November 17, 2022

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON, M5V 3H1

Attention: Emily Lawrence and Hailey Bruckner

Dear Ms. Lawrence and Ms. Bruckner:

Re: Red Hill Valley Parkway Inquiry: Report on Governance

Thank you for asking me to provide an opinion in respect of municipal governance. I am currently the Chief Administrative Officer for the Region of Peel. I was the City Manager and CAO of Mississauga, Ontario from January 2005 to May 2020. Before that, I was Acting City Manager and CAO of Mississauga from February 2004 to January 2005, and Mississauga's Commissioner of Corporate Services & Treasurer from May 1999 to February 2004. Prior to 1999, I held positions with the City of Oshawa, Ontario, and the City of St. John's, Newfoundland. My resume is attached as **Appendix A** to this report.

Commission Counsel provided me with a list of questions, themes, and assumed facts for review and consideration in preparing an expert report on governance for the Red Hill Valley Parkway Inquiry ("RHVPI"). This correspondence is attached as **Appendix B** to this report.

I have reviewed these questions, themes, assumed facts, and the RHVPI's Overview Documents and set out my opinions on Commission Counsels' questions below. For ease of reference, I have maintained the organizational themes and structures from Commission Counsels' correspondence in my report.

Yours very truly,

Janice Baker

Encl.

BAKER OPINION

A. *Gaps in information archiving and sharing, and roles and responsibilities as between Public Works divisions*

Questions:

1. What are the best practices for ensuring that each division and section within a City department is aware of its scope of responsibilities, and that no responsibilities fall through the gaps between divisions or sections?

2. What are the best practices for archiving and sharing all information within and between divisions, sections, and/or City departments regarding a specific matter or project, including staff reports, consultant reports, relevant media releases, consultant retainers, and/or information about work currently underway on a City asset?

3. What are the best practices for ensuring that each action item from a staff report is assigned to a division within Public Works?

4. What are the best practices for addressing significant safety issues that involve two or more divisions of a department? Would a project co-ordination team of the directors of the divisions involved or their delegates be more capable of reconciling different opinions than a more junior project manager from one division?

5. What are the best practices for addressing conflict or concern about the content of a consultant or staff report between City divisions or departments?

Opinion:

I understand from my review of the assumed facts that there may have been some ambiguity about the roles and responsibilities of staff within the Public Works Department of the City of Hamilton (the "City") around the Red Hill Valley Parkway ("RHVP"). For example, staff in the Engineering Services division took the view that they were responsible for the construction of the roadway and some maintenance following construction, but that the Traffic Operations and Engineering division was responsible for safety issues on the parkway once it opened to traffic. Traffic Operations and Engineering staff, in turn, viewed safety issues arising from the design of the RHVP, such as the surface and lighting on the parkway, as the responsibility of Engineering Services.

Large municipalities by their nature can be complex and untidy. They deliver a variety of services, and there are divisions that would never need to speak to one another in the course of discharging their responsibilities. In respect of questions 1, 3, 4 and 5, the best practices to ensure that responsibilities are assigned and implemented require both processes and procedure, and a culture of accountability and teamwork.

Baker Opinion, November 17, 2022

The Need for Culture of Accountability and Process to Have Clarity in Responsibilities

Culture is very important to organizational effectiveness. Reinforcing cultural values such as collaboration and teambuilding is a best practice. Competencies such as working with others, accountability, and practising good teamwork should all be identified in performance documents to ensure not only that duties are clear, but that the desired behaviours of individuals across the organization are clear. Municipalities can measure whether leaders are practicing these desired behaviours through tools like 360 reviews and employee surveys.

Process-based best practices can assist municipalities in preventing responsibilities and roles from falling through gaps between divisions. Municipalities use a variety of tools to design the structure of a department, and to assign accountability and document the responsibilities of various divisions, positions, and people, which I address below.

The responsibility for developing both a culture of accountability and processes to ensure clarity in roles rests with the departmental leader. Every departmental leader needs to ensure that there is role clarity within their department, that all roles and responsibilities have been assigned, and that the interconnections, duplication or overlaps that may exist between roles are reconciled and negotiated, so that there is no confusion or gaps in who is responsible for what. Department heads can certainly seek professional help in doing this. Most human resources departments will provide support in organizational design, preparing job descriptions, and documenting day to day role responsibility and the scope of responsibilities for individual positions. I would note here that the City did undertake such a review with a third party (COREinternational) who, in January 2017, identified "Critical Success Factors for Organization Implementation" and "Role Purpose Statements" (OD7, p. 128-130, paras. 407-409).

One way that leadership can assess and encourage clarity in roles and responsibilities is by having a clear sense themselves of what the departments and divisions are doing. Leaders should have regular update meetings with their direct reports to understand their tasks and responsibilities. One practice is holding scheduled meetings at regular intervals (bi-weekly or monthly), with additional meetings as required. Such meetings are an opportunity to discuss day-to-day work responsibilities, assess progress, understand challenges and problems that may arise, and clarify any ambiguity that might exist in roles and responsibilities across the department. In addition, regular team meetings with all directors create an additional opportunity to have discussions about team responsibilities, collaboration across departments and within the team itself, and to resolve any ambiguity or confusion about who is responsible for what. Performance agreements and performance goals, which are generally established annually, should clearly outline what is expected from each employee – whether they be a director, a manager, or a frontline employee.

Each municipality structures their departments and divisions differently; and I am not in a position to comment on the division of responsibilities between the City's Engineering Services and Traffic Operations and Engineering divisions. However, in my professional experience, the condition of municipal infrastructure, which would include both capital construction and capital maintenance, is usually the responsibility of an Engineering or Capital department or division. These groups would be responsible for issues arising from the design and physical characteristics of a road, including issues around road surface and

lighting. They would engage the Operations group(s) for input and feedback about what Operations staff had observed on the road during the course of regular daily maintenance. Staff in Operations groups, particularly those working in the field, may not have the same technical or engineering backgrounds as staff in Engineering groups, but in the course of discharging day-to-day maintenance of the road, they observe road conditions and can help identify problems. They can also suggest pavement markings, signs, and other things that might be used to influence driver behaviour on a road.

As a result, to the extent that Traffic Operations and Engineering understood that Engineering Services was responsible for the follow-on consequences of decisions made while the RHVP was constructed, that understanding is consistent with my experience in municipal governance. I would expect that implementation of recommendations arising from CIMA Reports that raised questions about the design of the parkway, including completing friction testing or otherwise assessing the surface condition of a roadway, would typically fall to an Engineering Services, rather than Traffic Operations group.

Regardless of the ultimate division of responsibilities between departments, divisions or individual staff, information and responsibilities should not be siloed, particularly on matters that may affect public safety.

Best Practices to Promote Transparency in Roles and Responsibilities and Avoid Silos

With respect to questions 1 and 3 above, to avoid situations in which responsibilities or action items from staff reports fall through gaps between divisions, the General Manager of the Public Works department should assign responsibility to the appropriate division. If there is a role for multiple divisions in implementing action items or completing a project, the General Manager of the Department is responsible for designating those who are in leading and supporting roles.

Many municipalities use collaboration tools to create and monitor project lists, to update status reports, and to track progress. In most municipalities, the Clerk will send Council direction and decisions to department heads and the author of the report for follow up. Some municipalities have a central project management team to monitor the status and progress of key corporate projects, which may include significant Council requests. They would often have a set of best practice guidelines and tools that the municipality would expect project managers and those who are responsible for reporting on the progress of projects, initiatives, and work orders to utilize both for tracking and reporting.

Best Practices for Addressing Safety Issues and Addressing Conflict

It appears from the assumed facts that the RHVP became a high-profile issue over time. There was political interest in the parkway, and concerns were expressed about the parkway at Committees, by members of the public, and by the media. In my view, high profile issues, such as the RHVP, should receive attention at all levels of leadership, up to the City Manager. Regular briefings for all levels of leadership on this issue may have assisted to avoid confusion or misunderstandings about which divisions were responsible for addressing issues related to the RHVP.

The creation of a steering committee of directors to manage RHVP issues would, in my opinion, have helped to resolve some of the challenges that staff had in getting information, understanding what was happening, and determining who was responsible for what. This could have been in place as early as 2013 when councillors raised issues with the RHVP by motion. The municipality needs to have all affected staff, divisions, and departments at the table to diagnose the problem, and agree on how it will be resolved. There should have been regular check-in meetings with senior leaders to review progress and co-ordinate the "moving parts" of the project. This practice could have been particularly effective and important if key players were reluctant to share information and were non-responsive to colleagues on matters concerning the project. A committee of equals (i.e.: directors) would have been able to more effectively get agreement across the divisions that were directly involved in managing and assessing safety on the RHVP.

Where there is a safety issue that crosses division lines, the best practice is to designate a person most responsible ("PMR"), and to have that person develop a project charter to ensure the scope, resources, responsibilities, and desired outcomes of a project are clearly articulated.

Through the discussion for and development of a project charter, staff from affected divisions will discuss and agree on who is responsible for what; this discussion is particularly important when there are grey areas between divisions. If there is any ambiguity or confusion about which person or division is most responsible for action items arising from a staff report, both leaders and staff have an obligation to make inquiries to ensure roles and responsibilities are clarified. Those decisions should be documented and incorporated into the project charter. Anyone who is unclear about their role should be able to go to the charter and see which responsibilities have been assigned to them.

A cross-functional project team (likely comprised of operational and technical staff with a designated project manager) could have been established to manage the day-to-day requirements of the project, under the guidance of the steering committee. A project charter would spell out the rules of engagement and deliverables for the team. This would include things like drafting the scope of work for a consultant engagement, engaging the consultant with the assistance of the procurement team, managing the assignment and ensuring that the consultants were doing all of the work required to meet the scope as written, and managing any changes to scope that might arise as part of the engagement, etc. As a best practice, the project charter should indicate that issues that cannot not be resolved at the project team level will be referred up to the steering committee where decisions will be made at a more senior level.

The steering committee model/project management model referenced above is a very effective mechanism for collectively directing the work of a consultant and resolving concerns or conflicts about a consultant's report.

