




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

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	August 14, 2023
SUBJECT/REPORT NO:	Hamilton Waterfront Trust Business Model Review (FCS23029(a)) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Carolyn Paton (905) 546-2424 Ext. 4371
SUBMITTED BY:	Mike Zegarac General Manager, Finance and Corporate Services Corporate Services Department
SIGNATURE:	

Discussion of Confidential Appendix “C” to Report FCS23029(a) is subject to the following requirement(s) of the City of Hamilton’s Procedural By-law and the *Ontario Municipal Act, 2001*:

- **A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.**

RATIONALE FOR CONFIDENTIALITY

Appendix “C” to Report FCS23029(a) is being considered in Closed Session as it contains information provided to the City in confidence.

RATIONALE FOR MAINTAINING CONFIDENTIALITY

Appendix “C” to Report FCS23029(a) is to remain confidential as it was provided to the City in confidence.

RECOMMENDATIONS (CLOSED SESSION)

None

RECOMMENDATIONS (OPEN SESSION)

- (a) That Council approve the scope of work to be undertaken by KPMG, City of Hamilton staff, in consultation with the Hamilton Waterfront staff related to the Hamilton Waterfront Trust Business Model Review as described in Appendix “A” of Report FCS23029(a);
- (b) That the City of Hamilton provide a grant to the Hamilton Waterfront Trust in an amount up to \$455,000 (exclusive of depreciation expenses), funded from the Tax Stabilization Reserve #110046, to aid Hamilton Waterfront Trust in avoiding a deficit position in 2023 with operating expenditures to December 31, 2023;
- (c) That the Hamilton Waterfront Trust be requested to provide supporting documentation satisfactory to the General Manager, Finance and Corporate Services, to the City along with any claims as to aid with the grant in an amount up to \$455,000 (exclusive of depreciation expenses) being provided by the City;
- (d) That staff be directed to follow up with Hamilton Waterfront Trust regarding the recommendation approved by Hamilton Waterfront Trust Board of Trustees on June 13, 2023 as per Confidential Appendix “C” to Report FCS23029(a) and report back to General Issues Committee;
- (e) That the General Manager, Finance and Corporate Services, be authorized to negotiate, enter into and execute, on behalf of the City of Hamilton, all necessary agreements, extensions, amendments and any ancillary documents with Hamilton Waterfront Trust, in a form satisfactory to the City Solicitor and with content acceptable to the General Manager, Finance and Corporate Services; and
- (f) That Confidential Appendix “C” to Report FCS23029(a) remain confidential.

EXECUTIVE SUMMARY

In 2022, the City of Hamilton engaged KPMG to prepare a report on the future of the Hamilton Waterfront Trust. More specifically, a review was requested to provide options for the business operations model of Hamilton Waterfront Trust including future programs and services (see Appendix “F” to Report FCS23029(a)).

On March 29, 2023, Hamilton City Council approved recommendations for KPMG to undertake a detailed review of the following two business models for the Hamilton Waterfront Trust future operations:

SUBJECT: Hamilton Waterfront Trust Business Model Review (FCS23029(a)) (City Wide) – Page 3 of 8

- a) A joint model whereby the management and operations of programs and services are delivered by the Hamilton Waterfront Trust and the City of Hamilton;
- b) Winding up the Hamilton Waterfront Trust, inclusive of a recommended process founded on the City of Hamilton assuming the responsibility for existing programming and services delivered by the Hamilton Waterfront Trust.

The scope of work as per Appendix “A” to Report FCS23029(a) outlines a process based on a systemic review of services and programs in the immediate vicinity of Hamilton Harbour (Eastwood Park to Princess Point) for the two Council-directed business models. The success of the area is dependent on each of the operations of the Hamilton Waterfront Trust and the City working together to create synergy. The intent of the review is for KPMG to incorporate broader city priorities and risk in the development of recommendations.

Recommendations coming out of the review should address the governance of the waterfront as a whole moving forward. As one of the business model options represents a hybrid model, it is important that under this model that there be delineation of governance structure between the Hamilton Waterfront Trust and the City. As identified in Appendix “A” to Report FCS23029(a), the scope of work will include human resource and legal impacts.

On April 11, 2023, the Board of Trustees of the Hamilton Waterfront Trust approved a motion to negotiate with the City to secure future funding for the Hamilton Waterfront Trust, so they will be in a position to maintain business operations during the City’s study for Options for the Future Operations, Programs and Services of the Hamilton Waterfront Trust and assist in funding their projected 2023 operating deficit of \$455,000.

The financial viability of the Hamilton Waterfront Trust has been a discussion topic with past councils, generating Council deliberations and directions.

Over the past number of years, there have been a series of staff reports relating to the Hamilton Waterfront (see Appendices “E” and “F” to Report FCS23029(a)).

