



**Office of the Auditor General: Investigation into
the Giver 150 Playground at Mooney's Bay Park,
Tabled at Audit Committee – June 22, 2017**



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Executive Summary

Purpose and Rationale

On May 13, 2016, the City issued a News Release, which formally announced that an Agreement had been signed with Sinking Ship Entertainment (SSE), a Toronto-based company, to construct a new Playground (the “Playground” or “the Giver 150 Playground”) at Mooney’s Bay Park in Ottawa. Following the News Release, several media reports raised questions regarding the Playground. These reports focused on concerns regarding a perceived lack of transparency and public consultation associated with the project. The media attention raised questions about whether City staff followed policies and protocols in the period leading up to the Agreement with SSE.

In July 2016, the OAG commenced an investigation (“the Investigation”) into the Giver 150 Playground in response to reports received directly by the Auditor General and via the City’s Fraud and Waste Hotline. The objective of the Investigation was to identify the extent to which the City complied and demonstrated compliance with relevant by-laws, policies, procedures and other applicable requirements during the period leading up to the signing of the Agreement with SSE. This report details the results of the OAG’s investigation including findings and recommendations.

Findings

The Investigation concluded that the City did not breach any relevant by-laws, policies, procedures or other applicable requirements¹. However, the Investigation highlighted a gap insofar as the City had no clear intake and evaluation mechanism in place to engage in relationships like the one proposed by SSE². It also identifies several weaknesses and lessons learned based on the extent to which the City demonstrated the principles of transparency, accountability and due process. These include weaknesses related to the documentation of due diligence and related decision-making,

¹ The Investigation concluded that the arrangement with SSE reflected a partnership rather than a procurement. As such, procurement-related requirements including the Ethical Purchasing Policy and the Ottawa Option Policy were not applicable.

² We note that, in 2012, the City of Toronto developed a policy which establishes the guidelines, criteria and delegated authorities associated with relationships like the one proposed by SSE to the City of Ottawa.

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as well as the process for identifying a potential need for public engagement / consultation. This report includes a number of recommendations that address opportunities for the City to avoid or mitigate reputational risk or other implications should situations like this one occur in the future.

Conclusion

Based on the Investigation conducted into the Giver 150 Playground, the City was not in breach of any relevant by-laws, policies, procedures or other applicable requirements. However, the actions and decisions taken in the preparation and approval of the Agreement with SSE did not fully reflect the principles of transparency, accountability and due process.

In addition to supporting Council's November 2016 direction that City staff assess the need for additional policy guidance regarding arrangements like the one with SSE, this Investigation highlights the importance of ensuring that effective tools and protocols are leveraged when City staff are dealing with situations of a potentially high-profile nature.

Recommendations and Responses

The investigation resulted in a few recommendations, as listed below. Please refer to the attached investigation report for additional details.

Recommendation #1

That the City implement documentation protocols, such as documentation of meetings agendas/minutes/records of decisions, that must be activated in potentially high-profile (e.g. sensitive or higher risk) situations.

Management response:

Management agrees with this recommendation.

Under both the City's *Records Management Policy* and Procedures as well as the *Records Retention and Disposition By-law*, being By-law No. 2003-527, as amended, all staff have an obligation to know and apply the *Policy* and the *By-law*. In doing so, staff are required to identify, classify and capture Official Business Records in one of the City's two record management systems.

The City's existing *Records Management Policy* defines two types of records: Official Business Records ("OBRs") and Temporary Records. Official Business Records document work-related decisions and actions. OBRs show:

- what happened,
- when,
- who was involved,
- what was decided or recommended and by whom.

OBRs provide evidence of City decisions and decision-making, policies, procedures, services, operations (including transactions, activities, etc.).

Increased awareness of the importance of maintaining records and, in particular, the responsibility of institutions to accurately document key decisions ('Duty to Document') has been prompted by recent changes to the *Municipal Freedom of Information and Protection of Privacy Act* along with calls for further policy changes from information officers such as the Information and Privacy Commissioner of Ontario. In response, existing records management policies and practices have been reviewed and updated. Similarly, several communications have been circulated to senior management, management and to all City staff over the past two years reinforcing that records are essential for good government and serve as evidence of the decisions that have been made. In addition, the

Employee Code of Conduct expressly emphasizes the importance of keeping “records of our important decisions” in the sections on Transparency and Respect.

The City Clerk and Solicitor will continue to monitor relevant legislation and the Duty to Document requirement with respect to any subsequent municipal best practices. Any necessary changes or new guidelines will be brought forward as part of Information Management's annual report to Committee and Council.

