



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Damage to Western Gap Breakwall

Date:	June 21, 2007
To:	Government Management Committee
From:	City Solicitor
Ward:	Ward 20 – Trinity Spadina
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions.
Reference Number:	

SUMMARY

On or about December 6, 2006 a section of the breakwall forming the north boundary of the Western Gap collapsed. The damaged area borders City owned land.

The Government Management Committee has, among other things, directed the City Solicitor to report to the Committee at its July 6th meeting regarding mechanisms for determining ownership of the collapsed section of breakwall and liability for the costs of repair.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff contained in Attachment 1 of this report.
2. The confidential information in Attachment 1 remain confidential.

Financial Impact

The relevant financial information is addressed in Attachment 1.

DECISION HISTORY

At its meeting of June 12, 2007, the Government Management Committee considered correspondence from Councillor Vaughan dated May 16, 2007 regarding the condition of the breakwall and, among other things, directed staff to report to the July 6, 2007 meeting of the Committee regarding mechanisms for determining the ownership of the collapsed section of the breakwall and liability for the costs of repair.

ISSUE BACKGROUND

The Western Gap is a channel that serves as one of two entrances to the Toronto Harbour. It is located approximately at the foot of Stadium Road and bounded to the north by a pier, commonly referred to as a breakwall. This structure consists of timber cribs filled with rock, with a concrete cap.

On or about December 6, 2006, a twenty metre section of the Western Gap breakwall collapsed. This section of breakwall is located next to City owned land, which land is subject to a long term ground lease in favour of the National Yacht Club.

COMMENTS

There has never been a Deed or Transfer for the land underneath the collapsed section of breakwall. As a result, the Land Registrar does not have a record of ownership for this area. Such land is referred to as “unpatented land”.

As a matter of law, unless there is an unregistered transfer, or jurisdiction has been conveyed to an entity such as the Toronto Port Authority, ownership of unpatented land rests with either the federal or provincial government. The answer generally depends upon Constitutional jurisdiction, unless statute or contract dictates otherwise. However, in response to inquiries made by City staff in this case, neither level of government has acknowledged its ownership of this area. Staff from the province has advised City staff that ownership of the land in question rests with the federal government. Staff from the Toronto Port Authority has also expressed this view. Representatives of the federal government have advised City staff that they are in the process of reviewing the situation, but do not believe that ownership of the area rests with the federal government.

Given the lack of Land Registry documents confirming ownership of this area, coupled with the fact that none of the provincial government, the federal government, nor the Toronto Port Authority acknowledge ownership, alternative measures for confirming ownership and liability have been identified in the attached confidential report.

CONTACT

Ray Mickevicius
Solicitor
Tel. 416-392-3912
Fax. 416-397-5624
rmickev@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Information (to follow)