




**CITY OF HAMILTON**  
**PUBLIC WORKS DEPARTMENT**  
**General Manager's Office**

<b>TO:</b>	Chair and Members General Issues Committee
<b>COMMITTEE DATE:</b>	December 6, 2023
<b>SUBJECT/REPORT NO:</b>	Red Hill Valley Parkway Inquiry Final Report (PW23029(a)) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Pat Leishman (905) 546-2424 Ext. 2629 Andrea Vargas (905) 546-2424 Ext. 3867
<b>SUBMITTED BY:</b>	Carlyle Khan General Manager, Public Works Public Works Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- a) That Council approve the formation of an interdepartmental Working Group led by the Public Works Department, for the purpose of responding to the recommendations noted in the Report of the Red Hill Valley Parkway Inquiry from the Honourable Mr. Justice Herman J. Wilton-Siegel dated November 29, 2023;
- b) That the General Manager, Public Works, or their designate be directed to provide an initial update to the General Issues Committee by March 31, 2024 on the establishment of the Working Group and associated Action Plan; and
- c) That the General Manager, Public Works, or their designate be directed to provide bi-annual updates to the General Issues Committee, on status of the Action Plan.

**EXECUTIVE SUMMARY**

On April 24, 2019, Council passed a resolution requesting that a judicial inquiry (the **"Inquiry"**) be commenced to investigate a number of issues related to the Red Hill Valley Parkway (the **"RHVP"**) and a consultant's report concerning friction testing on the RHVP in 2013 that was not previously disclosed to Council or the public.

In May 2019, The Honourable Justice Herman J. Wilton-Siegel (the “**Commissioner**”) was appointed to preside over the Inquiry, which centered on 24 questions posed by Council referred to as the Terms of Reference. The City chose to proceed with the Inquiry because of the public nature of the hearings, in the interest of accountability and transparency and to maintain the trust of the public.

On November 29, 2023, the Commissioner released the “Report of the Red Hill Valley Parkway Inquiry” (“**Inquiry Report**”), which provides a summary of the key evidence received by the Inquiry and the Commissioner’s findings on the Terms of Reference, including recommendations to prevent any future incidents of non-disclosure of significant information to Council.

Report PW23029(a) provides a high-level summary of the Commissioner’s findings relating to the key Terms of Reference. A subsequent report will be provided to the General Issues Committee by March 31, 2024 which will include the membership and Terms of Reference of the Working Group, and initial Action Plan in response to the recommendations identified in the Inquiry Report.

#### **Alternatives for Consideration – N/A**

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

Financial: The costs associated with the advancement of the Red Hill Valley Parkway Inquiry through the report completion and post-report stages are estimated to be in the range of \$27 million and \$28 million. The costs are based upon the current status and anticipated effort required and are detailed in Red Hill Valley Parkway Inquiry Update report LS19036(t) dated October 18, 2023. These costs will be recovered from the Tax Stabilization Fund.

There are no additional costs anticipated for the establishment of the proposed interdepartmental Working Group. Any additional costs relating to the implementation of recommendations from the Inquiry Report will be addressed in subsequent reports to Council from the Working Group.

Staffing: Additional staffing is not anticipated at this time, as the proposed Working Group will be staffed and supported by current City employees.

Legal: As outlined in Report PW23029(a).

## **A. Background**

### **1. Events Leading to the Inquiry**

In early 2019, City Council received information regarding a report by Tradewind Scientific Ltd. (“**Tradewind**”) related to friction testing conducted on the RHVP dated November 20, 2013 (the “**Tradewind Report**”) that was not previously disclosed to Council or the public.

Council was advised that the public and Council may have received inconsistent information regarding the Tradewind Report including in 2015 and 2017 in the face of speculation regarding asphalt conditions on the RHVP and the impact of these conditions on collisions.

Upon learning of the Tradewind Report, on April 24, 2019, Council passed a resolution requesting that the Inquiry be commenced. In May 2019, the Honourable Justice Herman J. Wilton-Siegel was appointed to preside over the Inquiry.

The Inquiry was a time-intensive and costly process. Spanning over 4 years and involving 130,000 documents, interviews of over 100 individuals and 85 hearing days, the Inquiry process allowed for a comprehensive investigation into 24 Terms of Reference in a public setting.

