



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Chair and Members General Issues Committee
COMMITTEE DATE:	March 22, 2023
SUBJECT/REPORT NO:	Hamilton Waterfront Trust Business Model Review (FCS23029) (City Wide) (Outstanding Business List)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Carolyn Paton (905) 546-2424 Ext. 4371
SUBMITTED BY:	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department
SIGNATURE:	

RECOMMENDATION(S)

- (a) That City of Hamilton – Hamilton Waterfront Trust Future Options – Final Report by KPMG dated November 29, 2022, attached as Appendix “A” to Report FCS23029, be received;
- (b) That a detailed review of the following two business models for the Hamilton Waterfront Trust future operations be undertaken as follows:
 - (i) Status quo with consideration of varying the business model and governance structure; and
 - (ii) A joint model whereby the management and operations of programs and services are principally delivered by the Hamilton Waterfront Trust with the potential for some operations delivered by the City of Hamilton;
- (c) That Council approve a single-source procurement, pursuant to Procurement Policy #11 – Non-competitive Procurements, for a detailed review of the two business models for Hamilton Waterfront Trust operations and that the General Manager, Finance and Corporate Services Department be authorized to negotiate, enter into, and execute the extension and any ancillary documents required to give effect thereto with KPMG LLP, in a form satisfactory to the City Solicitor;

- (d) That staff report back to City Council on the preferred model and the cost including the resources necessary to deliver the programs and services required.

EXECUTIVE SUMMARY

Council, at its meeting on September 28, 2022, directed staff to work with the Hamilton Waterfront Trust and prepare a report for the General Issues Committee on how to transfer the Hamilton Waterfront Trust's operational responsibilities and Hamilton Waterfront Trust's assets to the City of Hamilton.

In October 2022, the City of Hamilton engaged KPMG to prepare a report on the future of the Hamilton Waterfront Trust ("HWT"), more specifically, a review of HWT was requested to provide options for the operations model of HWT including future programs and services of the Trust.

Since engaging KPMG, the following work was undertaken:

- KPMG engaged with both City staff and HWT staff;
- Established three high-level options for the future of HWT as follows:
 1. Transfer all assets and operations to the City: HWT is dissolved with all assets and operations absorbed by the City;
 2. Transfer all assets and operations to another entity: HWT is dissolved and all assets and operations absorbed by an outside entity;
 3. HWT remains status quo or operates under a hybrid model: HWT operates under a hybrid model or remains status quo;
- Defined understanding of the current governance and operating model of HWT, as well as, thoughts on future operating models of HWT;
- KPMG collected relevant information on HWT's current mandate and operations. The key steps in this process included: reviewing documents, stakeholder consultation and analysis of the three high-level options (identified above);
- A SWOT (strengths, weaknesses, opportunities and threats) analysis was prepared by KPMG to help assess internal and external factors affecting the three operational models / options for consideration; and
- KPMG released a final report for consideration (attached as Appendix "A" to Report FCS23029).

After further discussion with senior leadership, staff is recommending that a detailed review of the following two business models for HWT future operations be conducted:

- (i) Status quo with consideration of varying the business model and governance structure; and

- (ii) A joint model whereby the management and operations of programs and services are principally delivered by the HWT with the potential for some operations delivered by the City of Hamilton.

The cost for the detailed review will be funded from the Corporate Financials operating budget (Dept ID 211090).

It is being recommended that KPMG be retained pursuant to Procurement Policy #11 – Non-competitive Procurements for the services required in Report FCS23029. As KPMG completed the initial evaluation (Appendix “A” to Report FCS23029), their knowledge of HWT and its operations will ensure this new work is carried out in a cost-effective and timely fashion. Staff will report back to City Council on the preferred model, and the cost including the resources necessary to deliver the programs and services required.

The terms and conditions in the Revised Deed of Trust between the City and HWT, effective as of October 1, 2018, indicate that it shall continue until terminated by the City on no less than 12 months’ written notice to the Trust. Further, this Revised Deed of Trust may be amended by a Special Resolution of the Trustees, subject to the prior written approval of the City, provided that the Trust Assets shall, at all times, be held in trust absolutely and exclusively for the purposes set out in this Revised Deed.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The cost of the detailed review will be funded from the Corporate Financials operating budget (Dept ID 211090).

Staffing: Staff in the Financial Planning, Administration and Policy Division of the Corporate Services Department will be the lead division for the contract for the review outlined in Report FCS23029. It is highly unlikely that existing staff would be able to take on the necessary thorough review required to make a recommendation to Council on what the best option would be for the future of the HWT. Staff will certainly be an integral part of discussions surrounding options (i.e. effort and impacts on bringing in-house). However, a consulting firm with experience in business operations modelling and tax expertise is essential.

Legal: Staff in Legal and Risk Management Services of the Corporate Services Department may be required to review the Revised Deed of Trust and review agreements related to changes to the HWT business model.

HISTORICAL BACKGROUND

Hamilton Waterfront Trust (HWT), initially known as Hamilton Harbour Development Trust, was established through a Trust Deed dated November 24, 2000 between the City and the Hamilton Harbour Commissioners (the “Commissioners”) now known as the Hamilton Port Authority (the “HPA”).

