

## Development and Infrastructure Division

**TO: Mayor and Members of Development & Infrastructure Committee**

**SUBJECT: Burlington Executive Airport Update #8 – January 13, 2014**

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### **Discussion:**

The following is a summary of the issues that have been addressed or are in the process of being addressed since the last update to Council, on December 2, 2013.

#### **Airport Site Inspections**

King Paving & Materials Co. left the site in mid November. No filling operations have been observed since that time.

#### **Site Alteration By-law Update**

Engineering staff are continuing to work on the proposed update of the Site Alteration By-law.

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### **Other Regulators:**

#### **Staff Meeting with MOE (Dec 13, 2013)**

In attendance were MOE Regional Director, MOE Toronto staff and local MOE staff, Halton Region Health Dept representative, Terrapex Environmental, Scott Stewart, Mike Crough and Cary Clark.

The main purpose of this meeting was to discuss the differing opinions regarding the environmental legislation, the Airpark's ground water monitoring program and well water test results.

The MOE stated that:

- no off-site impacts have been identified,
- water well tests undertaken by the Halton Region Health Department were within the specifications required for potable water,
- elevated concentrations of contaminants in the soil on the Airpark site does not necessarily imply that:
  - there is a risk to human health or the environment,
  - remedial action is required, or
  - the fill material should be considered waste.

The MOE confirmed that the Airpark is undertaking a ground water monitoring program, which was approved by the MOE. Data will be evaluated by MOE staff and results shared with the City. If the data shows impacts, the Airpark will be required to undertake a Remedial Action Plan. After results are available, a meeting with the neighbours and stakeholders will be scheduled by the City (anticipated to be in February 2014). The MOE Regional Director confirmed that the MOE would be willing to attend the meeting.

The MOE's "Soil Management – A Guide to Best Management Practices" provides the guidelines for addressing fill quality issues. The plan of action for the Airpark site should include a "Qualified Person" with environmental expertise developing a "Fill Management Plan" for the site which includes an assessment of risk and establishment of site standards.

The City and MOE agreed to move forward with a coordinated approach.

### **Update on FOI Request to MOE for Monitoring Plan and Details**

Since the last update, staff had been waiting on a decision by the FOI office of the MOE on whether to release in full, release in part, or deny the city's FOI request for information on the Burlington Airpark. Specifically, the city's FOI request was seeking the release of information regarding a groundwater monitoring plan and associated details that staff are aware has been agreed to between the MOE and the Airpark.

On January 2, 2014 staff received a letter from the MOE (note the letter is dated December 23, 2013) indicating that **partial** release of the requested information would be provided. The letter states that "there is no compelling public interest in disclosure that clearly outweighs the purpose of the exemptions and the application of sections 13 and 17". The letter provides the following explanation of material that will not be released, along with references to sections of the act:

- Records that reveal the advice and recommendations during the deliberative process have been removed in order to encourage the free flow of advice as outlined in Section 13(1) of the Act
- Requests for legal advice from ministry counsel and the response received has been denied in accordance with Section 19 (a) and (b) of the Act in order to maintain solicitor-client privilege; and
- Personal information of a resident of the area has been withheld to protect personal privacy (Section 21(1)(f) of the Act

The letter does not elaborate on the specific pieces of information that will be released to the city or when and in what method the information will be provided.

City staff sent two follow up emails to Emily Halford at the FOI office in accordance with instructions given in the letter. One email was sent on January 6, 2014 and another was sent on January 9, 2014. Ms. Halford was asked the following questions:

1. What, if any, is the appeal process should the city wish to challenge the decision for partial release of information?
2. If no appeals are allowed or submitted, when would the city receive the information indicated in the letter?
3. If upon receipt of the information the city finds it is insufficient, does the city have any recourse (i.e. new FOI request or other mechanism to ask for more information)?

Staff received a phone call from the FOI office on January 10, 2014, indicating that records would be couriered to the city by the end of the day. Again, no details were given on what specific pieces of information were being sent or on the possibility of the city requesting an appeal or review of the decision of partial release. However, after the phone conversation staff also received an email response from Ms. Halford with an attached letter that provided some more details. Specifically, the letter stated that the records were being provided on CD and confirmed that the records were being couriered to the city. Further, the letter indicated that the City could request a review of the decision to offer only partial release of the information. This review can be initiated by contacting the Information and Privacy Commissioner of Ontario and providing the required \$25.00 fee. There is a 30 day window to request the review, which starts upon the date of the receipt of the letter (note the letter is dated January 9, 2014 but was received by the city on January 10).

Staff will review the information received and provide further update to Committee in a subsequent memo. In addition, staff can initiate the review of the FOI decision as outlined above, if directed by Committee. However, based on previous conversations with staff at the FOI office, staff are of the understanding that the review process takes approximately 6-9 months.

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### **Legal Matters:**

On Monday December 9, 2013, Airpark served and filed its factum in support of its appeal of the decision of the Superior Court of Justice. The City's retained legal counsel will be filing the City's factum no later than February 7, 2014.

To date, the Court of Appeal has yet to schedule a hearing date for the hearing of the Airpark appeal.

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**Communication Matters:**

This update along with the correspondence from the MOE will be posted on the airport page of the city's website [www.burlington.ca/airport](http://www.burlington.ca/airport).

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**Conclusion:**

This report has been provided for information.

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Respectfully submitted,

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General Manager  
Development & Infrastructure Division

Cc: Blake Hurley - City of Burlington Legal Dept.  
Helen Walihura - City of Burlington Clerk's Dept.  
Mike Crough - City of Burlington Planning & Building Dept.  
Cary Clark - City of Burlington Engineering Dept.

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