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DATE: April 12, 2011

REPORT TITLE: **STATUS OF PEEL REGION OFFICIAL PLAN REVIEW AMENDMENTS, AREA MUNICIPAL PROVINCIAL POLICY CONFORMITY OFFICIAL PLAN AMENDMENTS, THE CITY OF MISSISSAUGA'S NEW COMPREHENSIVE OFFICIAL PLAN AND LEGAL SERVICES FOR THE PEEL REGION OFFICIAL PLAN REVIEW ONTARIO MUNICIPAL BOARD HEARING**

FROM: Norma Trim, Chief Financial Officer and Commissioner of Corporate Services  
Dan Labrecque, Commissioner of Public Works

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### RECOMMENDATION

**That the contract for External Legal Services for the Peel Region Official Plan Review (PROPR,) Ontario Municipal Board (OMB) hearings and related hearings contingent on the outcome of the PROPR, be awarded to Garrod Pickfield LLP in the estimated amount of \$364,000 (excluding applicable taxes) under Capital Project 11-7708 in accordance with Purchasing By-law 63-2008.**

### REPORT HIGHLIGHTS

- Through the Peel Region Official Plan Review (PROPR), seven Regional Official Plan Amendments (ROPAs) were developed. The ROPAs were adopted by Regional Council and submitted to the Minister of Municipal Affairs and Housing for approval and are at various stages of the approval process.
- Mississauga's Growth Plan conformity Official Plan Amendment (OPA) number 95 was submitted to the Region on June 25, 2009 and approved by Regional Council on December 10, 2009 with the exception of Section 1.2, paragraph 1 which contains the population and employment forecasts. Mississauga's new comprehensive Official Plan was submitted to the Regional Municipality of Peel for approval on October 14, 2010 and has not yet been approved.
- Brampton's Growth Plan conformity OPA number 2006-043 was submitted to the Region for approval on June 24, 2010 and has not yet been approved.
- Caledon's provincial policy conformity OPA number 226 was submitted to the Region for approval on June 25, 2010 and has not yet been approved.
- ROPAs 20, 22, 23, 24 and 25, Mississauga's OPA 95 and Caledon's OPA 226 have been appealed to the Ontario Municipal Board (OMB).
- On September 9, 2010, Regional Council provided direction to retain external legal counsel to represent the Region on appeals to PROPR ROPAs at the OMB.
- Staff is recommending the contract for external legal services for PROPR OMB hearings be awarded to Garrod Pickfield LLP in the estimated amount of \$364,000.

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**DISCUSSION**

**1. Background**

The Province of Ontario introduced new legislative and policy changes through the Places to Grow: Growth Plan for the Greater Golden Horseshoe (Growth Plan), 2006; Provincial Policy Statement, 2005; Greenbelt Plan, 2005; and the *Planning and Conservation Land Statute Law Amendment Act*, 2006. This legislation and policy established new requirements for the Region to meet and subsequently, for its area municipalities; Brampton, Caledon and Mississauga to meet. As a result, the Region and each area municipality undertook Official Plan reviews to incorporate and conform to the new requirements.

The Region initiated the Peel Region Official Plan Review (PROPR) process to undertake studies and develop seven Regional Official Plan Amendments (ROPAs) to conform to the provincial legislation and policy. Similarly, each area municipality completed reviews of their own Official Plans and developed conformity amendments as well.

The development of the PROPR amendments was completed through a collaborative partnership with the area municipalities. Regional staff has provided input into the area municipal Official Plan Amendment (OPA) conformity processes as well.

The remainder of this report will discuss the status of PROPR ROPAs, area municipal provincial policy conformity OPAs, related Ontario Municipal Board (OMB) appeals, and retaining external legal counsel to provide legal services for the Region's defense of the PROPR ROPAs.

**2. Status of PROPR ROPAs**

Through PROPR, the Region developed seven ROPAs to conform to provincial requirements. All ROPAs have been adopted by Regional Council and were submitted to the Ministry of Municipal Affairs and Housing (MMAH) for approval. The status of each PROPR ROPA is as follows:

**a) ROPA 20 - Sustainability and Energy policies**

ROPA 20 was approved with minor modifications by MMAH on November 26, 2009. MMAH's decision was later appealed to the OMB by Solmar Development Corporation on December 15, 2009.

