



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Economic Development Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	February 1, 2023
SUBJECT/REPORT NO:	Establishing a Process to Appoint a Municipal Representative to the Hamilton Oshawa Port Authority Board of Directors (PED23021) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Norm Schleeahn (905) 546-2424 Ext. 2269
SUBMITTED BY:	Norm Schleeahn Director, Economic Development Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That a City of Hamilton working group comprised of two Councillors, together with the Mayor, be established to determine a process for jointly appointing a new municipal representative to the Hamilton-Oshawa Port Authority Board of Directors in collaboration with a similar working group of City of Oshawa elected officials;
- (b) That the collective results of the working groups be reported back to the General Issues Committee with a recommended process for jointly appointing a single municipal representative to the Hamilton-Oshawa Port Authority Board of Directors.

EXECUTIVE SUMMARY

On February 9, 2019, based on a recommendation from the Minister of Transport, the Governor General in Council issued a notice of a Certificate of Intent to amalgamate the Oshawa and Hamilton Port Authorities and invited comments to be submitted within 30 days of the notice. The objective of the proposal was to strengthen the Canadian supply chain in Ontario by providing a coordinated approach to port development, land use and marketing.

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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During the 30-day post certificate consultation period, City staff presented a report to GIC on February 20, 2019 (PED19065) which was ratified by Hamilton City Council on February 27, 2019. The Report included several recommendations that were to be presented to the Minister of Transport regarding the proposed amalgamation including that the City of Hamilton's preference was that both the City of Hamilton and the City of Oshawa be given a seat on the Board of Directors of the Hamilton-Oshawa Port Authority (HOPA). This recommendation was not accepted by the Department of Transport.

On June 8, 2019, the Department of Transport issued a Certificate of Amalgamation of Port Authorities to create the new Hamilton-Oshawa Port Authority HOPA. The Certificate of Amalgamation included the Letters Patent of the HOPA. See Appendix "A" to Report PED23021, attached to this Report. According to the HOPA Letters Patent, as issued by the Department of Transport on June 8, 2019.

"The HOPA Board of Directors shall be composed of seven directors appointed to hold office as follows:

- (e) The Governor in Council appoints one individual nominated by the Minister;
- (f) The City of Hamilton and the City of Oshawa, in consultation with the City of Burlington, appoints one individual;
- (g) The Province of Ontario appoints one individual; and,
- (h) The Governor General in Council appoints four remaining individuals nominated by the Minister in consultation with the users selected by the Minister or with the classes of users."

The Letters Patent state that there is to be one municipal representative on the HOPA Board of Directors, however, they did not provide direction on how this municipal appointment is to be determined.

After discussion with senior staff from both the City of Hamilton and the City of Oshawa, the recommended approach of two municipal working groups collaborating to determine an appointment process was put forward.

Upon the City of Hamilton selecting its working group, Hamilton staff would work with Oshawa staff to develop an agenda and schedule a meeting for both working groups to jointly discuss a preferred process for appointing the new municipal representative to the HOPA Board of Directors in 2023, and for any future appointments.

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The current municipal seat on the HOPA Board of Directors is occupied by Mr. Jim Howlett. He was first appointed by the City of Hamilton to the HOPA Board of Directors on February 14, 2018. Mr. Howlett's board position is currently in overhold, and he will remain the municipal representative until the new appointment has been determined.

Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: There are no known financial implications for the City of Hamilton.

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

Legal: There are no known legal implications for the City of Hamilton.

HISTORICAL BACKGROUND

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

On February 9, 2019, 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 which noted that:

- 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

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- 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 \$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;
 - 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 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."
 - During the 30-day post certificate consultation period, City staff presented a report to GIC on February 20, 2019 (PED19065) which was ratified by Hamilton City Council on February 27, 2019. The Report included several recommendations that were to be presented to the Minister of Transport regarding the proposed amalgamation including that the City of Hamilton's preference was that both the City of Hamilton and the City of Oshawa be given a

seat on the Board of Directors of the Hamilton-Oshawa Port Authority (HOPA). This recommendation was not accepted by the Department of Transport.

- On June 8, 2019, the Department of Transport issued a Certificate of Amalgamation of Port Authorities to create the new Hamilton-Oshawa Port Authority HOPA. The Certificate of Amalgamation included the Letters Patent of the HOPA. See Appendix “A” to Report PED23021, attached to this Report. According to the Letters Patent, as issued by the Department of Transport on June 8, 2019, “The HOPA Board of Directors shall be composed of seven directors appointed to hold office as follows:
 - (e) The Governor in Council appoints one individual nominated by the Minister;
 - (f) The City of Hamilton and the City of Oshawa, in consultation with the City of Burlington, appoints one individual;
 - (g) The Province of Ontario appoints one individual; and,
 - (h) The Governor General in Council appoints four remaining individuals nominated by the Minister in consultation with the users selected by the Minister or with the classes of users”.

Current Board Representation

The municipal seat on the HOPA Board of Directors is occupied by Mr. Jim Howlett. He was appointed to the Board of Directors on February 14, 2018. Mr. Howlett is a lifetime Hamiltonian who has served on a wide variety of councils and boards since the 1980's. These include the International Joint Commission to the Great Lakes, several community councils, and non-profit groups, and also a tribunal judge for the Province of Ontario. Mr. Howlett has remained on the HOPA Board of Directors post amalgamation as the municipal appointed director under 4.4(b) of the HOPA Letters Patent.

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 Oshawa Port Authority;

City of Oshawa; and,

City Manager’s Office.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Despite best efforts by both the City of Hamilton and the City of Oshawa to have individual representation on the HOPA board, the Letters Patent included in the Certificate of Amalgamation clearly state that there is to be a single municipal representative on the HOPA Board of Directors. The Letters Patent did not provide direction on how this municipal appointment is to be determined.

Following discussions with senior staff from both the City of Hamilton and the City of Oshawa, and to ensure a fair and equitable process, it is recommended that both municipalities form working groups comprised of elected officials and collaborate to recommend an appointment process for the new municipal representative to the HOPA Board of Directors in 2023, and for any future appointments.

ALTERNATIVES FOR CONSIDERATION

Council could direct senior staff from both municipalities to collaborate and bring forward a suggested selection process to their respective Councils, however given the political importance of the board position, this alternative would not be recommended.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

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

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 PED23021 – Letters of Patent

NS/jrb