Furthermore, Council, at its meeting of September 11, 2019, approved Item 3 of the Audit, Finance and Administration Committee Report 19-012, the 2019 to 2022 Workplan for the Office of the Auditor General in Report AUD19007 which included a Value for Money audit of the Hamilton Waterfront Trust. Due to other commitments, staff in the Office of the Auditor General has not been able to perform this work. The Office of the Auditor General will be consulted in future discussions surrounding business model options.

On June 13, 2023, the Board of Trustees of the Hamilton Waterfront Trust approved motions as identified in Confidential Appendix “C” to Report FCS23029(a) regarding future operations of the Hamilton Waterfront Trust.

Alternatives for Consideration – N/A

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The Hamilton Waterfront Trust is seeking financial assistance in an amount up to \$455,000 to assist with operating expenditures to December 31, 2023.

On April 11, 2023, the Board of Hamilton Waterfront Trust received information from their staff of a forecasted 2023 Operational Budget deficit. The Consolidated Budget illustrates an estimated projected net loss for the Hamilton Waterfront Trust of \$455,882 in 2023. Table 1 sets out the breakdown of the Hamilton Waterfront Trust’s line of business which, if they materialize, would generate the projected loss.

Table 1

CONSOLIDATED	Net Income(loss)
Williams	\$ (118,356)
Scoops	\$ 55,289
Grill	\$ (905)
Skate Rental	\$ 64,300
Hamiltonian	\$ 18,735
Trolley	\$ 26,460
Admininstration	\$ (416,405)
NET INCOME(LOSS)	\$ (370,882)
Less Depreciation- estimated	\$ (85,000)
TOTAL NET INCOME (LOSS)	\$ (455,882)

As noted, Williams is forecast to operate at a loss for 2023 as it did in 2022. Two key contributing factors to this loss are the rising cost of food, beverages and other supplies along with increases in labour costs. Administrative costs also contribute significantly to the 2023 projected deficit.

It is being recommended that funding in an amount up to \$455,000 from the Tax Stabilization Reserve (#110046) be provided to Hamilton Waterfront Trust to assist with their projected 2023 operating loss. It will be incumbent on Hamilton Waterfront Trust staff providing year end reporting to the City of 2023 actual operating expenses and providing rationale as to how funding was applied. City staff will be required to review financial information as provided by Hamilton Waterfront Trust after December 31, 2023 to ensure funding was applied in accordance with City practices including netting off any receivables owed to the City.

While the operational review is ongoing, City staff are not recommending the buyout of the lease for 57 Discovery Drive (approximately \$1.5 M) as identified in Appendix “B” to FCS 23029(a). The City will continue to pay the Trust \$166,000 per annum as set out in the agreement.

SUBJECT: Hamilton Waterfront Trust Business Model Review (FCS23029(a)) (City Wide) – Page 5 of 8

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 approved in Report FCS23029 (see Appendix “F” to Report FCS23029(a)). Relevant staff across the City will be an essential part of discussions surrounding business model options.

Legal: Staff in the Legal and Risk Management Services Division will be engaged during the completion of any necessary agreements.

Option 1: Winding up the Trust

The Trust Deed that established the Hamilton Waterfront Trust requires the City to provide a notice of termination to the Hamilton Waterfront Trust in order to dissolve the Hamilton Waterfront Trust. Following receipt of the notice from the City, the Hamilton Waterfront Trust is required to take immediate steps to wind up the operations and its related companies, trusts and other entities. This includes providing working notice to its employees, notice of contract termination to its contractors and service providers, disposition of its existing assets and resolving all outstanding liabilities. Once the winding up is completed, the Hamilton Waterfront Trust is required to transfer any of the remaining assets and any monetary assets to the City. The Legal work that would be involved includes a review of all the employment contracts, franchise agreements and other contractual and financial arrangements in order to initiate the steps to dissolve the Hamilton Waterfront Trust.

Option 2: Joint Operating / Hybrid Model

The Hamilton Waterfront Trust deed is silent on entering into a hybrid model for the joint delivery of services. All agreements entered into by the Hamilton Waterfront Trust, including employment contracts, will be evaluated to better understand the implications of providing services jointly. Contracts will have to be amended to reflect the new arrangement and new contracts entered into for the delivery of the shared services. In addition, the City will likely need to enter into a formal agreement with the Hamilton Waterfront Trust for the joint delivery of services which will detail the roles and responsibilities of the parties. As such, information on all the assets and liabilities of the Hamilton Waterfront Trust will need to be reviewed to fully evaluate the legal work that is required to give effect to this model.

HISTORICAL BACKGROUND

Hamilton Waterfront Trust, 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-Oshawa Port Authority (the “HOPA”). Council, at its meeting of September 26, 2018, approved a Revised Deed of Trust.

