



Statement by Waterfront Toronto Interim CEO Michael Nobrega Regarding the Report of Ontario’s Auditor General

Toronto, December 5, 2018 – Waterfront Toronto CEO Michael Nobrega issued the following statement today in response to the Auditor General’s report, released this morning:

“We acknowledge the Auditor General’s report and thank her for her work. We will use the report’s recommendations as we deliver excellence and move forward with our many waterfront projects. We’ve begun the implementation of recommendations and always strive to protect the public in all of our revitalization plans.

Waterfront Toronto has been the catalyst for incredible work being done as well as significant investment for the future of the waterfront– just look around and you can see the cranes and construction creating new opportunities for people to live, work and enjoy their waterfront.

The Auditor General’s report accurately identifies some of the structural barriers we’ve faced in revitalizing the waterfront, such as land ownership and planning control. Despite those barriers, over the past 15 years, Waterfront Toronto has attracted billions of dollars in private investment to the waterfront, created new parks and access to the shores of Lake Ontario.

We are pleased to report that action is being taken to remove the single largest barrier to waterfront revitalization: flood protection of the Port Lands. Just last week, Waterfront Toronto and its federal, provincial, and municipal partners broke ground on the Port Lands Flood Protection Project. This is a game changer for our city and for our organization. Once complete, flood protection will unlock almost half of the land available to Waterfront Toronto for revitalization.

The Auditor General’s report reviewed our procurement process with respect to Quayside. On this issue, we want to be crystal clear – our RFP processes are competitive, fair, and follow best practices. Former Associate Chief Justice of Ontario and Ontario Integrity Commissioner, the Honorable Coulter Osborne has reviewed the Auditor’s finding and reports that:

“In summary, I am satisfied that no organization, including the eventual short-listed proponents, was provided with any information or documentation that was not public or readily accessible. The evidence pertaining to this seems to me to be clear. I am satisfied that Waterfront Toronto successfully took all reasonable steps to ensure that the Quayside procurement proceeded on the basis that no proponent or potential proponent secured any unfair advantage. In my opinion, there is no evidence that would support a contrary conclusion.”

With respect to Quayside, we expect to see a Master Innovation and Development Plan in the new year.

Waterfront Toronto has, however, made its evaluation criteria known to our innovation partner and to the public and the bar is high. We continue to welcome the ongoing public dialogue about the role of technology in our cities and our lives, including data collection and privacy. We look forward to continuing to work with our government partners prior to taking next steps on this project.

We remain committed to broad public engagement on a proposed plan for Quayside, which includes consulting with all potentially impacted government departments and regulatory agencies. As the Auditor General herself noted, Waterfront Toronto does not have the power to amend or override federal, provincial or municipal policies or laws governing technology, privacy or transportation. We will take our lead from our shareholders at the three levels of government with respect to any regulatory or policy amendments that may be required to enable the safe and ethical uses of new technologies.

Since its inception, Waterfront Toronto has recognized that its first duty is to protect the public interest as it revitalizes this precious resource – we have only one waterfront, and our business practices reflect that. We look forward to the next chapter in Waterfront Toronto’s work to revitalize the waterfront.”

Quick Facts:

- The Auditor General’s report recognizes the role played by Waterfront Toronto in leveraging the initial \$1.2 billion seed capital received from all three levels of government to generate over \$10 billion in new private sector investment and 26 hectares of new parks and public spaces. That space includes award-winning developments such as Sugar Beach and Corktown Common.
- Waterfront Toronto’s work has contributed to 14,100 full-time years of employment, 5,000 new residential units, almost 600 affordable housing units, and 1.5 million square feet of commercial office space to date.
- Waterfront Toronto has redeveloped 150 acres of waterfront area, and the upcoming flood protection of the Port Lands will unlock approximately another 800 acres for development – almost half of the land that falls under Waterfront Toronto’s development area.
- More information from Waterfront Toronto regarding the Auditor General’s report can be found at www.waterfronttoronto.ca

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Auditor General's Report - Additional Information

The Auditor General's 2018 report included a review of Waterfront Toronto's operations over its 15 years, as well as a particular focus on our Quayside project. This was one of [15 value-for-money audits](#) conducted by the Auditor General this year.

Waterfront Toronto was permitted a limited response in the report. In the interest of transparency and accountability, we are providing additional information and context in regard to several issues raised in the report.

Structural Barriers:

The Auditor General's report accurately identifies some of the structural barriers we've faced in revitalizing the waterfront, such as land ownership, planning control and overlapping responsibilities with other organizations.

The report included a recommendation to the Provincial Government that a mandate review take place to address these challenges. This is something we wholeheartedly support and we look forward to continuing our discussions with our government partners on these important matters.

On this subject, it's important to note two things:

- Despite those barriers, over the past 15 years, Waterfront Toronto has attracted billions of dollars in private investment to the waterfront, created new parks and access to the shores of Lake Ontario. Those facts are recognized in the report.
- Action is being taken to remove the single largest barrier to waterfront revitalization: flood protection of the Port Lands.

The report fails to mention that over 290 hectares of the waterfront could not be developed until it was flood protected. Just last week, Waterfront Toronto and its federal, provincial, and municipal partners broke ground on the Port Lands Flood Protection Project.

This is a game changer for our city and for our organization. Once complete, flood protection will unlock almost half of the land available to Waterfront Toronto for revitalization.

