



CITY OF HAMILTON
CITY MANAGER'S OFFICE
Strategic Partnerships and Communications

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	September 19, 2018
SUBJECT/REPORT NO:	Hamilton Waterfront Trust – Revised Deed of Trust (CM18017) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Ryan McHugh (905) 546-2424 Ext. 2725 Michael Kyne (905) 546-2424 Ext. 4716 Al Dore (905) 546-2424
SUBMITTED BY:	John Hertel Director Strategic Partnerships & Communications City Manager's Office
SIGNATURE:	

RECOMMENDATIONS

- (a) That the revisions to the Hamilton Waterfront Trust's original Deed of Trust, as outlined in the attached Appendix "A" to Report CM18017, be approved; and,
- (b) That the Mayor and City Clerk be authorized and directed, to execute the revised Deed of Trust between the City of Hamilton and the Hamilton Waterfront Trust, attached as Appendix "B" to Report CM18017, and any ancillary or related documents, with content acceptable to the City Manager and in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY

The Hamilton Waterfront Trust ("HWT") was created by Deed of Trust dated November 24, 2000, which outlined its initial funding as well as its mandate and governance.

On August 3, 2017, the City and the Hamilton Port Authority ("HPA") received notice of the HWT's January 10, 2017 resolution that advised of a restructuring including a

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proposal that its new Board would consist of 5 appointments by the City of Hamilton and no appointments by the Hamilton Port Authority;

On October 6, 2017, the HPA responded that it was amenable to the proposed restructuring provided that, among other things, the HWT Board pass a stand-alone Special Resolution that ‘all references to the HPA be completely removed from all, or most, substantive provisions of the Deed’;

On January 24, 2018, Council directed staff to review and:

- provide clarification with respect to the HWT Mandate; and
- renew the governance model for the HWT.

On February 28, 2018, Council resolved that the City Manager be authorized and directed to advise the HWT and the HPA that the City of Hamilton consents to the removal of the HPA board member as outlined in the HWT’s January 10, 2017 resolution.

As a result, Staff entered into discussions with the HWT with the objective of updating the Deed of Trust consistent with Council’s directions. Those discussions have resulted in the following proposed revisions to the Deed of Trust which are recommended by City Staff and have been incorporated into the draft Revised Deed of Trust attached as Appendix “B” and summarized in Appendix “A” which:

1. removes all mention of the HPA as a condition of its withdrawal from the Trust;
2. updates the description of the HWT’s mandate/governance to reflect the HWT’s connection to waterfront as outlined in the HWT’s Positioning Statement and its Vision Statement;
3. provides the City with the authority and discretion to dissolve the Trust on 12 months’ notice;
4. imposes a monetary limitation of \$250,000 on the HWT’s ability to conduct transactions without City approval;
5. grants the HWT explicit authority, with the City’s consent, to create subsidiary corporations, such as HWT Inc.;
6. requires four year terms for HWT Board Trustees coincident with Council terms;
7. increases HWT Board meetings from four to six mandatory meetings per year;
8. requires the HWT to publicize minutes of its meetings;
9. confirms the City’s discretion to increase the minimum number of Board members;
10. grants City Council the authority to resolve a deadlock among HWT Board Trustees;
11. formally aligns the HWT’s fiscal year with City’s fiscal year; and

12. requires the HWT to provide an annual report to City outlining its Annual Audited Financial Statements, its 10 Year Capital Plan, its Strategic Plan and any changes to its organizational structure.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Council’s approval of these recommendations would provide the City with more consistent and complete insights into the HWT’s plans and finances while permitting the HWT the flexibility to achieve its mandate.

Staffing: N/A

Legal: Council’s approval of these recommendations would result in:

1. the updating of the HWT’s Trust Deed much of which has been rendered obsolete by the passage of time, the expenditure of its initial trust funds and the evolution of HWT’s services and revenue streams; and
2. fulfilment of the request made by the HPA to remove references to it in the Trust Deed as a condition of its withdrawal from HWT oversight.

HISTORICAL BACKGROUND

The HWT was created in 2000 by way of a Trust Deed and received initial funding of \$6.3 Million. Those initial funds have long since been invested/expended and the HWT has since developed several alternative revenue sources including operating Williams Fresh Café, managing the on-site skating rink, conducting project management for several City projects and proceeds from the City’s buyout of the HWT’s leasehold interest in the Discovery Centre at 57 Guise St.

