



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Damage to Western Gap Breakwall - Update

Date:	December 18, 2008
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.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff contained in Attachment 1; and
2. if adopted by Council, only recommendations 2 and 3 be made public at the end of the Council meeting.

FINANCIAL IMPACT

The relevant financial information is addressed in the confidential 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 regarding mechanisms for

determining the ownership of the collapsed section of the breakwall and liability for the costs of repair.

At its meeting of July 16, 17, 18 and 19, 2007 City Council considered Staff's report, dated July 10, 2007 and instructed City Staff to proceed in accordance with the recommendations contained in the confidential attachment to that report.

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 portion of the breakwall forming the north wall of the Western Gap (the "Western Gap Breakwall") collapsed. The lands located immediately to the north of the Western Gap Breakwall are owned by the City of Toronto and leased to The National Yacht Club (the "City Property"). This lease is a long term ground lease for a period of 50 years, commencing in 1987.

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 ownership of unpatented land rests with either the federal or provincial government.

City staff have been advised by Public Works and Government Services Canada that the federal government is not the owner of the land in question, and that ownership and control rests with the Province. The Province has, in turn, advised City staff that it is the owner of the land underlying the wall, but is not responsible for the breakwall structure, which it claims was constructed by the federal government and has been maintained by someone other than the Province to date. It is not clear on what basis the Province asserts that it is not responsible for the maintenance or repair of the breakwall despite admitting ownership to the land on which the wall sits. However, in summary, neither the federal government nor the Province has acknowledged responsibility for maintenance and repairs of the breakwall. It is possible that responsibility for the ongoing repairs and maintenance of the breakwall structure has been assigned by contract but no evidence of such an assignment has been produced to date by either the federal or provincial governments.

On December 9, 2008 the City was served with a Statement of Claim by The National Yacht Club (the "NYC"). It names the federal government, the provincial government, the Toronto Port Authority and the City as defendants. The NYC claims against the City both as a potential owner of the breakwall and as its landlord. The lawsuit seeks, among other things, repairs to the breakwall, repairs to the City Property, an abatement of rent

and damages in the amount of \$1,000,000.00 as a result of the collapse of the breakwall and its impact on the NYC's use of the City Property.

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SIGNATURE

Anna Kinastowski
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ATTACHMENTS

Attachment 1 – Confidential Information