With respect to question 2, information belongs to the organization, but may be under the control of an individual or a team. Transparency, collaboration, and respect for different roles that touch the same asset are foundational to an effective and efficient organization. In today's environment, most municipalities use tools like Sharepoint and other collaboration tools to store documents and manage related materials, such as copies of consultant or other reports and media releases, etc. Access to this material for review or to make

changes as needed can be granted to all staff with a role or interest in the project, and even to staff outside the project as needed. This access ensures transparency and gives staff the means to raise questions and concerns in a structured way.

Best practice for archival responsibilities would typically use a central records management and archival group to ensure that all municipal records, including digital records, are maintained in accordance with legislative requirements and the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). Most municipalities have a retention by-law that spells out what needs to be kept and for how long, and how records are to be preserved and stored.

B. Refusing to provide requested information and/or reports to other City staff persons

Questions:

1. Under what circumstances (if any), would it be appropriate for a member of City staff to refuse to provide, or redact prior to providing, requested information in their possession to another member of City staff?

2. In what circumstances (if any), should City staff escalate concerns about their inability to obtain requested information from a City staff person in another division to their superiors?

Opinion:

I understand from the assumed facts that City staff outside of Engineering Services tried to obtain friction testing results for the RHVP from Gary Moore, Director of Engineering Services, and/or staff in his division, and either received no response or were not given access to the test results.

In my experience, there are a limited number of circumstances where one staff person may redact or refuse to provide requested information to another staff person. For example:

1. Any information that would identify the private information of an individual would necessarily be redacted before being distributed within or outside the corporation to comply with MFIPPA;

2. Any information that was subject to or related to an in camera matter at Council might be redacted or limited in its distribution; and

3. Any matters or commentary related to Legal advice, or a legal matter (e.g. a lawsuit, court challenge, or a matter before the Ontario Land Tribunal) might also be redacted or limited in its distribution.

However, the second and third examples above may not necessarily limit or prevent information from being distributed to City staff, as long as the information is appropriately marked confidential. Municipal staff sign confidentiality agreements. They are also aware of and sensitive to the management and handling of confidential information. As such, only

Baker Opinion, November 17, 2022

information that would create a privacy violation should generally be redacted or removed from internal circulation within a municipality. If material is sensitive, or in draft form, staff can be given instruction as to the handling of the material. For example, staff could be asked not to distribute it further until the material is final.

With respect to question 2, where staff cannot obtain requested information from a person in another division, they should first make any and all efforts to resolve disputes and differences with that staff person prior to bringing the matters to the attention of their manager or senior leadership.

However, there are times where staff do not feel they have the authority to resolve an issue because the person with whom they are dealing is more senior and/or there is simply a lack of cooperation, despite staffs' best efforts to acquire what they need. Requests from more junior staff in Traffic Operations and Engineering to Mr. Moore for friction testing requests may be an example of this type of situation.

In a case like this, staff should first approach their immediate supervisor to express their concerns, set out what they've done to try and resolve the matter, and clearly articulate why the information is necessary to their work or how their ability to address an issue would be enhanced by having the requested information. Staff should then make it clear that their supervisors' intervention is necessary to advance the work that they are attempting to complete.

I understand from the assumed facts that senior leadership in Traffic Operations and Engineering and Public Works did not recall and/or denied that more junior staff in Traffic Operations and Engineering had escalated their inability to obtain friction testing results for the RHVP. In contrast, staff from the manager-level down within this division believed they escalated concerns about friction testing results to their superiors. While I express no view on this evidence, a policy or standard practice by which junior staff make a clear and explicit request for their superiors' intervention, including in writing (via email for example), could assist in preventing miscommunications about expectations and escalation. Senior leadership may not act on an offhand comment because they interpret it as a casual or minor complaint, not a request for intervention or assistance.

At the end of the day, a municipality's processes for sharing information may not be able to overcome a lack of due diligence by staff or interference from a senior staff member who does not wish to do certain work or share certain information. City staff expect their colleagues, particularly senior leaders in the organization, to behave in an ethical way and to be truthful and respond fully when asked about an issue. Best practices will only get an organization so far if someone is actively trying to circumvent them. That is why fostering a culture of escalation and transparency (as set out in section A above) is so important to a municipality's effectiveness.

Baker Opinion, November 17, 2022

C.   Non-Disclosure of a consultant's work to Council

Questions:

1.   When is it necessary to disclose a consultants' findings or recommendations to Council?

2.   Who is responsible for determining whether a consultant's findings or recommendations, or reports with the recommendations therein, should be presented to Council?

3.   What factors should be considered in determining whether a consultant's findings or recommendations should be presented to Council?

4.   If the consultant's findings or recommendations raises a real or possible safety issue, does that impact the analysis as to whether it should be disclosed to Council?

5.   If the consultant's findings or recommendations raises a real or possible safety issue, does that impact the timeline or expediency with which it should be disclosed to Council?

Opinion:

There are a wide range of consultant engagements that municipalities can undertake, including responsibilities which are often purely administrative and under the control of the City Manager. These administrative engagements could include asking a consultant to develop strategy documents, improve the layout of municipal offices, or review internal structure and redesign parts of the organization. There are also consultant engagements like those surrounding the RHVP, where consultants were asked to provide detailed technical reviews, including on issues of safety.

With respect to question 2, generally the responsibility for determining when or if a consultants' recommendations or report should go to Council or Committee rests with staff. With respect to questions 1, 3, and 4, the degree of transparency that would be required around the engagement of a consultant will depend on the origin, purpose, and nature of the consultant's assignment.

I would expect that where a consultant is engaged to do a technical review and make recommendations as to how public safety might be improved on a matter that has already received media scrutiny, city staff would disclose those recommendations to Council.

Consultants can also be engaged in response to direct requests from a Committee or Council. In most (if not all) municipalities, that would mean that a response would be provided back to Council – in essence back to the body making the request for the advice and recommendations in the first place. Staff should take all necessary steps to ensure that a direct request from Council or Committee is satisfied. It would not be uncommon in a situation such as this for the consultants themselves to appear before Committees and

Council to explain their observations and recommendations and answer questions about their report.

With respect to question 5, staff should always treat issues of real or potential public safety with some urgency. It is generally a best practice to expedite work in this area as much as possible, even to the point of pointing out the urgency in the Request for Proposals ("RFP") or retainer requests, and giving greater weight to those consultants who can meet those timelines during the evaluation and selection process

D.   Staff Interactions with Consultants/Consultant Reports

Questions:

1.   How should the scope of a consultant's report be established?

2.   Is it the role of City staff or the consultant to give recommendations to Council about the prioritization and timing of recommendations in a consultant's report?

3.   Is it more appropriate for a consultant to comment on the reasonableness of a staff recommendation regarding prioritization and timing when such matters are influenced significantly by staffing and/or budgetary constraints and broader planning considerations not known to the consultant?

4.   Are there best practices for ensuring Council is aware of the roles and information provided by City staff as opposed to consultants, and vice versa?

5.   When/how may a consultant's scope be modified during the course of a project?

6.   In what circumstances (if any) would it be appropriate for City staff to direct a consultant to exclude work from their report that is directly relevant to a motion from Council?

7.   At what stage of the drafting (if ever), would it be appropriate for City staff to provide edits or comments on a consultant report?

8.   In what circumstances (if any), would it be appropriate for City staff to ask a consultant to "soften and stage" or otherwise modify a consultant's report to reflect a staff report?

9.   How should City staff address a circumstance in which a consultant's report is modified after it has been presented to Council or Committee?

10.   In what circumstances (if any) do City staff have an obligation to advise Council or Committee of such a modification?

Opinion:

With respect to question 1, typically the definition of the scope of work for a consultant is a collaborative effort between the procurement team within the municipality and the subject

matter experts who will be managing the consultant engagement. The scope should be clearly documented in the project charter if one exists, any RFP, and the contract with the consultant ultimately chosen to do the work.

With respect to question 2, City staff and the consultant have a shared responsibility to give recommendations to Council about the prioritization and timing of recommendations in a consultant's report.

Both staff and consultants should be transparent with each other about their respective roles at the outset and throughout the project. The distinction between the consultant's recommendations and staff's recommendations should be clearly pointed out in any report to Council. Commentary on timing of implementation of those recommendations should also be clearly spelled out in the information that goes to Council.

Managing consultants' engagements can be challenging at times. First, the consultant must perform at the expected standard. The consultant must do the work necessary to ensure City staff and Council have confidence in the product that has been produced. Once the consultant has completed their work, and assuming that the consultant has the necessary technical expertise and experience and has been hired for that subject matter expertise, it would be normal for the recommendations and observations of a consultant to go unfiltered to Council, in my experience.

In a situation that involves a potential safety issue, as on the RHVP, a consultant should take the risk to public safety into account when making their recommendations. They should clearly point out those recommendations they consider most critical and/or urgent in addressing safety concerns identified in their work. The consultant should also identify which recommendations are not considered urgent, but are nonetheless things that could help improve public safety. In other words, helping staff and Council understand what the consultant feels the City must do versus things that are helpful, but discretionary, is always useful to ensure a municipality's time, effort, and resources are assigned to the right priorities.

Distinct from the consultant's assessment of appropriate recommendations, there may also be other factors that need to be addressed before the recommendations can be implemented. For example, where a consultant's recommendations require significant capital or operating budget, funds may or may not be readily available within a department or division's approved budget. It is entirely appropriate for staff to analyze these factors and present their analysis to Council at the same time as the consultant's findings and recommendations. It is not unusual for more costly consultant's recommendations to be referred to the next budget cycle, so that Council and/or City staff can determine how those costs should be funded.

With respect to question 3 and 4, as a best practice, the consultant should only speak to their rationale for the recommendations, how those recommendations will address issues of safety or other concerns, and their opinion on the urgency of implementation. While consultants may be able to provide order of magnitude costing for implementing their recommendations, consultants are not experts on the budget or the internal processes of the municipality and therefore are not in a position to comment on how these costs should be funded.