On or about November 24, 2000, the Commissioners transferred to HWT approximately \$6.3 M for the purposes of land assembly, improvements and development costs relating to Hamilton’s West Harbour which funds have long since been invested or expended and HWT has since developed several alternative revenue sources.

Council, at its meeting of September 26, 2018, approved a Revised Deed of Trust.

In closed session at its meeting on April 27, 2022, Council received confidential correspondence from David A. van der Woerd, Ross & McBride LLP, respecting the Hamilton Waterfront Trust.

Council, at its meeting on September 28, 2022, received correspondence from HWT Board Chair and Executive Director Werner Plessl stating: “As mutually desired, the Hamilton Waterfront Trust team welcomes the imminent arrival of amicable and productive dialogue with City Staff respecting the future path of management of all of our much loved and managed operations.”

Council, at its meeting on September 28, 2022, approved the release of the direction to staff from the closed session Council meeting on April 27, 2022 which stated:

“That staff be directed to work with the Hamilton Waterfront Trust and prepare a report for the General Issues Committee within 90 days on how to transfer the Hamilton Waterfront Trust’s operational responsibilities and Hamilton Waterfront Trust’s assets to the City of Hamilton.”

In October 2022, and in accordance with Procurement Policy #11, Non-Competitive Procurements, the City of Hamilton engaged KPMG to prepare a report on the future of HWT, more specifically, a review of HWT was requested to provide options for the business operations model of HWT including future programs and services of HWT.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

In accordance with By-law 20-205 as amended, Procurement Policy #11, Non-Competitive Procurements, staff is recommending that a single-sourced contract through Policy #11 of the City’s Procurement Policy be awarded to KPMG as it is more cost effective or beneficial for the City.

RELEVANT CONSULTATION

Staff representatives from appropriate city departments, including Procurement and Legal Services, were consulted in the preparation of Report FCS23029.

HWT staff and HWT Board members were consulted in the preparation of KPMG's report, attached as Appendix "A" to Report FCS23029.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Since engaging KPMG, the following work was undertaken:

October 2022

- KPMG engaged with both City staff and HWT leadership and Board Members
- Scope of work defined
- Established three high-level options for the future of HWT as follows:
 1. Transfer all assets and operations to the City: HWT is dissolved with all assets and operations absorbed by the City;
 2. Transfer all assets and operations to another entity: HWT is dissolved and all assets and operations absorbed by an outside entity;
 3. HWT remains status quo or operates under a hybrid model: HWT operates under a hybrid model or remains status quo;
- During research, review and stakeholder engagement, KPMG gained an understanding of the current governance and operating model of HWT, as well as, thoughts on future operating models of HWT;
- Staff in the Office of the City Auditor were consulted in preparation of Report FCS23029.

October / November 2022

- KPMG collected relevant information on HWT's current mandate and operations. The key steps in this process included: reviewing documents, stakeholder consultation and analysis of the three high-level options (identified above).
- A SWOT (strengths, weaknesses, opportunities, and threats) analysis was prepared by KPMG to help assess internal and external factors affecting the three operational models / options for consideration.
- KPMG released a final report for consideration (attached as Appendix "A" to Report FCS23029).

KPMG is recommending that following Council endorsement of their report, both the City and HWT establish a Steering Committee to further review the preferred option. For the Steering Committee to be effective, the composition of the committee requires a cross-departmental team including members of Finance, Legal, Human Resources and Internal Audit. Policies and implementation plans are to form part of the plan.

City Staff Discussions

Through a consensus of leadership, a sustainable framework going forward to further assess the options being considered for a future operating model of the HWT is warranted. The framework would ensure consideration of the following principles and criteria in assessing any business model of the HWT. They are as follows:

1. That the role and purpose of the waterfront lands is, first and foremost, a public space, for the free and accessible enjoyment of residents and visitors;
2. Land and other assets relating to Hamilton's waterfront will remain public (i.e. use of spaces or buildings would be contemplated through leases and licenses, but not sale of assets);
3. All decisions must consider Hamilton's waterfront in its entirety. The geographic scope of the "operator" would, at minimum, include Pier 5-8 lands, but should consider a single entity to be responsible for the operations of the full waterfront area from Bayfront Park to Pier 8;
4. The chosen operating model should be one that generates revenues to help offset operating costs and ensures that commercial and for-profit entities pay appropriate market rates for use of waterfront spaces or buildings; and
5. The Hamilton waterfront should be financially stable not excluding an investment by the City.

ALTERNATIVES FOR CONSIDERATION

Alternatives to selecting KPMG, an external vendor, for the consulting services review of the two recommended business models for the HWT would be preparing a Request for Proposal or having internal City staff manage the review.

Existing City staff do not have the complete expertise and capacity to undertake the review required to make a recommendation to Council on the best option for the future of the Hamilton Waterfront Trust operations. Staff will certainly be an integral part of discussions surrounding options (i.e. effort and impacts on bringing in-house). KPMG has the experience in business operations modelling and tax expertise that will be required.

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.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

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 FCS23029 – City of Hamilton – Hamilton Waterfront Trust Future Operations – Final Report by KPMG November 29, 2022.

CP/dt