**CITY OF HAMILTON**

**CITY MANAGER'S OFFICE**

*Office of the City Manager*

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**COMMITTEE DATE:** August 13, 2012

**SUBJECT/REPORT NO:**
Letter of Understanding with the Hamilton Port Authority regarding Piers 7 and 8 (CM12015) (Ward 2)

**SUBMITTED BY:**
Chris Murray
City Manager

**PREPARED BY:**
Chris Phillips
905-546-2424 Ext. 5304

**SIGNATURE:**

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**RECOMMENDATION**

(a) That Report CM12015 entitled "Letter of Understanding with the Hamilton Port Authority Regarding Piers 7 and 8" be received;

(b) That the City Manager be directed and authorized to:

(i) notify the President and C.E.O and the Chair of the Hamilton Port Authority in writing, of the approval of Report CM12015;

(ii) draft and present, on behalf of the City of Hamilton and in a form satisfactory to the City Solicitor, a formal "Memorandum of Understanding", based upon the terms, conditions, and intent of Appendix A to the Hamilton Port Authority for their approval.

(iii) report back to the General Issues Committee by October 3, 2012.

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Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
EXECUTIVE SUMMARY

On October 26th, 2000, the City of Hamilton and the Hamilton Port Authority (HPA, formerly known as the Hamilton Harbour Commissioners), signed an historic agreement, settling several long-standing issues of disagreement between the two parties. As part of this “Agreement”, the City of Hamilton received ownership of the lands known as “Piers 7 and 8”, located in the West Harbour, but the Hamilton Port Authority was entitled to continue to lease these lands through two leases; the first which expires in 2015, and the second in 2025. Within this first lease, the Hamilton Port Authority was also granted the ability to operate the marina and boat storage businesses on behalf of the City, which is located on these lands.

The City Manager, along with several members of senior City of Hamilton staff, began discussions late in 2009, with senior Hamilton Port Authority staff, regarding the future of the leases for Piers 7 and 8, as well as the future of both the marina and boat storage business units. Over the course of these early discussions, staff from both sides started to develop a “framework” for future discussions, which could be used as terms and conditions for a potential agreement moving forward.

On October 11, 2011, GIC approved a motion entitled “Hamilton Waterfront Priorities”, which contained the following:

“That staff be directed and authorized to begin discussions with the Hamilton Port Authority, with the objective of a formal agreement transferring the lands consisting of Piers 7 and 8, to the City of Hamilton immediately.”

Since this time, both parties have continued discussions with a clear goal of negotiating an agreement that could be presented to the respective decision makers that would allow the City of Hamilton to have full control over the lands of Piers 7 and 8 immediately. This Report and the “Letter of Understanding with the Hamilton Port Authority Regarding Piers 7 and 8” (Appendix A to Report CM12015), have been prepared for this purpose.

In very general terms, the basis of the “Letter of Understanding with the Hamilton Port Authority Regarding Piers 7 and 8” would allow the City of Hamilton to immediately achieve the formal transfer of Piers 7-8 from the HPA to the City of Hamilton, in return for the HPA continuing to operate the marina and boat storage within the West Harbour by way of a long-term lease, with no further direct compensation.

As well, it is intended to address a variety of long-standing issues relating to the “main basin” area in the West Harbour, specifically relating to the City of Hamilton’s marina and boat storage businesses that are located on Piers 7-8, by clearly identifying the capital needs and assigning responsibilities to them.
Lastly, it is also intended to balance the desire of the City of Hamilton to re-develop the West Harbour by creating a greater sense of place and community, with the needs of the HPA to create diverse economic opportunities for the City as a whole.

Staff wanted to ensure that the “Letter of Understanding with the Hamilton Port Authority Regarding Piers 7 and 8” was as comprehensive as possible so that it could be easily used as a basis on which to draft a formal agreement between the parties without the need for much further negotiation. Therefore, staff segmented the negotiations into six specific areas, some of which are directly related to the current leases, with others representing indirect relationships. The following is a brief summary of the agreed to framework for each:

1. **Marina Operation – Long term Operating Agreement**
The City of Hamilton agrees to the HPA operating the Marina (slip rentals and boat storage, formerly known as Harbour West) for 25 years, with an option to extend the formal agreement another 25 years.

2. **Slip Rentals**
The HPA will manage approximately 300 slips, while the Royal Hamilton Yacht Club (RHYC) will manage and retain the associated annual revenues of approximately 58 slips, which is consistent with the current operations.

   With respect to the potential for future marina expansion, the HPA will be given the opportunity to expand and maintain the number of slips it rents by 550 bringing its total to 850, while the RHYC will be given the opportunity to expand and maintain the number of slips it rents by 42 bringing its total to 100.