Baker Opinion, November 17, 2022

If a Council is having challenges in understanding role clarity as between City staff and external consultants generally, an education or orientation session to explore this issue and provide clarity would be helpful and appropriate. If necessary, outside experts who can speak to best practice in this area can be brought in to assist with this session and to help build a shared understanding.

With respect to question 5, in my experience, municipal procurement bylaws do not typically allow for significant scope changes during the course of a project, although there may be some contingency for minor scope changes. Minor changes to a consultant's scope can generally be approved by staff. That said, as work is being done on a project, information may come to light which should be addressed to improve the overall completeness and quality of the product that the consultant delivers.

There are processes that can, and should, be used to increase the scope of a consultant's engagement when necessary. If staff and a consultant agree that a material scope change to a consultant engagement is necessary, it is best practice to report that information back to Council or Committee and explain why the additional work is recommended and/or required, so that Council or Committee can authorize both the scope change and any budget increase needed to complete the work. This report will generally recommend sole sourcing the additional work to the consultant doing the rest of the engagement because it is more efficient. Often when consulting engagements are requested by Council, a budget is established. Major scope changes may push the work above that approved budget so there are financial requirements that would make this reporting process necessary.

However, I understand from the assumed facts that question 5 arises, at least in part, because CIMA did not reference some of its work and conclusions on lighting from a draft of the 2013 CIMA Report after being advised by City staff that, in their view, the RHVP Environmental Assessment ("EA") did not allow for continuous illumination on the parkway. I further understand that the request from the Public Works Committee that led City staff to engage CIMA for this report directly engaged questions about improving the lighting on the RHVP.

If City staff had developed a project charter for the 2013 CIMA Report that set out the assessment of continuous lighting in the study area as part of the scope of the consultant retainer, the omission of a response on that assessment would have been apparent and staff would have had an obligation to consider the rationale for the omission. If continuous lighting on the RHVP was part of the scope of the consultant's retainer, the fact that CIMA did not address it at the behest of staff, and did not document why it was not included, is unusual, in my experience.

In circumstances where a Committee has made a specific request, and content is excluded or is removed from the scope of a consultants' work based on information provided by staff, the best practice is to advise Council or Committee of that fact before the conclusion of the consultant retainer. In the case of the 2013 CIMA Report, the Public Works Committee directed staff to investigate lighting upgrades on the RHVP. If there was something that precluded continuous lighting on the RHVP, staff, as a best practice, should have brought a report to the Public Works Committee as soon as possible to explain these limitations, and how staff planned to address the request for an investigation into upgrading lighting on the RHVP. This process would have informed the Public Works Committee of the issue in

Baker Opinion, November 17, 2022

advance of the completion of the 2013 CIMA Report, and allowed them to consider how, or if, they wanted staff to continue to address lighting on the RHVP if there was an EA in place that prevented the City from implementing the consultant's lighting recommendations. For example, councillors could have considered whether they wanted to do an updated EA to see if the consultant's lighting solutions could be implemented.

With respect to question 6, I can think of almost no circumstances where it would be appropriate for staff to direct a consultant to remove portions of their report or recommendations the consultant felt were important or relevant to their work. This is particularly true in circumstances where a consultant is being engaged as a technical expert or subject matter expert. Consultants of this nature are often engaged by municipalities because the specific expertise to do the work does not exist in house, or staff do not have the capacity to carry out the work in a timely manner. A consultant engaged as a technical expert looking at issues of safety would typically not be asked to remove work from their report, nor would I expect a consultant to agree to its removal if the recommendations were a material part of the scope.

The only exception I can think of is a consultant who somehow included work and recommendations that went outside the initial scope of their engagement, and staff were concerned it would distract from the core work that was requested. An example of this might be if a consultant was asked to look at a building foundation to see if it was structurally sound, and in the resulting report opined about how the building's roof shingles were reaching the end of their life and would soon need to be replaced. If staff asked the consultant to remove this irrelevant comment, it would in no way undermine the consultant's work, and would keep the focus of the report on the core issue.

With respect to question 7, it is not unusual for staff to recommend edits to or make comments on a consultant's report while it is in draft. This could be done for a variety of reasons, including:

1. For clarity, as not every consultant is a great writer;

2. For readability, especially if the report is highly technical; and/or

3. To add additional context to a consultant's observations or recommendations.

In all cases, changes to the report should be for the sole the purpose of improving and/or enhancing the report, with the consultant's full concurrence. I would expect that a consultant would only agree with staff to remove recommendations that arose from their work where the consultant also agreed they were not material or germane to the issue at hand and their removal did not in any way alter the substance of the report.

Once a report is issued by a consultant and considered final, the report would typically stand at that point.

With respect to question 8, staff can have a discussion with a consultant about phasing the implementation of a consultant's recommendations, due to workload, budgetary, and/or other considerations that are known to staff. It is incumbent upon the consultant to communicate to City staff in these discissions those recommendations the consultant

Baker Opinion, November 17, 2022

considers critical or urgent to the completeness of their report. In other words, consultants should tell City staff where flexibility exists and where it does not.

Either the consultant's report or the staff report should also make clear which of the consultant's recommendations, including recommendations on the priorities of implementation, are based solely on information from City staff as opposed to the independent judgment of the consultant.

If the term "soften" suggests that the consultants were asked to minimize, in some way reduce the impact of, or change their recommendations, that is not appropriate.

With respect to questions 9 and 10, in my opinion if a modification is material, and as a result changes information or recommendations that were previously presented to Committee or Council in a material way, then it would be incumbent on staff to report back on those changes and how and why those changes came about.

E.   *Accurate and Complete Staff Reporting to Council/Committee*

Questions:

1.   What steps should be taken to ensure the accuracy of a staff report to be submitted to Council or a Committee? Who is responsible for taking those steps?

2.   Is it sufficient for City staff to rely on assurances from another staff member that particular matters have been addressed or will be addressed in providing information to Council or councillors, including, but not limited to, by way of staff reports?

3.   What obligations (if any) does the staff member who provides this information have in the event that the staff member learns that the particular matter was not addressed?

4.   If City staff in one department or division become aware or have reason to believe that staff in another department or division have concealed, withheld and/or misrepresented facts or information to their superiors and/or Council, what obligations (if any) flow from that knowledge?

5.   What are the best practices for ensuring that staff reports are accurate, action items in staff reports are addressed and reported to Council, and any misstatements of a material nature in staff reports are identified and reported to Council together with any required action flowing from these misstatements?

Opinion:

With respect to question 1, the primary responsibility for the accuracy of a staff report rests with the drafter of that report. Councillors and other staff will assume that the person drafting a report to Council has technical and operational understanding of the issues and can appropriately discharge the responsibility for ensuring that the report is complete and

accurate. As a best practice, the drafting of staff reports to Committee and Council should only be assigned to those who have the necessary competence to achieve that standard.

There may be sections of a staff report where others in the organization need to be called on for content and drafting assistance. For example, finance staff may need to review sections dealing with budgetary information; legal staff may need to comment on and review sections that deal with the interpretation of legislation or matters relating to appeals or lawsuits; communication staff may need to review the report for purposes of supporting media inquiries that may arise because of the report. This review process is all part of ensuring a staff report is complete and accurate.

Staff reports are typically signed by a senior leader in the organization – either a general manager or CAO. These senior leaders also have an obligation to review the report thoroughly, ask questions, seek clarification, and reconcile the information contained in the report to their own knowledge and experience with an issue.

Having said that, in my experience, senior leaders in large organizations will rely on the staff involved in writing the report for its accuracy. For a broad issue involving a number of departments or divisions, it would be customary to circulate a draft of the report to those divisions or departments that touch the issue for their review and input on the content of the report. Should those staff see anything in the report that they question or that raises concerns, they should reach out to the drafter of the report. If their concerns are not subsequently addressed, the staff person who raised them should escalate them to someone more senior within their division or department.

If there is a project team and/or steering committee, they can work together to resolve issues and ensure reports are accurate and complete.

Reliance on team members is a core part of municipal work and, in general, staff should be able to rely on others with confidence. With respect to question 2, in my experience, it is typically sufficient for staff to rely on the assurances of another staff person, particularly someone who is in a senior leadership role and/or someone who has professional credentials. Staff codes of conduct require every individual to behave ethically, responsibly, and honestly and to work collaboratively with other members of staff.

Municipalities can add additional checks and balances by implementing a "trust but verify" philosophy in respect of reports going to Council. Such a philosophy would not make it necessary for staff to make inquiries about every representation made to them by other staff, but would emphasize that staff should make inquiries or raise concerns if they see something in a report that does not read quite right – just to "double check". In a healthy, transparent organization, such inquiries would be welcome as they ensure that reports to Council do not have any weaknesses or inaccuracies. To operate efficiently, such a philosophy requires a culture where staff are comfortable raising questions even to senior leadership without fear of reprisal.

With respect to question 3, where a staff person provides information to Council for which they relied on the representations of another staff person and then learns the information was inaccurate, they should make efforts to correct the record with Council in a timely

Baker Opinion, November 17, 2022

manner. If staff are unsure how to do this, they should escalate the issue to their senior leader.

I understand from the assumed facts that David Ferguson (Superintendent, Traffic Engineering) sent an email to a local community group, certain City staff, the Mayor, and councillors on the Public Works Committee, which stated that friction testing recommended in the 2015 CIMA Report would be completed by Engineering Services in 2016.

As a best practice, staff should be cautious about making commitments to Council and the public outside of formal processes, and about speaking on behalf of other City staff. In this case, Mr. Moore was copied on the email, but the General Manager of Public Works and City Manager were not copied (OD7, paras. 350-351, p. 111). It is the General Manager of Public Works' obligation to ensure that commitments made to Council and/or Committee by their staff are met. It is the responsibility of staff to ensure that the General Manager is aware of commitments made to Council and the public outside of formal processes. If the General Manager is not advised of a commitment made by their staff, they will not be aware they need to take steps to meet it.

Of course, Mr. Moore was a director, and it is not acceptable for a director to make a commitment to do something and not follow through. Having been copied on the email referenced above, if he knew the friction testing would not be completed in 2016, he had an obligation to reply and make the correction.