Finally, and following on direction from the Senior Leadership Team, the Office of the City Clerk and Solicitor is conducting a corporate-wide communications plan in an effort to consistently reinforce the value of information and employee's records management responsibilities, including the duty to document and record important decisions. The plan will coincide with the release of additional Municipal Duty to Document guidance by the Information and Privacy Commissioner of Ontario expected in early Q4 2017. Further, the City Clerk and Solicitor will look at incorporating training and guidance related to Duty to Document as part of ongoing training for all City employees.

Recommendation #2

That the City implement a protocol whereby formal consideration of accountability and transparency mechanisms is considered in potentially high-profile (e.g. sensitive or higher risk) situations.

Management response:

Management agrees with this recommendation.

Council-approved accountability and transparency measures that are currently in place include the hiring of a Lobbyist Registrar to oversee the City's Lobbyist Registry. The purpose of the Lobbyist Registry is to provide accountability and transparency around lobbying activities that serve to benefit an individual or group with a business or financial interest. The Registry does this by providing a public, searchable record of who is lobbying whom, on what subject matter and when the lobbying is occurring.

In response to the Lobbyist Registrar's 2016 Inquiry Report on the Playground Partnership Project at Mooney's Bay Park, an amendment was made to the Transparency section in the *Employee Code of Conduct* to expressly require staff to notify lobbyists of their obligation to record their activity in the Registry.

In keeping with the City's *Accountability and Transparency Policy*, each delegation of authority to staff is accompanied by the obligation for the individual exercising

the authority to report such exercise out, on a routine basis, usually to the appropriate Standing Committee or Council. Generally, use of delegated authority by departments is reported on an annual basis to the appropriate Standing Committee in the form of Information Previously Distributed (“IPD”). Furthermore, the *Delegation of Authority By-law*, includes a process for obtaining Ward Councillor concurrence and reporting on delegated authority that was established based on the Site Plan approval process. The Site Plan approval process provides steps from pre-application to final decision on a site plan, including a step at which the Ward Councillor may lift delegated authority if unsatisfied with conditions of approval outlined in staff’s Delegated Authority Report.

As part of the 2018-2022 Council Governance Review, staff of the Office of the City Clerk and Solicitor will lead a review of service area-specific processes for consultation and decision-making within delegated authority. The review will seek to identify gaps in existing processes with respect to consultation and reporting, as well as to identify potentially high-profile situations for which the development of such processes would be beneficial. This report will be tabled during the current Term of Council and considered by the 2018-2022 Term of Council. Management will develop training for all new managers and new employees on requirements, as set out broadly in the *Delegation of Powers Policy* and as documented in such service area-specific processes that will provide for enhanced accountability and transparency of decision-making. This training will be incorporated into existing modules following approval of the 2018-2022 Council Governance Review Report.

Recommendation #3

That the City develop a tool and/or protocol that would serve to help identify situations where public engagement should be considered in potentially high-profile (e.g. sensitive or higher risk) situations.

Management response:

Management agrees with this recommendation.

Residents expect to be engaged by the City on a wide variety of subjects, programs and services. City Council recognized the importance of improving public engagement outcomes by approving the Public Engagement Strategy in December 2013.

As approved by Council, the Public Engagement Strategy is required for use by all City staff as the overarching framework and approach for public engagement. The

Strategy assists staff to determine when engagement is appropriate, how engagement should be designed and implemented, who should participate, and provides tools and training that should be used for different engagement activities.

The Public Engagement Strategy guidelines identify a number of reasons to engage the public. Contained within the Strategy is a checklist to assist staff in determining if public consultation is required. The criteria for public engagement is as follows:

1. A legislated requirement to consult the public.
2. Council direction to consult the public.
3. Public input required to help define or influence the final outcome.

The Public Engagement Strategy includes a toolkit to support public consultation. As each department is ultimately responsible for public consultation, the tools were designed to be flexible and responsive to staff and departmental needs, offering each department the ability to tailor the tools to their service area. Public Engagement training is also available through the Learning Centre for City staff.

Evaluation and continuous improvement is an important component of the Public Engagement Strategy. Components of the evaluation include monitoring the implementation of the Public Engagement Strategy and developing an evaluation of the effectiveness of the tools and guidelines.

Working with departments, management will communicate the importance of using the Public Engagement Strategy and encourage staff to participate in the training courses. This will be done through internal communications and by reaching out directly to each departmental Business Support Services branch. This initial communication to staff is planned for early June 2017. Following this, the internal communications group will develop a communications plan for the Public Engagement Strategy in late Q2/Q3 with implementation scheduled for Q3/Q4 2017.

