

## **Walks and Gardens Trust – Repeal of Legislation**

<b>Date:</b>	February 7, 2012
<b>To:</b>	Government Management Committee
<b>From:</b>	Chief Corporate Officer and City Solicitor
<b>Wards:</b>	Toronto Centre – Rosedale (Ward 28)
<b>Reference Number:</b>	

### **SUMMARY**

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This report recommends that City Council request that the Provincial Government repeal the legislation establishing the Walks and Gardens Trust, dissolve the Trust, relieve the City of any past and ongoing obligations in respect of the Trust, and clear the Trust and any other conditions or restrictions contained in the original Crown Patent from the title to the lands affected by the Trust, including the Union Station Lands.

### **RECOMMENDATIONS**

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**The Chief Corporate Officer and the City Solicitor recommend that:**

1. City Council request the Provincial Government to repeal the legislation which established the Walks and Gardens Trust (the “Trust”), dissolve the Trust, relieve City Council of any past and ongoing obligations in respect of the Trust and clear the Trust and any other conditions or restrictions contained in the original Crown Patent from title to the lands affected by the Trust.

### **Financial Impact**

The adoption of these recommendations will not have any immediate financial impact.

Not repealing the Walks and Gardens Trust legislation and dissolving the Trust may have a financial impact in the longer term as Union Station is projected to generate an operating surplus once the revitalization of Union Station is complete. Repeal of the legislation establishing the Trust, dissolution of the Trust and absolving the City of any past and ongoing responsibilities in respect of the Trust will relieve any uncertainty in

respect of the City's obligations in respect of the Trust and will clarify that the City is free to deal with Union Station revenues as it sees fit.

There may be public response to the City's request to have the Trust legislation repealed and the Trust dissolved, and there may need to be a dialogue with the Ontario Public Guardian and Trustee. Either event could lead to further costs on the part of the City in support of its request to the Province.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

At its meeting of February 1, 2 and 3, 2000, by adoption of the Administration Committee confidential Report No.2, Clause No.9, City Council requested the City Solicitor to report on the status of the Trust, the amount of funding that should be in the account and possible uses for the funds.

At its meeting of April 25, 2000 (Report No.6, Clause No. 3a), the City Solicitor reported to the Administration Committee that the 1853 legislation establishing the Trust was still in force, that a full and proper accounting of the Trust funds would be difficult and that the intentions of the original Trust had long since been satisfied. That report also recommended that the City request the Province to repeal the legislation that established the Trust and dissolve the Trust.

The Administration Committee referred the matter back to staff and directed the City Solicitor and the Commissioner of Urban Development Services to establish a Walks and Gardens Working Group ("WGWG"), composed of staff from City Legal, City Property, Urban Development Services and Parks and Recreation, and including representatives from Citizens for the Old Town and other community groups and to report back to the Committee.

<http://www.toronto.ca/legdocs/2000/agendas/committees/adm/adm000425/it003.pdf>

The resulting WGWG report was submitted to the Administration Committee at its meeting of November 13, 2001 (Report No. 15, Clause No. 16). The Committee received the report from the WGWG and referred it to the Policy and Finance Committee through the Waterfront Reference Group for a further report from the City Solicitor, the Acting Chief Financial Officer and the Commissioner of Economic Development, Culture and Tourism and the Commissioner of Urban Development Services on the legal, financial and policy implications of the WGWG's recommendations. No report has been submitted to date.

At its meeting of July 22, 23 and 24, 2003, City Council adopted, as amended, Clause No. 1, Report No. 8 of the Administration Committee, Union Station Request for Proposals - Negotiations with Union Pearson Group, which recommended, among other

things, that all net revenues to the City generated from Union Station be placed in a reserve account to be used solely for Union Station purposes pending a determination of the status of the Walks and Gardens Trust.

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030722/adm8rpt/cl001.pdf>

## **ISSUE BACKGROUND**

In 1818, 30 acres along what was then Toronto's waterfront (immediately south of Front Street between Peter and Berkeley Streets) were granted by Crown Patent to a group of public trustees for use as a "public walk or mall" for the use and benefit of the inhabitants of the Town of York. The Crown Patent also contained conditions restricting building on the land. In 1853 this land was conveyed to the Mayor, Councillors and the Corporation of the City of Toronto by provincial legislation to be used for the same purpose. In 1857, with the advent of the railway lines crossing the waterfront and the area along Front Street becoming the commercial core of the City, the legislation was amended to allow the sale or lease of the lands by the City, provided the revenues were put into a special account to be used for the same purpose identified in the original Crown Patent. This special account, known as the Walks and Gardens Account, appears in City records from 1857 to 1916 and was used to acquire, expand or improve park spaces in other parts of the rapidly expanding City of Toronto.

