teaching City initiative in Oshawa.

#### **5.3.4 Theme 4: Safety**

As noted earlier, waterfront areas are of significant importance to shoreline municipalities, including Oshawa. As part of the City's efforts to promote its waterfront, the City is investigating the reestablishment of a boat launch in the harbor and have marketed the opportunity to reintroduce a marina facility for recreational boating as components of the City's waterfront revitalization plans. Given the presence of a working industrial port that is also important to Oshawa as a major generator of economic activity and jobs, working closely with the O.P.A. to ensure that recreational waterfront activity is safely accommodated is paramount. This activity includes boating as well as the use of the Waterfront Trail for active transportation purposes, where there is a need to ensure a safe crossing for pedestrians and cyclists where the trail traverses the main driveway leading into the port facility. Accordingly, it is recommended that Port Authorities continue to investigate ways of allowing safe public access to waterfront areas near ports.

Another key element under the theme of safety relates to a requirement under the Oshawa Harbour Land Use, Development and Municipal Services Agreement (see Attachment 4) between the City and the O.P.A. for the Port Authority to consult with Oshawa Fire Services to identify special needs and equipment. Port facilities may include uses and involve operations/activities that do not commonly occur in municipal settings outside of port lands. Accordingly, it is recommended that Port Authorities take appropriate steps to ensure that the need for specialized fire services/training is communicated with the host municipality and appropriate procedures are developed to contain potential incidents. It is also recommended that other Port Authorities consider similar types agreements with their host municipalities.

#### **5.3.5 Theme 5: Financial Support**

It is recommended that a sustainable funding source be established for Port Authorities to undertake the above recommended activities identified under the preceding themes. In addition, a sustainable funding source would enable investment in infrastructure, maintenance and modernization. Support staff for Port Authorities may be limited and in the absence of financial support to augment staff resources (either internally or externally), implementing the recommendations contained in this report may not be feasible.

In addition, it is recommended that the Crown be responsible for contributing financially to the costs incurred by a host municipality (at both the Regional and local area municipal level) for such matters as erosion control and road, bridge and other service infrastructure installation and/or maintenance attributable in whole or in part to the activities associated

with the Port Authority. For example, Port Authorities should be required to undertake traffic studies for a major development to determine the impact of traffic on Regional or City roads. If the study requires road improvements (i.e. traffic signals or road widenings) then the Crown should financially contribute to these improvements.

In addition, heavy truck traffic to and from a port can impact road quality.

### **5.3.6 Theme 6: Governance**

In some cases, a Port Authority may operate in a location under the governance of more than one host municipality (such as an upper-tier Regional municipality and a lower-tier local area municipality). Given that the activities of the Port Authority in such circumstances will involve the use of resources and infrastructure (e.g., roads) under the jurisdiction of both levels of government, and the port's economic importance will similarly relate to both municipalities, appropriate Board representation for each host municipality is recommended (i.e. Regional and Local).

## **6.0 Financial Implications**

There are no financial implications associated with the comments in this report.

## **7.0 Relationship to the Oshawa Strategic Plan**

The comments are intended to advance the Economic Prosperity, Social Equity, Environmental Responsibility and Accountable Leadership goals of the Oshawa Strategic Plan.



Warren Munro, HBA, Director,  
Planning Services



Paul D. Ralph, BES, MCIP, RPP, Commissioner,  
Development Services Department



Corporate Services Department  
City Clerk Services

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File: A-2100

February 11, 2019

The Honourable Marc Garneau, MP  
Minister of Transport  
Email: [marc.garneau@parl.gc.ca](mailto:marc.garneau@parl.gc.ca)

Re: Government of Canada's Intent to Amalgamate the Oshawa and Hamilton Port Authorities to Form a New Entity

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Oshawa City Council considered the above matter at its meeting of February 8, 2019 and adopted the following recommendation:

"Whereas, on February 5, 2019 the Honourable Marc Garneau, Minister of Transport, announced that the Government of Canada intends to amalgamate the Oshawa and Hamilton Port Authorities to form a new entity in an effort to improve port efficiencies and planning in the region; and,

Whereas, the notice of intent to amalgamate will be published in the Canada Gazette on February 9, 2019; and,