The City chose to proceed with the Inquiry because of the public nature of the hearings, in the interest of accountability and transparency and to maintain the trust of the public. Specifically, the hearing stage of the Inquiry was live streamed on YouTube and all evidence, including recordings and transcripts of witness testimony, documentary evidence, and the closing submissions are readily accessible on the Inquiry website.

On November 29, 2023, the Commissioner released the Inquiry Report, which provides a summary of the key evidence received by the Inquiry and the Commissioner’s findings on the Terms of Reference, including recommendations to prevent any future incidents of non-disclosure of significant information to Council.

### **2. Summary of the Inquiry Report**

This report provides a high-level summary of the Commissioner’s findings relating to the key Terms of Reference, including regarding the safety performance of the RHVP, the disclosure of the Tradewind Report, friction testing completed by the Ministry of Transportation (the “**MTO**”) and the Commissioner’s recommendations. This report does not provide a comprehensive summary of the entire Inquiry Report, which is 1000 pages long.

For ease of reference, this report also includes the following additional appendices:

- Appendix “A” to Report PW23029(a) lists the 24 Terms of Reference and provides a high-level summary of the Commissioner’s findings for each.

- Appendix “B” to Report PW23029(a) provides an index of some of the key individuals and entities involved in the Inquiry.
- Appendix “C” to Report PW23029(a) provides a detailed summary of the Commissioner’s recommendations.

## **B. Findings regarding the Safety Performance of the RHVP**

This section provides a high-level summary of the Commissioner’s findings regarding the safety performance of the RHVP and specifically with respect to:

- 1) the design and construction of the RHVP;
- 2) the role of friction in collisions on the RHVP prior to its resurfacing in 2019; and
- 3) the impact of the non-disclosure of the Tradewind Report.

The Inquiry was primarily focused on the time-period between the design and construction of the RHVP to its resurfacing in 2019. The Commissioner does not make any findings concerning the safety performance of the RHVP since its resurfacing in 2019.

### **1. RHVP Design and Construction**

The Inquiry received extensive evidence regarding the design and construction of the RHVP, including with respect to design guidelines, the type of asphalt used to construct the RHVP and the paving process. The Commissioner made three key findings with respect to these issues, detailed below.

The first two findings relate to two unique features of the RHVP pavement – the use of perpetual pavement and stone mastic asphalt, which the Commissioner described as “innovative in a municipal context”.

The RHVP was built using a perpetual pavement structure, which is intended to last longer than traditional pavement structures. Perpetual pavements have significant benefits, including a longer life cycle cost, lower rehabilitation costs, and better resistance to cracking. The only drawback to perpetual pavement is higher initial construction costs.

The Commissioner found that using perpetual pavement, which was primarily done at the direction of Mr. Gary Moore (at the time, the Manager of Design at the RHVP Project Office), “made good economic sense”.

The Commissioner also made findings regarding the use of stone mastic asphalt (“**SMA**”), a special type of asphalt that was used on the surface course of the RHVP.

The City’s paving contractor for the RHVP, Dufferin Construction, sourced the aggregate used in the SMA surface course from Demix Agrégats, located outside of Montreal, Quebec.

The Commissioner confirmed that there was no evidence to suggest that the Demix aggregate was inadequate from a friction perspective or otherwise. The Commissioner further found that the use of SMA did not give rise to any friction issues on the RHVP. The Commissioner also made important findings concerning the design of the RHVP. Specifically, the Commissioner found that while the RHVP was generally designed and constructed in accordance with the prevailing Ontario design guidelines, certain “design features make some sections of the RHVP particularly challenging to drive”.

These design features include the differential between the design and posted speed limit, the radii of certain curves in the section between the Greenhill Avenue and Queenston Road interchanges and the spacing between certain on and off ramps.

The Commissioner further found that “individually and collectively, these design elements may result in ‘expectancy violations’ for some drivers leading to poor decision making”. Expectancy violations occur when roadway conditions are inconsistent with drivers’ reasonable expectations.

## **2. Role of Friction in Collisions on the RHVP prior to the 2019 Resurfacing**

The Inquiry received considerable evidence regarding the role of friction in collisions on the RHVP from safety reports prepared by CIMA (the City’s safety consultant) and evidence from witnesses, including Brian Malone (VP of Transportation at CIMA) and expert witnesses engaged by Commission Counsel and the City.