With respect to question 4, if City staff in one department or division become aware or have reason to believe that staff in another department or division have concealed, withheld and/or misrepresented facts or information to their superiors and/or Council, they have an obligation to bring those matters to the immediate attention of their supervisor and leadership of the department, along with any supporting evidence.

Most municipalities have an internal audit department that can be called on to investigate matters such as these, and Human Resources also has access to investigatory resources for purposes of looking at matters such as these.

With respect to question 5, if it becomes known that a staff member has made a representation to Council or Committee on a material point, for example where a staff report that has been submitted to Council or Committee contained a material error in the information or recommendations provided, or in any other representation made to Committee or Council, that error should be reported to Council immediately. The existence of the error can be reported to Council through an urgent e-mail with a commitment that a follow up report will be brought to Committee or Council correcting the erroneous information and seeking approval or receipt from Council as appropriate.

Baker Opinion, November 17, 2022

F. Reporting to Council/Committee on Consultant Reports

Questions:

1. Should consultant reports be appended to staff reports?

2. Under what circumstances would it be appropriate not to append a consultant report to a staff report?

3. When (if ever) is it appropriate for staff to summarize or explain the findings in a consultant report in a staff report?

4. What are the best practices for distinguishing the views and recommendations of staff from the recommendations in a consultant report commissioned in response to a Council motion?

5. If City staff disagree with the recommendations in a consultant's report, how should they communicate that information to Council or Committee?

6. Under what circumstances (if any) would it be appropriate to exclude a recommendation or potential countermeasure discussed in a consultant report from a staff report?

7. Is it appropriate to present a recommendation in a staff report (and consultant report) as a deferral, if deferral effectively means that the recommendation will not be implemented for the foreseeable future?

Opinion:

With respect to question 1, 2, 3, and 4, in my experience, City staff can and do summarize consultant reports, rather than appending them to staff reports. Staff are less likely to append consultant reports that are overly long or overly technical, preferring instead to provide an executive summary or a staff summary of the consultant's findings. In this way, staff assist Council in understanding or interpreting a dense, technical, or difficult to read consultant report.

There is nothing inherently wrong with staff undertaking this work as long as they come to the task as an honest broker and present the consultant's findings fairly and accurately.

However, a best practice to avoid any misunderstandings or misrepresentations about the content of a lengthy or technical consultant's report would be to ask the consultant to prepare an executive summary that could be appended to the staff report. This practice allows the consultant to speak for themselves.

Alternatively, if staff summarize the consultant's report themselves, they should provide the consultant with an opportunity to review it and confirm that it accurately summarizes the consultant's report.

With respect to question 4, and as noted above, if staff have observations or other opinions or perspectives that they wish to share with Council, they should clearly identify these opinions as belonging to City staff and segregate them from the opinions of the consultant.

Baker Opinion, November 17, 2022

Best practice for distinguishing the views and recommendations of staff from the recommendations in a consultant report would include using formatting to segregate and highlight the findings, recommendations, and opinions of a consultant from those of City staff. This can be achieved by using italics or headings for sections of reports, or putting the consultant's perspectives in an appendix. I think any of these formats work as long as they achieve the desired result, which is to segregate the perspectives of the two parties.

Ideally, any disagreements or concerns staff have with a consultant about their recommendations will be resolved during the working phase of the engagement. However, with respect to question 5, if City staff disagree with a recommendation in a consultant's report, they should articulate their concerns and the basis for those concerns in a report to Council or Committee. Alternatively, a Senior Leader in the organization may wish to speak to staff's concerns about the consultant's recommendations at the Council or Committee meeting.

With respect to question 6, in my view all material recommendations and advice from a consultant's report should be included in a staff report. Minor recommendations or process details on how something should be implemented may not need to be highlighted for Council (distinguishing the what from the how, for example), especially if the report is long and complex and staff want to assist Council in focusing on the major issues at hand.

I understand from the assumed facts that Geoff Lupton (Director of Energy, Fleet & Traffic, Corporate Assets & Strategic Planning) instructed his direct reports to remove content about CIMA's friction testing recommendation from the Information Report prepared on the 2013 CIMA Report, unless Mr. Moore agreed to the recommendation. I further understand that the final staff report lists friction testing as a short-term countermeasure in Appendix A (RHV0000668) but goes on to quantify this countermeasure by stating: "Staff will also review further countermeasures such as friction testing with Construction Engineering".

In my view, staff must be held to a high standard when summarizing a consultant report that engages safety issues. Consultants are hired because they are subject-matter and technical experts. Their recommendations should not be discarded because they do not have buy-in from an individual City staff person or division. City staff should have gone back to CIMA about why the friction testing recommendation was being made, advised them that Engineering Services did not want to implement the recommendation (if that was the reason), and asked whether they would be concerned if the recommendation were removed or modified.

In circumstances like this one, both Public Works divisions either needed to agree to implement the recommendations or Engineering Services needed to explain why they did not want to implement the recommendation so that the issue could be escalated to the General Manager for a resolution.

I understand that question 7 arises, at least in part, from the assumed facts that the Recommendation Report on the 2015 CIMA Report recommended deferring medium (2-5 years) and long term (6+ years) recommendations in the staff report for review as part of the City's Transportation Master Plan. I further understand that the 2015 CIMA Report listed friction testing as a short-term safety option, while City staff listed it as a medium-term option thereby recommending deferral pending completion of the Transportation Master

Plan Update. CIMA did not provide a timeframe for the implementation of short-term options in the 2015 CIMA Report, but short-term options in the 2013 CIMA Report were to be completed in 0-5 years. CIMA refused a request from City staff to list friction testing as a medium-term option in the 2015 CIMA Report.

For those with experience working in municipalities, a recommendation to complete work in a 0–5-year timeline would not convey urgency in completing the recommendation, in my view. I would have expected a recommendation that was considered material to addressing the safety of a road to have a shorter timeframe for implementation.

In fact, a 0–5-year timeframe is not terribly precise or helpful for planning municipal works. Generally, municipalities budget in one-year increments. While 2–3-year forecasts may be prepared and provided to Council, generally only the next year's capital and operating plan is approved in the budget. Once a timeline for implementation extends beyond 2 years, City staff will often defer work to advance the recommendation until it becomes included in a future operating plan, in order to allocate resources to more timely issues. Municipalities will often re-evaluate deferred works to determine when they will be included in the budget.

If the consultant has provided priorities or timeframes for implementation, the consultant report should make clear why the timeframes are recommended, and what flexibility the municipality might have in implementation (i.e.: explaining whether a recommendation be phased, for example). Similarly, the staff report should make clear if and why staff agree or have concerns with the consultants' timeframes or prioritization. As a best practice, particularly with issues of public safety, staff should clarify with consultants the timelines for implementation of recommendations and if there are any recommendations that should be considered urgent or critical. For Council's benefit, staff should include in their staff reports their views on the timing of implementation for recommendations, as well as any other factors that affect implementation, such as operating or capital budgets. This advice or timetable should be accurate to the best of staffs' ability to manage expectations of how quickly work will be done.

In my view, it is unusual for staff to request that consultants re-characterize the timeframes of their recommendations. As noted earlier, disagreements or clarifications should be highlighted and discussed within accompanying staff reports. If staff were of the view that friction testing should not be completed until 2-5 years after the consultant's report, staff should have discussed that with the consultant. If the disagreement remained, it was incumbent on staff to explain why they recommended the friction testing as a medium-term option in their report, especially where there were no set timelines for implementation in the 2015 CIMA Report, and CIMA refused City staff's request to change the characterization of the option from short to medium term. That said, the 2015 CIMA Report was included with staff's Recommendation Report, so Council had the information required to question staff's recommended timing for this recommendation.

If City staff question a recommendation in a consultant's report and do not support its implementation, then they should directly and clearly address that disagreement before Council or Committee. There is difference between a genuine deferral of work based on a clear rationale (i.e.: "Staff agree the work needs to be done, but for good reasons it will be delayed") and characterizing a decision as a deferral while knowing that the deferred work will never get done.

Baker Opinion, November 17, 2022

G. Sharing draft staff and/or consultant reports with Individual Councillors

Questions:

1. Is it appropriate to share or disclose consultant, draft, or in progress consultant reports to individual Council members?

2. If so, under what circumstances would this be permissible (i.e.: with Council authorization, etc.)? Are there any restrictions on acceptable use in this context?

3. Is it appropriate to share or disclose staff, draft, or in progress staff reports to individual Council members?

4. If so, under what circumstances would this be permissible (i.e.: with Council authorization, etc.)?

5. Under what circumstances (if ever), should City staff allow the expectations of individual councillors to inform or influence the content or timing of reports to Council?

Opinion:

With respect to question 1, 2, 3, and 4, it is a best practice to avoid sharing final or draft versions of consultant reports or staff reports with individual councillors before they are made available to all councillors and/or all councillors on the standing Committee in question. All members of Council and Committee should have equal access to and be provided material at the same time, which typically occurs at the point that agendas for meetings are distributed by the Clerk.

Individual councillors, while they may have an interest in an issue, have no authority to request briefings or act outside of the body of Council on issues. These issues are within the purview of Council and Committees.

Staff should be very cautious about sharing information that is relevant to all councillors with a subset of Council, as this can lead to preferential treatment or the perception of preferential treatment for some councillors. Concerns about preferential treatment can damage the credibility and transparency of City staff.

The disclosure of draft staff reports is particularly problematic as it may lead to the appearance of political interference in the recommendations and conclusions of staff. Staff have an obligation to be impartial and independent, and to provide their best professional advice to Council. Council only has one employee, the CAO/City Manager. All other staff work for the CAO/City Manager. The CAO/City Manager works for Council, not individual councillors, and individual councillors have no authority to direct any member of staff.

The independence of the public service must be maintained at all times. Staff should avoid the appearance of political interference or influence in staff reports as a result. There is a saying "fearless advice, loyal implementation" that applies to staff. They must be

Baker Opinion, November 17, 2022

independent in their recommendations, and once Council has made a decision, they must do everything in their ability to make it happen.

