



## Waterfront Toronto Consent to Borrow and Encumber Assets Extension Request

**Date:** January 9, 2020

**To:** Executive Committee

**From:** Deputy City Manager - Infrastructure and Development Services

**Wards:** All Wards

### SUMMARY

---

The purpose of this report is to recommend City Council approval of an extension to the Consent to Borrow Money and Encumber Assets for Projects in the Designated Waterfront Area and for Bridge Financing (the "Consent to Borrow and Encumber Assets"), for Waterfront Toronto, also known as the Toronto Waterfront Revitalization Corporation. This Consent is required so that Waterfront Toronto can maintain an efficient, effective and financially-viable operation beyond March 31, 2020. The extension requires approval from the City, and the Federal and Provincial governments.

Waterfront Toronto has requested an extension to its Consent to Borrow and Encumber Assets, executed by the City and the governments of Canada and Ontario on August 12, 2015, as authorized pursuant to Subsections 4(5) and 4(6) of the *Toronto Waterfront Revitalization Corporation Act, 2002* (TWRC Act). The current Consent, which allows for up to \$40 million in borrowing, expires on March 31, 2020. An extension to the Consent would allow Waterfront Toronto to continue to bridge cash flow gaps between infrastructure investments and revenues. Further, the extension would allow Waterfront Toronto to continue to use this financial tool to secure letters of credit for construction work, including work associated with the Port Lands Flood Protection project. City staff are of the view that Waterfront Toronto's request for an extension to its Consent to Borrow and Encumber Assets is reasonable.

## RECOMMENDATIONS

---

The Deputy City Manager, Infrastructure and Development Services recommends that:

1. City Council amend the Consent to Borrow Money and Encumber Assets for Projects in the Designated Waterfront Area and for Bridge Financing substantially on the terms and conditions contained in the draft Amendment to Consent, attached as Appendix A to the report (January 9, 2020) from the Deputy City Manager, Infrastructure and Development Services, and authorize the Deputy City Manager to execute the Amendment to Consent with such modifications as she shall deem necessary or desirable and in a form approved by the City Solicitor; and
2. City Council authorize the Deputy City Manager, Infrastructure and Development Services to further extend from time to time the term length contained in the draft Amendment to the Consent to Borrow Money and Encumber Assets for Projects in the Designated Waterfront Area and for Bridge Financing as she shall deem necessary or desirable but to no later than May 15, 2028, in a form approved by the City Solicitor.

## FINANCIAL IMPACT

---

This report recommends that Council extend Waterfront Toronto's Consent to Borrow and Encumber Assets up to May 15, 2028. The Consent requires that any borrowing by Waterfront Toronto be without recourse to the three levels of government and that Waterfront Toronto only be able to mortgage or encumber Waterfront Toronto-owned land assets and sales agreements and revenues generated from those assets.

The Chief Financial Officer and Treasurer has reviewed this report and agrees that there will be no financial impact on the City as a result of the recommendations in this report.

## DECISION HISTORY

---

At its meeting on July 7, 8 and 9, 2015, City Council adopted the Waterfront Strategic Review which contained a Consent for Waterfront Toronto to Borrow Money and Encumber Assets for Projects within the Designated Waterfront Area and for Bridge Financing pursuant to Subsections 4(5) and 4(6) of the *Toronto Waterfront Revitalization Corporation Act*. The authority to borrow money and mortgage or otherwise encumber assets was time limited, with an expiry date of March 31, 2020 but with the option to renew.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX7.6>

## COMMENTS

---

Waterfront Toronto has requested an extension to its Consent to Borrow and Encumber Assets to May 15, 2023. The existing \$40 million Consent was signed by the three levels of government in the summer of 2015. Waterfront Toronto executed a credit facility with a qualified financial lender in September 2015. The borrowing Consent expires on March 31, 2020.