The Commissioner made important findings on this issue. Most notably, he confirmed that any general comments or conclusions regarding the role of friction in collisions on the RHVP cannot be applied to any individual collision. The Commissioner further confirmed that a “full collision reconstruction” would be required to properly understand the cause of any individual collision.

The Commissioner found that the evidence did not indicate that the friction levels on the RHVP were “inordinately low or unsafe on their own”, but rather that, generally speaking, the RHVP needed more friction than other roadways due to certain characteristics of the RHVP, including the geometry and operating speeds. On this basis, the Commissioner found that there was “ample evidence” that friction levels were one of the contributing factors to collisions on the RHVP, particularly on wet pavement, noting:

... the friction levels on the RHVP, or a section thereof, were such that they did not supply adequate skid resistance to vehicles negotiating the roadway and thereby constitute a potential contributing factor to accidents on the roadway where there was a wet surface.

As part of Public Works’ ongoing efforts to improve road safety, various improvements have been made to the RHVP since the commencement of the Inquiry, including resurfacing and the lowering of the speed limit in 2019.

### **3. Impact of Non-Disclosure of the Tradewind Report on Roadway Safety**

The Tradewind Report concluded that the friction levels on the RHVP were “below or well below” the investigatory level of the standard used in the United Kingdom and recommended that the City do “a more detailed investigation” and consider “possible remedial action” to enhance surface texture and friction characteristics.

One of the key issues in the Inquiry was to understand the impact of the non-disclosure of the Tradewind Report and on the RHVP.

The Commissioner’s findings on this issue were based on an “objective standard of what internal municipal traffic safety professionals, acting with external advice, should reasonably have been expected to do” with the Tradewind Report.

The Commissioner found that the principal significance of Mr. Moore’s retention of the Tradewind Report (discussed further in section C) was that the City’s Traffic group and its safety consultant CIMA did not have the benefit of the findings of the Tradewind Report.

Specifically, the Commissioner noted that “it is reasonable to proceed on the basis that” if the Traffic group had received the Tradewind Report, the Traffic group would have:

- 1) investigated the friction levels, including perhaps through further friction testing; and
- 2) developed a more comprehensive view of the factors that were contributing to collisions in 2014.

The Commissioner also considered the extent to which these actions would have impacted the safety performance of the RHVP, noting that this was a “difficult question” to answer in hindsight.

The Commissioner stated that he cannot speculate on whether Traffic would have implemented certain recommendations from the City’s consultants that were not ultimately implemented but found that it is “reasonable to assume” that Traffic may have undertaken to implement the countermeasures that were completed on the RHVP “earlier than actually occurred”.

Specifically, the Commissioner found that “it is reasonable to assume” that Traffic would have taken the following three steps before 2019 if they had received a copy of the Tradewind Report and developed a more comprehensive approach to traffic safety:

- 1) Recommended a reduction in the posted speed limit on the RHVP;
- 2) Recommended more aggressive speed enforcement on the RHVP; and
- 3) Installed permanent raised reflective markings, notwithstanding the fact the RHVP was scheduled to be resurfaced in 2019.

On the issue of whether users of the RHVP were put at risk because of the non-disclosure of the Tradewind Report, the Commissioner stated that it would be difficult to generate a definitive conclusion on this issue.

However, the Commissioner found that “it is logical to assume that the failure to disclose the Tradewind Report ... contributed to accidents and injuries on the RHVP since January 2014” if we assume that:

- 1) The Traffic group would have reduced the speed limit, arranged for more aggressive speed enforcement and installed permanent raised reflective markings before 2019; and
- 2) The implementation of these countermeasures would have actually been effective at reducing the demand for friction.

### **C. Disclosure of Tradewind Report**

#### **4. Why was the Tradewind Report not shared with Council after it was discovered in 2014?**

One of the key issues driving the Inquiry was whether the Tradewind Report was shared with anyone once it was received by the City in 2014 and, if not, why not.

In answering these questions, the Commissioner made specific findings regarding the non-disclosure of the Tradewind Report and identified other systems and processes that allowed the Tradewind Report to go undetected in the 2014 – 2018 period. Each are reviewed below.

