



CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT

Legal and Risk Management Services Division and City Manager's Office

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	October 18, 2023
SUBJECT/REPORT NO:	Red Hill Valley Parkway Inquiry Update (LS19036 (t)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Patricia D'Souza, Solicitor, Legal & Risk Management Services (905) 546-2424 Ext. 4637
SUBMITTED BY:	Lisa Shields, City Solicitor Legal and Risk Management Services Corporate Services Department
SIGNATURE:	

RECOMMENDATION

That Council approve the revised estimated total cost of the Red Hill Valley Parkway Judicial Inquiry of up to \$28,000,000, to be funded through the Tax Stabilization Reserve (110046).

EXECUTIVE SUMMARY

On April 24, 2019 Council directed staff to provide regular updates on the costs to date of the Red Hill Valley Parkway Judicial Inquiry (the "Inquiry"), to be paid from the Tax Stabilization Reserve.

This report provides both an update on the status of the Inquiry and the costs to date.

To date, the City has incurred approximately \$25.5 million in costs associated with the Inquiry, inclusive of the non-recoverable portion of HST, and based on the estimate of costs provided by Emily Lawrence and Andrew Lewis of Paliare Roland Rosenberg Rothstein LLP, who were retained by the Commissioner as Counsel to the Commission ("Commission Counsel") and the City's external legal counsel ("Inquiry Counsel") at Lenczner Slaght LLP. The City may incur an additional \$1 million in costs between October 2023 and January 2024, resulting in a total estimated cost to the City for the Inquiry of between \$27 million and \$28 million (including taxes).

This increase in costs is related to additional work that will be necessary following the release of the final report, including an analysis and presentation of the key findings of the report to Council by Inquiry Counsel. Given the delay in the release of the report, which was initially expected in early Fall 2023, Inquiry Counsel are unable to provide a complete breakdown of this additional work at this time. The report is now expected to be released by November 2023. Commission Counsel continues to assist in preparing the final report, and the bulk of the current fees relate to Commission Counsel's legal fees, as well as data storage, website maintenance and report publication.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The costs associated with the advancement of the Red Hill Valley Parkway Judicial Inquiry through the report completion and post-report stages are estimated to be in the range of \$27 million and \$28 million.

These costs are based upon the current status, anticipated effort required and the current forecasted schedule, which are subject to change based upon the requirements of the Commissioner and Commission Counsel, which may be outside the control of the City.

These costs will be recovered from the Tax Stabilization Fund.

Staffing: Not Applicable.

Legal: As outlined in this Report.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

As outlined in this Report.

RELEVANT CONSULTATION

- Mike Zegarac – General Manager Corporate Services Department

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Status of the Inquiry

The hearing stage of the Inquiry was completed in Spring 2023, with oral closing submissions delivered on March 22 and 24, 2023. The parties are now awaiting the release of the report by the Inquiry's Commissioner, the Honourable Mr. Justice Herman J. Wilton-Seigel, in which he will summarise the evidence, make findings of fact, and recommendations in response to the Terms of Reference, which were 24 questions

provided by City Council at the Inquiry's outset. It is expected that the Commissioner's report will be released by November 2023.

Since the hearing stage was completed in March 2023, the bulk of the work on the Inquiry since that time has been by Commission Counsel, assisting the Commissioner with the preparation and publication of the report.

Costs of the Inquiry

The costs of the Inquiry to date are outlined in the following chart, representing external legal fees incurred by Commission Counsel and Inquiry Counsel, as well as fees related to services provided by Deloitte for data hosting, reviewing and producing documents and other associated expenses, including the digitizing of paper files, website hosting and consultants. The total below represents the actual expenses and the non-recoverable portion of HST. These expenses are being funded from the Tax Stabilization reserve.

To September 18, 2023	
City's Expenses (e.g. data collection, hosting)	\$798,188.87
City's External Legal Counsel Fees and Disbursements	\$10,689,371.14
Commission Counsel Fees and Disbursements	\$12,590,962.14
Other Expenses (e.g. consultants, website hosting)	\$1,587,429.05
Total (inclusive of non-recoverable HST)	\$25,665,951.20

The Inquiry was previously estimated to cost between \$18 million and \$20 million. On August 8, 2022, Council approved a revised estimated total cost of the Inquiry up to \$26 million, to be funded through the Tax Stabilization Reserve. The total costs were revised based on an updated estimate of Commission Counsel's legal fees from July 1, 2022 to the end of the Inquiry (excluding taxes). This estimate did not include the costs associated with all of Commission Counsel's disbursements, including the cost of expert witnesses.

The City receives detailed dockets from Inquiry Counsel which allows it to monitor and assess Counsel's fees. However, as Commission Counsel stands in a solicitor-client relationship with the Commissioner, the City has limited visibility into the breakdown of Commission Counsel's fees. Commission Counsel does provide a general breakdown of their fees into specific categories. These summaries provide some additional details to the City, while maintaining Commission Counsel's solicitor-client privilege with the Commissioner.

The bulk of the expenses following the conclusion of the hearing stage in late March 2023 arise from legal fees incurred by Commission Counsel as they assist the

Commissioner in preparing the final report. There have also been ongoing expenses relating to the hosting and maintenance of the Inquiry website and database and report publication.

Based on the revised estimate of Commission Counsel's legal fees, the costs of the Inquiry are expected to fall between \$27 million and \$28 million. This total also anticipates additional support Inquiry Counsel may provide to the City following the release of the Commissioner's Report, such as further reporting to staff and Council on the legal implications of the Report's conclusions and recommendations.

ALTERNATIVES FOR CONSIDERATION

Not Applicable.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Our People and Performance

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

APPENDICES AND SCHEDULES ATTACHED

None.