



City of Hamilton
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Hamilton

12. Judicial Investigation Red Hill Valley Parkway (LS19017) (City Wide) (Item 10.14)

- (a) That the Terms of Reference for the Judicial Investigation on the Red Hill Valley Parkway matter, attached as Appendix "B" to Report 19-008, be approved and be forwarded to the Chief Justice of the Superior Court;
- (b) That the City Manager be authorized and directed to take such actions and to execute such documents in a form satisfactory to the City Solicitor as required to give effect to Council's decision to initiate a Judicial Investigation on the Red Hill Valley Parkway matter, including such actions required by the Justice presiding over the Investigation;
- (c) That the costs of the Judicial Investigation on the Red Hill Valley Parkway matter be paid from the Tax Stabilization Reserve (110046);
- (d) That staff provide regular status reports identifying the costs to date associated with the Judicial Investigation on the Red Hill Valley Parkway; and,
- (e) That the law firm of Lenczner Slaght Royce Smith Griffin LLP be appointed as legal counsel for the City of Hamilton for the Judicial Investigation on the Red Hill Valley Parkway.

I hereby certify the foregoing to be a true copy
of Item 12, General Issues Committee Report
19-008, approved by City of Hamilton Council
of April 24, 2019.

Dated at the City of Hamilton on this 25th day of April, 2019.

A handwritten signature in black ink, appearing to read 'J. Pilon', written over a horizontal line.

J. Pilon
Acting City Clerk

WHEREAS under s. 274 of the *Municipal Act, 2001* S.O. 2001, c. 25, the council of a municipality may, by resolution, request a judge of the Superior Court of Justice to inquire into or concerning any matter connected with the good government of the municipality, or the conduct of any part of its public business;

AND WHEREAS any judge so requested shall make inquiry and shall report the results of the investigation or inquiry to the council as soon as practicable;

AND WHEREAS on February 6, 2019, Council of the City of Hamilton ("**Council**") was advised that a draft report by Tradewind Scientific Ltd. with respect to friction on the Red Hill Valley Parkway (the "**RHVP**"), dated November 20, 2013 (the "**Report**"), was not disclosed to Council;

AND WHEREAS the Report was provided to the City of Hamilton's Department of Engineering Services in January, 2014 by Golder Associates Ltd;

AND WHEREAS the Ontario Ministry of Transportation (the "**MTO**") conducted friction testing on the RHVP in 2007, but did not disclose the results of the testing (the "**MTO Report**") to Council or to the public;

AND WHEREAS concerns have been raised about why the Report, or the information and recommendations in the Report, were not disclosed to Council;

NOW THEREFORE Council does hereby resolve that:

1. An inquiry is hereby requested to be conducted pursuant to s. 274 of the *Municipal Act*, S.O. 2001, c. 25, which authorizes the Commissioner to inquire into any matter related to a supposed malfeasance, breach of trust, or other misconduct on the part of a member of Council, or an officer or employee of the City of Hamilton or of any person having a contract with it, in regards to the duties or obligations of the member, officer, or other person to the corporation, or to any matter connected with the good government of the municipality, or the conduct of any part of its public business; and
2. The Honourable Chief Justice Smith, Chief Justice of the Superior Court of Ontario, be requested to designate a judge of the Superior Court of Ontario as Commissioner for the inquiry and the judge so designated as Commissioner is hereby authorized to conduct the inquiry in two stages:
 - (a) To obtain, bearing in mind cost and the principles of proportionality, all documents necessary to answer the following questions:

- (i) Identify all individuals who received a copy of the Report or were advised of the Report or the information and recommendations contained therein after it was provided to the City's Department of Engineering Services in January, 2014;
- (ii) Based on the City's by-laws, policies and procedures, as they were in 2014, should Council have been made aware of the Report, or the information and recommendations contained therein, once the Report was submitted to the Department of Engineering Services in 2014?
- (iii) Why was the information in the Report, or the information and recommendations contained therein, not provided to Council or the public once the Report was submitted to the Department of Engineering Services in 2014?
- (iv) Who, if anyone, was responsible for the failure to disclose a copy of the Report, or the information and recommendations contained therein, to Council in 2014?
- (v) Was there any negligence, malfeasance or misconduct in failing to provide the Report, or the information and recommendations contained therein, to Council or the public?
- (vi) How was the Report discovered in 2018?
- (vii) Identify all individuals who received a copy of the Report or were advised of the Report or the information and recommendations contained therein, in 2018;
- (viii) Were appropriate steps taken to disclose the Report, or the information and recommendations contained therein, once it was discovered in 2018?
- (ix) Was there any negligence, malfeasance or misconduct in failing to disclose the Report, or the information and recommendations contained therein, once the Report was discovered in 2018?
- (x) Were users of the RHVP put at risk as a result of the failure to disclose the Report's findings?
- (xi) Did the Report contain findings or information that would have triggered Council to make safety changes to the roads or order further studies?

- (xii) Did the failure to disclose the Report, or the information and recommendations contained therein, contribute to accidents, injuries or fatalities on the RHVP since January, 2014?
- (xiii) Did anyone in the Public Works Office or Roads Department request, direct or conduct any other friction test, asphalt assessment, or general road safety reviews or assessments on the RHVP?
- (xiv) Did subsequent consultant reports provide additional support or rebuttal to the conclusions contained in the Report?
- (xv) Identify any changes to the City's bylaws, policies and procedures to prevent any such future incidents of non-disclosure of significant information to Council;
- (xvi) Did the MTO Report provide additional support or rebuttal to the conclusions contained in the Report?
- (xvii) Why was the MTO Report not provided to Council or made publicly available?
- (xviii) Who was briefed within the MTO's office about the MTO Report?
- (xix) Did the MTO Report contain findings or information that would have triggered Council to make safety changes to the roads or order further studies?
- (xx) Did the failure to disclose the MTO Report, or the information and recommendations contained therein, contribute to accidents, injuries or fatalities on the RHVP since January, 2014?
- (xxi) Did the MTO request, direct or conduct any friction tests, asphalt assessments, or general road safety reviews or assessments on the RHVP other than the MTO Report?
- (xxii) What is the standard in Ontario, if any, with respect to the acceptable levels of friction on a roadway?
- (xxiii) Is information with respect to the friction levels of the roadways in Ontario publicly available?
- (xxiv) To what extent do other factors, including, but not limited to, driver behaviour, lighting and weather conditions, contribute to motor vehicle accidents when compared to the impact of friction levels on motor vehicle accidents on the RHVP?

- (b) Having concluded the documentary review, to hold a public hearing to answer the questions listed in items 2 (a) (i) – (xxiv).
3. **AND IT IS FURTHER RESOLVED THAT** the Terms of Reference of the Inquiry shall be to inquire into all aspects of the above matters listed in items 2 (a) (i) – (xxiv), their history and their impact on the ratepayers of the City of Hamilton as they relate to the good government of the municipality, or the conduct of its public business, and to make any recommendations which the Commissioner may deem appropriate and in the public interest as a result of the inquiry.

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