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The detailed section of this report is available in English only and may be translated in whole or in part upon request. For more information, please contact Ines Santoro at 613-580-2424, extension 26052.

La section détaillée de ce rapport n'existe qu'en anglais et pourrait être traduite en partie ou en totalité sur demande. Renseignements : Ines Santoro, 613-580-2424, poste 26052.

Detailed Investigation Report

Introduction

In July 2016, the Office of the Auditor General (OAG) commenced an investigation related to a new Playground (the "Playground" or "the Giver 150 Playground") under construction at Mooney's Bay Park in Ottawa. Construction was completed and the Playground was officially opened to the public on November 18, 2016.

The OAG's investigation ("the Investigation") was in response to reports received directly by the Auditor General and reports received through the City's Fraud and Waste Hotline. This document details the findings and recommendations resulting from the OAG's investigation.

Background and Context

In early January 2016, the City received an unsolicited email from Sinking Ship Entertainment (SSE) outlining their interest in having the City host the site for a proposed Canada-themed playground. SSE is a Toronto-based television production company that produces several television series aimed primarily at children. One of these productions is "Giver"; a series featuring children working together to build or improve local playgrounds. The Giver series is broadcast by the Provincial Crown Corporation TVOntario (TVO). Conceived as a legacy of Canada's 150th birthday, the Giver 150 Playground was to be Canada's largest at 4,600 m². The Playground was designed in the shape of the country, with 10 play areas representing Canada's various regions.

Led by the City's Recreation, Cultural and Facility Services department, numerous discussions, reviews and negotiations concerning the proposed Playground were undertaken between January and May 2016. Topics addressed during this time included: determining the optimal site for the Playground, identifying environmental considerations, determining funding mechanisms and obtaining agreement from the

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owner of the selected site - the National Capital Commission (NCC)³. On May 13, 2016, the City issued a News Release, which formally announced that an Agreement had been signed with SSE. The Release provided some details of the Mooney's Bay Park Playground including the disclosure that the City would be investing ~\$1.0M, or 50% of the construction cost, in partnership with SSE to build the Playground.

The Recreation, Cultural and Facility Services department continued to be responsible for managing the project on behalf of the City and the department's General Manager accessed the Cash-in-Lieu Parkland fund, which includes an account reserved for "city-wide" projects, to finance the City's share of the Playground construction costs. In addition to the City's share of construction costs, building the Playground also required that the City undertake site preparation activities which included removal of trees and creosote contaminated soil (attributed to condemned wooden bridges previously scheduled for removal), preparation of a base that would accommodate construction and installation of benches, garbage containers and drains. These site preparation costs, incurred by the City's Infrastructure Services department (ISD), amounted to \$341,000 of which \$200,000⁴ had been previously included as part of the 2016 Capital Budget. The difference was funded by the Recreation, Cultural and Facility Services department from existing capital accounts.

Following the May 13 News Release, several media reports raised questions regarding the Playground. These reports focused on concerns regarding a perceived lack of transparency and public consultation associated with the project. The media attention raised questions about whether City staff followed policies and protocols in the period leading up to the Agreement with SSE. During the ensuing weeks, several reports from the public were received directly by the Auditor General as were reports received through the City's Fraud and Waste Hotline. Because of these reports, the OAG commenced an investigation of the Playground under the Fraud and Waste Policy. The Investigation commenced in July 2016. At that time, site preparation work had been completed and construction of the Playground structures was underway. Also in July, the City's Integrity Commissioner and Lobbyist Registrar released his report on the

³ The City leases the site of the Playground within Mooney's Bay Park from the NCC.

⁴ Prior to the Giver 150 Project, \$200,000 had been estimated for "bridge removal and replacement" at the park. ISD agreed to take on site preparation in lieu of bridge replacement for the three out of four bridges that were situated on the proposed playground site.

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"Playground Partnership Project at Mooney's Bay Park", which was focused on possible lobbying activities conducted by SSE.

Objective of OAG Investigation

The objective of this Investigation was to identify the extent to which the City complied and demonstrated compliance with relevant by-laws, policies, procedures and other applicable requirements during the period leading up to the signing of the Agreement with SSE. The Investigation was designed to seek, identify and assess potential implications of any instances of non-compliance with applicable requirements.

Readers are cautioned about the important distinction between an investigation and an audit. Audits are designed to provide a high level of assurance over its findings and will typically feature rigorous testing and analysis. While this investigation was conducted in a systematic and professional manner as described under "Approach and Methodology" below, the extent of activities undertaken by the OAG was relatively narrow compared to an audit.