SUBJECT: Hamilton Waterfront Trust Business Model Review (FCS23029(a)) (City Wide) – Page 6 of 8

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

On March 29, 2023, upon receiving the report from KPMG, Hamilton City Council approved the following recommendations (“City of Hamilton – Hamilton Waterfront Trust Future Options”):

Hamilton Waterfront Trust – Options for Future Operations, Programs & Services (FCS23029) (City Wide) (Item 8.1) (see Appendix “F” to Report FCS23029(a))

- (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) A joint model whereby the management and operations of programs and services are delivered by the Hamilton Waterfront Trust and the City of Hamilton;
 - (ii) Winding up the Hamilton Waterfront Trust, inclusive of a recommended process founded on the City of Hamilton assuming the responsibility for existing programming and services delivered by the Hamilton Waterfront Trust.
- (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, and other external expertise, 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.

KPMG recommended that both the City and Hamilton Waterfront Trust 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, Real Estate, Public Works, Parks, Human Resources and Internal Audit, as well as, staff from the Hamilton Waterfront Trust. Since March 29, 2023, the Board of the Hamilton Waterfront Trust has passed two additional sets of recommendations at their Board meetings on April 11, 2023 and June 13, 2023. These are included as Appendix “B” and Confidential Appendix “C” to Report FCS23029(a).

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

N/A

RELEVANT CONSULTATION

Corporate Services: Legal and Risk Management Services Division

Planning and Economic Development: Economic Development, Real Estate Division

City Manager's Office: Human Resources

Financial projections included in Report FCS23029(a) are based on information received from the Hamilton Waterfront Trust.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

As approved by Council on March 29, 2023, through Report FCS23029 (see Appendix "F" to Report FCS23029(a)), KPMG has been appointed to complete a review of business models for Hamilton Waterfront Trust going forward. A proposed Scope of Work is outlined in Appendix "A" to Report FCS23029(a).

A systematic review will be undertaken in the immediate vicinity of Hamilton Harbour (Eastwood Park to Princess Point) to determine the most appropriate way to deliver them under the two scenarios and that the business review include opportunities such as consolidation of resources in conjunction with broader priorities including environmental, social and governance.

Of particular concern is the clear delineation that needs to be addressed on both the future of Hamilton Waterfront Trust and the governance of the waterfront moving forward. The review undertaken by KPMG will provide valuable input and recommendations to City staff to assist them in determining what recommendations to make to Council going forward. It is crucial that a clear delineation of governance structure between the two entities (or one, as may be the case) results.

Recommendations should also consider and reference any one-time and ongoing financial benefits and risks. The viability of the recommendations is to be determined by detailed review and due diligence and should include the implementation timeframes required and other considerations, such as, changing operating demands, the future development surrounding these lands or new legislative requirements.

The deliverable should include an evaluation framework that contains factors such as:

- Governance – what objectives will be prioritized and how will they recognize market trends and policy

SUBJECT: Hamilton Waterfront Trust Business Model Review (FCS23029(a)) (City Wide) – Page 8 of 8

- Financial Model – how is capital raised for expansion and how are performance measures set and tracked
- Assets and Infrastructure – how are investments in assets assessed and are there economies of scale
- Services and Programming Offers – identify customer segments and assess opportunities for partnerships and service offerings

Immediate Financial Assistance

Hamilton Waterfront Trust is seeking financial assistance in the amount of \$455,000 to assist with operating expenditures to December 31, 2023 (see Appendix “B” to FCS23029(a)). Through Report FCS23029(a), it is being recommended Hamilton Waterfront Trust receive a grant in an amount up to \$455,000 to assist with operating expenditures to December 31, 2023.

With respect to the other financial assistance that is being sought related to the amount payable by the City to Hamilton Waterfront Trust related to 57 Discovery Drive and possible advance payment (approximately \$1.5 M), City staff is not recommending this option at this time while the operational review is in process. The City will continue to pay the Trust \$166,000 per annum as set out in the agreement.

ALTERNATIVES FOR CONSIDERATION

N/A

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report FCS23029(a) – Scope of Work for Review of the Hamilton Waterfront Trust Business Models

Appendix “B” to Report FCS23029(a) – Funding Request from the Hamilton Waterfront Trust

Confidential Appendix “C” to Report FCS23029(a)

Appendix “D” to Report FCS23029(a) – Hamilton Waterfront Trust Consolidated Financial Statements for the year ended December 31, 2021

Appendix “E” to Report FCS23029(a) – Analysis for Hamilton Waterfront Trust – December 31, 2020 – Audited Financial Statements (FCS22019)

Appendix “F” to Report FCS23029(a) – Hamilton Waterfront Trust Business Model Review (FCS23029)