Safety issues like the RHVP should be of interest to all councillors. If an individual councillor or a group of councillors has a particular interest in a staff or consultant report, a preferred practice is for staff to present the report to Council or Committee and allow the councillor(s) to ask to discuss it in more detail with staff outside the Council chamber. This process allows the other councillors to sign off on a follow up meeting and leaves it up to other interested councillors to join the meeting if they choose. This process allows councillors to choose whether they want the benefit of a more detailed discussion with City staff, rather than creating the perception that City staff have chosen to give certain councillors a head-start on issues important to all councillors.

Discussions with individual councillors after a staff or consultant report has been circulated to all councillors, but before the Committee or Council meeting at which the report will be presented, can be difficult to navigate as well. Discussions during this time period with councillors are less likely to create the perception of preferential treatment, and can be more acceptable as a result. However, City staff should be cautious not to take direction from individual councillors about how to present staff or consultant reports during these discussions.

An exception to sharing draft consultant information with one or a subset of councillors can be made where 1) Council believes a member of Council has a level of expertise in the matters being considered and has asked for that councillor's perspective, or 2) the issue is geographically-limited and ward-specific and Council believes the ward councillor in question should be given a pre-briefing prior to a council meeting in order to better represent their affected constituents.

In these cases, it is appropriate for staff to meet with the councillor to understand their perspective on the issue, what the community is saying about the issue, and even hear the councillor(s)'s perspective on what should be done to resolve the issue. Staff can then take that information away and assess whether they can support what the councillor is asking for, whether those actions fit within the approved municipal budget and approved service standards, and whether their implementation is feasible, etc.

However, if Council authority is required to take the actions that staff recommend, the final report must go to Council or Committee, not to the individual councillor(s). Further, staff must be prepared to stand behind their recommendations and defend them on their merits.

In my personal experience, these exceptions (especially number 1 above) arise quite rarely. In most cases, Council will default to having all members of Council treated as equals.

H.   Statements to the Media and Public

Questions:

1.   If City staff become aware or have reason to believe that another member of City staff has misrepresented facts or information to the public and/or media, what obligations (if any) flow from that knowledge?

2.   Are there best practices for ensuring that statements made to the media and/or public by City staff are consistent with staff reports to Council?

Opinion:

I understand from the assumed facts that Mr. Moore made inconsistent and/or inaccurate statements to the media about friction testing on the RHVP, including stating, in July 2017, that he had received only an "informal chart" and "inconclusive" results.

With respect to question 1, a director or senior staff member who notices an inconsistent and/or inaccurate statement made to the media by another director should first pick-up the phone or otherwise directly engage with their colleague to address the inconsistency.

A more junior staff member is less likely, and should not be expected, to take this direct route. If City staff become aware or have reason to believe that another member of City staff has misrepresented facts or information to the public and/or media they should bring that information to the attention of the leadership of their department who should pass it on to corporate communications and the CAO/City Manager.

However, sometimes staff find it extremely difficult to escalate issues to their supervisor(s). A variety of factors can influence this decision, including, but not limited to, 1) concern about being branded a snitch, 2) past experience suggesting they may not be listened to, 3) concern that their a supervisor will not escalate the issue, and/or 4) not wanting to get a colleague in trouble for a mistake.

Because of these barriers, escalating concerns, even when they affect colleagues or superiors within the organization, must be addressed as part of building a municipality's culture. However, there is no easy, comprehensive solution that allows municipalities to build and maintain a culture that encourages escalation. Policies and practices that can break down barriers that prevent issue escalation within municipalities include:

1. Implementing monthly meetings that include all directors and the municipality's leadership team to discuss business and human resources issues. These meetings assist directors to network with one another, and breakdown positional barriers that might otherwise prevent one director from reaching out to another for help when an issue arises.

2. Implementing whistleblower policies and whistleblower channels to allow staff to bring concerns forward through an anonymous channel if they don't feel comfortable talking to their supervisor.

3. Making transparency a competency for staff and management, so staff understand that the municipality encourages them to speak up when they have seen something that should be escalated, and managers learn to be receptive to those concerns.

4. Bringing middle managers to leadership conferences that address leadership competencies, including transparency and escalation. Middle managers are at a critical level for supporting or blocking changes to a municipality's culture. They set the tone for the culture of the organization in how open they are to people coming forward and reporting things.

With respect to question 2, in my experience, communications staff are not responsible for maintaining a record of prior statements to the media about certain issues to ensure statements made to the media are consistent. I understand from the assumed facts that this understanding is consistent with the role and responsibilities of the City's Communications Officers.

Most municipalities coordinate media inquiries through their communications team. This allows the team to connect with the officials within the organization who are best positioned to provide a response. Responses are typically provided in writing to media inquiries and a spokesperson is designated if the media wish to interview an official from the municipality. If it is a sensitive issue, communications staff would typically put together a support document for the spokesperson containing key messages and key facts related to the matter. There would then be monitoring and follow up to review media articles and make corrections if necessary.

If someone in the organization notes an inconsistent or inaccurate statement in the media, they would go to communications staff. Communications staff would then be responsible for reaching out to the media organization and requesting a correction.

Baker Opinion, November 17, 2022

Appendix A

<div align="center">

RESUME

JANICE M. BAKER FCPA, FCA ICD.D

</div>

███████████

CAREER SUMMARY

Region of Peel

The Region of Peel has a population of 1.4 million. As an upper tier municipality, we deliver housing, income support, public works and public health services across Mississauga, Brampton and Caledon.

Chief Administrative Officer *(October, 2020 – present)*

City of Mississauga, ON

Mississauga, with a population of 750,000+ and an annual operating and capital budget in excess of $900 million, has a reputation for being one of the best managed cities in Canada.

City Manager and CAO (January 2005 to May 2020);
Acting City Manager and CAO (February 2004 to January 2005);
Commissioner of Corporate Services & Treasurer (May 1999 to February 2004)

As Chief Administrative Officer, I developed strategy and policy to sustain and build on the City's reputation as a leader in the municipal sector and provided effective leadership on a wide variety of issues in a complex and changing political environment. With a dynamic team of four Commissioners, I had responsibility for:

- providing strategic, fiscal, policy and operational advice and recommendations to the Mayor and 11 member Council;
- building a culture of trust, quality and excellence for over 5,000 full and part time employees;
- delivering a broad range of services to residents and businesses; and
- discharging the City's regulatory and planning powers under legislation.

Under my leadership, notable achievements included:

- approval of a new strategic plan developed through an extensive community consultation process called "Our Future Mississauga" (http://www.mississauga.ca/portal/strategicplan) , followed by a series of Master Plans on Culture, Tourism, Transportation and Climate Change, among others.
- a new customer service strategy focussed on e-service and implementing service standards across the organization
- a series of growth initiatives in Transit, including receipt of $110 million in funding for a new Bus Rapid Transit service from the Provincial and Federal Government; and approval of a $1.4 Billion investment in Hurontario/Main Light Rail Transit line by the Province of Ontario
- construction of a major sports complex
- the attraction of a new Sheridan College campus in Mississauga's downtown.

I have been a member of advisory panels to Provincial Ministries, the Association of Municipalities of Ontario and the Federation of Canadian Municipalities on issues such as the development of the new Municipal Act and Regulations, Tax Reform and Assessment, Debt and Investment, revenue sharing and the "New Deal for

Cities". I have regularly attended meetings with Provincial and Federal Cabinet Ministers to discuss broad municipal concerns or issues specific to Mississauga and have presented before the Ontario Finance and Economic Affairs Committee on a number of pieces of proposed legislation, including recommendations to influence the provincial budget. I have presented at a wide variety of conferences and seminars on issues relevant to the municipal sector and on leadership.

City of Oshawa, ON

Commissioner of Operational Services, December 1998 – May 1999
Acting Commissioner of Public Works Services, December 1997 – December 1998
Commissioner of Corporate Services - February 1995 to December 1997

I joined the city in 1995 as Commissioner of Corporate Services, providing direction and leadership to administrative services including Human Resources, Legal, City Clerk, Finance, Purchasing, and Information Technology. In 1997, I was asked by the City Manager to take on role of Commissioner of Public Works Services. For twelve months, I led the City's Road Maintenance, Waste Management, Engineering and Transportation Services, including the Municipal Parking System.In 1998, after a corporate restructuring was approved by Council, I was appointed Commissioner of Operational Services with responsibility for Roads and Parks Maintenance, Recreational Programs and Facilities, and Solid Waste Collection.

City of St. John's, NL

Director of Finance and City Treasurer - February 1991 to January 1995
Manager, Financial Services - May 1988 to January 1991

The City of St. John's is the Capital City of the Province of Newfoundland and Labrador. I provided direction and leadership to the Finance Department with responsibility for preparing the Annual Operating and Capital Budget, issuing and managing Capital and Operating Debt, including Debenture Debt, and providing city wide accounting and purchasing services for all funds and agencies, including the St. John's Maple Leafs and Non-profit Housing.

City Consumers Co-operative Society Limited

Manager of Finance & Personnel - September 1987 to April 1988;
Controller - April 1983 to September 1987

Senior financial and human resources manager for a retail Co-operative operating two full-service supermarkets located in St. John's.

AWARDS

- In 2019, awarded the Vanier Medal by the Institute of Public Administration of Canada (IPAC) for distinctive leadership in public administration and public service in Canada, the first time the award was given to a municipal official.
- In 2011, made a fellow of the Institute of Chartered Accountants of Ontario
- In 2011, awarded the Excellence in Municipal Finance Award from the Municipal Finance Officers Association of Ontario (MFOA).
- In 2010, inducted into the Women's Executive Network Top 100 Hall of Fame, after being named one of Canada's Top 100 Most Powerful Women in the category of Public Sector Leader by WXN three years in a row.

