

Legislative
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STANDING COMMITTEE ON PUBLIC ACCOUNTS

WATERFRONT TORONTO

(SECTION 3.15, 2018 ANNUAL REPORT OF THE OFFICE OF THE AUDITOR
GENERAL OF ONTARIO)

1st Session, 42nd Parliament
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The Honourable Ted Arnott, MPP
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Public Accounts has the honour to present its Report and commends it to the House.

A handwritten signature in blue ink, appearing to read 'Taras Natyshak'.

Taras Natyshak, MPP
Chair of the Committee

Queen's Park
April 2021

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1st Session, 42nd Parliament

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INTRODUCTION

On December 11, 2019, the Standing Committee on Public Accounts held public hearings on Chapter 3, section 3.15 of the Auditor General's 2018 *Annual Report* ("Waterfront Toronto") on the revitalization of Toronto's waterfront led by Waterfront Toronto.

The Committee endorses the Auditor's findings and recommendations, and presents its own findings, views, and recommendations in this report. The Committee requests that the Ministry provide the Clerk of the Committee with written responses to the recommendations within 120 calendar days of the tabling of this report with the Speaker of the Legislative Assembly, unless otherwise specified.

ACKNOWLEDGEMENTS

The Committee extends its appreciation to officials from the Ministry of Infrastructure (Ministry) and Waterfront Toronto. The Committee also acknowledges the assistance provided during the hearings and report-writing deliberations by the Office of the Auditor General, the Clerk of the Committee, and staff in Legislative Research.

BACKGROUND

Waterfront Toronto was created under provincial legislation, the *Toronto Waterfront Revitalization Corporation Act, 2002 (Act)*, to oversee and lead the revitalization of Toronto's waterfront. The Act has a sunset clause which provides for Waterfront Toronto to be wound up after the 20th anniversary of the date the Act came into force (2003). The corporation may be wound up before the anniversary if decided upon by the three levels of government (federal, provincial, municipal) which provide oversight and governance to Waterfront Toronto. As well, the corporation may operate up until 2028 if that is recommended by the results of a review to be conducted before the 20-year anniversary date.

Ontario Regulation 200/03 stipulates that the total waterfront area under development, excluding roadways and waterways, covers 2840 acres. The area generally runs south of Front Street between Dowling Avenue to the west and Coxwell Avenue to the east (including Mimico, Port Union, Ontario Place and Tommy Thompson Park/Leslie Street Spit but excluding the Toronto Islands).

GOVERNANCE AND FUNDING

The three levels of government provide oversight and governance of Waterfront Toronto through an Intergovernmental Steering Committee (IGSC). The IGSC comprises a voting member from each level of government (usually Deputy Ministers and the City Manager) supported by a staff member from each level of government, and Waterfront Toronto is represented by a non-voting member. The IGSC helps with executive decision-making, funding projects, and directing project implementation.

Waterfront Toronto is also governed by a board of Directors, composed of 12 members and a Chair, with each level of government appointing four representatives.

In 2000, the federal, provincial and municipal governments committed \$1.5 billion for waterfront revitalization and \$1.25 billion in 2018 for Port Lands flood protection. (The Port Lands is an industrial and port area of about 880 acres that is part of the waterfront area.) The Auditor General clarified that the total commitment to Waterfront Toronto was \$1.5 billion in intended contributions by the three levels of government. However, the actual amount directly available for Waterfront Toronto use was \$822 million; of this, \$177 million was provided by the Province directly.

QUAYSIDE AND SIDEWALK LABS

Quayside is a 12-acre development site on the waterfront, 1.5 kilometres from downtown Toronto. Between 2007 and 2009 Waterfront Toronto purchased Quayside land plots for \$68 million to build affordable housing, provide public access to the water's edge, build streetcar track extensions, locate an energy plant, and enable other development opportunities.

Sidewalk Labs (a Google sister company) became the innovation and funding partner for the Quayside development. In 2017 Waterfront Toronto signed a Framework Agreement with Sidewalk Labs. Sidewalk Labs set out to create an urban area (publicly referred to as a "smart city") that uses electronic sensors to collect data for the purpose of managing assets and resources efficiently within the Quayside area.

In July 2018 Waterfront Toronto and Sidewalk Labs signed the Plan Development Agreement (PDA) which established the roles of the two companies for Quayside development, set project management structures, and identified principles for the governance of data (including the collection and use of personal data).

