



Submission of Waterfront for All;

Re: Ports Modernization Review

November 12, 2018

Waterfront for All (<http://www.waterfrontforall.ca/>) is an umbrella organization of 29 residents' associations and other groups in Toronto interested in the conservation and revitalization of Toronto's waterfront. We are guided by the "nine principles" set out in *Regeneration: Toronto's Waterfront and the Sustainable City*, by David Crombie, the 1992 final report of the Royal Commission on the Future of Toronto's Waterfront. The nine principles are that Toronto's waterfront should be: 1. clean, 2. green, 3. connected, 4. open, 5. accessible, 6. usable, 7. diverse, 8. affordable and 9. attractive.

Executive Summary

This submission deals with Toronto Port Authority ("TPA"). TPA must be substantially reformed or replaced. According to its website, TPA is "guardian and steward of Toronto's waterfront resources." While some agency should fill this role, TPA does not and cannot because its statutory structure as a port authority under the *Canada Marine Act* ("CMA") is inappropriate and out of date.

Toronto Harbour has changed in recent decades. It is no longer primarily a shipping port or transportation hub, but is now mostly used by sailors, paddlers, powerboaters, tour boats, as well as local residents and visitors of all kinds enjoying the lake from promenades, patios, condos, workplaces and the many public realm improvements along the waterfront. We believe the harbour is Toronto's most valuable cultural, recreational and tourism-oriented resource. The number of visitors increases each year. There is rapid population-growth. A multi-decade waterfront revitalization project is underway, requiring constant and extensive public consultation. Land values are extremely high.

TPA does not work well in this evolving environment. Problems include:

1. a lack of financial and operational accountability, particularly regarding land sales and leases of legacy real estate. TPA must not be allowed to decide the future of its underused but incredible valuable properties without extensive consultation with other stakeholders;
2. TPA's statutory mandate is wrong. It is inappropriately limited to transportation functions and "financial self-sufficiency" rather than the public interest. As a result, harbour infrastructure maintenance and administration is chaotic and neglected, and TPA often seems to work at cross-purposes with waterfront revitalization efforts and the local community;
3. TPA has an unrepresentative board of directors;
4. unlike other agencies and stakeholders on the waterfront, TPA need not follow municipal or provincial planning documents and laws.

A different agency should probably be created to be an effective guardian and steward of Toronto's waterfront resources. Such an agency should be accountable to all three levels of government, with a mandate to serve the public interest as a whole, not just transportation users such as the airport and shipping. It must have a deep commitment to public consultation and transparency, and a mandate to harmonize its operations with and support revitalization efforts. In some ways, Waterfront Toronto ("WT") may be an appropriate model to follow.

Meaningful reform likely means abandoning financial self-sufficiency as a statutory requirement. Toronto's harbour and port must be managed in the public interest. Incentivizing TPA, a public agency, to raise money to support itself necessarily has caused it to focus on its own needs over those of the public it supposedly serves.

How our comments relate to the subject matter of the Port Modernization Review

The purposes of the Ports Modernization Review include "Optimizing governance and accountability, including with respect to financial management." In the context of the Ports Modernization Discussion Paper, our comments relate to "Port governance: review stream 5" particularly questions 12 and 13:

Q12. Does the current governance model enable Canada Port Authorities to effectively manage their assets, support economic development and deliver their regulatory duties?

Q13. What models or approaches could be pursued to ensure Canada Port Authorities are more responsive to user and local perspectives.

Our comments relate entirely to TPA, and not to other Canadian port authorities. TPA, we believe, raises different issues from other ports, because Toronto is *not* a significant port

although Canada's largest city. The fundamental question about TPA is: is the port authority structure in the *CMA* appropriate for Toronto? We believe it is not.

TPA is a port authority but there's not much port.

The Port of Toronto has almost the least cargo tonnage of any of the 19 port authorities under the *CMA*. Most of the 2.2 million metric tonnes of cargo shipped through the Port in according to TPA's 2017 annual report was shipped through privately-owned dock facilities not owned or operated by TPA such as the Redpath Sugar Refinery or private concrete plants.

TPA is an oddity: a port authority which hardly operates a port, and gets its revenues mainly from an airport, Billy Bishop Central Toronto Airport ("BBCTA"), and from sale of legacy landholdings, as discussed below.

Although it handles little maritime cargo, TPA "owns" a lot of under-utilized, in fact almost derelict, but incredibly valuable waterfront land. It seems to view this land as its own private resource not a public trust.

