



The Corporation of the Town of Milton

Report To: Council

From: Glen Cowan, Chief Financial Officer / Treasurer

Date: February 7, 2022

Report No: CORS-004-22

Subject: Insurance Update

Recommendation: Whereas municipal governments provide essential services to the residents and businesses in their communities; and

Whereas the ability to provide those services is negatively impacted by exponentially rising insurance costs; and

Whereas one driver of rising insurance costs is the legal principle of 'joint and several liability,' which assigns disproportionate liability to municipalities for an incident relative to their responsibility for it; and

Whereas, the Government of Ontario has the authority and responsibility for the legal framework of 'joint and several liability;' and

Whereas the Premier of Ontario committed to review the issue in 2018 with a view to helping municipal governments manage their risks and costs; and

Whereas the Association of Municipalities of Ontario on behalf of municipal governments has provided recommendations to align municipal liability with the proportionate responsibility for incidents and capping awards;

Now, therefore be it resolved, that the Town of Milton does hereby support AMO's recommendations; and

Further be it resolved that the Town of Milton does hereby call on the Attorney General of Ontario to work with municipal governments to put forward a plan of action to address "joint and several liability" before the end of the government's current

term so that municipalities can continue to offer high quality services to their communities.

That a copy of this resolution be circulated to the Attorney General for the Province of Ontario, the Minister of Municipal Affairs and Housing, the Town of Milton's Member of Provincial Parliament and the President of the AMO.

EXECUTIVE SUMMARY

- The terms of the Town's 2022 insurance renewal have been finalized and the results include a 39.6% increase to the cost of the overall insurance program along with higher deductibles and modifications to the available coverages.
- Factors that influenced the outcome of the renewal include the hard market conditions that currently exist in the municipal sector, proceedings that the Town is currently involved with (example - the class action lawsuit), growth in the Town assets and trends within the sector.
- In 2018 the Province committed to reviewing joint and several liability and the Town of Milton and AMO provided input through that process in 2019. To date, no changes have been identified or announced by the Province.
- In January 2022 the AMO has requested that municipalities join their efforts in renewing advocacy for the Provincial government to introduce important changes with respect to joint and several liability.
- If adopted, these measures represent an opportunity to alleviate the mounting pressure that the Town of Milton has faced in recent years through the insurance renewal processes.

REPORT

Background

Through report CORS-063-21, staff were provided with delegated authority to proceed with the renewal of the Town's insurance policy portfolio and risk management services with Marsh Canada. As was indicated, the Town had been advised that the insurance industry is in a hard market cycle. This occurs due to many factors, including natural disasters, changes in legislation and societal impacts (pandemic). A hard market results in increased premiums and reduced capacity of coverage available. As such it was expected that the Town will face financial pressure with the contract award. With the terms of the renewal for 2022 now in place, staff are reporting back to Council with those results.

Separately, through report CORS-051-19, Council approved the Town's submission to the Attorney General of the Province of Ontario as part of the consultation process on joint and several liability reform. No changes to the related legislation (the Negligence Act,



Background

1990) have been made to date, and the Association of Municipalities of Ontario (AMO) have recently called upon municipalities to support renewed advocacy efforts.

Discussion

2022 Insurance Renewal

As was anticipated, the final terms and pricing associated with the Town's renewal reflect continued pressure on the Town both financially and in the risk absorbed directly.

The increase experienced by the Town is substantial. Staff are aware that many Ontario municipalities also experienced significant increases for 2022 renewals as well as limitations on coverage. The increases being experienced relate, in part, to current conditions in the insurance industry, that being a hardened market. As explained to Council in previous reports, a hard market has the effect of increased premiums and stricter limits being placed on coverage. Pertaining to the Town, Marsh has advised staff that the significant increase in premium under the Liability Policy was directly impacted by claims loss history and, specifically, the Town's involvement with the current class action lawsuit and a previous catastrophic injury claim which occurred in 2015 that remains open in litigation.

The initial renewal quote received provided for a premium under the Primary Liability Policy of \$400,000 (a 125% increase from the 2021 premium). In an effort to mitigate some of these costs, staff requested quotes from Marsh for the premium if the Town increased the deductible on the policy. The Town's deductible on the Primary Liability Policy in 2021 and for many years previous, was \$50,000. This deductible is quite low for a municipal liability policy and is no longer practical in a hardened market. Although raising the deductible could have the effect of increasing internal claims handling by staff, the quote received to raise the deductible under the Primary Liability Policy to \$100,000 was favourable in reducing the premium to \$359,450.

The Town's other major lines of coverage (Auto, Property, Cyber) also received premium increases. The increases for the Auto and Property Policies are attributed to market conditions, inflationary factors and additions/upgrades to the Town's assets (fleet vehicles).