On October 31, 2019, the Waterfront Toronto Board decided to move forward with a formal evaluation of the MIDP. The Board indicated it would make a decision about whether to move forward with the MIDP by May 20, 2020. On May 7, 2020, Sidewalk Labs announced that it would no longer pursue the development project in Quayside.

Waterfront Toronto publicly announced in June 2020 that it would be issuing a new request for proposals for Quayside, with a focus on affordable housing and long-term care housing.

AUDIT OBJECTIVES AND SCOPE

The objective of the audit was to assess whether Waterfront Toronto, working with the municipal, provincial, and federal governments and other stakeholders, has effective systems and procedures in place to:

- plan and execute the revitalization of Toronto's waterfront in a cost-efficient and timely manner in accordance with applicable legislation, regulations, agreements and mandates; and
- regularly monitor and publicly report on the progress and performance of revitalization projects.

The audit was conducted from December 2017 to October 2018. The audit examined various aspects of Waterfront Toronto's operations, including planning, designing, prioritizing, budgeting, procurement, management and delivery of revitalization projects.

MAIN POINTS OF AUDIT

The Auditor General (Auditor) concluded that Waterfront Toronto has not been as effective as it could have been in the delivery of its mandate to revitalize Toronto's waterfront.

The audit found that

- Waterfront Toronto was given ownership and control of just 1% of the land it was tasked to revitalize; the three governments and the Toronto and Region Conservation Authority did not transfer ownership to Waterfront Toronto of the 75% of the developable waterfront area they owned. Moreover, Waterfront Toronto had no authority to expropriate the 24% of private land that was available for development. As a result, the visions of those with ownership controlled the decisions over waterfront development.
- The three levels of government redirected \$700 million (approximately 47%) of their original \$1.5 billion in Waterfront Toronto funding commitments to other agencies for other projects, including for the expansion of GO transit and the Union Station second subway platform.
- Five of 13 projects over \$10 million that Waterfront Toronto directly managed cost 22% (about \$43 million) more than their estimated project cost. Waterfront Toronto also did not provide sufficient oversight of projects when it transferred funds to other organizations conducting development work. In addition, Waterfront Toronto spent \$49 million on cancelled projects.
- In March 2017, Waterfront Toronto issued a request for proposal (RFP) for an innovation and funding partner for the Quayside area, giving respondents six weeks to reply to a complex RFP. Sidewalk Labs received more information from Waterfront Toronto prior to the RFP than other parties that would be responding to the RFP.

- Unlike its previous operating practices, Waterfront Toronto did not adequately consult with any level of government regarding the Sidewalk Labs project prior to signing an initial agreement with Sidewalk Labs.
- The smart city project has raised public concerns about data collection and use that need to be addressed to protect the public interest. Further, the Province lacks a policy framework to guide the development of a mixed-use smart city that considers intellectual property; data collection, ownership, security and privacy; legal issues; consumer protection; infrastructure development; and economic development.

2020 FOLLOW-UP REPORT

In December 2020 the Auditor General released a follow-up report to its 2018 audit of Waterfront Toronto. The Auditor found that of the original audit's 36 recommended actions, 26 had been fully implemented while 8 were in the process of being implemented. Relevant updates have been incorporated into the Committee's report.

The follow-up report noted that as of May 2020, Sidewalk Labs is no longer pursuing the Quayside project. This affects two of the outstanding recommended actions, which are no longer applicable.

ISSUES RAISED IN THE AUDIT REPORT, FOLLOW-UP REPORT, AND BEFORE THE COMMITTEE

A number of issues were raised in the audit report, follow-up report, and before the Committee. The Committee considers the issues below to be of particular importance.

In December 2019 the Committee heard that Waterfront Toronto had fully implemented the majority of the Auditor's recommendations and expected to fully implement all of the recommendations by March 2020. Waterfront Toronto acknowledged that the audit identified the structural barriers it faces in order to revitalize the waterfront, such as land ownership, planning control, and overlapping responsibilities. Waterfront Toronto has improved cooperation with its partners, implemented new measures to better manage the project's timelines and budgets, and provided regular updates to government funders. According to the 2020 follow-up report, Waterfront Toronto is still in the process of implementing two recommended actions.

