



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

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	March 24, 2021
<b>SUBJECT/REPORT NO:</b>	Waterdown Garden Supplies Ltd. Update (LS21009)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Michael Kyne (905) 546-2424 Ext. 4716
<b>SUBMITTED BY:</b>	Michael Kyne, Acting City Solicitor Legal and Risk Management Services Division
<b>SIGNATURE:</b>	MGKyne

**RECOMMENDATION**

(a) That this Report LS21009 be received and that Appendix “A” remain confidential.

**Discussion of Appendix “A” to this Confidential Report in closed session is subject to the following requirement(s) of the City of Hamilton’s Procedural By-law and section 239(2) of the *Ontario Municipal Act, 2001*:**

- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose; and
- (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

**RATIONALE FOR CONFIDENTIALITY**

Appendix “A” to this report is being considered in Closed Session as it outlines solicitor-client advice relevant to ongoing litigation and associated negotiations arising out of the

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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.

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

lawsuit commenced by Waterdown Garden Supplies Ltd. (“WGS”) against the City and two identified City employees.

### **RATIONALE FOR MAINTAINING CONFIDENTIALITY**

Staff are recommending that Appendix “A” to this Report LS21009 remain confidential as its public disclosure could compromise the City’s interests in responding to WGS’ claims.

### **EXECUTIVE SUMMARY**

On February 16, 2021, the City was notified of a Statement of Claim issued by Waterdown Garden Supplies Ltd. and others (“WGS”) seeking \$75M in damages based on allegations that thousands of loads of contaminated soil taken from City sites were illegally deposited on its lands and that this illegal dumping was facilitated by a criminal conspiracy involving two named City employees.

It’s important to note that, despite several specific requests, the claimants have not yet provided any information that would substantiate their claims.

As a result, the City has:

1. placed the two employees on paid administrative leave while these claims are investigated;
2. notified its insurer which has now appointed the law firm Gowlings to defend the City’s interests in these legal proceedings; and
3. commenced an investigation through the City’s Auditor’s Office to ascertain if there is any credence to the claims against the named employees.

### **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** While the civil claim against the City will funded primarily by the City’s insurer, the City will bear the cost of the applicable deductible(s) and the City Auditor’s investigation.

**Staffing:** As indicated, the two employees named in the Statement of Claim have been placed on paid administrative leave.

**Legal:** As outlined in this Report LS21009.

### **HISTORICAL BACKGROUND**

On February 16, 2021, the City was notified of a Statement of Claim issued by Waterdown Garden Supplies Ltd. and others (“WGS”) seeking \$75M in damages based on allegations

that thousands of loads of contaminated soil taken from City sites were illegally deposited on its lands and that this illegal dumping was facilitated by a criminal conspiracy involving two named City employees.

Despite several specific requests, the claimants have not yet provided any information that would substantiate their claims.

As a result, the City has:

1. placed the two employees on paid administrative leave while these claims are investigated;
2. notified its insurer which has now appointed the law firm Gowlings to defend the City's interests in these legal proceedings. At the time of writing this report, Gowlings is drafting the City's formal Statement of Defence with the expectation that it will be provided to the claimants' lawyer by March 19, 2021.

Thereafter, it's anticipated the claimants' claims will be litigated in accordance with the regular Rules of Civil Proceedings in a process that can take two to three years and which includes:

- a. an exchange of relevant documents with the claimants;
  - b. examining the major witnesses under oath;
  - c. at least one pre-trial conference conducted by a judge; and
  - d. assuming that the claimants continue to pursue their claims, a trial; and
3. commenced an investigation through the City's Auditor's Office to ascertain if there is any credence to the claims against the named employees.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

N/A

## **RELEVANT CONSULTATION**

- City Manager's Office
- Planning and Economic Development Department
- Public Works Department

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

As outlined in this Report LS21009.

**ALTERNATIVES FOR CONSIDERATION**

N/A

**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.

**Our People and Performance**

Hamiltonians have a high level of trust and confidence in their City government.

**APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” to Report LS21009—Related Issues: Status Update