##### ***a. Who received the Tradewind Report?***

The Commissioner found that upon receiving the Tradewind Report in January 2014, Mr. Gary Moore (the Director of Engineering Services) did not share a copy of the Report with other staff members in the City.

In 2017, Mr. Moore provided a copy of the Tradewind Report to the City’s external legal counsel in the context of ongoing litigation against the City concerning the RHVP, at their request.

Prior to his retirement as Director of Engineering Services in May 2018, Mr. Moore saved a copy of the Tradewind Report within the “Director’s Office (Engineering Services)” folder in the document management system used by Engineering Services. Mr. Gord McGuire (the Director of Engineering Services after Mr. Moore) found the saved copy of the Tradewind report in September 2018 after which he forwarded it to a number of other staff members at the City to assess next steps.

***b. Why was the Tradewind Report not shared?***

The Commissioner found that although there was no requirement for Mr. Moore to disclose the Tradewind Report to Council upon receiving it in 2014, he did have an obligation to provide the report to the Traffic group so they could assess the Report from a traffic safety perspective.

The Commissioner was also tasked with identifying whether there was any misconduct associated with the non-disclosure of the Tradewind Report. The Commissioner defined “misconduct” in this context as “improper or unprofessional behaviour” or “bad management”.

The Commissioner found that Mr. Moore engaged in misconduct in the following ways:

- Did not provide the Traffic group with a copy of the Tradewind Report for the purposes of its traffic safety mandate;
- Provided inaccurate or incomplete information about the Tradewind Report to CIMA and to the Public Works Committee. Specifically, he advised the Committee in December 2015 that friction testing showed the RHVP was holding up “exceptionally well” such that there are “no concerns about the performance of the surface mix” of the RHVP; and
- Provided inaccurate statements to the Hamilton Spectator in July 2017 regarding the timing and nature of the friction testing completed on the RHVP and in January 2018 regarding the purpose of subsequent pavement testing on the RHVP.

In addition to the above, the Commissioner also identified other structures and processes that allowed the Tradewind Report to go undetected in the 2014 – 2018 period. Some examples of these are provided below.

- **More coordination and cooperation in Public Works:**  
The Commissioner found that the allocation of responsibilities related to the RHVP amongst various divisions and sections in Public Works excluded any sense of collective responsibility for the safety of the RHVP. In particular, the lack of a central authority over the RHVP had the effect of creating a lack of accountability where personnel in Engineering Services and Traffic disagreed or did not share information, expertise, or a common understanding about who was responsible for tasks concerning the RHVP.
- **A more comprehensive approach to traffic safety:**  
The Commissioner found that the RHVP would have benefited from a more comprehensive traffic safety program noting that (1) the Annual Collision Report program was paused between 2011 and 2017; and (2) better coordination between Traffic and Engineering Services was necessary to implement countermeasures that fall within the mandate of both groups, such as friction testing.

- **More clarity and collaboration when working with consultants:**

The Commissioner found that the engagement and work of CIMA (the City's safety consultant) in 2013 and 2015 would have benefited from more collaboration between staff from Traffic and Engineering Services and that this would have allowed for a more comprehensive approach to traffic safety.

Specifically, the Commissioner identified the lack of a project charter, which could have provided clarity on individual roles and respective responsibilities, and the lack of information sharing and coordination between Traffic and Engineering Services in particular during the implementation of consultant recommendations.

#### **5. Steps Taken to Disclose the Tradewind Report to Council and the Public following its Discovery in the Fall of 2018**

As stated above, the Tradewind Report was identified by Mr. McGuire in September 2018, and subsequently shared with other City staff members. In November 2018, the City also received a Freedom of Information request requesting the release of friction testing-related documents.

In 2019, two presentations regarding matters related to the Tradewind Report were made to Council, the first on January 23, 2019, and the second to the General Issues Committee ("**GIC**") on February 6, 2019.

The Commissioner was tasked with assessing staff's conduct to confirm whether there was any misconduct leading up to the report to Council in 2019 once the Tradewind Report was identified in 2018.

As detailed below, the Commissioner did not make findings of misconduct in this regard.