**b) ROPA 21A - Air Quality and Integrated Waste Management policies**

ROPA 21A was approved with minor modifications by MMAH on May 25, 2010. It was not appealed to the OMB and is in effect in the Regional Official Plan.

**c) ROPA 21B - Natural Heritage and Agriculture policies**

Regional staff has received draft modifications on ROPA 21B from MMAH and Regional staff is consulting with MMAH on the draft modifications. Regional staff will prepare a future report to Regional Council for endorsement of comments that will be submitted to the Province. The 180-day deadline for MMAH to approve ROPA 21B has passed. At this time, ROPA 21B has not been appealed to the OMB.

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**d) ROPA 22 - Transportation policies**

ROPA 22 was approved with minor modifications by MMAH on August 27, 2010. MMAH's decision was later appealed to the OMB by Solmar Development Corporation on September 3, 2010.

**e) ROPA 23 - Housing policies**

ROPA 23 was approved with minor modifications by MMAH on June 22, 2010. MMAH's decision was later appealed to the OMB by Solmar Development Corporation on July 5, 2010.

**f) ROPA 24 - Managing Growth, Employment and Employment Areas and Greenbelt Conformity policies**

Regional staff has received draft modifications from MMAH on ROPA 24. Regional staff is currently working with area municipal staff and MMAH staff to reach agreement on the modifications. A future report to Regional Council will describe the provincial modifications in detail. On November 25, 2010, Solmar Development Corporation appealed, to the OMB, MMAH's failure to issue a decision on ROPA 24 within the 180-day deadline.

**g) ROPA 25 - Performance Measurement policies and *Planning Act* Conformity**

ROPA 25 was approved with minor modifications by MMAH on August 10, 2010. MMAH's decision was later appealed to the OMB by Solmar Development Corporation on August 20, 2010.

**3. Status of Area Municipal Provincial Policy Conformity Official Plan Amendments**

The *Planning Act* requires all local Official Plans to conform to Regional Official Plans and provincial plans. Therefore, each of Peel's area municipalities have drafted OPAs to conform to the Region's Official Plan, as amended by the PROPR ROPAs and provincial plans.

All area municipal provincial policy conformity amendments have been submitted to the Region for approval. After the Region receives a local Official Plan or OPA that requires Regional Council's approval, the *Planning Act* provides a 180-day deadline in which to review the Official Plan or OPA before issuing a Notice of Decision. After the 180-day period has expired, and if no decision has been issued, any person or public body may appeal the Official Plan or OPA to the OMB for a Hearing.

ROPA 24 includes population, employment and housing forecasts and policies related to managing growth, employment and employment areas and greenbelt conformity. Given the significant changes brought forward in ROPA 24, Regional staff determined that it would not be appropriate to recommend approval of area municipal OPAs until ROPA 24 was approved by MMAH. MMAH has proposed 110 modifications and 2 non-decisions to ROPA 24 and Regional and area municipal staff continue to work with MMAH staff to address and resolve these items. Approving area municipal OPAs ahead of ROPA 24 could require additional amendments to bring area municipal OPAs into conformity if significant modifications were made to ROPA 24 by MMAH or the OMB. Therefore, the Development Services Division does not recommend approval of any area municipal Official Plans or OPAs related to area municipal provincial policy conformity, with the exception of a partial

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approval of Mississauga's OPA 95 as noted below. Regional staff was able to recommend the partial approval of OPA 95 because it did not include content other than the policies and definitions that were necessary to amend the Mississauga Official Plan to conform to the Growth Plan.

The status of each area municipal amendment is as follows:

**a) Brampton**

Brampton City Council adopted their Growth Plan OPA number 2006-43 on June 9, 2010. The amendment has been submitted to the Region for approval on June 24, 2010. The 180-day review period has expired and the Region has not issued a Notice of Decision due to the status of ROPA 24 discussions with MMAH. At this time, no appeals to OPA 2006-43 have been received. Discussions are ongoing at the staff level on proposed modifications to OPA 43.

**b) Caledon**

Caledon Town Council adopted their Provincial Policy Conformity OPA number 226 on June 8, 2010. The amendment was submitted to the Region for approval on June 25, 2010. The 180-day review period has expired and the Region has not issued a Notice of Decision due to the status of ROPA 24 discussions with MMAH. On February 28, 2011, Solmar Development Corporation appealed the Region's failure to make a decision on OPA 226 within the prescribed time period of 180 days.