Sale of 30 Bay illustrates TPA's lack of financial accountability

TPA recently sold the 1.8 acre site of its headquarters at 30 Bay Street in the core of the downtown waterfront area (possibly the most valuable undeveloped real estate in Canada on a square-foot basis) for \$96 million. TPA did not pass that money to the coffers of the federal government, but kept it. There were no consultations with the public, stakeholders or other levels of government as to whether selling this prime public land in the centre of the downtown waterfront was in the public interest, nor as to the best use of the windfall TPA got from the sale.

The Minister of Transportation rubber-stamped the necessary revisions to TPA's Letters Patent without any public consultation. No one knows what TPA will do with the money. It does not seem to plan to contribute it to the revitalization of the waterfront. Yet funding is lacking for many desirable projects around Toronto's waterfront and harbour, such as rebuilding the Jack Layton Ferry Terminal, or improving water quality.

We object strongly to the lack of transparency and consultation that characterized this transaction. Large land deals behind closed doors are not in the public interest.

Opaque policies as to TPA legacy landholdings

A related aspect of TPA's lack of financial or policy accountability is the obscurity that surrounds the future of another TPA legacy landholding, the 56 acre Port of Toronto lands on the east side of the Eastern Gap. This little-used but extraordinarily valuable land overlooks both the Inner and Outer harbour, just south of the massive Ports Lands Flood Protection Plan and Don River Naturalization project. That project, financed by all three levels of government working together through WT, will make possible development, and therefore greatly increase the value of the port lands, including TPA's Port of Toronto site.

Can TPA sell these 56 acres or lease them, and keep the proceeds itself, as it did with 30 Bay, without public accountability as to when or to whom, or as to what will become of the proceeds? The present structure of TPA would, it seems, allow this. That must be changed.

Not all this land is needed for shipping. Ports Toronto recently announced it had entered into a 15 year lease of two buildings by the water on the 56 acre Port of Toronto site, Marine Terminal 51 and the Cruise Ship Terminal (the now-defunct building that once served the short-lived ferry to Rochester) to Cinespace Film Studios as a film and TV studio. These buildings sit right on the water near the Eastern Gap. It is unclear how Ports Toronto could have authority under its letters patent to become a movie studio landlord.

The proposed Marine Terminal/film studio will be a windowless industrial building. It gets no benefit from being by the lake, and would be more suitable to an industrial subdivision. This is a waste; the site has a magnificent view of the City Skyline, the Island and both the Inner and Outer Harbours. The lease has not been made public, so we don't know the rent, the dimensions of the leased area, and any details, but it seems these buildings will be off-limits to the public, and perhaps surrounded by a private parking lot cutting the public off from the water's edge for decades.

There was no public consultation about the lease, but should have been. We believe that these lands, if not needed for shipping, should be opened to the public perhaps as a park with a bike path or some public realm improvement so that the public can have access to the water and enjoy the harbour. Nothing of the kind seems to be planned.

These 56 acres may one day be among the most valuable real estate holdings in Canada. What happens to them and how they are used in years to come will have profound consequences for Canada's largest city.

TPA's history of selling or leasing land, and keeping the proceeds, with no public consultation demonstrates that major reforms are needed.

TPA's statutory mandate is too narrow

As a port authority under the *CMA*, TPA's mandate is limited in scope. Under section 28, a port authority must engage in "port activities related to shipping, navigation, transportation of passengers and goods, to the extent that those activities are specified in the letters patent.; and ... other activities that are deemed in the letters patent to be necessary to support port operations."

As well, a port authority such as TPA must be "financially self-sufficient" and likely to remain so, under section 8(1).

That is, the public interest and waterfront revitalization are both irrelevant to TPA's statutory mandate. Its top priority must be to do whatever is necessary to perpetuate its own existence. It must engage in port activities, even if revenues from such activities are negligible due to lack of demand. TPA need not consider, and in fact may be prohibited from considering, whether its land or the proceeds of the sale of land should be used for something other than transportation infrastructure.

We submit that TPA, with its narrow statutory focus, should not be entitled to decide whether to sell or lease incredibly valuable public land and keep the money without regard to any broader agenda or priorities, and without regard to the revitalization going on around it.

While shipping facilities may well continue to be necessary and desirable in Toronto Harbour, it should not be TPA but some objective third party that studies and determines how much land should be devoted to shipping. TPA's mandate is too narrow, and its self-interest too great for it to be the appropriate decision-maker.

A reformed agency should have a mandate to consider the public interest, and should be accountable to three levels of government and the public.

Big decisions about TPA's assets require transparency and accountability.

Reform of TPA should be structured to encourage transparency, particularly as to big policy issues, for example, the future of BBTCA, which sits on roughly 280 acres of land of which approximately 80% is owned by TPA.

Few major cities now have a downtown airport. Chicago, Edmonton and Berlin for example have closed downtown airports. Is BBTCA an obsolete land use like the railway lines, shipping docks, and grain terminals that used to dominate the Toronto waterfront, or do its benefits outweigh its downside local impacts in the long term?