In addressing whether appropriate steps were taken to disclose the Tradewind Report, or the information and recommendations contained therein, once it was discovered in 2018, the Commissioner found that:

- There was an obligation to bring the Tradewind Report to the attention of Council.
- Mr. McGuire took appropriate steps upon locating the Tradewind Report in September 2018.
- The communications to Council and the public regarding the Tradewind Report was inadequate in its assessment of potential safety issues, and focused on possible reputational damage to the City that could result from release of the Tradewind Report.
- No members of staff involved in the preparation of the notification of the Tradewind Report to Council and the public during the 2018/2019 time period, engaged in misconduct, improper or unprofessional behaviour to warrant a finding of misconduct.

In the Commissioner's view, the Tradewind Report raised two obvious questions:

- 1) whether the collision history of the RHVP and related complaints could be attributed, at least in part, to the friction levels on the RHVP; and
- 2) whether the actual friction levels in 2018 and 2019 posed a safety concern.

The Commissioner found that City staff did not comprehensively answer the questions above and did not review the significance of the Tradewind Report on traffic safety of the RHVP in their presentation to GIC, due to:

- Mr. McGuire and Mr. Soldo not interpreting the Tradewind Report and the 2014 Golder Report to be expressing an urgent safety concern;
- Mr. McGuire's and Mr. Soldo's understanding that the planned resurfacing of the RHVP which was scheduled to take place in 2019, would address any deficiencies in friction levels on the RHVP;
- the siloed structure of the Public Works Department resulting in the absence of effective communication among those involved, and leading to various divisions not taking responsibility for the possible impact of friction levels on the RHVP; and
- an undue focus on reputational damage to the City and possible liability exposure.

The Commissioner noted that City staff and senior staff members worked expeditiously to prepare the presentation to Council on the outstanding RHVP-related matters including the Tradewind Report within a reasonable time frame. However, as a result of the unclear and overlapping roles and responsibilities of those involved and the compressed timeframes, there was little actual collaboration in developing the content for the presentations to Council.

The Commissioner acknowledged and accepted that staff involved in the presentations to Council legitimately sought to be open and transparent with Council and the public, while noting that Council could have been provided with more information in the written materials to understand more comprehensively the factors contributing to accidents on the RHVP.

The Commissioner stated that despite the reservations expressed regarding the actions of staff after discovery of the Tradewind Report, each staff member ultimately addressed issues that fell within their respective areas of responsibility and within the City's organizational structure at the time.

#### **D. MTO Results**

The MTO completed friction testing on the RHVP in 2007 and between 2008 and 2014. The Inquiry received evidence regarding the circumstances around the friction testing, including the purpose of the testing, the extent to which the results were shared with the City, and the consequences of the non-disclosure of the MTO friction testing results. The City learned of the MTO's friction testing between 2008 and 2014 in 2019, after the City disclosed the Tradewind Report to Council and the public (the "**Post-2008 MTO Friction Testing**").

The Commissioner noted that the Terms of Reference defined the “MTO Report” as the MTO friction testing in 2007 and, accordingly, focused on the MTO 2007 friction testing and not the Post-2008 MTO Friction Testing.

#### **6. Why did the MTO perform friction testing on the RHVP?**

On February 12, 2019, City staff learned from MTO staff and from a reporter at the Hamilton Spectator that the MTO had conducted friction testing on the RHVP between 2008 and 2014. At the time the Tradewind Report was disclosed to the public, City staff were unaware of the yearly friction testing from 2008 to 2014 (except for 2013), or the test results.

The Commissioner found that the MTO performed friction testing on the RHVP in 2007 at the request of the City’s pavement consultant Golder Associates Ltd. (“**Golder**”) on behalf of the City prior to the opening of the RHVP and performed the Post-2008 MTO Friction Testing to evaluate the roadway’s aggregate, and not for traffic safety purposes.

#### **7. Why did the MTO not share these results?**

The MTO shared the results of the 2007 RHVP friction testing with the City through its consultant, Golder. Mr. Moore and Mr. Marco Oddi were the only City staff who received the results. They did not distribute the friction testing results, but the Commissioner found that they were not required to do so by any by-law or policy and Council would not have expected to receive the 2007 results.

