



## CITY CLERK

**Clause embodied in Report No. 8 of the Policy and Finance Committee, as adopted by the Council of the City of Toronto at its meeting held on July 22, 23 and 24, 2003.**

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### **Hummingbird Centre for the Performing Arts - CityCentre Proposal (Ward 28 - Toronto Centre-Rosedale)**

*(City Council on July 22, 23 and 24, 2003, adopted this Clause, without amendment.)*

**The Policy and Finance Committee recommends the adoption of the report (June 25, 2003) from the Chief Administrative Officer.**

The Policy and Finance Committee reports, for the information of Council, having received the confidential report (June 25, 2003) from the Chief Administrative Officer respecting the "Estimated Capital Costs of the Proposed Redevelopment at No. 1 Front Street East (Hummingbird Centre for the Performing Arts) and the Estimated Value of the Available Site Density."

**The Policy and Finance Committee submits the following report (June 25, 2003) from the Chief Administrative Officer:**

Purpose:

To report and make recommendations on a proposal, requested by Council, from the Board of Directors of the Hummingbird Centre for the Performing Arts to enable the Centre to remain self-sustaining following the expected departure of the Canadian Opera Company and the National Ballet Company from the Centre in 2006.

Financial Implications and Impact Statement:

The recommendations in this report have no immediate financial implications.

The Board is requesting that the City of Toronto support its proposed redevelopment project through the transfer of the land value associated with the current residential density rights on the site, so that the Board can realize its value as a contribution to the capital costs of the project. This contribution would be in lieu of a cash contribution to the capital budget for the redevelopment. A separate, confidential report provides a preliminary estimate of the value of the available residential site density for reference.

Given the nature of the site and its location and the magnitude and significance of this potential redevelopment, a formal appraisal report will be undertaken by a qualified independent third party real estate consultant, prior to consideration of any formal development proposals. The Board's request is a matter that requires additional information and, based on that information, further examination.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement.

Recommendations:

It is recommended that:

- (1) Council approve, in principle, the concept set out in the attached redevelopment proposal entitled “The New World of Toronto at CityCentre” from the Board of Directors of the Hummingbird Centre for the Performing Arts (the Board) and further described in this report;
- (2) Council approve, in principle, subject to Recommendations Nos. (3), (4) and (5), the concept of a funding strategy for this redevelopment which uses land value in lieu of cash as the City’s capital contribution;
- (3) the Board be requested to continue to refine its redevelopment proposal and be required to prepare a comprehensive Business Plan for submission to the Chief Administrative Officer by December 31, 2003, such Business Plan to include but not be limited to:
  - (a) a detailed market analysis for each programming component in the plan and for the Centre overall;
  - (b) detailed operating budget projections for the years 2004 through 2010 indicating how the Hummingbird Centre intends to remain self-sustaining in its new configuration;
  - (c) multi-year capital budget projections over the term of the redevelopment indicating that there will be no need for any further contribution from the City in order to successfully complete the project as proposed;
  - (d) updated plans for the proposed development component of the project;
  - (e) information to assist in the resolution of any planning and real estate legal issues raised by the City Solicitor relating to the proposed development component of the project as it develops; and
  - (f) responses to the issues listed in the Preliminary Planning Assessment (Appendix 2);
- (4) the Board be required to submit to the Chief Administrative Officer by December 31, 2003, a status report on its fundraising efforts, along with evidence in a form satisfactory to the Chief Financial Officer and Treasurer that the Board’s private-sector and other public-sector fundraising targets will be met, and a status report on its community and stakeholder consultations;

- (5) the Chief Administrative Officer subsequently report on the Board's Business Plan and status reports to Council, through the Policy and Finance Committee, and recommend a strategy in response to them, including, if appropriate, a recommended implementation process for the execution of the Business Plan and recommended changes to governance elements, if necessary;
- (6) the motion from the Toronto Preservation Board meeting of May 15, 2003 expressing support in principle for the proposal be referred to the Commissioner of Urban Development Services in order that the conditions expressed therein be addressed through the regular planning application process;
- (7) the City negotiate and enter into an agreement with the Board amending the September, 25, 1968, operating agreement between the parties to provide for the establishment and operation of a dedicated donations reserve fund by the Board for the purposes of financing capital improvements and extraordinary programming opportunities, in accordance with and subject to the considerations set out in this report;
- (8) such amending agreement contain terms and conditions in the interest of the City, satisfactory to the Chief Administrative Officer and the Chief Financial Officer and Treasurer, and, in addition, be in a form satisfactory to the City Solicitor;
- (9) the Chief Administrative Officer be authorized to execute such amending agreement on behalf of the City; and
- (10) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background:

City Council, at its meeting of October 29, 30 and 31, 2002, appointed three City Councillors and nine citizens to the Board of Directors of the Hummingbird Centre for the Performing Arts (the Board) for the balance of the current term of Council. At that time, Council directed that a business plan for the future of the Hummingbird Centre for the Performing Arts (the Centre) and any redevelopment proposal which the Board wished to make should be submitted to the City Chief Administrative Officer within 18 months.