These are complex questions which cannot be decided by TPA alone. TPA lacks accountability, and its statutory mandate is too narrow to consider such matters from a broad perspective. Such

decisions must be decided by all three levels of government with extensive consultation with stakeholders and the public.

The Tripartite Agreement between the Minister of Transport, TPA and the City of Toronto governing the operation of BBTCA expires in 2033. A robust consultation process must at some point go forward as to whether the Tripartite Agreement should be renewed and if so on what basis. Potential alternative uses should be carefully studied and assessed. TPA should of course be a participant in that process, but should not run it. TPA's narrow statutory mandate prevents it from considering these questions objectively.

Any reform of TPA should ensure that this upcoming discussion, now on the horizon, is fully transparent and involves robust consultation.

TPA can ignore other levels of government

Due to the constitutional doctrine of paramountcy, TPA, as a federal agency, is not bound by City by-laws or planning documents.

We see no good reason for maintaining TPA's exceptional legal status. Running a little-used cargo port and a comparatively small airport are not matters of such national importance that they require TPA to be exempt from the laws and planning considerations that bind other agencies and stakeholders.

As a "government business enterprise" with a statutory mandate to be "financially self-sufficient", TPA is essentially free to raise revenue for itself as it pleases provided it stays within the port and airport-related activities in its Letters Patent, regardless of the impact of its actions and decisions on the surrounding city and waterfront. This statutory structure is not appropriate in the complex, changing environment of the Toronto waterfront.

TPA or its successor agency should be subject to the laws of other levels of government, like other agencies and stakeholders.

We question whether a federal port authority is necessary to administer the port, harbour, and legacy landholdings held by TPA. While paramount federal authority may be necessary to operate a large airport such as Pearson International, the same model, we submit, is not necessary and does not work for a small airport so close to dense population, parkland (the Toronto Islands), recreational and tourism land uses such as the public realm facilities along Queens Quay, and Toronto's massive waterfront revitalization project.

Unrepresentative Directors

TPA's narrow focus and lack of accountability is also shown in its board of directors.

Section 15 of the *CMA* requires that TPA's directors "have generally acknowledged and accepted stature within the transportation industry or the business community". That is, TPA's board members cannot be community representatives, city planners, architects, conservationists, people knowledgeable on Toronto's waterfront revitalization project, or recreational users of the harbour. They must be businesspeople, preferably in the transportation industry. This statutory restriction on the qualifications of TPA board members virtually ensures that board members will represent a narrow perspective, not reflective of the interests of the local community or the waterfront revitalization project.

In practice, under both Conservative and Liberal governments, directors have long been political appointees with no apparent connection to the waterfront, and little knowledge of or interest in waterfront revitalization, conservation, city planning, or recreational water activities. One of the two most recent appointees to the TPA Board, for example, although theoretically appointed to represent "the Port User Group", is a securities lawyer with no visible connection with or interest in the waterfront, revitalization, or harbour so far as we are aware.

TPA's directors meetings are closed to the public (while those of the other major government agency on the Toronto waterfront, WT, are public, as discussed below.) This is inappropriate if TPA is truly the guardian and steward of Toronto's waterfront resources as it claims.

TPA has not been an effective steward of Toronto Harbour

The maintenance of dock walls and piers around Toronto's harbour and waterfront has been problematic for many years. Parts of the harbour are in an astonishing state of neglect.

An example is the Eastern Gap seawall, or pier, on Toronto Island at the Eastern Gap. Hundreds of feet long, the seawall was for decades in such a state of decay and neglect that the public was endangered. The seawall deteriorated to the point where it was essentially a pile of rubble in the lake. People often walked out on it, which was dangerous due to the possibility of collapsing concrete. In high water conditions such as those that occurred in 2017, the seawall was partially submerged, making it a potentially life-threatening danger to boaters.

For decades no agency maintained or saw itself as responsible for the seawall. There was apathy and inaction. To this day, no one knows who has jurisdiction over the seawall.

At the request of community representatives, City Council recently requested that city staff research the ownership of the seawall. Staff concluded in early 2018 that TPA owns the seawall.

TPA responded within days with a letter denying ownership and claiming that some unspecified arm of the federal government, not TPA itself, has responsibility. TPA nevertheless agreed to remove the rubble of the pier (a task it has now largely completed), and to contribute to the cost of an upgrade of some kind. Negotiations are now on-going between different agencies of government as to what will happen next.

There have been other instances where disputes between different levels of government delayed essential repairs or upgrades of dock walls and other waterfront infrastructure for months or years. There is also a general lack of safety equipment such as ladders, stairs, life preservers and safety hooks along the dock wall in many part of the harbour. Clean-up of debris on the water seems haphazard and inadequate.