The Commissioner found that the MTO’s actions in respect of the Post-2008 MTO Friction Testing and the results were guided by the MTO’s practice and unwritten policy of not sharing DSM-related friction testing results with outside parties.

The Commissioner found that more importantly, the Post-2008 MTO Friction Testing was obtained by the MTO solely for Designated Source of Materials list purposes. It was not obtained as part of a broader investigation of a potential issue engaging public safety, nor was there any evidence to suggest that the MTO was aware of concerns pertaining to friction or safety of the RHVP.

#### **8. What was the impact of non-disclosure of the MTO 2007 results?**

The Commissioner found that there was no impact associated with the non-disclosure of the 2007 RHVP friction test results. If the results had been provided to Council in 2007, they would not have triggered any safety changes to the RHVP or prompted any further friction-related studies of the RHVP.

The Commissioner further found that there is no connection between the 2007 friction testing results and accidents, injuries, and fatalities that occurred on the RHVP after January 2014. The results were acceptable for a stone-mastic asphalt pavement that had not yet opened to the public and did not disclose any prospective pavement issue.

## **E. Recommendations**

The Commissioner has made a total of 36 recommendations in response to the matters outlined in the Terms of Reference. These recommendations include making changes to the City's by-laws, policies, and procedures, and are aimed at preventing any future incidents of non-disclosure of information to Council.

The recommendations have been categorized into the following 8 categories:

<b>1. Traffic Safety on the RHVP and LINC</b>
<b>2. Delineating the Roles and Responsibilities of City Staff</b>
<b>3. The Culture Within the Public Works Department</b>
<b>4. Information Sharing and Communication Among Staff</b>
<b>5. Staff's Reporting Obligations</b>
<b>6. Staff Communications with the Media and Public</b>
<b>7. Consultant Engagements and Assignments</b>
<b>8. Staff Reports</b>

A broad summary of the recommendations with respect to each specific category, as well as the steps already taken by the City to address some of the issues giving rise to the Commissioner's recommendations, are discussed below.

A more detailed list of the specific recommendations for each category is provided in Appendix "C" to Report PW23029(a).

### **1. Traffic Safety on the RHVP and LINC**

The Commissioner made a number of recommendations to improve the City's approach to traffic safety on the Lincoln M. Alexander Parkway (the "**LINC**") and the RHVP (together the "**Parkways**"). The Commissioner emphasized the importance of implementing processes that ensure effective management, efficient operation, and proper maintenance. Examples of the key recommendations on this issue are provided below:

- Implementing mechanisms to reinforce the joint responsibility of the Transportation Operations & Maintenance Division and Engineering Services towards traffic safety by designating a Public Works staff person with overall responsibility for the operation, maintenance, and traffic safety of the Parkways.
- Maintaining the City's existing Parkway Management Committee so it can continue to provide leadership on the maintenance of the Parkways, and developing comprehensive guidelines based on industry best practices, such as project charters to ensure that desired outcomes are effectively actioned.

- Adopting processes for a comprehensive traffic safety approach similar to the MTO to monitor and address traffic safety issues that arise on the Parkways, by regular collection and analysis of traffic statistics. We note that some of the recommendations on this issue are in regard to the processes in place between 2011 and 2017 and do not take into account the steps already taken by the City, including the review of collision through the Annual Collision Reports program, which resumed in 2017.

The City has already taken a number of steps to improve internal processes within Public Works with a view to better maintain oversight of the Parkways.

For example, the creation of the temporary (24-month) Chief Road Official (the “**CRO**”) role within the Public Works Department in March 2021 allowed for consistent coordination and addressing some fragmentation of the structure and systems involved in the design, build, operation and maintenance of city roads.

The Commissioner acknowledged the creation of the CRO position and confirmed that it is appropriately within the City’s purview as to whether the duties of the Chief Road Official duties could be combined with those of the Director of Transportation Operations & Maintenance. After 18 months of piloting the Chief Road Official role, and through Report PW21013(a), the duties of the Chief Road Official have been combined with the Director, Transportation Operations & Maintenance (TOM) to create the new position, Director, Transportation. This role has overall responsibility for the concerns identified in the recommendation.