**c) Mississauga**

Mississauga City Council adopted their conformity of the Mississauga Plan to the Growth Plan OPA number 95 on June 10, 2009. The City submitted the amendment to the Region on June 25, 2009. On December 10, 2009, Regional Council issued a decision to approve OPA 95 as adopted by City Council with the exception of Section 1.2, paragraph 1 which contains the population and employment forecasts. OPA 95 has been appealed to the OMB by five appellants. The new Mississauga Official Plan, which incorporates OPA 95, was adopted by City Council on September 29, 2010 and was submitted to the Region on October 14, 2010. The 180-day review period expired on April 12, 2011. The Region has not recommended approval of the new Mississauga Official Plan due to the ongoing discussions with MMAH on ROPA 24 and the PROPR amendments appealed to the OMB.

**4. Ontario Municipal Board Appeals**

Solmar Development Corporation has appealed ROPAs 20, 22, 23, 24 and 25 to the OMB. For efficiency of time and resources, Regional staff requested the OMB to consolidate the PROPR ROPA appeals into one hearing. The OMB has accepted this request and has consolidated the PROPR ROPAs. A pre-hearing conference has been scheduled for the appealed PROPR amendments, along with Mississauga's appealed OPA 95. The date of the pre-hearing conference is May 10<sup>th</sup>, 2011 at 10:00 AM at Court Room B7, 5 Ray Lawson Blvd., Brampton, Ontario. Regional and area municipal staff are coordinating their approach and evidence to be presented to the Board.

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A report titled "Regional Official Plan Amendment 21A and 23 – Air Quality, Integrated Waste Management and Housing Policies – Provincial Modifications and Appeal" was provided to Council at its September 9, 2010 meeting recommending that the Region retain the services of external legal counsel, for the purpose of dealing with all PROPR amendments under appeal. Council approved the recommendation through Resolution 2010-817.

Mr. Stephen Garrod from Garrod Pickfield LLP is the preferred legal counsel to provide legal services for the Region's defense of PROPR ROPAs. A competitive process is not recommended as only Mr. Garrod possesses the specific knowledge and expertise of Regional Official Plan matters and a comprehensive understanding of historical and current planning issues in Peel such as growth management and environmental and resource protection. Mr. Garrod has a vast amount of experience in successfully representing the Region on OMB appealed ROPAs. Examples include the first Regional Official Plan in the 1990's, expansion of the Regional Urban Boundary to include Northwest Brampton (ROPA 15), and the Rockfort Quarry OMB hearing (ROPA 13). Mr. Garrod's familiarity with the Region of Peel, its planning documents and staff resources, together with his special expertise and experience will be cost effective for Peel and will likely result in a better outcome for Peel in these matters. Therefore, Regional staff recommends the contract for the provision of legal services for the Region's defense of PROPR ROPAs be awarded to Garrod Pickfield LLP.

## **FINANCIAL IMPLICATIONS**

As noted above, Council approved retaining external legal counsel to deal with the PROPR ROPAs. Mr. Garrod has provided an estimate of \$364,000 to provide legal services on the appealed PROPR ROPAs in 2011 and 2012. Staff reviewed the quotation and deems it represents good value therefore staff recommends the contract for external legal services for the PROPR OMB hearing be awarded to Garrod Pickfield LLP in the estimated amount under Capital Project 11-7708 in accordance with Purchasing By-law 63-2008.

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**CONCLUSION**

Regional Council and area municipal Councils have adopted OPAs to bring their Official Plans into conformity with the required provincial legislations. Five of the seven ROPAs and the Caledon and Mississauga OPAs have been appealed to the OMB and Regional staff are not approving area municipal provincial policy conformity OPAs and related Official Plans until the Region's appealed amendments are approved through the OMB process. Regional and area municipal staff are coordinating their OMB cases and the pre-hearing conference scheduled for May 10, 2011.



Norma Trim  
Chief Financial Officer  
and Commissioner of Corporate Services




Dan Labrecque  
Commissioner of Public Works


**Approved for Submission:**



D. Szwarc, Chief Administrative Officer

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