We appreciate TPA's belated removal of the dangerous rubble of the Eastern Gap seawall. We also recognize that many piers, dock walls and other waterside properties around Toronto's harbour are not owned by TPA but by different levels of government, private owners or long-term lessees. In some instances responsibility is disputed or unclear. However, we believe that if TPA is in fact guardian and steward of the harbour, it should have taken the lead long ago in negotiating and resolving such disputes, through arbitration if necessary. TPA should also have taken a leadership role on dock wall safety equipment.

If it is within TPA's statutory mandate to carry out these leadership functions, then it has done an inadequate job. If it is not within TPA's mandate, some successor agency should be expressly given such a mandate. Someone has to take responsibility.

TPA's mandate to be financially self-sufficient may have contributed to this problem. Maintenance of the dock walls and clarifying ownership through arbitration or negotiation costs money and therefore does not advance, and in fact likely detracts from, TPA's primary statutory objective, financial self-sufficiency.

Some agency should be given responsibility for routine maintenance of the harbour including dock wall repair, safety equipment and water quality, and also larger, more long-term questions such as how access to the harbour and water can be improved and revitalized.

As a further example, TPA is now conducting a Master Planning process for BBTCA, but there is no such process for the Port. Yet there are many questions about the long term direction for the port including the 50 acre Port of Toronto site, as discussed above. A port and harbour master plan is needed.

Another minor, perhaps symbolic, example of the lack of interest of TPA in managing the harbour: there is an informal Toronto Harbour Liaison Committee. Harbour users such as tour boat operators, kayakers, Toronto Islanders, the Police Marine Unit, the marine fire department, TPA's harbourmaster, water taxi operators and so on come together about once a month to

exchange information and talk about routine matters concerning the administration of the harbour. It is a useful and necessary committee because the boat traffic on Toronto harbour is steadily increasing.

One might think that TPA, as “steward” of the harbour would run and provide administrative support to such a committee, perhaps by keeping minutes or providing a meeting room. In fact, the committee is run by Harbourfront. Our perception is that this is because someone must fill the vacuum created by TPA’s non-involvement and general lack of interest in consultation on the day-to-day business of running the harbour.

We would like to make clear we do not blame the staff of TPA for these lapses. These problems flow from the perverse incentives and inappropriate mandate inherent in TPA’s outdated statutory structure.

What should be done? Waterfront Toronto is a model

By contrast with TPA, WT has a governance model that has proved effective and has been widely praised. WT may be a model for reform of TPA in some ways.

The contrast between TPA and WT is striking. WT is co-owned by the three levels of government. It is directly accountable to all three. It has a long-standing culture of transparency and consultation, established over fifteen years. There seems to be consensus WT has done an excellent job of pushing forward the complex revitalization project. Funded in part by the sale of public land around the harbour, WT has been audited by its government co-owners 18 times since 2003 as to value-for-money and its effectiveness in delivering services. (We are not aware of any such external financial review of TPA). WT directors’ meetings are public. We believe WT has succeeded as an agency because of this high level of transparency.

WT, previously the Waterfront Regeneration Trust, was originally set up specifically to break through the inertia and paralysis caused by many government agency land-owners working at cross-purposes on the waterfront, with conflicting agendas and little or no public accountability. However only some parts of the waterfront were put in WT’s sphere when it was set up. TPA’s lands were excluded.

The objective of any reform of TPA should be to introduce transparency and accountability, similar to WT. TPA’s operations including the airport, and big decisions about the future of its properties, should harmonize with and if possible provide economic support for the revitalization effort on the Toronto waterfront, to which all three levels of government are deeply committed.

We recognize that the reforms suggested above require either substantial amendment of the *CMA*, or alternatively transferring TPA's landholdings and responsibilities to a new organization, perhaps modelled on WT.

Conclusion

In the context of Toronto's waterfront and the TPA, our response to questions 12 and 13 are:

Q12. Does the current governance model enable Canada Port Authorities to effectively manage their assets, support economic development and deliver their regulatory duties?

No, not in the context of Toronto. TPA is selling off legacy land holdings without consultation, and generally operates without regard to the context in which it operates. Its contribution to economic development is doubtful because its land, particularly its almost unused port lands, can likely be put to more economically and socially valuable uses related to recreation and tourism.

Q13. What models or approaches could be pursued to ensure Canada Port Authorities are more responsive to user and local perspectives?

A different, more accountable and transparent model is required, perhaps modelled on Waterfront Toronto, an agency that has worked well due its transparency, accountability, and co-ordinated ownership by three levels of government.