BOARD and COMMUNITY SERVICE

- Member of the Board of Directors of the Municipal Property Assessment Corporation (MPAC), an independent not-for-profit corporation delivering assessment services in Ontario (March 2018- present). Member of the Audit and Governance committees of MPAC as well.
- Member of the Board of Directors of the Association of Municipalities of Ontario (AMO) (2016- 2018) and member of Large Urban Caucus
- President of the Board of Directors for the Canadian Association of Municipal Administrators (CAMA) (2017-2018); Board Member (2013-2019). CAMA is a national membership-based Association providing education and other services to senior municipal officials and aspiring CAO's
- Member of the Board of Directors for the Ontario Municipal Administrators Association (2011-2014), a membership based Provincial organization supporting municipal CAO's
- Member of the Board of Directors (2005-2014) and Business Affairs Committee (2005 – 2019) of the Living Arts Centre , a performing arts centre owned by the City of Mississauga
- Elected member of the Council of the Institute of Chartered Accountants of Ontario (ICAO) (June 2010 – 2012), the governing body for CA's in Ontario
- Member of the Board of Directors of Enersource Corporation (2005 – 2007), a municipal electrical utility 90% owned by the City of Mississauga and 10% owned by Borealis Infrastructure, a subsidiary of OMERS
- Member of the Executive Board of the Government Finance Officers' Association (GFOA) (2003 to 2005). Based in Chicago, GFOA is the leading organization serving the needs of state, provincial, and local government finance practitioners in the United States and Canada.
- Member of the GFOA Committee on Canadian Issues (2001 to 2005) and Co-Chair (2003 to 2005), a sub-committee of the Executive Board co-ordinating Finance Officers across Canada on issues of common concern.
- Member of the Board of Directors, Resources Committee, and Information Technology Sub-Committee of the Trillium Health Centre (2003 – 2011), a multi-site hospital in Mississauga and West Toronto with an operating budget of $400 million.
- Chair of the Resources Committee, Chair of Audit Committee, and member of the Executive Committee of the Trillium Health Centre (2006 – 2010),
- Chair of the Board of Directors of Municipal Finance Officers' Association of Ontario (MFOA) (2003), member of the MFOA Board (2000 to 2004). MFOA is the professional association of municipal finance officers in the Province of Ontario.
- Member of the Canadian Institute of Chartered Accountants Public Sector Accounting Board Task Force on Financial Statement Discussion and Analysis (2001 – 2004), an initiative to establish broader Financial Statement reporting standards for governments
- Member of the Board of Directors, Finance Committee and Executive Committee for the Oshawa and District YWCA (1997 to 1999)
- Member of the Board of Directors and Marketing Committee for the Oshawa Chapter of the Canadian Federation of University Women (1997 – 1999)
- Member of the Board of Directors, Executive Committee and Treasurer of the Women's Enterprise Bureau (1992 to 1995), an organization dedicated to helping women entrepreneurs start their own business
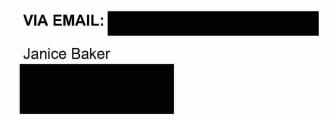
EDUCATION

- Bachelor of Commerce (Honours) degree; Memorial University of Newfoundland, 1979; Major in Accounting and Finance
- Chartered Professional Accountant – 1982
- Directors Education Program, Rotman School of Business - 2019

Appendix B

October 25, 2022

VIA EMAIL: ████████████████████████

Janice Baker

████████████████

Dear Ms. Baker:

Re: RHVPI – Questions on Governance

Please find below a list of questions, themes, and assumed facts for your review and consideration in preparing an expert report for the Red Hill Valley Parkway Inquiry ("RHVPI").

A structural chart of the Public Works department as of February 2017 has been attached as Schedule A to this letter. Additional structural charts can be provided as requested.

We anticipate that we may provide you with an additional list of questions, themes, and assumed facts shortly after the close of the RHVPI's Phase 1 hearings on November 1, 2022. If we do, they will concern the actions of City staff following the discovery of the Tradewind Report and will not be as lengthy the attached.

Should you identify additional questions or themes arising from any of the questions below, please let us know. Your input in developing this response would be greatly appreciated.

GOVERNANCE QUESTIONS, THEMES, AND ASSUMED FACTS

A.   *Gaps in information archiving and sharing, and roles and responsibilities as between Public Works divisions*

Questions:

1.   What are the best practices for ensuring that each division and section within a City department is aware of its scope of responsibilities, and that no responsibilities fall through the gaps between divisions or sections?

2.   What are the best practices for archiving and sharing all information within and between divisions, sections, and/or City departments regarding a specific matter or project, including staff reports, consultant reports, relevant media releases, consultant retainers, and/or information about work currently underway on a City asset?

3.   What are the best practices for ensuring that each action item from a staff report is assigned to a division within Public Works?

4.   What are the best practices for addressing significant safety issues that involve two or more divisions of a department? Would a project co-ordination team of the directors of the divisions involved or their delegates be more capable of reconciling different opinions than a more junior project manager from one division?

5.   What are the best practices for addressing conflict or concern about the content of a consultant or staff report between City divisions or departments?

Assumed Facts:

A common refrain of City staff when asked why they didn't follow-up on something or challenge the conduct of another City staff member has been: "It wasn't within my scope of responsibility."

The scopes of responsibility for divisions within Public Works are in dispute. City staff in the Traffic Operations and Engineering division in the Public Works Department have given evidence that RHVP lighting, road surface, and/or friction testing were not within their scope of responsibility, but rather were the responsibility of the Engineering Services division in Public Works. Engineering Services staff say they are not responsible for safety issues, but rather for designing and constructing assets and management of capital assets. In their view, Traffic Operations and Engineering is responsible for safety issues, and the recommendations flowing from any consultant retained by their division, regardless of whether those recommendations appear to cross-divisional lines in terms of areas of responsibility.

For example, CIMA was retained in 2013 after a motion from the Public Works Committee for staff to investigate upgrading the lighting on the Red Hill Parkway in the vicinity of the Mud/Stone Church Rd interchanges; staff were directed to investigate better reflective signage and lane markings or other initiatives to assist motorists in the same area. At least

2

EXP0000193

one City staff person in Lighting, which is part of Engineering Services, gave evidence that he was a "stakeholder" in respect of the aspects of the 2013 CIMA Report that addressed lighting on the RHVP. In his view, Traffic Engineering and Operations staff were responsible for the 2013 CIMA Report, including the content and recommendations on lighting, since they are responsible for roadway safety. Traffic Engineering and Operations staff gave evidence that in their view the Lighting group was responsible for these aspects of the report.

There are instances in which staff in Engineering Services disagreed with staff in Traffic Operations and Engineering about the content of consultant or staff reports. Often, the City staff person in Traffic Operations and Engineering responsible for addressing these disagreements and managing the staff or consultant report was more junior than the Engineering Services staff member who expressed disagreement about the content of a consultant or staff report. For example, Mr. Moore proposed deleting significant content from the draft 2015 CIMA Report (discussed in more detail below), but Traffic Operations and Engineering staff managing this report at the manager-level and below disagreed with this proposal.

The City does not seem to have a formal mechanism for resolving these disputes. Rather, Public Works staff seem to resolve these issues based on their understanding about which division is responsible for the asset or recommendation in dispute. As set out above, the Public Works divisions and staff have not expressed consistent views about what types of recommendations and/or assets fall within the scope of responsibility of Engineering Services as compared to Traffic Operations and Engineering.

Similarly, there are several instances in which Recommendation Reports prepared by City staff for the Public Works Committee (often in relation to safety reports prepared by consultants over which there was disagreement between Public Works divisions) gave rise to recommendations that may be outside the scope of responsibilities of the Public Works division that prepared and submitted the Recommendation Report. In these reports, recommendations are not directed to specific Public Works divisions. Rather, City staff recommend that Council direct the General Manager of Public Works to implement the recommendations. Some City staff have suggested that following such a direction from the Public Works Committee and/or Council, senior City staff (generally Directors and Senior Directors) would have a meeting to allocate recommendations/action items to the appropriate Public Works division.

However, the Public Works department does not seem to have a mechanism in place to track the assignment and completion of recommendations between divisions. There are several instances in which recommendations were not completed. In some cases, it appears that Traffic Operations and Engineering staff assumed certain recommendations were the responsibility of Engineering Services, but Engineering Services staff either never accepted responsibility for and/or never took action in respect of these recommendations.

In or around June 2021, the City created a new role "Chief Road Official", which reports to the General Manager of Public Works. The role of the Chief Road Official is to co-ordinate between all Public Works divisions delivering transportation services, and ensure that all projects meet Council policies and procedures and are in compliance with the City's Transportation Master Plan. The Chief Road Official is the "asset owner" for all

3

transportation related infrastructure, including the RHVP. No similar position existed within the City from 2014-2019, and no Public Works division has been identified as the "asset owner" for the RHVP during that time.

B. Refusing to provide requested information and/or reports to other City staff persons

Questions:

1. Under what circumstances (if any), would it be appropriate for a member of City staff to refuse to provide, or redact prior to providing, requested information in their possession to another member of City staff?

2. In what circumstances (if any), should City staff escalate concerns about their inability to obtain requested information from a City staff person in another division to their superiors?

Assumed Facts:

Some City staff may have been restrictive and/or territorial about sharing information with staff outside their divisions. Most significantly, several City staff gave evidence that they requested friction testing results for the RHVP from Mr. Moore or Engineering Services staff, and either did not receive a response and/or were not provided with the results. For example, Jason Worron (Senior Project Manager, Traffic Operations & Engineering) gave evidence that, between 2015 and 2017, he asked for the friction testing results on the instruction of Martin White (Manager, Traffic Operations and Engineering) and David Ferguson (Superintendent, Traffic Engineering). He was told by someone in Engineering Services that Traffic Operations and Engineering did not need the friction testing results and would not be provided with them.

In June 2017, a Councillor (and his assistant) explicitly requested friction testing results for the RHVP from Public Works staff, including Mr. Moore, Mr. White, and Mr. Ferguson, after seeing that it was listed as complete in an Information Update provided to Council. This email was internally circulated to numerous other City staff. The evidence suggests that the Councillor was never provided with the friction testing results he had requested. Staff in Engineering Services advised that they were unable to provide a response because Mr. Moore was away of vacation. Staff in Traffic Operations and Engineering did not take steps to seek the friction test results from Mr. Moore for themselves or the Councillor because they believed friction testing results would not be provided in response to such requests, and obtaining these results was not their responsibility.