Whereas, the publication of the notice of intent to amalgamate will mark the beginning of a 30 day consultation period, and interested parties will only have until March 11, 2019 to submit comments on the Government's proposal to amalgamate the Oshawa Port Authority and Hamilton Port Authority; and,

Whereas, after the 30 day consultation period the Government of Canada can decide to confirm the amalgamation through the publication of a certificate of amalgamation in the Canada Gazette; and,

Whereas it appears the Federal Government has been working on this proposal for some time without consulting with the City and without any details concerning this important matter at this time such as a proposed governance structure, the business case for the amalgamation and the priorities for this new entity; and,

Whereas, the Port of Oshawa is a major economic driver and the City recognizes the importance of the port from an economic development and jobs creation perspective; and,

Whereas, given the importance of the Port of Oshawa to the Regional and City economies, the importance of a good working relationship between the Port Authority and the City, 30 days is an insufficient amount of time for the public, the Indigenous community and other stakeholders to provide comments; and,

Whereas, on September 24, 2018 in accordance with Report DS 18 150 dated September 20, 2018, City Council provided comments on Transport Canada's Ports Modernization Review and requested that Transport Canada meet with the Mayor to discuss the City's comments; and,

Whereas, as of the current date Transport Canada has yet to schedule a meeting with the Mayor to discuss the future of Canada Port Authorities, and more specifically the future of the Oshawa Port Authority and the City is unaware that a final report has been released on Transport Canada's Port Modernization Review; and,

Whereas it comes as a surprise to the City that the notice of intent to amalgamate the two Port Authorities was provided before the final report of Transport Canada's Port Modernization Review was released;

Therefore be it resolved:

1. That the Development Services staff be directed to present a report to the February 25, 2019 Development Services Committee regarding the proposal to amalgamate the Oshawa Port Authority and Hamilton Port Authority in order to provide a submission to the Federal Minister of Transport on this matter and that a Special Council meeting be held thereafter to meet the March 11, 2019 deadline for comments; and,
2.
  - a) That the City re-establish a city working group consisting of the Mayor, Chair of Development Services Committee, a Ward 5 Councillor and a Councillor from another Ward, as determined by Council, and appropriate staff to monitor the evolving governance and land use issues at the Port of Oshawa and adjacent lands and to provide recommendations and advice to City Council through the Development Services Committee.
  - b) That the Federal Minister of Transport be requested to meet with the Working Group to discuss the Government of Canada's intent to amalgamate the Oshawa Port Authority and Hamilton Port Authority before any final decision is made on the matter; and,
  - c) That Councillors Nicholson and McConkey be appointed to the Working Group.
3. That Transport Canada be requested to provide the public, the Indigenous community and other stakeholders additional time (90 additional days) to provide comments to the Government of Canada's certificate of intent to amalgamate the Oshawa Port Authority and Hamilton Port Authority and to allow the City of Oshawa to host a public meeting to obtain comments from its residents and businesses, the Indigenous community and other stakeholders on this important matter to Council and which could influence the Federal Government's final decision on this matter; and,
4. A copy of this resolution be forwarded to the Prime Minister of Canada, the Federal Minister of Transport, Region of Durham, all Durham area municipalities, the Greater Oshawa Chamber of Commerce, all Durham MP's and MPP's, the Oshawa Port Authority, Friends of the Second Marsh and Central Lake Ontario Conservation Authority."

If you need further assistance, please contact Paul Ralph, Commissioner, Development Services Department at the address listed below or by telephone at 905-436-3311.



Andrew Brouwer  
City Clerk

/ld

- c. Prime Minister of Canada
- Region of Durham
- All Durham Area Municipalities
- Greater Oshawa Chamber of Commerce
- Durham MP's
- Durham MPP's
- Oshawa Port Authority
- Friends of Second Marsh
- Central Lake Ontario Conservation Authority
- Development Services Department



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Economic Development Division**

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	February 20, 2019
<b>SUBJECT/REPORT NO:</b>	Proposed Amalgamation of Hamilton Port Authority and Oshawa Port Authority (PED19065) (City Wide) <b>(Outstanding Business List Item)</b>
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	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
<b>SUBMITTED BY:</b>	Glen Norton Director, Economic Development Planning and Economic Development Department
<b>SIGNATURE:</b>	

**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;

- (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;

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- 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;

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- (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	↑
<b>Ratios:</b>				
<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

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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.

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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.

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**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