The Committee raised a number of concerns regarding the Quayside project and the RFP selection process that led to Sidewalk Labs becoming the project partner. Waterfront Toronto stated that the RFP process was fair and competitive. The Auditor General clarified that Sidewalk Labs received more information prior to the RFP than other parties. In addition, respondents were only given six weeks to respond (compared to ten weeks for a project in the West Don Lands). Further, Waterfront Toronto confirmed that the geographic area of

the project remained the 12 acres of Quayside (the audit report noted that at the time of the audit Sidewalk Labs' website stated that Sidewalk Labs aimed to expand the smart city project across approximately 800 acres of the waterfront). Waterfront Toronto told the Committee there was still a lot of work to be done before a final decision was made regarding the Sidewalk Labs partnership. The Committee heard that Waterfront Toronto was working with both the federal and provincial governments on issues of privacy and data governance. On May 7, 2020, Sidewalk Labs announced that it would no longer pursue the development project in Quayside.

In December 2019 the Ministry of Infrastructure (Ministry) told the Committee it agreed with the Auditor General's recommendations and was in the process of implementing the recommended changes. The Ministry was working with its federal and municipal government partners to clarify roles and responsibilities for organizations involved in the revitalization of the waterfront. According to the 2020 follow-up report, the Ministry is still in the process of implementing six of the audit's recommended actions. The Auditor found that for one of the remaining recommendations (Recommendation 10), the Ontario Digital Service, a division of the Treasury Board Secretariat, has made minimal progress implementing its remaining recommended actions.

The Ministry explained that it has an ongoing relationship with Waterfront Toronto. The Ministry helps to assess and evaluate various proposals and brings its own expertise to help to inform Waterfront Toronto's activities. On July 31, 2020, the three levels of government signed a memorandum of understanding with Waterfront Toronto to establish decision-making principles, set expectations, and establish communications and issue management protocols. The Ministry also stated that Waterfront Toronto has developed a set of performance measures linked to its legislative mandate.

WATERFRONT TORONTO'S AUTHORITY

The Auditor found that Waterfront Toronto was not given ownership and control over the lands it was tasked to revitalize, which limited its ability to plan large-scale projects. The audit report noted that Waterfront Toronto may be subject to the changing priorities and revenue needs of its government funders. It also highlighted that Waterfront Toronto's mandate is similar to that of other existing government entities, further limiting its ability to plan and execute the revitalization since overlapping mandates may result in conflict over the use of land.

The Committee asked the Ministry of Infrastructure what the government has done to address concerns about the need to define and clarify Waterfront Toronto's mandate. The Ministry explained that the municipal, provincial, and federal governments are in the process of comparing other waterfront-related agencies' mandates and roles and that the three levels of government will ensure the roles and responsibilities of Waterfront Toronto are clarified. To reduce the overlap of competing mandates, Waterfront Toronto and Ports Toronto (a government business enterprise which owns and operates Billy Bishop Toronto City Airport among other things) have signed a memorandum of understanding to underline the importance of open lines of communication between the two organizations.

Waterfront Toronto said that it could be more effective if it had more control and could ensure its recommendations were implemented. Waterfront Toronto noted, however, that it has been successful in attracting private investment for waterfront revitalization in spite of constraints it faces. The audit noted a consultant hired by Waterfront Toronto to assess the economic benefit of its projects estimated that nearly \$10 billion of development would be created in areas adjacent to those developed by Waterfront Toronto. However, the consultant was not able to definitively determine the contribution of Waterfront Toronto's work toward the \$10 billion of development, since external factors are at play.

2020 Follow-Up Report

At the time of the Auditor General's follow-up, the three levels of government had begun a strategic review of Waterfront Toronto's mandate, current and future initiatives, governance framework and financial outlook, as well as the overlap between Waterfront Toronto's mandate with that of other entities. The follow-up report indicated that the review was to be completed by the end of February 2021. Subsequently, this date was extended to April 2021.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

- 1. The Ministry of Infrastructure, working with partner governments, should**
 - a) clearly define the mandate of Waterfront Toronto and other waterfront-related agencies;**
 - b) strengthen Waterfront Toronto's ability to ensure its recommendations, previously approved by its government partners, are implemented; and**
 - c) facilitate cooperation between waterfront-related organizations with a mandate to improve economic development of the waterfront.**

PROJECT SPENDING AND ESTIMATED COSTS

The Auditor examined the estimated project amounts for construction projects over \$10 million managed by Waterfront Toronto and found that the actual cost of five projects was higher than the estimated cost by about 22%. The audit findings also included that Waterfront Toronto had an inconsistent approach to determining estimated project amounts; project change orders added during construction contributed to additional costs and work; and, cancelled projects cost \$49 million.