Scope

The scope of this Investigation included an examination of compliance with relevant City by-laws, policies, procedures and other applicable requirements from the date of initial contact with SSE in early January 2016 to the signing of the Agreement and News Release in mid-May 2016. As part of the Investigation, the OAG took steps to identify which by-laws, policies, procedures or other requirements might be relevant to the situation and sequence of events during the indicated timeframe.

For greater clarity, the Investigation did not include any examination of:

- SSE's compliance with the Agreement or the City's efforts to monitor/ensure this compliance;
- The role or actions of non-City employees or elected officials; nor
- Any matter that had already been subject to investigation by the City's Integrity Commissioner and Lobbyist Registrar.

Approach and Methodology

The approach to this Investigation was designed to efficiently identify the possible existence of non-compliance with relevant City requirements. Through interviews (see Appendix C), document review, research and analysis, the OAG gathered evidence with a view to answering the following questions:

- What was the sequence of events leading to the eventual signing of an Agreement with SSE to build the Playground (see Appendix B)?
- What were the major steps and activities, who was involved and what decisions were taken?
- What are the applicable by-laws, policies, procedures or other requirements associated with the events and activities during the scope period of January – May 2016 (see Appendix A)?

This Investigation was conducted during the period from August 2016 to October 2016, inclusive. The OAG briefed the General Manager of Recreation, Cultural and Facility Services on initial observations for validation purposes in early December 2016 and on the final investigation results and recommendations in January 2017.

Detailed Findings and Recommendations

This section provides details on the key findings resulting from the Investigation. Where applicable, recommendations are also provided.

A. Compliance with City By-laws, Policies and Procedures

Examination of documents and interviews with City management led the identification of several formal requirements related to accountability, authorities, procurement and programs that could be relevant to the situation and sequence of events under this investigation. One of the early conclusions of the Investigation was that the origination and ongoing relationship between the City and SSE did not clearly fall under the scope of established policies or other guidance. This lack of clarity was partly a result of the atypical, based on the City's history with similar projects, nature of the situation and because the precise nature of the relationship was not clearly established by either party at the outset. The relationship between the parties evolved as discussions and negotiations advanced.

While the situation raised by the SSE proposal was unique to the City, City staff agree that there is at least some likelihood that it could happen again. As such, the

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Investigation highlighted a scope gap within the City's policy framework. Specifically, there was no clear intake and evaluation mechanism in place for the City to engage in relationships like the one proposed by SSE. In November 2016, this policy gap, which was raised by the City's Integrity Commissioner and Lobbyist Registrar's July 2016 Report, was underscored when Council directed staff to review and make recommendations regarding the potential need for a policy and to establish guidelines and criteria regarding proposals for partnership opportunities that involve donations to the City⁵ for community benefits.

Notwithstanding the identified policy gap, the OAG expected that its Investigation would yield evidence to demonstrate that the events, actions and decisions made in the process of approving the Agreement with SSE reflected the principles and requirements set out in the existing framework of by-laws, policies and procedures. Based on the results of the Investigation, no evidence was identified that indicated the City was in breach of existing requirements. However, the Investigation did identify several weaknesses and lessons learned in how the City demonstrated the principles of transparency, accountability and due process. These findings reveal opportunities for the City to avoid or mitigate reputational risk or other implications should situations like this occur in the future. Details of these findings are grouped by policy in the sections below.

A.1 Accountability and Transparency Policy

In 2007, the City implemented an *Accountability and Transparency Policy* (A&T policy) to provide guidance to staff with an aim to ensuring that municipal matters are approached in an accountable and transparent manner. This policy emphasizes the importance of openness, ethics, performance outcomes and fiscal responsibility. Key definitions provided in the A&T policy are as follows:

⁵ On November 9, 2016, City Council directed staff "...to review how a policy with respect to donations to the City of Ottawa for community benefits would complement the City's existing regulatory tools and policies, including the Delegation of Authority By-law, the Public Engagement Strategy and the Accountability and Transparency Policy, and report back to the Finance and Economic Development Committee and Council no later than Q2 2017 with recommendations and a draft policy for consideration."