In February 2003, the Board submitted a proposal entitled "The New World of Toronto at City Centre", along with support material. A copy of the proposal is attached to this report as Appendix 1. This staff report presents a consolidated, inter-departmental response to the Board's submission.

Comments:

One Front Street East, on the south-east corner of Front and Yonge Streets, is the site of the Hummingbird Centre for the Performing Arts. The Centre is owned by the City and operated, managed and maintained by the Board of Directors of the Hummingbird Centre for the Performing Arts, a special purpose corporation established and continued by statute. Since 1961,

the Centre has been the performance home of the Canadian Opera Company (COC) and, since 1964, of the National Ballet of Canada (NBC) as well, showcasing the talents of these two premiere performing arts organizations.

In 2002, the Canadian Opera Company announced that, after many years of hard work, it was on track for building a permanent Opera House in Toronto. Shortly afterwards, the National Ballet of Canada announced it would be joining the COC at its new home upon its completion in 2006.

By statute, the City is entitled to any surplus resulting from the Board's activities and is responsible for any deficit the Board incurs. Previous studies have concluded that the Centre, as it is currently configured and operated, would certainly operate at a deficit without at least one of these two "anchor" tenants. Facing this scenario, the City might choose to demolish the existing structure and make the site available to the highest bidder for wholesale redevelopment, generating the highest financial return to the City.

However, the architectural and historical significance of the building, designed by Peter Dickinson and constructed in 1959/60 in the modernist style, discourages any serious consideration of a wholesale redevelopment of the site. The building's specific heritage attributes include a monumental cantilevered canopy identifying the principal entrance to the facility and covering the passenger drop-off area, a single-storey entrance block, mixing glazed sections with blocks of black granite, and Canadian artist R. York Wilson' mural, entitled "The Seven Lively Arts".

Another significant factor supporting the retention of the facility is the unique nature of the theatre space housed in the Centre. At 3,200 seats, it is Canada's largest "soft seat" theatre, and the only one capable of accommodating certain large-scale productions. The theatre also has a history of presenting live performance from beyond North America and Europe, thereby reaching audiences from across Toronto's multi-ethnic communities. The cultural life of Toronto is enhanced by its existence, as it forms part of the diverse range of cultural facilities in a City known world-wide as a vibrant centre for the arts.

Together with a desire to maintain and enhance the vibrancy of the immediate district and the vitality of the downtown core, these factors drive the City to seek a creative solution involving a re-invention of the Hummingbird Centre for the years beyond 2006.

Although there are a number of outstanding Council directives for the City to review some of the other cultural facilities in its portfolio, the 2006 deadline faced by the Board makes it necessary to make this a first consideration. This in no way precludes continued work on either a broad review of the City's cultural facilities or individual theatre reviews. In fact, plans are underway for a review of the City's three main theatres in 2003-2004, and the Board's efforts to remain sustainable beyond 2006 will both be considered in the context of that review and inform it.

#### The Proposal:

The Board's proposal, "The New World of Toronto at CityCentre" (Appendix 1), puts forward a compelling re-imagining of the site and its programs. It proposes to augment the performing arts elements that have to date defined the Centre with multi-disciplinary programming, with an

added emphasis on an interactive, technology-based experience. The focus of the proposal is a celebration of the creativity and the cultures of the City of Toronto, making it attractive to both tourists and residents, and offers opportunities for innovative partnerships with local educational and cultural institutions.