The Committee asked Waterfront Toronto about its progress in implementing the Auditor's recommendation to consistently develop detailed project plans and cost estimates. Waterfront Toronto told the Committee it has developed detailed project plans and cost estimates based on engineering and technical studies for

all new projects. For the Port Lands Flood Protection Project, Waterfront Toronto has completed thirty percent of its design documents in order to establish baseline budget and schedule timelines, and included this information in the Project Charters and the Port Lands Flood Protection Project dashboard report.

2020 Follow-Up Report

At the time of the Auditor General's follow-up, Waterfront Toronto had developed project plans and cost estimates based on engineering and technical studies for two new projects. In December 2019, Waterfront Toronto implemented a new Enterprise Resource Planning (ERP) system to enhance its ability to track project progress against budgets. It also developed a policy on privacy of personal information and on file structure and management. In September 2020, Waterfront Toronto developed and approved a formal Records Retention policy.

WATERFRONT TORONTO'S OVERSIGHT OF PROJECTS

Waterfront Toronto transfers funds to other organizations to manage and deliver projects. The Auditor found that Waterfront Toronto had weak oversight over the projects it funded other organizations to deliver. The Auditor noted that five out of eight projects examined (representing all projects over \$10 million) did not initially include complete estimated costs in the agreements and four out of eight did not have a planned completion date in the agreements. The Auditor also found that Waterfront Toronto did not have a project management information system to track and store project documents and progress reports. Further, there was no formal process to guide the review of invoices.

2020 Follow-Up Report

According to the Auditor General's 2020 follow-up report, Waterfront Toronto created a new policy and procedure to enhance the oversight of future projects for which it transferred funds to other organizations to conduct development work.

Waterfront Toronto noted that they did not have any project funding agreements with other organizations and told the Auditor that they did not anticipate entering into such agreements in the next five years.

FINANCIAL SUSTAINABILITY OF WATERFRONT TORONTO

The audit report concluded that Waterfront Toronto has been substantially dependent on government funding and is unable to sustain ongoing development of the waterfront or its operations without that funding. Further, it stated that Waterfront Toronto has not been successful in leveraging corporate sponsorships, philanthropic donations, and fundraising for revitalization.

Waterfront Toronto told the Committee it established a Fundraising Steering Committee in May 2019 to develop a Fundraising Action Plan for the Corporation. Throughout 2020/21, Waterfront Toronto planned to build organizational capacity in fundraising by building a donor pipeline, creating volunteer leadership, and launching a campaign to advance New Potential projects.

The Committee asked Waterfront Toronto about the sale of lands to supplement the operating budget. Waterfront Toronto explained that part of its original design was to generate additional revenue through the sales of designated properties in order to help fund waterfront development. It confirmed that all sales of land have been at fair market value. The Auditor General clarified that it could not find support for the sale of lands to generate additional revenue based on a review of the *Toronto Waterfront Revitalization Corporations Act, 2002*.

2020 Follow-Up Report

According to the Auditor General's follow-up report, Waterfront Toronto put a fundraising action plan into effect as of January 2020, including building organizational capacity in fundraising, building a donor pipeline, and developing a campaign strategy to advance potential new projects. The follow-up report indicated that the plan was expected to be fully implemented by March 2021. Subsequently, this date has been extended to spring 2021.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

2. Waterfront Toronto should

- a) prioritize its efforts to become more financially sustainable by exploring fundraising, funding, and revenue-generating opportunities;**
- b) ensure proper communication and accountability with prospective fundraising partners; and**
- c) only enter into fundraising agreements after sufficient review and approval by the Waterfront Toronto Board of Directors.**

INTERGOVERNMENTAL STEERING COMMITTEE FRAMEWORKS

As noted earlier, the three levels of government provide oversight and governance to Waterfront Toronto through the Intergovernmental Steering Committee (IGSC). The Auditor found that the IGSC does not have a framework or guide to support its decision-making process regarding what types of projects to fund to advance a revitalization mandate. Further, the Auditor noted that there is no formal dispute-resolution mechanism for the governments if they cannot reach agreement on an issue.