“Accountability – *The principle that the municipality is obligated to demonstrate and take responsibility for its actions, decisions and policies and that it is answerable to the public at large.*

Transparency – *The principle that the municipality will conduct its business in an accessible, clear and visible manner and that its activities are open to examination by its stakeholders.”*

The A&T Policy is designed to complement existing by-laws, policies, procedures and practices. It is based on seven stated principles:

1. Decision-making will be open and transparent.
2. Municipal operations will be conducted in an ethical and accountable manner.
3. Financial resources and physical infrastructure will be managed in an efficient and effective manner.
4. Municipal information will be accessible so that it is consistent with legislative requirements.
5. Inquiries, concerns and complaints will be responded to in a timely manner.
6. Financial oversight, service standards and performance reporting and all other accountability documents will be made available and accessible, in language that the public can understand, to increase the opportunity for public scrutiny and involvement in municipal operations.
7. Every new delegation of power or authority will have a corresponding accountability mechanism.

As further described below, the Investigation identified weaknesses and lessons learned regarding the extent to which the City demonstrated appropriate consideration of these principles, particularly principle #1.

The Investigation expected to find documented evidence to demonstrate **open and transparent decision-making**, even in the absence of specific policy requirements associated with the relationship with SSE and the progression of events that culminated in the signing of the Agreement.

As per the timeline in Appendix B, City staff worked both internally and with SSE from the outset to find a path that would support a “partnership” with SSE to construct the Playground. While it became apparent that the City had no existing intake and evaluation mechanism which fit the arrangement, discussions, negotiations and analysis continued. Prior to the May 2016 News Release, several key decisions were made. These included decisions regarding the City’s preferred site for the Playground, the City’s agreement to contribute 50% of the construction costs, leveraging cash-in-lieu of

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parkland funds to finance the City's share of construction costs and committing to site preparation that ultimately cost \$341,000.

As noted above, the Investigation did not find evidence that these decisions were made in contravention of specific requirements. However, the OAG raised concerns with City staff that decisions appeared to lack the openness and transparency required by the A&T Policy. In response to these observations, management said that the lack of transparency of decision-making, and of public engagement, prior to the May 13 News Release was necessary given the complexities associated with the NCC's involvement. Notwithstanding the issuance of the News Release, City staff still did not take steps to inform Council or the Public of site preparation costs, including the budget overrun on these costs, nor the value of donated labour⁶ (volunteer and professional) forming part of SSE's financial contribution. In the OAG's view, such disclosures would have demonstrated a better alignment with the spirit of the A&T Policy.

In addition to the lack of transparency, the Investigation found weaknesses in the City's process to ensure the extent of formal documentation and communication related to this matter was commensurate with the significance and potential for public interest in the project. Some examples where transparency and openness of decision-making could have been improved had there been formal structure and documentation include the following:

- Determination of the substance of the relationship (e.g. as a donation, partnership, procurement, grant, etc.);
- Consideration of the appropriateness of value for money for construction and pre-construction work and alignment with budget priorities;
- Records of consultations and other discussions between Recreation, Cultural and Facility Services and other functional areas including: Purchasing, Finance, Planning, Legal, and the City Manager's Office;
- Review and treatment of SSE's application under the Community Major Capital Project Program (CPMPP) considering timelines and funding amounts that were incompatible with that Program; and

⁶ The value of donated volunteer labour was calculated by City staff as \$36,448. The value of donated professional labour is estimated as \$60,000, although the amount is to be confirmed/validated by the City prior to project close-out.

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- Cash-in-Lieu of Parkland (CILP) fund
 - Rationale for the proposed site being classified as “city-wide”.
 - Rationale as the most appropriate mechanism to fund the project.

Weak or missing documentation in support of appropriate due diligence and formal decision-making, even within the context of the NCC's over-riding authority regarding approval of the Playground, increases the risk that the City would not be able to demonstrate a level of accountability and transparency that the public reasonably expects. As a result, the City could be exposed to reputational damage and additional costs related to information requests, audits, investigations, etc.

Recommendation #1

That the City implement documentation protocols, such as documentation of meetings agendas/minutes/records of decisions, that must be activated in potentially high-profile (e.g. sensitive or higher risk) situations.

Management response:

Management agrees with this recommendation.

Under both the City's *Records Management Policy* and Procedures as well as the *Records Retention and Disposition By-law*, being By-law No. 2003-527, as amended, all staff have an obligation to know and apply the *Policy* and the *By-law*. In doing so, staff are required to identify, classify and capture Official Business Records in one of the City's two record management systems.

The City's existing *Records Management Policy* defines two types of records: Official Business Records (“OBRs”) and Temporary Records. Official Business Records document work-related decisions and actions. OBRs show:

- what happened,
- when,
- who was involved,
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OBRs provide evidence of City decisions and decision-making, policies, procedures, services, operations (including transactions, activities, etc.).

