

August 8, 2022

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Delivered

The Honourable Frank Marrocco
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Dear Sir:

***Re: In the matter of the Public Inquiries Act, 2009, S.O. 2009, c 33, Sch 6
And in the matter of the Resolution of the Council of the City of Hamilton dated April 24, 2019,
establishing the Red Hill Valley Parkway Inquiry pursuant to section 274 of the Municipal Act,
2001, S.O. 2001, c 25***

We are counsel for Golder Associates, a Participant in the Red Hill Valley Parkway Inquiry. Pursuant to the Commissioner's Order of April 25, 2022, we were granted permission to make submissions in relation to this motion to determine privilege but do not have access to documents over which privilege is contested.

Golder adopts the submissions of Commission Counsel that the Disputed Documents are not privileged and, in the alternative, any such privilege is waived. Golder submits that having called this Inquiry and committed to truth and transparency, Hamilton should not be permitted to hedge its disclosure. In particular, where the Commission will be called upon to make findings of credibility and potentially fault, it would be unjust to withhold documents which would shed light on what was known by whom and when.

The Tradewind Report was included in an appendix to the Golder Report¹. The Golder Report was delivered to Mr. Moore on January 31, 2014 and hand delivered on February 7, 2014 and included specific recommendations, including: "By carrying out the mill and overlay where required and applying microsurfacing, the issue of relatively low FN on the RHVP would also be addressed." That recommendation in writing was subsequently repeated and further advice provided for interim intervention to improve frictional performance on the RHVP by shot blasting or skid abrading². The Golder Report (and Tradewind Report) was not reported to Council and Golder's advice was not taken. Disclosure of the Disputed Documents may shed light on why.

Golder submits that there are two themes which characterize the City's treatment of the Tradewind Report and Golder's advice based on it: one, a reluctance to disclose the results of friction testing on the RHVP; and two, a reluctance to specifically use surface treatments to improve the frictional performance of the pavement.

¹ The Golder Report is referenced in paragraph 17 of Commission counsel's Factum, footnote 10 but the Reference is redacted in the public version of the Factum.

² Golder's Pavement Evaluation report delivered first in draft dated December 17, 2018 records these Recommendation, RHVP Compendium tab 15, page 183-184.

Although the Inquiry is framed on an assumption that the Tradewind report was ‘discovered’ by Mr. Gord McGuire on September 26, 2018, the documents produced show that it was provided to external counsel, Shillingtons, on August 15, 2017³ and reported back to Ms. Swaby (Risk Management) on May 4, 2018⁴. Golder submits that disclosure of all of the documents which are part of the narrative of how the Tradewind Report was treated when it was ‘discovered’ is necessary to understand who had it, when and whether appropriate steps were taken to disclose it; but also crucially may shed light on how and why it was not more fully disclosed when it was delivered by Golder to the City of Hamilton on January 31, 2014. It is likely that the risk management strategy in effect in 2018 was not new and permeated senior level management of risk in prior years. The extent to which the strategy employed in 2018 reveals how the Tradewind Report was treated from the beginning certainly deserves scrutiny.

The Commissioner will be called upon to make findings of credibility and may potentially make critical findings in relation to the conduct of individuals. Golder submits that fairness requires the full disclosure of records which will shed light on the actions of individuals.

Subject to your direction, we would be pleased to answer questions or provide oral submissions as would be appropriate and helpful.

Respectfully submitted,

GIBBS & ASSOCIATES

Per:

A handwritten signature in blue ink, appearing to read "Jennifer A. Roberts", is written over a light blue horizontal line.

Jennifer A. Roberts

JAR/

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³ RHVP Compendium, tab 21, page 278.

⁴ RHVP Compendium, tab 23, page 282 – 283.

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