The audit report stated the IGSC expressed concern about how Waterfront Toronto shared information about Quayside with its Board of Directors and government partners prior to the official announcement that Sidewalk Labs had been the successful RFP bidder. IGSC minutes stated that Waterfront Toronto needs to give its Board and government partners information in advance, with adequate time to review materials.

The Committee asked Waterfront Toronto why it did not satisfy IGSC communication needs. Waterfront Toronto said that it did brief the IGSC prior to the 2017 announcement of the Framework Agreement (which pre-dated the 2018 Plan Development Agreement) between Waterfront Toronto and Sidewalk Labs, and the decision by the Board to proceed “on a no-name basis because we were in a blackout period.” The Auditor noted that the briefing to the IGSC about the project and RFP was in June 2017, about three months after issuing the RFP. The Auditor further noted that while the IGSC was informed that Waterfront Toronto had internally selected a successful bidder during a September 2017 committee meeting, the IGSC was only made aware of the name of the successful bidder five days before the October 2017 public announcement.

Waterfront Toronto told the Committee it had many discussions with all three levels of government regarding the Plan Development Agreement (PDA) between Waterfront Toronto and Sidewalk Labs because there was a protocol, at the Waterfront Toronto Board’s request, to obtain comments from the governments on any approval Waterfront Toronto asked of its Board. Waterfront Toronto told the Committee that it received comments from all three levels of government prior to signing the PDA.

The Committee asked Waterfront Toronto if there are any problems with its relationship with the IGSC. Waterfront Toronto said it is working well with its government partners, noting that it has regular meetings with assistant deputy ministers, the deputy city manager, and the IGSC.

2020 Follow-Up Report

According to the Auditor General’s follow-up report, a Memorandum of Understanding (MOU) signed by the Province of Ontario, Government of Canada, City of Toronto and Waterfront Toronto was signed on July 31, 2020. This MOU clarifies the relationship between the three levels of government and Waterfront Toronto as well as their respective roles and responsibilities. It also establishes principles to guide the IGSC on project funding, and outlines the formal dispute resolution process and expected timelines.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

- 3. Waterfront Toronto should consult with the Intergovernmental Steering Committee and the Board of Directors of Waterfront Toronto prior to signing official agreements or making public announcements.**

WATERFRONT REVITALIZATION BEST PRACTICES

Waterfront Toronto conducted an international review of waterfront revitalization best practices by travelling to study revitalization in global cities from 2003 to 2006. The audit report noted that Waterfront Toronto could not provide documentation for the cost of the trips nor could it confirm whether the findings of the review were presented or provided to its Board. The audit report also noted that some of the best practices identified in the 2003 to 2006 international review

had not been consistently applied in Waterfront Toronto projects, such as large public spaces or building height control.

Waterfront Toronto explained that it has incorporated some of the lessons learned from its initial review of global waterfront cities into its Rolling Five Year Strategic Plan as New Potential Projects.

2020 Follow-Up Report

In the follow-up report the Auditor confirmed that Waterfront Toronto had incorporated some of the lessons learned from its review of global waterfront cities (supplemented by a February 2020 assessment of best practices in other jurisdictions) into its five-year strategic plan. The report also found that Waterfront Toronto is following best waterfront design practices: its plan for Villiers Island Precinct (the first project to be developed after the completion of the Port Lands Flood Protection Project) includes 34 acres of parks and public spaces with direct access to the water, while the building height control of the development area in East Bayfront is expected to be much lower than surrounding development, as noted in a presentation to the Board of Directors in May 2020.

PERFORMANCE MEASURES AND TARGETS

The Auditor found that neither Waterfront Toronto nor governments providing oversight had developed a set of formal performance measures and targets to assess whether Waterfront Toronto's mandate or policy objectives were being achieved.

The Committee asked what checks and balances exist to ensure that Waterfront Toronto maintains proper financial reporting and ensures value for money. The Ministry told the Committee there have been 48 audits to ensure that Waterfront Toronto achieves its legislative objectives and delivers value for money. Overall, there have been 17 audits (including the 2018 Auditor General of Ontario's audit) conducted by the three levels of government. In addition, Waterfront Toronto has conducted 32 third-party audits. The Auditor General clarified that many of the previous audits were predominately focused on the financial statements, not operations. The Ministry noted that its oversight committee has monthly meetings with Waterfront Toronto which permit a deeper analysis of specific issues. The Ministry stated it is continually examining ways to improve oversight.