In 1999, upon learning of the City's intention to acquire Union Station, a group of citizens approached the City to determine the current status of the Walks and Gardens Trust. They were of the opinion that the City may not have properly administered the Trust and were concerned that it may not have properly spent all of the funds that had or should have accrued to the Walks and Gardens Account over time. Union Station sits partly on the Walks and Gardens property, and the citizen group was particularly concerned to know whether all rents received by the City for Union Station over the years had been properly accounted for.

As a result, at its meeting held February 1, 2 and 3, 2000, City Council requested the City Solicitor to report on the status of the Trust, the amount of reserve funding that should be in the account and possible uses for the funds. In April 2000, the City Solicitor reported to the Administration Committee that the 1857 legislation establishing the Trust was still in force but that a full and proper accounting of the Trust funds would be difficult and gave the opinion that the Trust provisions did not pertain to the City's purchase of Union Station then under negotiation. The City Solicitor also advised that the intentions of the original Trust had already been satisfied. That report recommended that the City consider requesting a repeal of the Trust legislation. Instead, City Council created the WGWG with the intention that a proper accounting could be made. It was the citizen group's hope that this would result in the Trust fund being resurrected and used for civic improvements in this area.

From historical records and deeds registered against title of the subject lands, WGWG attempted to reconstruct an approximate accounting of the revenues and expenses of the

Walks and Gardens Account up to 1916. At that point it was overspent by about \$4 million (in the range of \$85 million in today's dollars). In 1916 the City dramatically altered its accounting practices and the Walks and Gardens Account was merged with other parks related accounts. Therefore it is impossible after 1916 to ascertain parks expenditures and revenues from other revenue and expense sources with any degree of accuracy. However, a review of existing City records suggests that even after 1916, expenses for Walks and Gardens purposes exceeded revenues from Walks and Gardens properties, including revenues from Union Station.

The WGWG citizens group agreed with the City Solicitor that it would now be prudent to take whatever steps were necessary to terminate the Trust in order to clear title to the properties affected by it and to relieve the Trustees (i.e. the Mayor and Councillors) of any liability, past or future. In its place, the WGWG citizens group recommended that Council create a "legacy fund" to be funded gradually up to a total of \$7 million as an "equitable settlement" and a means of resolving the status of the Trust without legal proceedings. This amount was derived as follows: the arrears of rent owed by the Toronto Terminals Railway Limited at the time the City purchased the station, being \$25 million, was multiplied by 28%, being the WGWG citizen group's calculation of the portion of the Union Station lands still affected by the Trust, for a total of \$7 Million.

In 2003, the citizen group contacted the Ontario Public Guardian and Trustee ("OPGT") who requested an accounting of the Trust. The OPGT's mandate includes the responsibility to ensure that property held for charitable purposes is applied to the purposes for which it was given and to investigate any complaints about alleged mis-use of charitable property. The City Solicitor responded to the OPGT counsel, providing him with background documentation respecting the Trust and advising that the City was in the process of seeking a developer to manage and maintain Union Station on its behalf, and that in the interim, the operation of the station was being managed by Toronto Terminals Railway on the City's behalf; advising that no accounting of the Trust had taken place after 1916 and that the City was seeking advice as to how to deal with the Trust, including whether any funds from the lease of the station should be placed in a special account, as well as what steps would be required to wind up the Trust and advising that staff would be reporting back to Council on the matter. The OPGT counsel responded, advising that he agreed that it was reasonable to apply the Trust income to pay a proportional share of capital expenditures relating to the repair and maintenance of Union Station, but only if such expenditures were likely to increase the future income of the Trust or increase the capital value of the Trust property. The OPGT counsel also advised that the City should immediately begin to maintain a record of the income and expenditures attributable to the Trust. There has been no further communication with the OPGT since that time. However, it is anticipated that as part of the process of seeking repeal of the Trust legislation and dissolution of the Trust, the City may have to satisfy the OPGT that it is appropriate to do so.

## COMMENTS

### Legal Issues

The Trust exists at law and will continue to do so unless the legislation establishing the Trust is repealed, the Trust dissolved and City Council relieved of any past and ongoing obligations in respect of the Trust. The Trust applies to the Union Station lands and as long as the status of the Trust remains unresolved there is the possibility of a claim being made that Union Station revenues are subject to the Trust. As the City is currently undertaking a major redevelopment of Union Station, with the expectation of ultimately generating an operating surplus, this issue should now be resolved.

At issue is whether the City has a "moral" obligation (as suggested by the citizen group) to establish a legacy fund in the amount of \$7 million, to be used for purposes consistent with the original intent of the Trust within the Walks and Gardens original geographic area, as "an equitable settlement" to resolve the status of the Trust. According to the WGWG citizen group, only after the fund is created would the City take steps to repeal the Trust legislation.