The HWT’s primary mandate is to promote and facilitate the public’s access to, and enjoyment of, Hamilton’s Waterfront. It is directed by a Board of Trustees consisting of five representatives all of whom are now appointed by the City. The HWT Board chooses its own chairperson. The HWT employs professional staff to plan, execute and complete projects in partnership with, and for, the City of Hamilton and Hamilton Conservation Authority.

Several developments in 2017 resulted in an increased focus on the relationship between the City and the HWT including:

- a. reports that the Canada Revenue Agency (CRA) advised the HWT that the HWT would no longer be recognized as a ‘charitable organization’;

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- b. the HWT’s creation of a corporation known as HWT Inc. to which it transferred the Williams Fresh Café and the Discovery Centre sub-lease;
 - c. the HWT’s proposal that the HPA withdraw from HWT oversight and the HPA’s agreement to that proposal on condition, among other things, that all references to the HPA in the Trust Deed be removed; and
 - d. numerous media requests for confirmation of HWT revenue sources and meeting minutes.

By way of response:

1. the HWT committed to publishing its meeting minutes moving forward;
2. City staff have responded to media inquiries to disclose all current agreements between the HWT and the City;
3. on January 24, 2018, Council directed City Staff to work with the HWT staff and Board of Trustees and report back to the General Issues Committee regarding:
 - a. clarification of the HWT’s Trust Deed and Mandate; and
 - b. the review and renewal of the HWT’s governance model; and
4. City Staff have now completed those discussions with the HWT which has resulted in the revisions to the HWT’s primary mandate/governance guidance—the Trust Deed—outlined in this report.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

N/A

RELEVANT CONSULTATION

- City Manager’s Office;
- Legal Services Division, Corporate Services Department;
- HWT Board of Directors; and
- Mayor’s Office.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

1. **Removes all mention of the HPA as a condition of its withdrawal from the Trust**—this amendment fulfils a request made by the HPA as a condition of its withdrawal from the Trust and formalizes a previous Council direction;

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2. **Updates the description of the HWT’s mandate/governance to reflect the HWT’s connection to the waterfront as outlined in the HWT’s Positioning Statement and its Vision Statement**—this revision better aligns with the HWT’s Board approved “Purpose”, “Mission”, “Mandate” and “Goals” which are listed on the HWT’s website and other public documents;
 3. **Provides the City with the authority and discretion to dissolve the Trust on 12 months’ notice**—this amendment provides clarity on how the City would go about terminating the Deed of Trust in the event that Council believes it is necessary to do so and would provide a reasonable period of time for the HWT to wind-down operations while resolving its assets and liabilities;
 4. **Imposes a monetary limitation of \$250,000 on the HWT’s ability to conduct transactions without City approval**—this amendment provides the City with greater insight into the HWT’s major plans and finances and ensures that the HWT’s capital plan continues to align with the City’s vision for the waterfront;
 5. **Grants the HWT explicit authority, with the City’s consent, to create subsidiary corporations such as HWT Inc.**—this amendment would provide the City with greater insight into the HWT’s strategic and organizational plans to ensure continued alignment with the City’s vision for the waterfront;
 6. **Requires four year terms for HWT Board Trustees coincident with Council terms**—this amendment satisfies a request made by the HWT and logically aligns the term of Board appointments with that of City Council;
 7. **Increases HWT Board meetings from four to six mandatory meetings per year**—this revision incorporates a request made by the HWT and will further enhance the oversight and transparency of HWT’s operations;
 8. **Requires the HWT to publicize minutes of its meetings**—this revision formalizes recent HWT practice and is intended to provide greater transparency into the HWT’s governance and operations;
 9. **Confirms the City’s discretion to increase the minimum number of Board members beyond the minimum number (5) on providing 30 days written notice to the HWT**—this revision clarifies the City’s authority to increase the minimum number of Board members while providing the HWT with an adequate period to adjust to the increased membership of its Board;
 10. **Grants City Council the authority to resolve a deadlock among HWT Board Trustees**—this amendment provides a prompt dispute resolution mechanism should the HWT Board ever reach an impasse on a particular issue;

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11. **Formally aligns the HWT’s fiscal year with City’s fiscal year**—this amendment formalizes an existing practice and ensures the alignment of annual budgets between the HWT and the City; and
12. **Requires the HWT to provide an annual report to City outlining its Annual Audited Financial Statements, its 10 Year Capital Plan, its Strategic Plan and any changes to its organizational structure**—this revision mandates regular and consistent communication between the City and the HWT while promoting greater insight into the HWT’s finances and future plans.

ALTERNATIVES FOR CONSIDERATION

N/A

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report CM18017 – Suggested Revisions to Existing Deed of Trust

Appendix “B” to Report CM18017 – Revised Deed of Trust