Increased awareness of the importance of maintaining records and, in particular, the responsibility of institutions to accurately document key decisions (‘Duty to Document’) has been prompted by recent changes to the *Municipal Freedom of Information and Protection of Privacy Act* along with calls for further policy

changes from information officers such as the Information and Privacy Commissioner of Ontario. In response, existing records management policies and practices have been reviewed and updated. Similarly, several communications have been circulated to senior management, management and to all City staff over the past two years reinforcing that records are essential for good government and serve as evidence of the decisions that have been made. In addition, the *Employee Code of Conduct* expressly emphasizes the importance of keeping “records of our important decisions” in the sections on Transparency and Respect.

The City Clerk and Solicitor will continue to monitor relevant legislation and the Duty to Document requirement with respect to any subsequent municipal best practices. Any necessary changes or new guidelines will be brought forward as part of Information Management's annual report to Committee and Council.

Finally, and following on direction from the Senior Leadership Team, the Office of the City Clerk and Solicitor is conducting a corporate-wide communications plan in an effort to consistently reinforce the value of information and employee's records management responsibilities, including the duty to document and record important decisions. The plan will coincide with the release of additional Municipal Duty to Document guidance by the Information and Privacy Commissioner of Ontario expected in early Q4 2017. Further, the City Clerk and Solicitor will look at incorporating training and guidance related to Duty to Document as part of ongoing training for all City employees.

A.2 Delegation of Powers Policy

The *Cash-in-Lieu of Parkland Funds* policy states:

“City Council...Delegates authority to the General Managers of Parks, Recreation and Cultural Services and Infrastructure Services to access and use cash-in-lieu funds for any eligible project associated with an existing park or for the creation of a new park that is not associated with the development review process.”

This authority was clearly respected in the case of the Giver 150 Playground. However, requirement #5 of the City's Delegation of Powers Policy requires that “every delegation

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of a power or duty [of Council] shall be accompanied by a corresponding accountability and transparency mechanism⁷".

The Investigation revealed that the authority exercised, lacked formal consideration of the corresponding accountability mechanism. Specifically, given the atypical nature and reputational risk associated with the project, it would be reasonable for the City to have chosen a more formal accountability and transparency mechanism in the case of the Giver 150 Playground. This would have included documenting the assessment of how and when City Council should be consulted or otherwise engaged on this matter.

Recommendation #2

That the City implement a protocol whereby formal consideration of accountability and transparency mechanisms is considered in potentially high-profile (e.g. sensitive or higher risk) situations.

Management response:

Management agrees with this recommendation.

Council-approved accountability and transparency measures that are currently in place include the hiring of a Lobbyist Registrar to oversee the City's Lobbyist Registry. The purpose of the Lobbyist Registry is to provide accountability and transparency around lobbying activities that serve to benefit an individual or group with a business or financial interest. The Registry does this by providing a public, searchable record of who is lobbying whom, on what subject matter and when the lobbying is occurring.

In response to the Lobbyist Registrar's 2016 Inquiry Report on the Playground Partnership Project at Mooney's Bay Park, an amendment was made to the Transparency section in the *Employee Code of Conduct* to expressly require staff to notify lobbyists of their obligation to record their activity in the Registry.

In keeping with the City's *Accountability and Transparency Policy*, each delegation of authority to staff is accompanied by the obligation for the individual exercising the authority to report such exercise out, on a routine basis, usually to the appropriate Standing Committee or Council. Generally, use of delegated authority by departments is reported on an annual basis to the appropriate Standing Committee in the form of Information Previously Distributed ("IPD"). Furthermore,

⁷ City of Ottawa - *Delegation of Powers Policy*

the *Delegation of Authority By-law*, includes a process for obtaining Ward Councillor concurrence and reporting on delegated authority that was established based on the Site Plan approval process. The Site Plan approval process provides steps from pre-application to final decision on a site plan, including a step at which the Ward Councillor may lift delegated authority if unsatisfied with conditions of approval outlined in staff's Delegated Authority Report.

As part of the 2018-2022 Council Governance Review, staff of the Office of the City Clerk and Solicitor will lead a review of service area-specific processes for consultation and decision-making within delegated authority. The review will seek to identify gaps in existing processes with respect to consultation and reporting, as well as to identify potentially high-profile situations for which the development of such processes would be beneficial. This report will be tabled during the current Term of Council and considered by the 2018-2022 Term of Council. Management will develop training for all new managers and new employees on requirements, as set out broadly in the *Delegation of Powers Policy* and as documented in such service area-specific processes that will provide for enhanced accountability and transparency of decision-making. This training will be incorporated into existing modules following approval of the 2018-2022 Council Governance Review Report.

