

December 10, 2019

REASONS AND DECISION

Publication of and oral submissions respecting applications to participate and seek funding

Mr. Justice Herman J. Wilton-Siegel
Commissioner

1. Pursuant to the *Rules Regarding Applications to Participate and Seek Funding* (the “Rules”) in the Red Hill Valley Parkway Inquiry (the “Inquiry”) issued on October 30, 2019, interested persons were invited to submit applications to participate on or before November 29, 2019. Nine applications were received from the following applicants:

- (a) The City of Hamilton (the “City”)
- (b) Her Majesty the Queen in Right of Ontario (“Ontario”)
- (c) Dufferin Construction Company, A division of CRH Canada Construction Group Inc. (“Dufferin”)
- (d) Golder Associates Ltd. (“Golder”)
- (e) Mirle B. Chandrashekar
- (f) Malcolm Hodgskiss
- (g) Jodi Gawrylash

- (h) Belinda Marazzato
- (i) Grosso Hooper Law (Robert J. Hooper, Mary Grosso, and Kim Jossul) and Scarfone Hawkins (David Thompson, Matthew Moloci, and Michael Grant) (“Grosso Hooper and Scarfone Hawkins”)

A. *Publication of applications to participate*

2. None of the applicants requested that any portion of their application be kept confidential. Accordingly, pursuant to section 10 of the Rules, I direct that the applications of all applicants, except Malcolm Hodgskiss, be posted on the Inquiry website, with certain personal information contained in attachments to the applications of Jodi Gawrylash and Belinda Marazzato redacted.

3. The application of Malcolm Hodgskiss raises certain issues beyond the mandate of the Inquiry’s Terms of Reference. Accordingly, pursuant to sections 4 and 10 of the Rules, I exercise my discretion not to publish it at this time, pending a fuller appreciation of Mr. Hodgskiss’ application.

B. *Oral submissions*

4. Oral submissions respecting applications to participate and seek funding will take place on Friday, January 10, 2020 in the Council Chamber in Hamilton City Hall, 71 Main St W. Hamilton, commencing at 10:00 am.

5. Although not all applicants requested the opportunity, having reviewed the applications, the Inquiry would benefit from receiving oral submissions from all nine applicants.

6. In the schedule below, the amount of time allotted to each applicant, and the order in which they are requested to make oral submissions, does not reflect any view of the merits of their respective applications. Rather, the schedule reflects whether or not an applicant requested both participation and a funding recommendation, and a preliminary assessment of the complexity involved.

7. The schedule for the oral submissions hearing on January 10, 2020 (including five minutes between each applicant's submissions to avoid changeover or technical issues eroding any applicant's time allotment) is:

Commissioner's opening comments	10:00 am
The City 10 minutes (participation)	10:05 am
Ontario 10 minutes (participation)	10:20 am
Dufferin 10 minutes (participation)	10:35 am
Golder 20 minutes (participation and funding)	10:50 am
Mirle B. Chandrashekar 10 minutes (participation)	11:15 am
Morning Break	11:25 am
Malcolm Hodgskiss 15 minutes (participation and funding)	11:40 am
Jodi Gawrylash 15 minutes (participation and funding)	12:00 pm
Belinda Marazzato 15 minutes (participation and funding)	12:20 pm
Grosso Hooper and Scarfone Hawkins 20 minutes (participation and funding)	12:40 pm
Commissioner's concluding comments	1:00 pm

8. This schedule is subject to change. All applicants or, if applicable, their counsel, should be prepared to proceed at 10:00am on January 10, 2020 unless Commission Counsel advises them otherwise in advance.

C. Considerations respecting applications

9. The following Inquiry Rules set out the considerations for assessing the applications. As with their applications, in formulating their oral submissions applicants should be guided by these Rules:

14. When determining whether an applicant should be granted the right to participate in some or all parts of the Inquiry, the Commissioner may consider if an applicant:

- (a) has a substantial and direct interest in the subject matter of the Inquiry;
- (b) is uniquely situated to offer information or assistance to the Inquiry and/or whether the applicant shares a common interest or perspective with other applicants;
- (c) is likely to be notified of a possible finding of misconduct by the Inquiry;
- (d) would assist the conduct of the Inquiry; and
- (e) would contribute to the openness and fairness of the Inquiry.

16. The Commissioner may grant an applicant the right to participate in some or all parts of the Inquiry (a "Participant"), individually or as a group of applicants, including the right to:

- (a) access to a database of relevant documents;

(b) comment on background materials or written evidence prepared by Commission Counsel;

(c) propose individuals to be interviewed or to appear as witnesses at the Inquiry's public hearing;

(d) examine witnesses at the Inquiry's public hearing; and

(e) make oral or written submissions to the Commissioner.

17. When determining the form and extent of each applicant's role as a Participant, the Commissioner will consider:

(a) that Commission Counsel have the primary responsibility of representing the public interest throughout the Inquiry, including the responsibility of ensuring that all matters that bear upon the public interest are canvassed; and

(b) the need to balance the importance of a thorough inquiry with the need to minimize duplication to the extent possible; and

(c) the extent to which each applicant's participation would assist the Commissioner to fulfill his role to inquire into matters set out in the Terms of Reference and write a comprehensive and meaningful report of his findings.

18. All persons who are granted status as Participants will be required to comply with the Inquiry's Rules of Procedure, which will include an obligation to produce all relevant documents in the Participant's possession and control in a format directed by the Commissioner.

19. Where the Commissioner concludes that a Participant would not be able to participate in the Inquiry without receiving funding, the Commissioner may recommend to the City of Hamilton that it provide the Participant with funding to the extent of that Participant's interest in accordance with the City of Hamilton's funding criteria, attached as Appendix A to these Rules (available on the Inquiry website). The final decision on whether or not to provide funding and, if so, the level of funding, will be made by the City of Hamilton acting in its sole discretion.



**Mr. Justice Herman J. Wilton-Siegel
Commissioner**

December 10, 2019