

SCOPE OF WORK FOR REVIEW OF THE HAMILTON WATERFRONT TRUST BUSINESS MODELS

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)

- (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.

The City of Hamilton and the Hamilton Waterfront Trust separately delivery public services along parts of the Hamilton Harbour waterfront. Also, the Hamilton Waterfront Trust and the City of Hamilton work in connection with one another in the areas of waterfront development, waterfront animation, recreation. The review undertaken by KPMG will provide valuable input and recommendations to City staff to assist them in determining what approach to take going forward. It is crucial that a clear delineation of governance structure between the two entities (or one as may be the case) results. The focus of this work will be, where possible, finding new, more cost-effective ways to deliver the services the municipality has determined it wants or needs to continue providing, in conjunction with broader City priorities.

Scope

A systematic review of services and programs in the immediate vicinity of Hamilton Harbour (Eastwood Park to Princess Point) to determine the most appropriate way to deliver them under the two business models described above, and that the business review include opportunities such as consolidation of resources in conjunction with broader priorities including Environmental, Social and Governance (ESG) and risk matters. 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

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 Offerings – identify customer segments and assess opportunities for partnerships and service offerings

Legal Service Impacts

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 Trust in order to dissolve the Trust. Following receipt of the notice from the City, the Trust is required to take immediate steps to wind up the operations of the Trust 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 Trust is required to transfer any of the remaining Trust 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 under the Trust to dissolve the Trust.

Option 2: Joint Operating / Hybrid Model

The Trust deed is silent on entering into a hybrid model for the joint delivery of services. All agreements entered into by the 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 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 Trust will need to be reviewed to fully evaluate the legal work that is required to give effect to this model.

Human Resources Impacts

In 2018, staff reported to Council on the transfer of Hamilton Waterfront Trust to the City through a Private and Confidential report CM18002. An updated and comprehensive review of the potential labour relations, legal, staffing and associated costs will need to be conducted in order to fully assess the human resources and labour relations impacts and relevant costs under both of the business model options.