B. Other Considerations – Public Consultation

Given the City's commitment to employing an open, consultative and collaborative approach, the Investigation expected to observe that the preparation and approval of the Agreement would be carried out in accordance with the principles outlined in the 2013 Public Engagement Strategy (PES), and evidence would demonstrate that formal discussions were held with relevant stakeholders in the process. The PES was developed to demonstrate the City's commitment to being accountable and transparent to taxpayers in an open manner, and this was identified as a Strategic Priority in Council's 2011-2014 Strategic Plan. The overarching objective of the PES is to support an improved and consistent approach to public engagement across the City.

In response to the concerns raised during this Investigation regarding consultation, City staff noted the existence of a Redevelopment Plan for Mooney's Bay Park that was approved in 2000, but that had not been fully implemented due to budget constraints. This Plan included a "school age play structure" and was subject to various consultation techniques including community advisory committee, public meetings and user surveys prior to approval. While this Plan does demonstrate a robust consultation process, its

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age (16 years) and the smaller scale⁸ of the playground proposed at the time do not adequately demonstrate consideration of PES principles.

While the Investigation confirmed that the lack of public consultation before signing the Agreement with SSE was a direct reflection of the necessary preservation of confidentiality until NCC approval was confirmed, it also identified a process weakness. Specifically, there was little/no evidence regarding the formal consideration of when/how/if the PES would be engaged in this situation. The Investigation found no evidence indicating that the guiding principles and activities outlined in the PES were considered or demonstrated in the actions and decisions taken. Given the circumstances of the arrangement with SSE and the highly-visible nature of the project, it would have been prudent to consider the likelihood of media/public backlash and to have taken proactive steps to consider the applicability of the PES.

Recommendation #3

That the City develop a tool and/or protocol that would serve to help identify situations where public engagement should be considered in potentially high-profile (e.g. sensitive or higher risk) situations.

Management response:

Management agrees with this recommendation.

Residents expect to be engaged by the City on a wide variety of subjects, programs and services. City Council recognized the importance of improving public engagement outcomes by approving the Public Engagement Strategy in December 2013.

As approved by Council, the Public Engagement Strategy is required for use by all City staff as the overarching framework and approach for public engagement. The Strategy assists staff to determine when engagement is appropriate, how engagement should be designed and implemented, who should participate, and provides tools and training that should be used for different engagement activities.

The Public Engagement Strategy guidelines identify a number of reasons to engage the public. Contained within the Strategy is a checklist to assist staff in

⁸ The proposed play structure was part of a group of elements (including a multi-purpose path, kids' spray pad and minor work to accommodate a tobogganing hill) that was budgeted at \$225k (or about \$300k in 2016 \$).

determining if public consultation is required. The criteria for public engagement is as follows:

1. A legislated requirement to consult the public.
2. Council direction to consult the public.
3. Public input required to help define or influence the final outcome.

The Public Engagement Strategy includes a toolkit to support public consultation. As each department is ultimately responsible for public consultation, the tools were designed to be flexible and responsive to staff and departmental needs, offering each department the ability to tailor the tools to their service area. Public Engagement training is also available through the Learning Centre for City staff.

Evaluation and continuous improvement is an important component of the Public Engagement Strategy. Components of the evaluation include monitoring the implementation of the Public Engagement Strategy and developing an evaluation of the effectiveness of the tools and guidelines.

Working with departments, management will communicate the importance of using the Public Engagement Strategy and encourage staff to participate in the training courses. This will be done through internal communications and by reaching out directly to each departmental Business Support Services branch. This initial communication to staff is planned for early June 2017. Following this, the internal communications group will develop a communications plan for the Public Engagement Strategy in late Q2/Q3 with implementation scheduled for Q3/Q4 2017.

Conclusion

Based on the Investigation conducted into the Giver 150 Playground, the City was not in breach of any relevant by-laws, policies, procedures or other applicable requirements. However, the actions and decisions taken in the preparation and approval of the Agreement with SSE did not fully reflect the principles of transparency, accountability and due process. We encourage and support Council's recent direction that City staff review existing policies related to donations.

APPENDIX A – Relevant Policies, Directives and Guidance

The following documents were identified as containing potentially relevant requirements and were therefore examined and assessed during this investigation:

1. Accountability and Transparency Policy (A&T Policy)
2. Delegation of Powers Policy/Delegation of Authority By-Law
3. Public Engagement Strategy (PES)
4. Purchasing By-law and Ottawa Option Policy
5. Grant & Contribution Policy and Procedures
6. Community Major Capital Project Program (CPMPP)
7. Cash in Lieu of Parkland Policy (CILP)

Investigation into the Giver 150 Playground at Mooney's Bay Park

APPENDIX B – High Level Timeline

The graphic below provides an overview of the timeline and progression of events leading up to the commencement of construction of the Giver 150.

