

The Corporation of the Town of Niagara-on-the-Lake Information Report to Council

SUBJECT: Closed Meeting Review and Recommendations
DATE: 2022-12-13
REPORT #: CAO-22-035
PREPARED BY: Marnie Cluckie
DEPARTMENT: CAO/Administration

BACKGROUND INFORMATION

The Town appointed Local Authority Services Inc. ("LAS") as its closed meeting investigator pursuant to section 239.1 of the *Municipal Act, 2001*. LAS has delegated to Aird & Berlis LLP its authority to act as the Investigator for the Town. Aird & Berlis LLP was selected by LAS through a competitive procurement process to provide closed meeting investigation services to its participating municipalities, of which the Town is one. Their jurisdiction as Investigator is set out in section 239.2 of the *Municipal Act, 2001*. Among other things, they are authorized to investigate, in an independent manner, a request made by any person to determine whether the Town has complied with section 239 of the *Municipal Act, 2001* or a by-law enacted under subsection 238(2) (i.e. a procedure by-law) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation to Council, together with any recommendations as may be applicable.

In the first quarter of 2022, the office of Aird & Berlis received a request for a closed meeting investigation pertaining to a meeting that took place on September 29, 2021, during the last term of Council.

The Report prepared by Aird & Berlis concerning the investigation of this request is attached as **Appendix I**. Their Report, including the recommendations contained therein, was prepared for Council's consideration pursuant to subsection 239.2(10) of the *Municipal Act, 2001*.

The issues reviewed included: whether Council's resolution to convene the Closed Meeting complied with subsection 239(4) of the *Municipal Act, 2001*, whether the exceptions relied upon by Council apply to permit the Closed Meeting to be closed to the public, and whether Council was entitled to vote to pass a motion, by consensus, in the Closed Meeting.

The closed meeting investigator concluded that Council contravened the *Municipal Act, 2001*

and the Procedure By-law by its conduct of the Closed Meeting.

Based on their review and findings, Aird & Berlis LLP recommend:

1. Town Council and Staff should be provided with education and training with respect to the proper application of section 239 of the *Municipal Act, 2001* pertaining to open and closed meetings.
2. Town Staff should prepare procedures or protocols related to closed meetings, with some basic guidance about how each exception is to be applied, including ensuring that the general nature of a matter is described in a way that maximizes the information available to the public, while not undermining the reason for excluding the public.
3. The Town adopt the practice of preparing a script in every case to ensure that important motions are not inadvertently missed, or passed with errors or omissions.

NEXT STEP / CONCLUSION

This attached report was brought forward to Town Council to be reviewed in draft form in a closed session of Council on September 26, 2022. Town Council reviewed it, and the report is now to be made public pursuant to subsection 239.2(11) of the *Municipal Act, 2001*.

Subsection 239.2(12) requires that Council must pass a resolution stating how it intends to address this Report.

Staff recommend that Council accept the recommendations made by Aird & Berlis and pass a resolution as follows:

WHEREAS; Aird & Berlis LLP, the Town's closed meeting investigator, made recommendations to Town Council;

THEREFORE BE IT RESOLVED that:

Town Council accept the recommendations made by Aird & Berlis LLP;

Town Council direct Staff to coordinate to have Council and Staff provided with education and training with respect to the proper application of section 239 of the Municipal Act, 2001 pertaining to open and closed meetings;

Town Council direct Staff to prepare procedures or protocols related to closed meetings, with some basic guidance about how each exception is to be applied, including ensuring that the general nature of a matter is described in a way that maximizes the information available to the public, while not undermining the reason for excluding the public; and

The Town adopt the practice of preparing a script in every case to ensure that important motions are not inadvertently missed, or passed with errors or omissions.

These changes provide an opportunity for continuous improvement.

ATTACHMENTS

- **Appendix I – NOTL - Aird Berlis Closed Meeting Report of Oct 2022**