New elements include:

- (1) CityLink – an interactive theatre featuring daytime programming promoting the City of Toronto, its diverse cultures and neighbourhoods and many attractions, aimed at visitors to, as well as residents of, the City of Toronto. A concierge service will offer maps, guides, reservations and tickets to attractions across the city. In the evenings the space will be programmed with cabaret-style showcases of Toronto talent. CityLink will be housed in a new 250-seat theatre to be located at ground level at the corner of Yonge and Front Streets;
- (2) ArtsLab – a high-tech, inter-active exploration of the “seven lively arts”, reflecting the theme of the historic R. York Wilson mural in the lobby of the Centre. This three-story space will be constructed above a glassed-in atrium on the west side of the building, and will offer live events and displays, interactive hands-on exhibits, and workshop space for artists on site. The seven modules of visual arts, drama, music, dance, architecture, literature and the moving image will be reflected in exhibits and activities illuminating how different cultures, all represented in the population of Toronto, embrace and explore these forms to express themselves;
- (3) TV Dinner Theatre and Multimedia Room – a 250-seat themed restaurant, TV Dinner Theatre will present media programming, including television shows and movies from around the world and short films, animation and experimental new media from Toronto’s creative community. There will be a food and beverage service available offering patrons a unique dining experience. Complementing the TV Dinner Theatre and integrated with the food and beverage service will be a 100-station, interactive, multi-user computer environment featuring the efforts of artists working in this new storytelling medium; and
- (4) CityFest – this element of the proposal involves the closing of Scott Street, which runs between Front Street East and The Esplanade, between the Hummingbird Centre and its neighbour to the east, the St. Lawrence Centre for the Arts. This new plaza would be a venue for celebrations of the food, crafts, entertainment and sports of Toronto’s many communities.

The new program components, along with enhanced conference and banquet facilities, are designed to generate sufficient revenues to support continued programming in the mainstage theatre without the two “anchor” tenants, maintaining the self-sufficiency of the Centre overall. Gross operating revenues for the Centre under the new business model are projected to be in excess of \$25.0 million beginning in 2007, as compared to current annual operating revenues of about \$13.0 million.

Without a revitalization of the Centre, the facility will not be able to achieve a positive budget position after the COC and the NBC move out in 2006, and the City will be responsible for the

deficits it incurs. As is noted in the following section, the proposed CityCentre concept, while lacking in certain necessary detail, is deemed to have merit from culture, heritage, tourism, economic development and planning perspectives. This report therefore recommends that Council approve, in principle, the concept of CityCentre as proposed in order that the Board can continue its project planning and initiate its fundraising efforts.

The site redevelopment plan for CityCentre provides for construction of the additional facilities needed to house the new programming components. The Board proposes to raise funds for this capital project through a combination of philanthropic donations, naming sponsorships, foundation and government support, including a non-cash contribution from the City of Toronto relating to the land value of the residential development rights applicable to the site.

The underlying zoning of the Hummingbird Centre site allows for commercial and/or residential uses, and permits an as-of-right buildable floor area of 59,430 square metres (639,420 square feet). The revitalized Centre, including the proposed additions, would use 17,419 square metres (187,504 square feet), leaving substantial excess density rights available to the site. The site redevelopment plan includes a 48-storey residential tower, in conformity to the available density but requiring a zoning amendment to the height limit, on the east side of the site, with parking facilities to be located under Scott Street.

The Board is requesting that the City of Toronto support the project through the transfer to the Board of the land value associated with the current residential density rights on the site, so that the Board can realize its value. This transfer is requested in lieu of a cash contribution from the City towards the capital costs of the reconfiguration of the Hummingbird Centre and the development of the facilities to house new programming components.

The merit of the Board's site redevelopment proposal, including the development component, is that it simultaneously protects an important civic asset and provides the Board with the means to remain self-sufficient in the future, with no cash capital contribution required from the City. Therefore, this report recommends that Council approve, in principle, a funding strategy using land value in lieu of cash to contribute to this project's capital costs.

However, as this report goes on to note, there is a need for further detail on the legal, operating and capital components of this proposal to be submitted to the City for review in order to engender full confidence in its success. This report therefore recommends that consideration of the requested contribution be made conditional upon receipt and approval by Council of a comprehensive Business Plan, as defined later in this report, and evidence that the private-sector and other public-sector fundraising targets will be met.

A separate confidential report provides, for reference, a preliminary estimate of the value of the available residential density for the site at No. 1 Front Street East, and how it relates to the overall capital budget for the project.

Construction for the project would be conducted in such a way as to accommodate the performances and the patrons of the Canadian Opera Company and the National Ballet of Canada through to their departure at the end of their 2005/06 seasons.

## Responses from City Departments:

City staff from a number of departments have reviewed the Board's proposal and additional support material, including preliminary consultants' studies. A summary of staff comments is provided below. While the overall response is positive, the current proposal is deemed to lack detail in certain areas and requires refinement of both the programming and the capital plans. There is a need for clarification of the means by which the plans will be achieved and the processes to be followed for these purposes. As is elaborated upon later in this report, it is recommended that the Board submit a detailed Business Plan, which is to include but is not limited to responses to the specific issues identified in this report, to the Chief Administrative Officer by December 31, 2003.