Although the City's failure to account for Trust funds after 1916 appears to constitute a breach of trust, it is a reasonable position for the City to take that no loss was caused by the breach, as the City's expenditures in respect of parks has far exceeded any revenues that may have been generated from any Trust lands. Accordingly, it is unclear on what legal or financial basis the City would set up a \$7 million legacy fund in order to settle any outstanding obligations it may have in respect of the Trust. As well, there is no assurance that the establishment of such legacy fund would satisfy any concerns that the Province or the OPGT may have with respect to the City's accounting of the Trust. Finally, while the citizens involved in the WGWG support this "equitable settlement" there is no guarantee that some other citizen or group, claiming also to be beneficiaries under the Trust, would not oppose the City's actions.

The Trust long ago ceased to serve any purpose and this is supported by the fact that the Trust has been overlooked for close to 100 years. The City now has legislative tools in respect of parks and park acquisitions that did not exist at the time that the Trust was established. However the Trust continues to exist in law and accordingly, it would be prudent for the City to seek repeal of the Trust legislation and dissolution of the Trust in order to relieve Council of any ongoing obligations in respect of the Trust, to clear title to the remaining lands affected by the Trust, including the Union Station lands and to clarify that the City is free to use Union Station revenues as it sees fit.

### Financial Issues

The WGWG did a great deal of work attempting to determine the financial status of the Walks and Gardens Trust and in the end, the evidence is still inconclusive as to the status and accurate value of the Trust. The fund is only clearly accounted for until 1916. The

results of the analysis from 1916 to 1989 suggest that expenses were around ten times greater than revenues at any given point in time.

Starting in 2003, net operating revenues to the City from Union Station were deposited in Reserve Fund XR2501 Union Station to be used for Union Station purposes. Since that time, funds in the amount of \$10.4 million have been placed in the reserve fund. The net annual operating deficit for Union Station for 2012 is expected to be \$3.3 million. The annual operating deficit will decrease annually until the revitalization project is complete in 2016. Capital expenditures for Union Station over the next five years are budgeted at \$223.5 million. Funds in the Reserve Fund are drawn down to offset expenses at Union Station.

For the period of time from 1989 to 2000, the City has spent an estimated \$250 million in parks and related capital projects and an estimated \$686 million from 2001 to 2011. This amount is clearly in excess of the \$7 million that the WGWG citizens group suggests would have been owing to the Trust for that same period of time from Union Station revenues.

For the period of time from 2001 to 2011, the City has spent an estimated \$686 million on parks and park related capital projects as follows: the Waterfront Secretariat - \$201 million; Toronto and Regional Conservation Authority - \$87 million; Parks - \$334 million; Culture - \$64 million.

In addition to these capital expenditures, the City continues to spend large amounts on parks operations. For example, approximately \$850,000 is spent annually to support programs in the Harbourfront and Music Gardens.

These expenditures alone far exceed any funds which might have accrued to the Trust for the same period of time.

In view of the above information, it is the Chief Financial Officer's view that no monies are owing to the Trust, and there is no sound accounting basis for the suggestion that \$7 million be set aside to discharge the City's obligations in respect of the Trust.

The WGWG citizens report does not clearly identify a source of revenue to fund the legacy fund. Unless a new source of funding is found, creation of such a fund merely re-prioritizes existing programs. It has been suggested a portion of the \$7 million could be funded from rents to the City from Union Station, and the remainder of the funds from private developments in the geographic vicinity of the Walks and Gardens and that the legacy fund would be used for capital works in the original geographic area of the Walks and Gardens. However, staff have no further details as to how the legacy fund would be funded, what proportion of funds would come from Union Station revenues and what proportion from private development, nor over what period of time the \$7 million would be funded. The WGWG citizens report suggests that, once the City commits to the establishment of the legacy fund, staff would report back to Council on appropriate expenditures from the fund.

## Conclusions:

There is no evidence to support any amount of money owing to the Walks and Gardens account based on historic records, which in fact suggest that the account would have been in a deficit position for many decades. Furthermore, for the period of time during which the City has tracked revenues from Union Station, expenditures have continually exceeded revenues. The Trust has long ceased to serve any City purpose as the City has other legislative tools to fulfill the purpose of the Trust. The City has already implemented and continues to implement projects which address many of the original Trust objectives. However, the Trust continues to exist in law, and unless the Trust is dissolved, there is the potential that a claim could be made that a portion of Union Station revenues are subject to the Trust. The City should therefore request the Provincial Government to repeal the legislation establishing the Trust, dissolve the Trust and relieve the City of any past and ongoing obligations in respect of the Trust, and clear the Trust and any other conditions or restrictions contained in the original Crown grant from title to the remaining lands affected by the Trust, including the Union Station lands.

## CONTACT

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## SIGNATURE

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Bruce Bowes, P. Eng.  
Chief Corporate Officer

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Anna Kinastowski  
City Solicitor

Appendix 1: Report of the Walks and Gardens Working Group – October 31, 2001