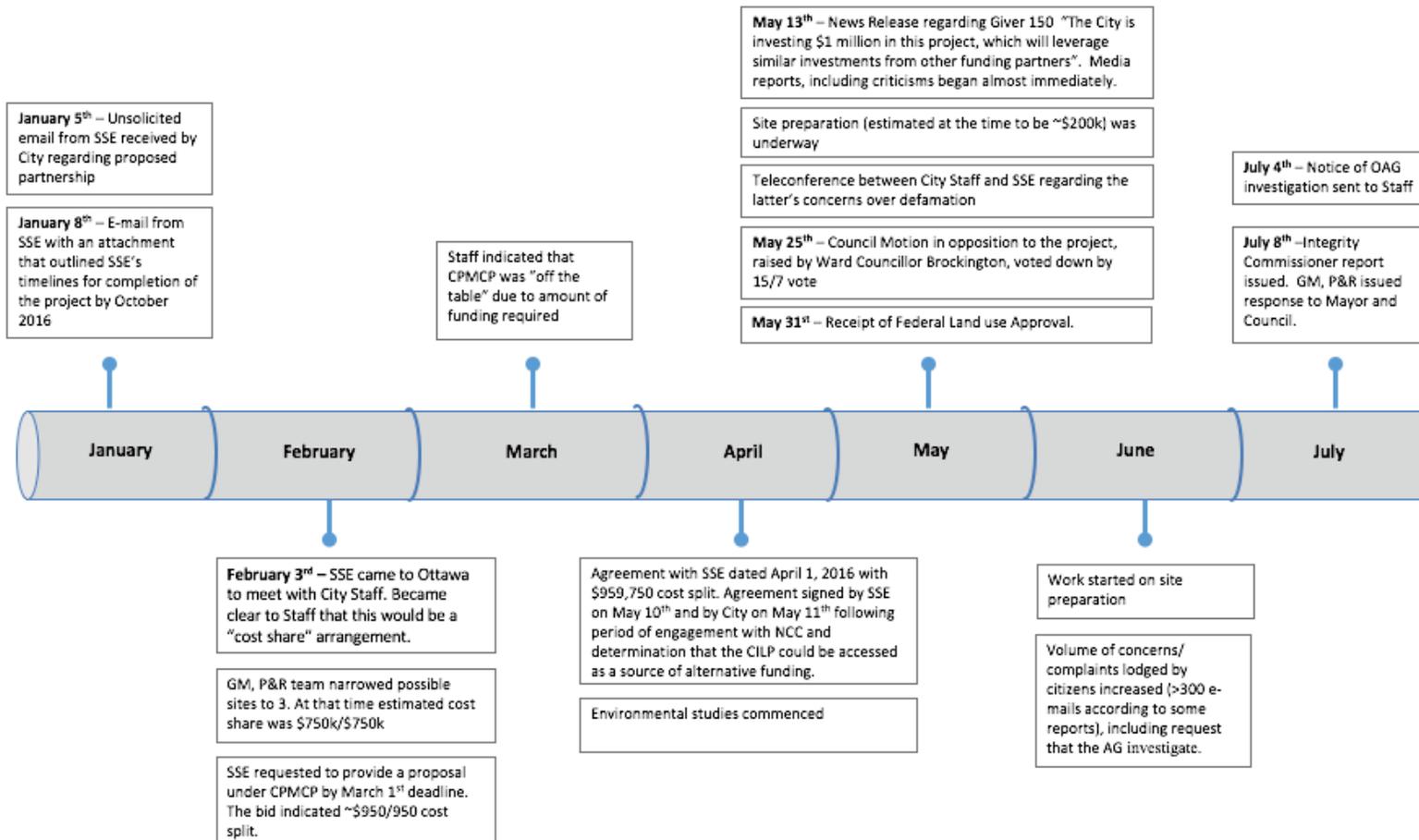


Figure 1: High Level Timeline

APPENDIX C – List of Interviewees

Dan Chenier – General Manager, Recreation, Cultural and Facility Services

Kevin Wherry (and representatives from his team) – Manager, Parks and Facilities Planning

John Moser – Special Advisor to the General Manager, Planning, Infrastructure and Economic Development

Rick O'Connor – City Clerk and Solicitor

Marian Simulik – General Manager, Corporate Services and City Treasurer

Will McDonald – Chief Procurement Officer