### EDCT (Culture):

#### Cultural Affairs:

Staff of the Culture Division have reviewed the proposal and additional support material, specifically with respect to the cultural program components. The Culture Division supports the retention of the facility and, in particular, of the 3,200-seat theatre. As noted previously, this theatre is the largest "soft seat" theatre in Canada, and is unique in the City's inventory of cultural facilities. It would be considered a great loss if this space were no longer available to celebrate Toronto's diverse culture through its international programming or to accommodate large-scale productions.

The Culture Division also supports the thrust of the current proposal. Unlike earlier proposals to simply re-configure the main auditorium, this proposal takes the Hummingbird Centre beyond the performing arts, and would result in a truly unique cultural facility, with new opportunities for expansion into the areas of arts education and cultural tourism.

Council recently adopted a Culture Plan for the City of Toronto to help guide the City's cultural development over the next decade. Recommendation No. (10) of the Culture Plan states: "The City should develop partnerships with the private and non-profit sectors and with other levels of government to foster culture through renovated, expanded and new cultural facilities". The Board's proposal, which will involve private and public sector partners in support of the renovation and expansion of the facility, is both apt and timely.

The Culture Division's support for the proposal is qualified, however, by the need to see much more detailed substantiation of the operational viability of the Centre overall, specifically given the challenges that will be faced in increasing the programming of the mainstage theatre while launching new program elements such as ArtsLab. The Division also noted a concern that the impact of the new mix of components and the shift in the focus of the Centre has not been fully explored. Accordingly, a detailed market analysis for each of the program components, including the additional programming needed for the mainstage theatre, and for the Centre overall, must form part of the required Business Plan. In addition, the Business Plan must show, through detailed operating budget projections, how the Board intends to minimize risk and ensure the self-sufficiency of the Centre.

#### Preservation:

Staff of Heritage Preservation Services reviewed the proposal along with additional, detailed architectural plans and are satisfied that the plans preserve the key heritage features of the building, including the listed features of the canopy and the driveway at the Front Street entrance. It was noted that the intent to give prominence to the R. York Wilson mural in the lobby, another listed feature of the facility, and to use its theme (the Seven Lively Arts) to animate the programming in the ArtsLab, has the full support of the artist's widow.

At its meeting on May 15, 2003, the Toronto Preservation Board heard a presentation from representatives of the Hummingbird Centre and adopted the motion, which accompanies this report. The motion expresses support, in principle, for the redevelopment proposal, while setting out a number of conditions for that support. The conditions, not unusual in the case of a listed heritage property such as this one, are, however, premature at this time. It is therefore recommended that the Policy and Finance Committee refer the motion from the Toronto Preservation Board to the Commissioner of Urban Development Services in order that the conditions expressed therein be addressed through the regular planning application process.

#### EDCT (Tourism):

Staff of the Tourism unit found the proposal to be consistent with the City's overall tourism strategies in that it will create a new and innovative visitor attraction. They cite the location as a strategic one, providing opportunities to link cultural and heritage tourism with waterfront visitor experiences. The location is convenient for visitors as it is near subway stations, hotels and other attractions.

Staff have suggested to the Board that they continue their discussions with Tourism Toronto and independent tourist information centres along Front Street to clarify roles and responsibilities with respect to the provision of information and booking services, as proposed for the CityLink component of the proposal. It was also noted that there is a need to review a more detailed conceptual plan and financial analysis of some of the new business ventures. This information is to form part of the required Business Plan.

The establishment of a tourist-focused service facility at this site does not preclude future establishment of an official tourist "gateway" in the future, at this or some other site.

#### EDCT (Economic Development):

Staff in Economic Development noted that the proposal complements a number of initiatives currently underway to revitalize the St. Lawrence Market neighbourhood. Staff solicited comments on the proposal from the St. Lawrence Market Neighbourhood Business Improvement Area (BIA) and received a very positive response lauding the development of not only a new tourist centre, but also the incorporation of a multi-disciplinary, educative arts component, and the Centre's proposed focus on a celebration of the city's multicultural character.

The BIA recognizes the economic realities of site development and considers the proposed condominium tower, which forms part of the redevelopment plan to be a reasonable response to



those realities. The BIA supports keeping the property in the City's portfolio of facilities, and hopes that local area residents and commercial interests can play a role in the Centre's future operations.

Staff in Economic Development have asked to see a more in-depth market assessment with respect to both need and pricing for the various components in the proposal. This information is to form part of the required Business Plan.