The evidence as to whether staff within Traffic Operations and Engineering escalated the inability to obtain friction testing results for the RHVP to their superiors is conflicting. Staff from the manager-level down have suggested they escalated concerns about friction testing results to their superiors, but staff at the Director-level and up have disputed this evidence. For example, John Mater (Director, Transportation, Public Works) has indicated that as of June 2017 none of his staff had raised an issue with obtaining friction testing results from Mr. Moore to him. In contrast, Mr. White (a Manager who reported to Mr. Mater) gave

4

evidence that Mr. Moore expressly refused to provide the friction testing results for the RHVP to Mr. Mater and Dan McKinnon (General Manager, Public Works). Mr. Mater could not recall this exchange. Mr. McKinnon has no memory of requesting friction test results from Mr. Moore, and stated that had he made such a request he would not have tolerated Mr. Moore refusing to address it.

Overview Document References: OD9a/302-303/700-702, OD7/60-61/183-188

C. *Non-Disclosure of a consultant's work to Council*

Questions:

1. When is it necessary to disclose a consultants' findings or recommendations to Council?

2. Who is responsible for determining whether a consultant's findings or recommendations, or reports with the recommendations therein, should be presented to Council?

3. What factors should be considered in determining whether a consultant's findings or recommendations should be presented to Council?

4. If the consultant's findings or recommendations raises a real or possible safety issue, does that impact the analysis as to whether it should be disclosed to Council?

5. If the consultant's findings or recommendations raises a real or possible safety issue, does that impact the timeline or expediency with which it should be disclosed to Council?

Assumed Facts:

Mr. Moore received the Tradewind Report, appended to the draft 2014 Golder Report, in January 2014. The Tradewind Report contained findings of friction values on the RHVP were below or well below an investigatory standard from the United Kingdom, in contrast to the Lincoln Alexander Parkway, which was above the same investigatory standard. The draft 2014 Golder Report recommended rutting and micro-surfacing to remedy the friction values on the RHVP and other surface cracking on the RHVP that Golder had identified. Neither Mr. Moore, nor any other member of City staff, sought a final draft of the Tradewind Report or Golder Report at any time, nor advanced the Tradewind Report or Golder Report to Council until February 2019. Disclosure in February 2019 came after the Engineering Services department received an FOI request to which the Tradewind Report was responsive.

In 2017, Mr. Moore requested that Golder Associates complete a pavement evaluation which included assessment of the pavement structure and a different type of testing of frictional characteristics of the pavement on the RHVP. Neither Mr. Moore, nor any other member of City staff, sought a final draft of a report summarizing Golder's findings after Golder provided their findings orally in March 2018 until November 2018. The City did not

receive a final report until March 2019. Staff did not disclose the findings of Golder in this evaluation to Council until February 2019.

As set out above, the City's "Sharing of Consultant Reports with Identified Imminent Risks to Human Health or Safety Procedure" was approved in January 2020 following a motion passed in February 2019 (HAM0062356_0001; HAM0062358_0001).

The evidence to date suggests that City staff were responsible for determining when a consultant's findings, and/or reports and/or the recommendations therein, should be presented to Council prior to the implementation of this policy in 2020.

Overview Document References: 10a/130-131/331

D.   Staff Interactions with Consultants/Consultant Reports

Questions:

1.   How should the scope of a consultant's report be established?

2.   Is it the role of City staff or the consultant to give recommendations to Council about the prioritization and timing of recommendations in a consultant's report?

3.   Is it more appropriate for a consultant to comment on the reasonableness of a staff recommendation regarding prioritization and timing when such matters are influenced significantly by staffing and/or budgetary constraints and broader planning considerations not known to the consultant?

4.   Are there best practices for ensuring Council is aware of the roles and information provided by City staff as opposed to consultants, and vice versa?

5.   When/how may a consultant's scope be modified during the course of a project?

6.   In what circumstances (if any) would it be appropriate for City staff to direct a consultant to exclude work from their report that is directly relevant to a motion from Council?

7.   At what stage of the drafting (if ever), would it be appropriate for City staff to provide edits or comments on a consultant report?

8.   In what circumstances (if any), would it be appropriate for City staff to ask a consultant to "soften and stage" or otherwise modify a consultant's report to reflect a staff report?

9.   How should City staff address a circumstance in which a consultant's report is modified after it has been presented to Council or Committee?

10.   In what circumstances (if any) do City staff have an obligation to advise Council or Committee of such a modification?

Assumed Facts:

City staff often engaged with consultants retained to perform safety studies, including by proposing revisions to draft consultant reports, and in some cases suggesting changes to the scope of a consultant's project after the work was already underway.

For example, the motion that led to CIMA being retained to prepare the 2013 CIMA Report specifically directed staff to investigate lighting on the RHVP (in the vicinity of the Mud/Stone Church Rd interchanges). Its proposal included an assessment of illumination of the mainline in the study area. It appears that during the course of its retainer, and after it had assessed whether illumination was warranted on the mainline, CIMA received information from Mr. Moore, who was not part of the team assigned to the project. CIMA

understood that an EA prohibited lighting on the mainline RHVP based on information received from Mr. Moore and possibly other City staff. In fact, the EA did not prohibit lighting on the mainline RHVP, although it is probable that a new EA would be required to install full illumination on the RHVP mainline. Despite the scope set out in its proposal and the work it had done, CIMA excluded consideration of illumination on the mainline RHVP in its report, as out of scope. CIMA and the City did not document this fact of this change in scope or its rationale.

City staff also provide edits and proposed revisions to draft consultant's reports. For example, on September 11, 2015, Mr. Ferguson asked CIMA staff to include "Install Continuous Lighting" as a long-term countermeasure after reviewing a draft of the 2015 CIMA Report. CIMA found that lighting was warranted, but had not made a formal countermeasure recommendation in the earlier draft because of its erroneous understanding that the EA prohibited continuous lighting on the RHVP. This countermeasure was added to subsequent versions of the 2015 CIMA Report.

Another example is that Mr. Moore proposed significant revisions to a draft of the 2015 CIMA Report, including the deletion of content about slippery when wet signs and all content under the subheading "Perform Friction Testing". City staff did not request and CIMA did not implemented these proposed revisions.

City staff have given evidence that in their view they are free to propose changes to consultant's reports as ultimately it is the consultant's responsibility to accept or reject proposed revisions from City staff based on their professional judgement.

City staff have also given evidence that while they would not generally ask a consultant to change their opinion, it is acceptable to ask a consultant to "soften and stage" a report, including the consultant's recommendations, based on needs or considerations identified by City staff. City staff asked CIMA to "soften and stage" the 2013 CIMA Report so that it would more closely mirror the Information Report that staff had prepared. In the case of the 2013 CIMA Report, this request was primarily focused on the order and timing by which safety options would be addressed. CIMA also made minor changes to the 2013 CIMA Report at the City's request, after the Information Report was presented and approved by Council.

City staff also asked CIMA to revise the 2015 CIMA Report to better track their staff Recommendation Report addressing this consultant's report. CIMA was asked to use the term "options for consideration" in the 2015 CIMA Report, as opposed "recommendations" (the original term used by CIMA). City staff also asked CIMA to change friction testing from a short-term to medium term option in the 2015 CIMA Report, and to include a section stating that implementing the short-term options in the report could address overall collision patterns and potentially reduce the overall cost benefits of long-term options like lighting and barriers. CIMA did not make friction testing a medium-term option in the final 2013 CIMA Report, but City staff's other proposed revisions were implemented.

Overview Document References: OD6/8/11, OD6/43/98, OD6/70/177-178, OD6/80/207-210, OD7/40-41/122-125, OD7/50-54/153-164, OD7/60-61/183-188, OD7/63/194

E.   *Accurate and Complete Staff Reporting to Council/Committee*

Questions:

1.   What steps should be taken to ensure the accuracy of a staff report to be submitted to Council or a Committee? Who is responsible for taking those steps?

2.   Is it sufficient for City staff to rely on assurances from another staff member that particular matters have been addressed or will be addressed in providing information to Council or councillors, including, but not limited to, by way of staff reports?

3.   What obligations (if any) does the staff member who provides this information have in the event that the staff member learns that the particular matter was not addressed?

4.   If City staff in one department or division become aware or have reason to believe that staff in another department or division have concealed, withheld and/or misrepresented facts or information to their superiors and/or Council, what obligations (if any) flow from that knowledge?

5.   What are the best practices for ensuring that staff reports are accurate, action items in staff reports are addressed and reported to Council, and any misstatements of a material nature in staff reports are identified and reported to Council together with any required action flowing from these misstatements?

Assumed Facts:

There are instances in which City staff have made inaccurate statements to the Public Works Committee and/or Council.

For example, on December 7, 2015, Mr. Moore told the Public Works Committee that the City did friction testing on the RHVP in 2012/2013, and the road was holding up exceptionally well. He said: "We have no concerns about the surface mix." Mr. Moore's representation was not consistent with the conclusions in the Tradewind Report or Mr. Moore's own evidence that he thought the Tradewind Report was inconclusive and/or required further work/examination.

On February 16, 2016, Mr. Ferguson sent an email to a local community group, copying the Public Works Committee and Mayor, which stated that friction testing recommended in the 2015 CIMA Report would be completed by Engineering Services in 2016. Mr. Moore was copied on this email and replied "perfect" to Mr. Ferguson, but there is no evidence that friction testing was contemplated or performed on the RHVP in 2016. Mr. Ferguson did not advise the local community group, Public Works Committee, or Mayor that this friction testing was not completed in 2016, although his own state of knowledge as to whether or not this testing had been completed may have been uncertain.

On March 24, 2017, Mr. White submitted an Information Update to the Mayor and Council as Acting Director of Transportation (HAM0025870_0001) respecting the countermeasures recommended in the 2015 CIMA Report. This Information Update erroneously lists friction testing on the RHVP, which was a countermeasure in the 2015 CIMA Report, as "completed". Friction testing was listed as completed by Traffic Operations and Engineering staff based on statements from Mr. Moore, but Traffic Operations and Engineering staff had been unable to obtain copies of the friction testing results from Mr. Moore. This information about friction testing being completed was also repeated in subsequent staff reports.