Waterfront Toronto's extension request is being advanced concurrently by the three levels of government. The proposed May 15, 2023 term length coincides with the 20<sup>th</sup> anniversary of the *Toronto Waterfront Revitalization Corporation Act, 2002* (TWRC Act). The TWRC Act also includes a provision for Waterfront Toronto to operate until May 15, 2028, which aligns with Waterfront Toronto's construction-related obligations (e.g. monitoring and warranties) for the Port Lands Flood Protection project. The Contribution Agreement for the Port Lands Flood Protection project, which was executed by all levels of government and Waterfront Toronto, includes an agreement end date of March 31, 2028. For these reasons, the recommendations contained in this report provide for the Deputy City Manager, Infrastructure and Development Services to extend the Consent to Borrow and Encumber Assets to 2023, and to have the authority to further extend the Consent to 2028, subject to agreement with the other levels of government.

An extension to the Consent to Borrow and Encumber Assets would allow Waterfront Toronto to bridge unexpected gaps between infrastructure investments and revenues. Waterfront Toronto's business model is based on making upfront capital investments prior to realizing revenues. Upfront capital costs include those related to servicing, soil management, roads, sanitary sewers, etc. This business model helps Waterfront Toronto maximize the value uplift of public lands.

In addition to providing bridge financing, the existing Consent provides Waterfront Toronto with a financial tool for acquiring letters of credit and other security related to Waterfront Toronto's construction work. For instance, Waterfront Toronto has used \$3 million of its credit facility to provide a letter of credit with the Federal Department of Fisheries and Oceans as part of the ongoing Port Lands Flood Protection project. Securities of this nature are anticipated to be required for the duration of the Port Lands Flood Protection project. Finally, the Consent provides Waterfront Toronto with access to capital in the event of an unforeseen delay of cash flows from the three government partners.

The proposed extension would maintain the terms that were approved by City Council in June 2015. These include:

- No recourse to the government partners;
- Encumbrance of only Waterfront Toronto-owned land assets and sales agreements and revenues generated from those assets;
- No costs to Waterfront Toronto for holding the credit facility;
- Explicit exclusion of Contribution Agreements' funding or related rights from being used as security;
- Restriction of the amount and period of indebtedness; and

- Repayment in full prior to the wind-up of Waterfront Toronto.

The Waterfront Toronto-owned land assets available for encumbrance would be the same as what City Council approved in 2015. These include:

- 200 Queens Quay East;
- 259 Lake Shore Boulevard East;
- 291 Lake Shore Boulevard East;
- 2 Small Street;
- 333 Lakeshore Boulevard East;
- 54 Commissioners Street; and
- 130 Commissioners Street.

The government partners review and comment on Waterfront Toronto's Long-Term Funding Plan, borrowing status and other financial reports at the Toronto Waterfront Intergovernmental Steering Committee (IGSC). The IGSC is an executive level staff body that meets quarterly with Waterfront Toronto to discuss and provide feedback to Waterfront Toronto on revitalization projects and financials. The City is represented on the IGSC by the City Manager and the Deputy City Manager, Infrastructure and Development Services.

In compliance with the Consent, borrowing would only be applied to projects contained in Waterfront Toronto's Rolling Five Year Strategic Plan, which is updated annually, circulated to the IGSC for comment, and ultimately approved by Waterfront Toronto's Board of Directors.

The Waterfront Toronto Rolling Five Year Strategic Plan for 2020/21-2024/25 does not anticipate any borrowing over the next 5-years. Therefore, the primary purpose of the Consent extension would be to give Waterfront Toronto a financial tool to bridge unforeseen cash flow gaps and/or for financial securities related to construction work.

City staff are of the opinion that Waterfront Toronto's request for an extension to the Consent to Borrow and Encumber Assets is reasonable. To date, Waterfront Toronto has effectively managed its credit facility. A draw of \$5 million was made in the fall of 2015; this draw was repaid ahead of schedule in early 2016. The credit facility has also been used to provide security for construction activities associated with the Port Lands Flood Protection project. These financial obligations, combined with fixed annual cash flow limits from the government partners for the Port Lands Flood Protection project, make the extension of the credit facility a necessary financial instrument for Waterfront Toronto.