The Committee asked if the Ministry sets goals and benchmarks to determine the value of a project. The Ministry explained that it now reports on 30 performance measures which are linked to Waterfront Toronto's legislative objectives listed in the *Toronto Waterfront Revitalization Corporation Act*. For example, the fiscal responsibility performance measures include competitive procurement, on budget performance, and the ability to deliver projects on schedule.

The Committee also asked about Waterfront Toronto's accountability and transparency in regards to public consultation, and specifically about its follow-up practices after public consultation. Waterfront Toronto noted that it has approximately five performance measures related to public consultation, including measuring the percentage of individuals engaged and consulted with

outside of the waterfront geographic area, as per one of the Auditor's recommendations. The Committee heard that some of the initiatives in Waterfront Toronto's discussions with Sidewalk Labs resulted from the initial public consultation.

2020 Follow-Up Report

According to the Auditor General's follow-up report, Waterfront Toronto has included performance measures in its five-year strategic plan. Waterfront Toronto is also now required to report publicly on its performance annually as a result of the MOU between Waterfront Toronto and the three levels of government (and it did so in the 2019/20 Annual Report). Waterfront Toronto had also created performance measures and targets for encouraging public input, and publicly reported on them in April 2019.

PLANNING AND DEVELOPMENT OF THE PORT LANDS

By May 2018, the three levels of government had signed joint agreements to provide a total of \$1.25 billion to Waterfront Toronto toward flood protection of the Port Lands. The cost projection included a base construction cost and three additional categories of costs: consulting and operating costs, risk contingency, and an escalation allowance. The Auditor questioned the reasonableness of the cost projections. The \$1.25 billion amount was determined using 2016 preliminary estimates. The Auditor found that by March 2018 Waterfront Toronto had already revised the forecast for consulting, operating, and other costs to \$175 million (\$15 million over the initial estimate in 2016). Further, the Auditor questioned the reasonableness of the risk contingency allowance in respect to the soil contamination risk and storm water treatment facility.

The Committee asked about the preliminary estimate for the cost of Port Lands flood protection, particularly the provision for upfront consulting, operating, and other costs which amounts to \$453 million (out of a total of \$1.25 billion). Waterfront Toronto explained that, from this total, consulting costs totalled slightly less than \$200 million. It added that the fixed cost is approximately \$850 million to \$900 million. Waterfront Toronto explained that it undertook specific project risk assessment and risk quantifications to ensure it had done its due diligence. Further, it assessed the Board and governments' risk tolerance to establish the likelihood of completing on-budget, which was deemed to be 90%.

The Committee heard that the environmental assessment for the Don Mouth Naturalization and Port Lands Flood Protection Project took ten years (from 2005 to 2015) and was undertaken jointly by the Toronto Region and Conservation Authority, the city of Toronto, and Waterfront Toronto. The assessment was approved by the Ministry of the Environment and all stakeholders. There was a subsequent due diligence study in 2015 and 2016 to better define scope, cost and schedule. Based on this, all three governments approved the project funding.

The Committee heard the timeline for the Port Lands Flood Protection Project is to substantially complete construction by 2024, although the project will continue through 2028. Waterfront Toronto stated that often timelines are dictated by development partners. As a result, Waterfront Toronto indicated it works on an annual basis with its private-sector partners and governments to re-establish and reconfirm timelines.

The Committee heard that Waterfront Toronto provided detailed construction cost estimates for each of the 23 component projects of the Port Lands Flood Protection Project to the funding governments for review in March 2019.

In November 2018 Waterfront Toronto began monthly reporting of “progress against budgets” as per provisions for the Port Lands Flood Protection Project Dashboard and component Project Status Reports.

Waterfront Toronto told the Committee it assesses the effectiveness of its work on reducing the impact of construction risks in three ways: engagement of a third-party expert risk consultant to identify and quantify project risks; through a Capital Peer Review Panel group of experts that assesses project risk and provides advice to management; and, through Independent Capital Monitor, an independent capital project firm that reports to Waterfront Toronto’s internal Finance, Audit and Risk Management (FARM) Committee on project risk.