Neither Mr. White nor Mr. Ferguson reported to Mr. Moore, but both recognized that Mr. Moore was senior to them in the City's hierarchy/organizational structure. Mr. White was Manager, Traffic Operations and Engineering. Mr. Ferguson was a Superintendent, Traffic Engineering, and reported to Mr. White. Mr. Moore was Director, Engineering Services.

In 2019, staff submitted a report that implied that the friction testing that had been listed as complete in the above 2017 staff report and in subsequent staff reports due to the pavement evaluation Golder had commenced in late 2017. However, the drafters of those reports did not, at the time the reports were drafted, have knowledge of the results of Golder's 2017 pavement evaluation. The 2019 report appears to be an attempt to recast the information previously provided in earlier staff reports.

Overview Document References: OD7/73-74/231-235, OD7/112/355-356, OD7/177/516-517, OD8/36-39/96-103, OD6/86/224-227

F.   Reporting to Council/Committee on Consultant Reports

Questions:

1.   Should consultant reports be appended to staff reports?

2.   Under what circumstances would it be appropriate not to append a consultant report to a staff report?

3.   When (if ever) is it appropriate for staff to summarize or explain the findings in a consultant report in a staff report?

4.   What are the best practices for distinguishing the views and recommendations of staff from the recommendations in a consultant report commissioned in response to a Council motion?

5.   If City staff disagree with the recommendations in a consultant's report, how should they communicate that information to Council or Committee?

6.   Under what circumstances (if any) would it be appropriate to exclude a recommendation or potential countermeasure discussed in a consultant report from a staff report?

7.   Is it appropriate to present a recommendation in a staff report (and consultant report) as a deferral, if deferral effectively means that the recommendation will not be implemented for the foreseeable future?

Assumed Facts:

On February 13-14, 2019, Council passed a motion requiring that City staff prepare a policy or protocol that directs City staff to share any consultants' reports, documents, memorandums or correspondence that raises any questions or concerns about any current or future risk to human health and safety. Once this policy was approved by Council, it would be appended to the City Staff Code of Conduct and to all employment contracts for the City Manager, Directors, and General Managers.

The City's "Sharing of Consultant Reports with Identified Imminent Risks to Human Health or Safety Procedure" was approved in January 2020 (HAM0062356_0001; HAM0062358_0001)

Prior to 2020, there was no policy in place that indicated when a consultant report should be provided to Council. City staff would determine when a consultant report should be provided to Council or Committee at their discretion.

Some City staff have indicated that it was their preference not to append consultant reports to staff reports summarizing and/or commenting on consultant reports. In 2013, Traffic Operations and Engineering staff prepared an Information Report on the 2013 CIMA Report. The 2013 CIMA Report was not appended to this Information Report.

In 2015, Mr. Mater suggested that the 2015 CIMA Report should not be appended to the associated Recommendation Report, although Lauri Leduc (Legislative Coordinator, Office of the City Clerk) distributed this consultant report to Councillors in advance of the Public Works Committee meeting at which the Recommendation Report was presented.

Further, City staff do not always include all of a consultant's recommendations in their staff reports to Council or Committee. Some City staff told the RHVP that they did not agree that a consultants' recommendation should be included in a staff report if staff disagreed with the recommendation and advised Council against it. Other City staff have advised that if they did not object to the recommendations in a consultant's report then these recommendations should be put in front of Council, but said that, if they objected to a recommendation, then whether it should go to Council in a staff report would "depend on what it was", etc.

Documentary evidence from October 23, 2013 indicates that Geoff Lupton (Director of Energy, Fleet & Traffic, Corporate Assets & Strategic Planning) instructed his direct reports to remove content about CIMA's friction testing recommendation from the Information Report prepared on the 2013 CIMA Report, unless Mr. Moore agreed to the recommendation.

CIMA had recommended friction testing in 2013. The final staff report lists friction testing as a short term countermeasure in Appendix A (RHV0000668), but goes on to quantify this countermeasure by stating: "Staff will also review further countermeasures such as friction testing with Construction Engineering". Traffic Operations and Engineering staff state that the friction testing countermeasure was not subsequently reviewed with Engineering Services. The staff report does not include any content explaining that the friction testing countermeasure was proposed by CIMA in response to a collision analysis for the RHVP, with particular emphasis on the higher rate of wet weather collisions on the parkway.

In 2015, in the staff Recommendation Report on the 2015 CIMA Report, friction testing was a medium-term safety option in Appendix B (to be completed in 2-5 years, while CIMA recommended it as a short-term option without providing a time range for completion; short term options in the 2013 CIMA Report were to be completed in 0-5 years) and the installation of continuous illumination and median barriers were long-term measures in Appendix B, pending the outcome of the City's Master Transportation Plan Update, which among other things, would include an assessment of expanding/widening the RHVP. City staff specifically recommended deferring these safety options for consideration as part of the Transportation Master Plan update. Although there may be a practical reason to consider continuous illumination and median barriers in connection with the widening of the RHVP, there appears to be no technical or practical connection between when to conduct friction testing and the widening of the RHVP.

The Recommendation Report indicates that the Transportation Master Plan update would be completed in 2016. However, the Transportation Master Plan was not updated until 2018, and the inquiry has received evidence that City staff (and some Councillors) understood in 2015 that the expansion of the RHVP, even if recommended, would not be completed in the foreseeable future. The deferral of these medium and long-term safety

options pending the completion of the Transportation Master Plan update therefore effectively meant they would not be implemented in the foreseeable future.

Overview Document References: OD6/64/162-163, OD6/68/173, OD7/61/187-188, OD7/67/210

G. *Sharing draft staff and/or consultant reports with Individual Councillors*

Questions:

1. Is it appropriate to share or disclose consultant, draft, or in progress consultant reports to individual Council members?

2. If so, under what circumstances would this be permissible (i.e.: with Council authorization, etc.)? Are there any restrictions on acceptable use in this context?

3. Is it appropriate to share or disclose staff, draft, or in progress staff reports to individual Council members?

4. If so, under what circumstances would this be permissible (i.e.: with Council authorization, etc.)?

5. Under what circumstances (if ever), should City staff allow the expectations of individual councillors to inform or influence the content or timing of reports to Council?

Assumed Facts:

Traffic Operations and Engineering staff shared copies of the draft 2013 CIMA Report with certain Councillors, whose wards touched on or included the RHVP. The draft report was not shared with all Councillors or all Councillors on the Public Works Committee. The Information Report that staff prepared on the 2013 CIMA Report did not append the final version of the consultant's report for review by the Public Works Committee and/or Council.

Councillors may have been aware of this practice at the time. The two Councillors who attended the meeting with staff regarding the 2013 CIMA Report both mentioned their meeting about the draft report during staff's presentation to the Public Works Committee, with appreciation.

There are also instances in which City staff appear to have consulted individual Councillors about their reporting timelines. For example, after City staff presented the Information Report on the 2013 CIMA Report, they were directed to report back on lighting improvements, and this item was added to the Outstanding Business List. Mr. Moore then consulted Councillor Collins for confirmation that he was not expecting this report until all the improvements approved in the Information Report had been implemented and staff were in a position to comment on their effectiveness.

13

Overview Document References: OD6/48/114-118, OD6/50/125

H. *Statements to the Media and Public*

Questions:

1. If City staff become aware or have reason to believe that another member of City staff has misrepresented facts or information to the public and/or media, what obligations (if any) flow from that knowledge?

2. Are there best practices for ensuring that statements made to the media and/or public by City staff are consistent with staff reports to Council?

Assumed Facts:

Mr. Moore made inconsistent and inaccurate statements to the media about friction testing on the RHVP, including stating, in July 2017, that he had received only an "informal chart" and "inconclusive" results. Mr. Moore had received the Tradewind Report in January 2014, which the City acknowledges was not an "informal chart" and provided definitive recommendations and results based on standards in use in Great Britain and elsewhere, although not in North America.

Gord McGuire made similar incorrect statements about friction testing being "inconclusive" to the media and/or members of public after he became Director, Engineering and discovered the Tradewind Report and 2014 Golder Report.

The Public Works department Communications Officer did not generally attend interviews with Mr. Moore or follow-up with him when he was quoted in media articles about friction testing on the RHVP. She did not keep a record of prior statements made about the RHVP to the media to ensure consistency and/or accurate information was being provided to the media and public. This work was not within her scope of responsibility.

Overview Document References: OD7/188/554

We will reach out to schedule a meeting with to discuss the above shortly. In the interim, please let us know if you have any questions or concerns.

Yours very truly,

Emily Lawrence
Commission Counsel, Red Hill Valley Parkway Inquiry

14

General Manager
Dan McKinnon

Communications
Finance & Administration
Human Resources

GM's Administrative
Coordinator

Energy, Fleet & Facilities
Rom D'Angelo

- Central Fleet
- Energy Initiatives
- Facility Management & Capital Programs
- Facilities Operations & Technical Services
- Strategic Planning & Capital Compliance
- Facilities Planning & Business Support
- Golf & Stadium Operations

Engineering Services
Gary Moore

- Asset Management
- Construction
- Design
- Geomatics & Corridor Management
- Waterfront Development

Environmental Services
Craig Murdoch

- Forestry & Horticulture
- Parks & Cemeteries
- Waste Collection
- Recycling & Waste Disposal
- Landscape Architectural Services

Hamilton Water
Mark Bainbridge (Acting)

- Compliance & Regulations
- Woodward Upgrades
- Water and Wastewater Operations
- Water and Wastewater Planning & Capital

Operations
Betty Matthews-Malone

- Business Programs
- Capital Rehabilitation & Technical Operations
- Roads & Maintenance

Transit
Debbie Dalle Vedove

- Accessible Transportation Services
- Transit Fleet Maintenance
- Transit Operations
- Transit Planning & Customer Service
- Transit Strategy & Infrastructure
- Transit Support Services

Transportation
John Mater (AGM)

- Transportation Planning Services
- Traffic Operations & Engineering
- Policy & Programs

HAM0061798_0001

EXP0000193