## CONTACT

---

Gregg Lintern, MCIP, RPP  
Chief Planner and Executive Director  
City Planning  
T: 416-392-8772  
E: [Gregg.Lintern@toronto.ca](mailto:Gregg.Lintern@toronto.ca)

David Stonehouse  
Director, Waterfront Secretariat  
City Planning  
T: 416-392-8113  
E: [David.Stonehouse@toronto.ca](mailto:David.Stonehouse@toronto.ca)

Michael Smith  
Solicitor, Municipal Law Unit  
Legal Services  
T: 416-392-7245  
E: [Michael.A.Smith@toronto.ca](mailto:Michael.A.Smith@toronto.ca)

Rob Hatton  
Director, Strategic and  
Intergovernmental Initiatives  
Office of the Controller  
T: 416-392-9149  
E: [Robert.Hatton@toronto.ca](mailto:Robert.Hatton@toronto.ca)

## SIGNATURE

---

---

Tracey Cook, MBA  
Deputy City Manager  
Infrastructure and Development Services

## ATTACHMENTS

---

Appendix "A" - Amendment to Consent

Appendix "A"

**AMENDMENT TO CONSENT  
ISSUED PURSUANT TO SUBSECTIONS 4(5) AND 4(6)  
OF THE *TORONTO WATERFRONT REVITALIZATION CORPORATION ACT***

**TO: TORONTO WATERFRONT REVITALIZATION CORPORATION ("TWRC")**

**RE: AUTHORITY TO BORROW MONEY AND ENCUMBER ASSETS FOR  
PROJECTS IN THE DESIGNATED WATERFRONT AREA AND FOR BRIDGE  
FINANCING**

---

**RECITALS:**

- A. TWRC is a corporation continued under the *Toronto Waterfront Revitalization Corporation Act, 2002* (Ontario), as amended (the "Act") with objects set out in the Act.
- B. Subsection 4(5) of the Act provides, among other things, that TWRC shall not borrow money unless it has the consent of the federal government, the provincial government and city council (all as defined in the Act).
- C. Subsection 4(6) of the Act provides, among other things, that TWRC shall not mortgage or otherwise encumber any of its assets unless it has the consent of the federal government, the provincial government and city council (all as defined in the Act).
- D. By a Consent dated August 12, 2015 the federal government, the provincial government and the city council, granted TWRC a Consent to borrow and encumber certain assets, a copy of which is attached hereto as the Appendix.
- E. Paragraph 1(b) of the Consent provides that the term of the borrowing permitted by the Consent shall not extend beyond March 31, 2020.
- F. TWRC has requested that the term of the borrowing permitted under the Consent be extended from March 31, 2020 to May 15, 2023.

**NOW THEREFORE:**

- 1. The Consent is hereby amended by deleting the words "March 31, 2020" in paragraph 1(b) and inserting the words "May 15, 2023" in the place thereof.
- 2. The provisions of this Amendment to Consent shall be read together with the Consent as one document.
- 3. All other terms and provisions of the Consent remain in full force and effect, unamended.
- 4. This Amendment to Consent may be executed in one or more counterparts, each of which when executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

**WITNESS WHEREOF** the undersigned have executed this Amendment to Consent.

**DATED** as of this \_\_\_\_ day of \_\_\_\_\_, 2019.

**HER MAJESTY IN RIGHT OF CANADA AS  
REPRESENTED BY THE MEMBER BELOW  
OF THE QUEEN'S PRIVY COUNCIL FOR  
CANADA DESIGNATED BY THE  
GOVERNOR GENERAL IN COUNCIL**

Per: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

**HER MAJESTY IN RIGHT OF ONTARIO AS  
REPRESENTED BY THE MINISTER OF  
ECONOMIC DEVELOPMENT,  
EMPLOYMENT AND INFRASTRUCTURE**

Per: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

**COUNCIL OF THE CITY OF TORONTO AS  
REPRESENTED BY THE UNDERSIGNED**

Per: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)