3. **Boat Storage Facility**
The boat storage capacity (based on its current size or greater) will be tied to the long-term operating agreement of the marina, so that the two operations go "hand-in-hand", and it remains intact and in-place on Piers 7 and 8, as currently configured (indicated by areas “E” and “G” on the map included in Appendix A) until such time development opportunities present themselves to the City.

4. **Capital Cost Allocation**
The City of Hamilton will pay for capital improvements for the "Shoreline Improvements/Protection" and the "Breakwater/wavebreak", as indicated in the West Harbour Recreation Master Plan (WHRMP), as well as the capital replacement/upgrades of the current slips.

   With respect to the potential for future marina expansion, the HPA would pay 100% cost for any increase in the number of slips within the Main Basin, and in
the event of the boat storage facility being re-located, the HPA would pay for 100% of the Capital Cost for the new boat storage facility.

5. Revenue Allocation
Existing boat storage and slip rental revenue continues to be attributed 100% to the HPA, but the City and HPA will review opportunities for profit sharing as part of the slip expansion program.

As it relates to the current sub-leases contained on the lands of Piers 7-8, the HPA agrees to transfer all sub-leases to the City of Hamilton, upon termination of the current existing Pier 8 Lease agreement, and the City of Hamilton will retain all revenue attributed to the existing sub-leases remaining on the Pier 8 lands.

6. Immediate Termination or “partial” Termination of the Land-Lease on Piers 7-8
The HPA agrees to an immediate early termination of the existing land-leases on Piers 7-8, as indicated (Areas “A”, “B”, “D”, “E” and “G” on the map included in Appendix A), with no direct financial compensation from the City.

The City also agrees to lease for a period of 25 years with an option for another 25 year term, 5 acres of land on Pier 22 to the HPA for economic development purposes.

On balance, City staff believe that the “Letter of Understanding with the Hamilton Port Authority Regarding Piers 7 and 8” represents a true balance of interests that will allow the City of Hamilton to take full advantage of the development and re-development possibilities in the West Harbour. At the same time, it represents an opportunity to ensure that the City’s marina and boat storage operations are sustainable for the long-term and are managed in a consistent manner.

The “Letter of Understanding” clearly clarifies the capital and operating responsibilities of each party and does so in a manner that is financially responsible to the City of Hamilton, while at the same time assigns them a consistent rationale based on the benefit derived.

Lastly, these discussions and the recommendations presented by the City Manager, represent a clear indication to the citizens of Hamilton and the investment community, that the City is taking steps in order to implement its recently adopted Strategic Plan, and will continue to invest in the future of its waterfront.

Alternatives for Consideration – See Page 7
FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial:
Report CM12015 has no immediate financial impact; however any financial impacts regarding the implementation of the approved “Letter of Understanding” will be identified as part of the formal “Memorandum of Understanding” to be presented to GIC by October 3, 2012.

Staffing:
Report CM12015 has no immediate staffing impact; however any staffing impacts regarding the implementation of the approved “Letter of Understanding” will be identified as part of the formal “Memorandum of Understanding” to be presented to GIC by October 3, 2012.

Legal:
Report CM12015 has no immediate legal impact; however advice from Legal Services staff will be sought as part of the formal “Memorandum of Understanding” to be presented to GIC by October 3, 2012.

HISTORICAL BACKGROUND (Chronology of events)

On October 26, 2000, a series of negotiations resulted in the City of Hamilton and the Hamilton Port Authority (formerly known as the Hamilton Harbour Commissioners), signing an historic agreement, settling several long-standing issues of disagreement between the two parties. Although the “Agreement” covered a wide-ranging set of issues, a key element was that it established that the ownership of the lands known as Piers 7 and 8 would rest with the City of Hamilton. In exchange for this ownership status, the City of Hamilton would agree to allow the Hamilton Port Authority continued use of these lands through two leases; the first of which would expire in 2015 (indicated as Areas “G” and “E” on the map included in Appendix A), the second in 2025 (indicated by Areas “A”, “B”, “C”, and “D” on the map included in Appendix A). These two leases included the lands themselves, as well as the day-to-day operation of the marina and boat storage businesses located on these lands, which is known as “Harbour West”. Since the time of the “Agreement”, the Hamilton Port Authority has continued to operate both of these businesses, as well as a variety of other uses within the lands.