The Commissioner also acknowledged that in 2020, the City implemented a Project Management Manual across Public Works as part of its new Public Works Quality Management System, which provides that project managers should create project charters as part of the initiating stage of their projects, consistent with the Commissioner’s recommendations.

## **2. Delineating Staff Roles and Responsibilities in Public Works**

The Commissioner made recommendations aimed at bettering the delineation of responsibilities across the various Public Works divisions, with particular emphasis on situations where there are overlapping responsibilities amongst groups for matters of traffic safety. Examples of the key recommendations on this issue include:

- Designating a staff member most responsible for a project, including for developing a project charter ensuring that the scope, resources, and responsibilities of the various groups are clearly articulated.
- Implementing mechanisms that ensure that staff receive regular, practical, and job-specific training on the City’s Code of Conduct and accepted best practices for working collaboratively.

The City has already taken some steps to improve the allocation of responsibilities across the various Public Works divisions by implementing the Project Management Manual, one of the key features of which is the Project Charter.

The Project Charter provides clear guidance and communication on who is accountable, what is expected to happen, and how success will be defined, serving as a work plan for all involved in a given project.

### **3. Culture Within Public Works**

The Commissioner made a series of recommendations to further develop a culture of collaboration and cooperation between departments and divisions in Public Works. Examples of the key recommendations on this issue include:

- adding competencies such as collaboration, cooperation, transparency, and accountability in any performance related documents, such as evaluations.
- ensuring that Public Works staff receive training and attend conferences that address leadership and communication.
- establishing processes and procedures that stipulate when Public Works staff require intervention from a superior for any reason, request(s) for that intervention should be clear, explicit, and in writing.
- strengthening existing policies and channels dealing with internal complaint procedures and/or internal whistleblower policies.

### **4. Information Sharing and Communication Among Staff**

The Commissioner made recommendations to improve access to records and reliable information sharing amongst various Public Works divisions, including:

- Having each division of Public Works maintain a library of all consultant and other third-party reports, staff reports to Council and formal internal reports, that is accessible to all staff in Public Works.
- Implementing formal project tracking processes for any case where multiple divisions in Public Works are working jointly to implement directions from Council.
- Establishing formal policies with respect to the transition of individuals in director and manager roles to ensure that institutional knowledge is not lost.

The City has already taken steps to improve information and document management. In particular, the Commissioner acknowledged that the City has taken steps to improve access to records and information, information storage, and the tracking of consultant reports since the events at issue in this Inquiry, including through the following policies and procedures:

- ***The Records & Information Management Policy*** (September 2022)  
Aimed at ensuring consistent standards and practices are maintained with respect to the management of records in the City's possession to ensure that information is available for decision-making, program and service delivery and access requests under the Municipal Freedom of Information and Protection of Privacy Act.
- ***The Public Works' Control of Records Procedure*** (October 2020)  
Includes guidelines with respect to record retention, disposal, collection, storage and access to ensure that records are managed appropriately to facilitate the accessibility, accuracy and security of information to meet operational and legislative requirements.
- ***The Transportation, Operations, and Maintenance Division's Consultant Procedure Reports Tracking and Retention – Divisional Procedure*** (May 2021)  
Establishes a process for tracking and retaining reports that consultants provide to City staff members in the Transportation Operations & Maintenance Division.

## **5. City Staff's Reporting Obligations**

The Commissioner made recommendations with respect to staff reports and staff communication with Council to better ensure that staff conduct themselves with transparency and give their best objective advice to Council. These recommendations include:

- Delivering continuing education programs to Public Works staff on their relationship with Council, including to provide Council with objective information and recommendations to allow Council to make informed decisions.
- Supplementing the Council/Staff Relationship Policy to reiterate that information provided to Council and/or the public should be accurate, and that staff should not manipulate or present information in a misleading way.
- Revising existing policies to reiterate that staff must place the interests of objective, accurate, and timely reporting of information to Council, ahead of their own self-interest and/or concerns for the reaction of Council or the public to such information.
- Implementing a policy to track any commitments made by staff to Council outside of formal processes and requiring that staff make efforts to correct the record with Council in a timely manner, should they learn that inaccurate information has been provided to Council for any reason.

The City has taken a number of steps, including through enacting new policies, to better improve the relationship between City staff and Council, including with respect to reporting on matters that concern public safety.