The Cyber Policy premium increased by 150% with a mandatory deductible increase from \$75,000 in 2021 to \$150,000 for 2022 and some coverage limitations. This is a direct result of market conditions and the cyber claims landscape being experienced globally. Due to the cyber claims activity within the public sector, staff are aware that many municipalities have been denied cyber coverage entirely and must resort to self insuring this exposure. In order to secure the cyber coverage for the Town, the underwriters have placed a number of conditions, such as ensuring multi-factor authentication (MFA) on



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remote email accounts, which staff will be working to implement to further mitigate cyber exposures.

The premium comparison for the various lines of coverage from 2021 to 2022 is outlined in the chart below:

Policy Type	2021 Premiums*	2022 Premiums*	Difference
Primary Liability	\$177,778	\$359,450	\$181,672
Environmental Liability	\$8,330	\$9,371	\$1,041
Umbrella Liability	\$71,706	\$80,028	\$8,322
Property	\$249,340	\$268,815	\$19,475
Automobile	\$89,178	\$95,729	\$6,551
Crime Primary	\$8,000	\$8,000	0
Crime Excess	\$5,100	\$5,100	0
Cyber	\$42,200	\$107,600	\$65,400
Councillor's Accident	\$1,507	\$1,507	0
Vol. Firefighters Accident	\$6,431	\$6,552	\$121
Facility Users' Liability	\$19,375	\$25,000	\$5,625

* Excludes PST, broker and other fees that are also included in the total cost to the Town.

With the 2022 coverage in place, the Town's focus now turns to 2023 and future years. During 2022, and subject to confirmation of an appropriate market, the Town intends on evaluating a competitive RFP process for coverage.

Staff will consider various factors prior to going to market in 2022, such as:

- Hard Market - Premiums are currently high, coverage is being restricted and higher deductibles are being required within the municipal sector.
- Capacity - there are a limited number of insurers willing to underwrite municipal insurance in the market and a number of firms have recently pulled out of this market altogether.
- Municipal Peers - several other municipalities have proceeded to market (or are planning to). The results of those processes will help inform the Town of Milton's decisions.
- Whether there are alternative opportunities, such as reciprocal arrangements, self insuring certain exposures, etc. that are reasonable for the Town to consider.

Discussion

Joint and Several Liability

In 2018, the Province committed to reviewing the matter of municipal joint and several liability. This review was conducted in 2019 with AMO and municipalities participating. To help drive the policy discussion, AMO submitted “[Towards a Reasonable Balance - Addressing Growing Municipal Liability and Insurance Costs](#)” in October 2019 to summarize the municipal argument to find a balance to the issues and challenges presented by joint and several liability, including implementing full proportionate liability and a cap on economic loss awards. The study provided seven recommendations for actions to deal with this problem.

The results of this provincial review have not been released and municipalities are still awaiting news of how the Province will address the matter. In January 2022 the AMO has requested that municipalities pass resolutions in support of the seven recommendations as identified in the 2019 study. Those seven recommendations were:

1. The provincial government adopt a model of full proportionate liability to replace joint and several liability.
2. Implement enhancements to the existing limitations period including the continued applicability of the existing 10-day rule on slip and fall cases given recent judicial interpretations, and whether a 1-year limitation period may be beneficial.
3. Implement a cap for economic loss awards.
4. Increase the catastrophic impairment default benefit limit to \$2 million and increase the third-party liability coverage to \$2 million in government regulated automobile insurance plans.
5. Assess and implement additional measures which would support lower premiums or alternatives to the provision of insurance services by other entities such as non-profit insurance reciprocals.
6. Compel the insurance industry to supply all necessary financial evidence including premiums, claims, and deductible limit changes which support its, and municipal arguments as to the fiscal impact of joint and several liability.
7. Establish a provincial and municipal working group to consider the above and put forward recommendations to the Attorney General.

As noted above, the Town of Milton has continued in 2022 to incur rising costs and reduced coverages in order to secure third party insurance. The market for coverage for municipalities also continues to decline as evidenced by the low response rates to requests for proposal processes within the province. Changes to the Negligence Act for joint and several liability represent an avenue to improve the conditions for municipalities and support the continued delivery of important services to the public.



Financial Impact

The higher cost of insurance for 2022 will result in a negative variance in the Town's operating budget. The cost of the renewal represents a \$100,507 increase from the amount that was reflected in the 2022 approved budget. This variance will be reflected in the Town's reporting through 2022 with a final funding source confirmed once the overall financial position for the Town is determined.

Respectfully submitted,

Glen Cowan
Chief Financial Officer / Treasurer

For questions, please contact: Dana McLean, Senior Advisor, Phone: Ext. 2158
Risk and Insurance
Leslie Williamson, Manager, Ext. 2138
Purchasing and Risk Services

Attachments

None

CAO Approval
Kristene Scott
Acting Chief Administrative Officer

Recognition of Traditional Lands

The Town of Milton resides on the Treaty Lands and Territory of the Mississaugas of the Credit First Nation. We also recognize the traditional territory of the Huron-Wendat and Haudenosaunee people. The Town of Milton shares this land and the responsibility for the water, food and resources. We stand as allies with the First Nations as stewards of these lands.