Our Ability to Deliver Projects on Budget:

The Auditor reviewed our ability to deliver projects on budget.

While the Auditor General found we've delivered six projects under budget by 12% (\$29 million), the report said they considered five other projects as being "over budget".

Of those five projects, we can report that all of these except one (Queens Quay) were within the budget variance threshold set by the Board.

These four projects within management's threshold were collectively over-budget by a total \$8.8 million (8%) and were managed by the cost savings (\$29 million) achieved in other projects. In other words, with the exception of Queens Quay, Waterfront Toronto has come in under-budget collectively by a total of \$20 million for projects with a budget over \$10 million.

As such, we maintain that we have always kept within the funding envelopes provided by governments and audited by governments for all but one project out of over 50 projects.

Quayside Procurement:

We are confident that Waterfront Toronto's RFP procurement process is fair, open, and competitive, and that view applies to the [RFP for the Quayside project](#). In fact, we sought a legal opinion, and an opinion from a former Integrity Commissioner to validate that this was the case.

Former Ontario Integrity Commissioner and Associate Chief Justice of Ontario, the Hon. Coulter Osborne, was appointed as Waterfront Toronto's Fairness Advisor for the RFP, and he [confirmed](#) that:

"In summary, I am satisfied that no organization, including the eventual short-listed proponents, was provided with any information or documentation that was not public or readily accessible. The evidence pertaining to this seems to me to be clear. I am satisfied that Waterfront Toronto successfully took all reasonable steps to ensure that the Quayside procurement proceeded on the basis that no proponent or potential proponent secured any unfair advantage. In my opinion, there is no evidence that would support a contrary conclusion."

Moreover, procurement experts at Dentons LLP [reviewed our procurement process](#) with respect to the Quayside project, and concluded:

"... we have not observed anything that we would qualify as deviating from accepted procurement best practices in Canada. On the contrary, we observe that this RFP process incorporated many accepted, modern hallmarks of an open, transparent and fair process. Finally, we understand that while bidders had ample opportunity to do so, none of them raised concerns related to the proponent evaluation and selection process."

Market Sounding:

Waterfront Toronto provided documents and held meetings with [over 50 companies](#) and organizations in the year leading up to the RFP for Quayside. This is a common practice known as "market sounding," which is undertaken to gauge market enthusiasm or interest in a project prior to issuing an RFP.

Our market sounding process for Quayside is [outlined in a 2017 memo](#), which details both the market outreach, and the RFP process. The memo outlines the shortlisted bidders and the rigorous selection process, which included four rounds of Commercially Confidential Meetings overseen by an independent Fairness Advisor, the Hon. Coulter Osborne Q.C.

Again, we secured a [legal opinion from Dentons LLP](#) about our market sounding activities regarding Quayside, and received confirmation that our activities were conducted appropriately:

“In principle, there is nothing improper about pre-solicitations consultations with potential bidders or other parties. In fact, in complex or innovative procurements, such exercises are widely considered as a best practice and an important first step in designing a successful solicitation. Pre-solicitation exercises can take a variety of different forms, including one-on-one meetings with stakeholders and potential bidders, bidder conferences, independent research, the publication of requests for expressions of interest, among many other forms and formats...”

...In our view, a reasonable person, properly informed of the information outlined above and other relevant information regarding the RFP process (such as the involvement of a fairness monitor), would not arrive at the conclusion that Waterfront Toronto acted in a manner that was biased.”

Scope of Quayside Project:

The scope of planning was amended in the [Plan Development Agreement \(PDA\)](#) beyond the Quayside parcel to apply to a broader Designated Waterfront Area (DWA). The planning area was expanded to reflect the fact that Quayside is not an island. Roads and power grids won't end at its borders, so it's important that planners be able to integrate Quayside into the broader waterfront.

To be clear, there is no sale or transfer of lands. Nothing in the PDA gives Sidewalk Labs or any other party, ownership of any lands. The PDA would permit implementation of the Master Innovation and Development Plan (if approved) on any land owned by Waterfront Toronto or Sidewalk Labs outside of Quayside in the wider waterfront area, but would require approvals from all three levels of government and landowners. This is all consistent with the RFP that was issued, and this was the [opinion of Dentons LLP](#) as well:

“References to the broader Designated Waterfront Area provide appropriate geographic context, allow Sidewalk to factor this context into the MIDP where a larger geographic scale supports the plans (e.g., waste management or transportation) and grant Waterfront Toronto certain rights to subsequently use what is developed in developing the Quayside MIDP (such as IP) in the broader Designated Waterfront Area.

...any implementation of the MIDP will be subject to subsequent approvals and clearances, including from governments and landowners. In our view, the MIDP Scope set out in Schedule B remains consistent with the terms of the RFP.”

Personal Data:

During the course of this audit, Waterfront Toronto repeatedly confirmed with the Auditor General our position that we will not approve a Master Innovation and Development Plan or Principal Implementation Agreements that would provide preferential treatment to any Alphabet company, including Google, regarding linking to, sharing or use of personal data. [Sidewalk Labs has also committed to abiding by this principle.](#)

Specifically we have committed to not share personal data with third parties, including other Alphabet companies, require that data cannot be used for advertising purposes, and that Privacy by Design be embedded in all solutions proposed by Sidewalk Labs.