As the 2015 end-date for the first lease approached, the City Manager, along with several members of senior City of Hamilton staff, began discussions late in 2009, with senior Hamilton Port Authority staff, regarding the future of the leases for Piers 7 and 8, as well as the future of both the marina and boat storage business units. Over the course of these early discussions, staff from both sides started to develop a “framework” for future discussions, which could be used as terms and conditions for a potential agreement moving forward.
On October 11, 2011, GIC approved the following motion entitled "Hamilton Waterfront Priorities":

(a) That staff be directed and authorized to begin discussions with the Hamilton Port Authority, with the objective of a formal agreement transferring the lands consisting of Piers 7 and 8, to the City of Hamilton immediately;

(b) That staff report back to Council in the 4th quarter of 2011 with a recommended "framework" for these discussions;

(c) That staff be directed and authorized to commence key studies that will accelerate the public and private sector development of Piers 5, 6, 7 and 8, including but not limited to issues of site servicing, geo-technical, soils, remediation, as well as development phasing, marketability, and valuation;

(d) That staff be authorized to fund these studies from the "Waterfront Development Corporation" capital budget;

(e) That staff report back by the 4th quarter of 2011 with a comprehensive 2012 work plan for the development of the waterfront precinct.

Since this time, both parties have continued the discussions with a clear goal of negotiating an agreement that could be presented to the respective decision makers, that would allow the City of Hamilton to have full control over the lands of Piers 7 and 8 immediately. This Report and the "Letter of Understanding" (Appendix A), have been prepared for this purpose.

**POLICY IMPLICATIONS**

The "Setting Sail" Secondary Plan was approved by Council in March 2005 and is currently under appeal at the Ontario Municipal Board. The Secondary Plan establishes the framework for public improvements and private investment in the West Harbour.

One of the goals of the Secondary Plan is to create a diverse, balanced and animated waterfront and therefore the policies encourage a broad mix of uses for the waterfront, including cultural, commercial and recreational with the purpose of providing a greater range of attractions year-round.

Under the current Secondary Plan designations for Piers 7 and 8 lands, a range of uses including retail, residential, open space and institutional are permitted. Medium Density Residential 2 is 150-300 units per gross hectare and includes multiple dwellings, apartment buildings and street townhouses.
By its nature, "Setting Sail" establishes the general land-use for the area, and would not be affected by the ownership structure of the lands themselves, or by the operational structure of the marina and boat storage business.

RELEVANT CONSULTATION

- City Manager’s Office
- Office of the General Manager, Planning and Economic Development Department
- Office of the General Manager, Public Works Department
- Corporate Services Department, Financial Planning and Policy Division
- Hamilton Port Authority

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The Executive Summary section of this Report contains a general analysis of the overall recommendations, and the context of Appendix A contains the general rationale.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

GIC can decide to revise, amend, add, or delete any or all of the items contained within the "Letter of Understanding - Long-Term Marina and Boat Storage Operating Agreement & Piers 7-8 Lease Transfer & Partial Early Termination" (Appendix A), or refer it back to staff. As Appendix A has been negotiated between senior staff of the City of Hamilton and the Hamilton Port Authority, City staff cannot guarantee approval from the Hamilton Port Authority.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Financial Sustainability

- Generate assessment growth/non-tax revenues

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
Intergovernmental Relationships
- Maintain effective relationships with other public agencies

Growing Our Economy
- A visitor and convention destination

Environmental Stewardship
- Natural resources are protected and enhanced
- Reduce the impact of Hamilton's industrial, commercial Private and Public operations on the environment

Healthy Community
- Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix A: "Letter of Understanding - Long-Term Marina and Boat Storage Operating Agreement & Piers 7-8 Lease Transfer & Partial Early Termination" and attached map
July 24, 2012

Mr. Bruce Wood, President and C.E.O
Hamilton Port Authority
605 James Street North, 6th Floor
Hamilton, Ontario
L8L 1K1

- Letter of Understanding -

Re: Long-Term Marina and Boat Storage Operating Agreement & Piers 7-8
Lease Transfer & Partial Early Termination

Dear Bruce:

As we are well aware, the City of Hamilton and the Hamilton Port Authority (HPA) have been engaged in numerous discussions over the past few years in an effort to bring a mutually beneficial agreement forward to our respective decision makers, to forge a new partnership between our organizations for the long-term.

Based on our mutual understanding of the issues, the HPA has a desire to have the City of Hamilton articulate our specific position on several of the outstanding issues related to this matter, in a manner that can constitute an "Offer", to be presented to you and your team.

At the same time, City Council has directed staff to complete a series of land-use, engineering, and commercial market studies, that when completed, will form the basis for any staging plan of future development and programming that would be recommended for the areas of Piers 5, 6, 7, and 8.