The Committee asked the Ministry about the Province’s vision for the Port Lands. Waterfront Toronto explained that the Board’s five-year plan examined opportunities for additional fundraising as well as improving four signature areas: the ferry terminal, the destination playground, a signature project, and access to transit. The Ministry stated it is important to draw people to the waterfront during the winter months, and described initiatives such as installing umbrellas help to protect people from the elements, and inclusion on the site of museums or activity centres. The Ministry supported Waterfront Toronto’s vision and noted the three levels of government are working together to support the implementation of the vision.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

4. Waterfront Toronto should

- a) improve communication between its senior management, its Finance, Audit and Risk Management Committee, and its Board of Directors regarding the cost and process of the Port Lands Flood Protection Project; and**
- b) regularly update the Board of Directors on the work and findings of the third-party risk consultant, Capital Peer Review Panel, and Independent Capital Monitor firm regarding risk assessments for the Port Lands Flood Protection Project.**

SMART CITY PROJECT WITH SIDEWALK LABS

The Auditor made a number of observations about Waterfront Toronto’s agreement with Sidewalk Labs noting there was a lack of sufficient due diligence or provincial involvement in the agreement.

The Auditor found that different parties were receiving different pieces of information throughout the request-for-proposal (RFP) process, with Sidewalk

Labs receiving the most information. The Committee asked Waterfront Toronto about this. The Committee heard that the Quayside RFP process took 159 days. The Auditor General clarified the initial RFP stage was 41 days and three proponents identified were then given 117 days to submit an RFP. Waterfront Toronto explained that documents were shared differently during the market sounding process (when information is communicated to gauge potential interest) prior to the RFP being issued. Waterfront Toronto clarified that once the RFP process was underway, data sharing was much more equitable. As a result of the audit, Waterfront Toronto noted it strengthened its practices related to determining market interest prior to a procurement process to ensure a fair and equitable process.

The Committee asked Waterfront Toronto several questions relating to its timelines throughout the RFP process. Waterfront Toronto explained that it asked the Board to meet three to four days earlier than scheduled in order to accommodate a public announcement about the Framework Agreement with federal, provincial, and municipal political leaders. Prior to the announcement, Waterfront Toronto stated that it provided two briefings to the Board on October 11 and 12, 2017, which focused on risks and risk mitigation measures for the Quayside project identified by Waterfront Toronto's Investment, Real Estate and Quayside Committee (IREQ).

The Committee heard that the IREQ Committee was working on the deal with Sidewalk Labs for several months. In hindsight, Waterfront Toronto acknowledged it should not have altered the date of the Board's meeting which reduced the amount of time the Board had for review. Waterfront Toronto told the Committee that instead of announcing the Framework Agreement, they should have negotiated the Plan Development Agreement. Since the audit, Waterfront Toronto told the Committee it has put into place a number of processes and protocols with the Board and government partners to ensure they receive updates on information and developments related to Quayside.

The Committee asked if it was good governance for Waterfront Toronto to accept funds from a vendor (in this case, Sidewalk Labs) to assist in development of a plan which Waterfront Toronto will subsequently have to evaluate. The Committee heard that governments have urged Waterfront Toronto to bring in private sector investment and Quayside presented what it described as an innovative opportunity to do so. Waterfront Toronto told the Committee that in order to mitigate taxpayer risk, all bidders were told that if successful, they would be required to pay for costs associated with the evaluation and development of the Plan Development Agreement, such as costs for hiring staff to establish an internal team and subject matter expertise. Waterfront Toronto clarified that it did not take any funds from Sidewalk Labs until after the Plan Development Agreement was completed.

Sidewalk Labs included a 20-acre site in its proposed mass renovation and development plan. The Committee asked if it is a fair procurement practice for a corporation to conduct public consultation on lands not originally covered in the RFP. Waterfront Toronto explained that it told Sidewalk Labs to prioritize the defined 12 acres.

The Committee asked what progress has been made to develop a policy framework that addresses issues concerning smart cities, such as data governance and privacy. The Ministry explained it is currently developing

Ontario's Data Strategy, which will be the key to promoting and informing the protection of people's privacy. The Strategy will prioritize three key areas: promoting public trust and confidence; creating economic benefits; and, enabling smarter and efficient government. Further, the Province's five principles will require smart cities to do the following: guarantee Ontario's privacy and personal data are protected; put people first by ensuring that Ontarians are the primary beneficiaries of the opportunities created by the project; create responsible and good governance systems; enact leading best technical practices that ensure chosen technologies use open software and open standards and educate the public on risks associated with the project; and provide meaningful opportunities for local residents to engage in the creation of a smart city.

