



**STAFF REPORT  
ACTION REQUIRED**  
with Confidential Attachment

**Damage to Western Gap Breakwall - Update**

<b>Date:</b>	May 29, 2012
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	Ward 20 – Trinity Spadina
<b>Reason for Confidential Information:</b>	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions.
<b>Reference Number:</b>	

**SUMMARY**

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The purpose of this memorandum is to provide legal advice with respect to the ongoing litigation about and information on the current state of the North Pier (see below), which is set out in the confidential attachment. The matter is being brought directly to City Council given the time sensitive nature of the request.

**RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff contained in Attachment 1; and
2. City Council direct that Confidential Attachment 1 remain confidential as it contains advice that is subject to solicitor-client privilege and pertains to litigation or potential 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.

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.

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.

On November 29, 30 and December 1, 2011, City Council considered a further report from the City Solicitor, dated October 26, 2011, seeking confidential instructions with respect to the ongoing litigation noted above. See <http://www.toronto.ca/legdocs/mmis/2011/gm/bgrd/backgroundfile-42101.pdf>

## **ISSUE BACKGROUND**

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”).

## **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.

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski  
City Solicitor

## **ATTACHMENT**

Attachment 1 – Confidential Information (Confidential Overview of the Current Status of the Litigation)