Therefore, in an effort to focus discussions, we have prepared the following "Letter of Understanding". The details contained here are designed to outline the general parameters that could form the framework for a formal agreement. We have tried to keep the high level issues in the same format as previous discussions; as well we have tried to keep the language simple with the understanding that the details will be drawn in the formal agreement once we generally agree on the framework presented as follows:

1) Marina Operation - Long-Term Operating Agreement
   - Effective immediately, HPA operates the Marina (slip rentals and boat storage, formerly known as Harbour West) for 25 years, with an option to extend the formal agreement another 25 years subject to terms acceptable to the City.

2) Slip Rentals
   - HPA will manage, on the City’s behalf, a total of approximately 300 slips.
   - Royal Hamilton Yacht Club (RHYC) will manage and retain the associated annual revenues, on the city’s behalf, a total of approximately 58 slips.
Re: Long-Term Marina and Boat Storage Operating Agreement & Piers 7-8
Lease Transfer & Partial Early Termination
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- Subject to City approval, HPA will be given the opportunity to expand and maintain the number of slips it rents by 550 bringing its total to 850.
- Subject to City approval, RHYC will be given the opportunity to expand and maintain the number of slips it rents by 42 bringing its total to 100.

3) Boat Storage Facility
- Boat storage capacity (current size or greater) will be tied to the long-term operating agreement of the marina, so that the two operations go "hand-in-hand".
- The current Boat Storage Facility remains intact and in-place on Piers 7 and 8, as currently configured (indicated by areas "E" and "G" on map attached) until such time development opportunities present themselves to the City.
- Final formal agreement to include a "Boat Storage Relocation" clause that would allow for the City/HPA to relocate the storage facility, with a reasonable notice period (i.e. one year) during the term of this agreement.
- Should the Boat Storage Facility reside on HPA own lands at the end of the 25 year contract, HPA will exercise its option under section 1 for another 25 year term or lease the subject lands to the City at fair market value.

4) Capital Cost Allocation
- City of Hamilton pays for Capital improvements for the "Shoreline Improvements / Protection" and the "Breakwater/wavebreak", as indicated in the West Harbour Recreation Master Plan (WHRMP) and subsequent City of Hamilton Environmental Assessments.
- City pays for the capital replacement/upgrades of the current slips in the Main Basin (slips to be identified on a map).
- HPA would pay 100% cost for any increase in the number of slips within the Main Basin, and therefore the HPA, through its operating lease, in consultation with the City of Hamilton, would develop the phasing and timing of any slip expansion. The expansion be determined by a cost-shared market study every three years.
- In the event of the boat storage facility being re-located, the HPA would pay for 100% of the Capital Cost for the new boat storage facility.

5) Revenue Allocation
- Existing boat storage and slip rental revenue continues to be attributed 100% to the HPA, based on the lands and capacity as indicated on sections 2 and 3 above (current HPA profit on 212 rental slips and boat storage, is estimated at $500,000/year).
- The City and HPA will review opportunities for profit sharing as part of the slip expansion program.
- HPA agrees to transfer any and all sub-leases to the City of Hamilton upon termination of the current existing Pier 8 Lease agreement, and the City of Hamilton will retain all revenue attributed to the existing sub-leases remaining on the Pier 8 lands as described in section 6.
- The City of Hamilton agrees to provide reasonable “Notice of Termination” to the existing sub tenancies/occupants located on the Pier 8 lands (see section 6), in the event the
Re: Long-Term Marina and Boat Storage Operating Agreement & Piers 7-8
Lease Transfer & Partial Early Termination
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City of Hamilton requires all or any part of the said lands prior to the expiration of the current leases.

6) Immediate Termination or “partial” Termination of the Land-Lease on Piers 7-8
   - HPA agrees to an immediate early termination of the existing land-leases on Piers 7-8, as indicated by a map (Areas “A”, “B”, “D”, “E” and “G” on the map included).
   - There will be no direct financial compensation from the City for this early termination or “partial” early termination.
   - The City agrees to lease for a period of 25 years with an option for another 25 year term, 5 acres of land on Pier 22 to the HPA for economic development purposes.

In closing Bruce, assuming that through this “Letter of Understanding” we can find common ground, I would suggest that the next steps in the process should involve a presentation of this framework to our respective Council / Board of Directors.

Sincerely,

[Signature]

Chris Murray, MCIP, RPP
City Manager

Attach.
Legend

A  Study Area Labels

Study Area Outline

Air Photos Flown in Spring 2010

Hamilton Waterfront Study Areas

Date Plotted: June 27, 2012