



Speaking Notes by Helen Burstyn, C.M., Chair of the Waterfront Toronto Board Regarding the Auditor General's Report

**Board of Directors Meeting
December 6, 2018**

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 only permitted a limited response in the report. In the interest of transparency and accountability, we are also providing additional information on our website in regard to several issues raised in the report.

The three key issue areas considered by the report are:

- Structural barriers impacting Waterfront Toronto's ability to achieve its mandate
- Our ability to deliver projects on budget
- The Quayside project

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:

1. 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.

2. 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, I 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:

With respect to Quayside, the key issue areas considered by the report are:

- Our procurement process;
- Scope of the Quayside project; and

- The fact that several potential innovations that have been discussed by Sidewalk Labs may not have sufficient federal and provincial policy frameworks to support them

Quayside Procurement

The report took issue with:

- meetings that took place between Waterfront Toronto and other potential bidders prior to the issuing of the RFP
- our sharing of information with potential bidders prior to the issuing of the RFP
- the length of the RFP process

Let me begin by stating clearly that we have carefully reviewed the reports comments and that management remains confident that Waterfront Toronto's procurement processes and more specifically, the RFP used for the Quayside project, were fair, open, and competitive.

Before I get into the specifics, let me tell you that we asked respected former Justice Coulter Osborne, who acted as the Fairness Commissioner for the Quayside procurement, to review and report on the issues we've been discussing with the Auditor over the past month that were ultimately included in the report.

His letter, a copy of which I am passing around states:

"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."

We also asked lawyers at Dentons LLP to review our procurement process with respect to the Quayside project, and they 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."

Let me now address the specific issues discussed in the report:

Meetings with interested parties prior to the RFP – a practice known to procurement specialists as “market soundings”:

The report raised questions about meetings that took place prior to the Quayside RFP suggesting that the practice creates a “risk” of unfair advantage.

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.

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 report discusses the fact Quayside’s 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.”

Alignment with government policy frameworks:

The report recommends that Waterfront Toronto work more closely with federal and provincial government departments on potential ideas being considered by Sidewalk that maybe outside existing policy frameworks set out by those departments.

We agree.

While no plan for Quayside has been received or evaluated. 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 remain committed to broad public engagement on a proposed plan for Quayside, which includes consulting with all potentially impacted government departments and regulatory agencies.

With respect to the protection of personal information, I want to make clear that during the course of this audit, Waterfront Toronto repeatedly confirmed both verbally and in writing with the Auditor General 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, to require that data cannot be used for advertising purposes, and that Privacy by Design be embedded in all solutions proposed by Sidewalk Labs.