The Commissioner confirmed that the 2020 Code of Conduct and 2021 Council/Staff Relationship Policy set out some of the principles that underlie his recommendations and noted that his recommendations seek to expand some of the principles in these policies.

## **6. Staff Communications with the Media and Public**

The Commissioner made recommendations regarding staff's communications with the media. These recommendations include:

- Ensuring that the Code of Conduct requires City staff to be truthful and accurate when speaking with the media and public and requires staff to advise their superiors if they become aware that another member of City staff has misrepresented facts or information to the public and/or media.
- Ensuring that Public Works staff that are spokespersons receive media training that emphasizes the importance of making accurate statements and ensure that any inaccuracies are corrected.

## **7. Consultant Engagements and Assignments**

The Commissioner made recommendations regarding the use of consultants, including to further develop a culture within Public Works that emphasizes shared ownership of consultant reports, where applicable. The Commissioner's recommendations include:

- Maintaining a log of all consultant engagements accessible to all other City staff and implementing mechanisms which accurately capture the scope and nature of the consultant's involvement, including through creating a project charter with details proportionate to the scope of the project.
- Implementing procedures to ensure prioritization of consultant recommendations, with guidelines for when City staff may request changes to consultant reports.
- Developing procedures to ensure that Councillors, regardless of their ward, have equal access to information regarding consultant reports, even if the consultant's report is particularly relevant to a specific ward.
- Developing procedures to ensure that staff who learn of a risk to health or safety from a consultant, follow up with the consultant to obtain an informed understanding of the factors involved, if necessary.

The City has taken some steps towards improving the way in which consultant reports are tracked and reported on. The Commissioner confirmed that the 2021 Council/Staff Relationship Policy addresses some of his recommendations, particularly with respect to ensuring that all Councillors are provided with the same information on matters of general concern and/or matters to be discussed at Council or committee meetings.

Public Works has also implemented the “Tracking and Sharing Consultant Report Recommendations, and Actions” procedure in January 2022. This procedure ensures that all consultant recommendations are documented and communicated to Council as appropriate.

## **8. Staff Reports**

The Commissioner made recommendations regarding the preparation and presentation of staff reports to Council. These include:

- Developing policies to ensure that staff reports are objective, accurately summarize consultant reports and identify a full range of options for Council to consider with the risks and fiscal impacts of each option clearly.
- Ensuring consultant reports are appended to staff reports or are made available at the request of Councillors.
- Providing staff with training on drafting staff reports.
- Developing policies to ensure that draft staff reports are circulated to those involved for their review and input but not shared with individual Councillor unless expressly authorized by Council.

The City has already taken some steps towards improving staff reporting to Council. The Commissioner confirmed that the 2021 Council/Staff Relationship Policy incorporates some of his recommendations, namely that all Councillors should have equal access to information on matters of general concern and/or discussed before Council and notes that his recommendations should assist in further developing this policy.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

N/A

## **RELEVANT CONSULTATION**

- Eli Lederman and Delna Contractor – external legal counsel, Lenczner Slaght LLP
- Belinda Bain – external legal counsel, Gowling WLG (Canada) LLP

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The Inquiry Report identified areas where Public Works has already taken action, including with respect to quality management, inter-divisional coordination meetings and project management guidance. However, the Inquiry Report also identified areas of opportunity where the City, and Public Works in particular, can continue to improve. The Commissioner’s eight (8) main recommendations are further delineated into 36 sub-recommendations that generally relate to four (4) issues: coordination and collaboration between Public Works divisions generally, and as related to the Parkways; better and more consistent reporting to Council; accurate disclosure of information to the media

and public; and better understanding of the role of third-party consultants and the role of staff in the interactions with third party consultants.

The initial Action Plan will address the recommendations with a developed management response that includes actions to date, future opportunities, and potential impact to resources and cost. Reporting will include the status and progress of each action in the bi-annual reports to the General Issues Committee.

#### **ALTERNATIVES FOR CONSIDERATION**

N/A

#### **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” to Report PW23029(a) – Answers to the Terms of Reference in the Inquiry Report

Appendix “B” to Report PW23029(a) – Index of Certain Referenced Individuals and Entities

Appendix “C” to Report PW23029(a) – Inquiry Report Recommendations