



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Damage to Western Gap Breakwall - Update

Date:	October 26, 2011
To:	Government Management Committee
From:	City Solicitor
Wards:	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

The Western Channel serves as one of two entrances to the Toronto Harbour. In December, 2006, an approximately 25 metre long portion of the Western Channel breakwall (the "North Pier") collapsed.

The North Pier is adjacent to property owned by the City of Toronto (the "City Property") and leased to the National Yacht Club ("NYC").

As a result of the impact of the North Pier's collapse on the City Property, NYC started legal action in 2008 against the City of Toronto (the "City"), the Attorney General of Canada ("Canada"), Her Majesty the Queen in Right of the Province of Ontario ("Ontario") and the Toronto Port Authority ("TPA").

The purpose of this report is to provide legal advice with respect to the litigation and information on the current state of the North Pier, which is set out in the confidential Attachments.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff contained in Attachment 1; and

2. if adopted by Council, the confidential instructions to staff contained in Attachment 1 be made public after the final resolution of the litigation.

Financial Impact

The relevant financial information is addressed in confidential Attachment 1.

DECISION HISTORY

At its meeting of June 12, 2007, as agenda item GM5.29, the Government Management Committee considered correspondence from Councillor Vaughan dated May 16, 2007 regarding the condition of the North Pier and, among other things, directed staff to submit a report regarding mechanisms for determining the ownership of the collapsed section of the North Pier and liability for the costs of repair. See

<http://www.toronto.ca/legdocs/mmis/2007/gm/agendas/2007-06-12-gm05-ar.pdf>

At its meeting of July 16, 17, 18 and 19, 2007, City Council considered a report from the City Solicitor, dated July 10, 2007. As per Council Minute 11.153, Council instructed City Staff to proceed in accordance with the recommendations contained in the confidential attachment to that report. See

<http://www.toronto.ca/legdocs/mmis/2007/cc/minutes/2007-07-16-cc11-mn.pdf>

Subsequently, at its meeting on January 27 and 28, 2009, City Council considered a further report from the City Solicitor, dated December 18, 2008, which reported on the legal action commenced by NYC. As agenda item GM20.12, Council authorized staff to, among other things, claim against Canada and Ontario and any other relevant party to seek contribution and indemnity from these parties in relation to the claims made by NYC. See <http://www.toronto.ca/legdocs/mmis/2009/cc/minutes/2009-01-27-cc30-mn.htm>

ISSUE BACKGROUND

While the North Pier forms the north boundary of the Western Channel, the section of the North Pier in issue in this litigation is located between the Western Channel's entrance to the Toronto Harbour and west of the end of Stadium Road. Photographs showing the section of the North Pier in issue are in Attachment 3. The section of the North Pier in issue is legally described as Part 5, Plan 63R-3424, as shown in Attachment 4.

The original Pier was built by Canada around 1910. At that time, the North Pier was within the boundary of the Toronto Harbour and used for marine shipping. The North Pier consists of timber cribs filled with rock, with a concrete cap.

The City Property was created by the Toronto Harbour Commissioners (now the TPA) in or about 1985 by placing fill on the lakebed. In October, 1986, NYC entered into a long term ground lease (the "Lease") of this property with the Toronto Harbour

Commissioners (now the TPA). The Lease is for a term of 50 years (ending in 2036) with no right of renewal.

The City became the NYC's landlord in February, 1995 as part of a substantially larger property transaction between the City and the TPA.

On or about December 6, 2006, an approximately 25m segment of the North Pier collapsed. Photographs of the collapsed section are in Attachment 3.

COMMENTS

In 2008, NYC served the City, Ontario, Canada and the TPA with a Statement of Claim.

In its statement of claim, NYC is asking the court to determine the ownership of the North Pier, order the owner to repair it, and order the owner to pay NYC damages flowing from their failure to maintain and repair the North Pier.

With respect specifically to the City, NYC is asking the court to order that the City provide an abatement of rent, compensate it by way of damages for the losses alleged to have been suffered because of the North Pier's collapse, and take measures to restore and prevent further erosion or collapse of the City Property.

Since 2006, the City has closed off public access to the North Pier by placing barriers across the width of the North Pier near the end of Stadium Road.

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Confidential Attachments:

Attachment 1 – Confidential Information – Damage to Western Gap Breakwall - Update

Attachment 2 – Confidential Notations from Counsel on Photograph of the Collapsed
Portion of the Pier

Public Attachments:

Attachment 3 – Photographs of the Collapsed Portion of the North Pier

Attachment 4 – Extract of Plan 63R-3424