The Ministry told the Committee that the Ontario Digital and Data Action Plan, which suggests actions on digital and data issues, would be released in 2020. However, according to the follow-up report, public consultations on the Data Action Plan were paused due to the COVID-19 pandemic. Ontario Digital Service committed to complete the public consultations, the policy framework, and the associated work with other ministries by December 2021. The Ministry explained it provides input to Waterfront Toronto based on information from two key task forces that have been set up to work on these issues: the Digital and Data Task Force and the Ministry of Colleges and Universities' expert panel on intellectual property. Waterfront Toronto told the Committee it has added digital expertise through the Digital Strategy Advisory Panel and external advisors.

The Committee asked about the economic development and social benefits of the Quayside project, in particular the provincial initiatives around tourism. Waterfront Toronto noted one of the key objectives in the planning framework, the Central Waterfront Secondary Plan, is improving north-south connections in order to improve transit as well as creating parks and public spaces to attract people to the waterfront.

2020 Follow-Up Report

On May 7, 2020, Sidewalk Labs announced that it would no longer pursue the development project in Quayside. As a result, the action items relating to Sidewalk Labs in the original report and committee hearings are no longer applicable. However, issues around smart city planning, such as intellectual property and data collection and ownership, remain pertinent. The follow-up report noted the Minister's Digital and Data Task Force would provide advice to the Minister on digital and data issues relevant to the creation of smart cities.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

- 5. The Ministry of Infrastructure, in conjunction with its government partners, should**
 - a) continue to study the issues surrounding the creation of a smart city in Toronto to determine what legal protections are necessary to protect the public interest;**

- b) assess whether Waterfront Toronto needs additional direct oversight of its practices or if its governance structure can be streamlined;**
- c) develop a policy framework, through legislation, to guide the development of a smart city, addressing issues of intellectual property, data collection, ownership, security and privacy, legal and consumer protection issues, infrastructure development, and economic development; and**
- d) improve communication and consult with the public regarding the development and potential of a smart city project.**

CONSOLIDATED LIST OF COMMITTEE RECOMMENDATIONS

The Standing Committee on Public Accounts recommends that:

- 1. The Ministry of Infrastructure, working with partner governments, should**
 - a) clearly define the mandate of Waterfront Toronto and other waterfront-related agencies;**
 - b) strengthen Waterfront Toronto's ability to ensure its recommendations, previously approved by its government partners, are implemented; and**
 - c) facilitate cooperation between waterfront-related organizations with a mandate to improve economic development of the waterfront.**

- 2. Waterfront Toronto should**
 - a) prioritize its efforts to become more financially sustainable by exploring fundraising, funding, and revenue-generating opportunities;**
 - b) ensure proper communication and accountability with prospective fundraising partners; and**
 - c) only enter into fundraising agreements after sufficient review and approval by the Waterfront Toronto Board of Directors.**

- 3. Waterfront Toronto should consult with the Intergovernmental Steering Committee and the Board of Directors of Waterfront Toronto prior to signing official agreements or making public announcements.**

- 4. Waterfront Toronto should**
 - a) improve communication between its senior management, its Finance, Audit and Risk Management Committee, and its Board of Directors regarding the cost and process of the Port Lands Flood Protection Project; and**
 - b) regularly update the Board of Directors on the work and findings of the third-party risk consultant, Capital Peer Review Panel, and Independent Capital Monitor firm regarding risk assessments for the Port Lands Flood Protection Project.**

- 5. The Ministry of Infrastructure, in conjunction with its government partners, should**
 - a) continue to study the issues surrounding the creation of a smart city in Toronto to determine what legal protections are necessary to protect the public interest;**

- b) assess whether Waterfront Toronto needs additional direct oversight of its practices or if its governance structure can be streamlined;**
- c) develop a policy framework, through legislation, to guide the development of a smart city, addressing issues of intellectual property, data collection, ownership, security and privacy, legal and consumer protection issues, infrastructure development, and economic development; and**
- d) improve communication and consult with the public regarding the development and potential of a smart city project**