Finance (Budget Services):

Staff in Budget Services reviewed the Board's proposal along with the consultants' studies and draft operating budget projections. The review raised a number of questions relating to assumptions underlying the Board's revenue projections. Specifically, concerns were expressed about the projected budget growth from the Centre's current operations to the proposed multi-venue structure, the market viability of the mainstage theatre, and the potential impacts of the new programming format on other City-owned theatre facilities, in particular, the nearby St. Lawrence Centre for the Arts.

Accordingly, the Board is requested to submit a detailed market analysis for each programming component and detailed operating budget projections for the years 2004 through 2010. This information is to form part of the required Business Plan.

UDS (Planning), WES (Transportation):

The proposal along with preliminary drawings and site-plans have been reviewed by staff in the Urban Development Services Department and the Works and Emergency Services Department. There is general consensus that the site development proposal has merit from a community planning perspective and that, with the exception of issues relating to Scott Street, there are no major impediments to the development as proposed.

Both the closing of Scott Street, a key element to the CityFest component of the proposal, and the construction of parking facilities under that street, are problematic. The street closing must be reviewed and assessed in accordance with the provisions of both the *Municipal Act* and the *Environmental Assessment Act*. A closing would also require a transportation study to address the impact on the adjacent road network based on the redistribution of traffic. In this case, the operations and function of Scott Lane and the implications on loading operations for existing developments along Front Street East and the Esplanade would also need to be assessed. Should it be determined that the closure of Scott Street is not feasible, the Centre could still apply to close the street for events on an as-needed basis.

More significantly, Scott Street contains considerable underground infrastructure and numerous utilities, including a sanitary pumping station and forcemain sewer connecting to the Low Level Interceptor on Front Street East that would have to be reconfigured to accommodate the proposed parking facilities. A technical analysis would be required to determine if relocation of the sanitary pumping station is at all feasible.

Accordingly, matters, including detailed cost estimates, relating to any plans for Scott Street, will need to be addressed in the required Business Plan.

The height of the residential tower as proposed would require a zoning amendment and should therefore be re-considered. In addition, the height and mass of the tower as proposed is an issue in terms of shadow casting. There are a number of other, less problematic, planning and transportation issues that will also need to be addressed as part of the rezoning and site plan process. Appendix 2 presents a summary of these issues, responses to which are to form part of the required Business Plan.

Should Council grant approval in principle to the concept set out in the proposal, the Board intends to issue a Request for Expressions of Interest (REI) as a means to fully develop the plans for the proposed development as per the available density. The REI will allow for consideration of, but not be limited to, a residential tower as currently proposed and commented on in this report. This process will assist in the response to the issues listed in Appendix 2. The revised development plans are to be included with the required Business Plan and will be subject to further review at that time.

The St. Lawrence neighbourhood is a cohesive and community-minded mix of residences and businesses. There are a number of associations and organizations representing various locations and interests, including heritage interests. The Board has initiated consultations with local area residents and businesses, and has shown a willingness to respond to concerns as they are raised. It is expected that the Board will continue to involve the community as it refines its plans. It is recommended that the Business Plan to be submitted to the Chief Administrative Officer by December 31, 2003, be accompanied by a status report on community and stakeholder consultations undertaken by the Board. These consultations are in addition to the public process required for planning and rezoning approvals.

#### Legal Services:

Staff in Municipal Law, Planning and Development Law and Real Estate Law have considered various aspects of the Board's proposal and have raised a number of issues, relating primarily to the capital redevelopment aspect of the proposal, and, specifically, the proposed development component of the project.

Issues raised include concerns relating to the transfer of the available density, the legal relationships with developers that may be required, real estate transactions which might be required vis-à-vis necessary planning applications, and requirements (statutory and otherwise) concerning the disposition of City property.

It is premature to attempt to resolve these issues at this point in time, given the preliminary nature of the proposed development component of the proposal. An updated plan for the development component of the project will be developed through the issuance by the Board of a Request for Expressions of Interest, and will form part of the required Business Plan. The Board will keep the City Solicitor informed as the plans progress and it is recommended that the Business Plan clearly address any planning and real estate legal issues raised by the City Solicitor pertaining to the proposed development component as it develops.

Another issue raised by Legal Services involves the corporate capacity and power of the Board, whose corporate purpose is to operate, manage and maintain the Centre. At issue is the capacity to acquire and hold an interest in the building or the site and to enter into design and construction contracts for the redevelopment of the site. As is noted later in this report, governance issues such as these will be considered as part of the Chief Administrative Officer's review of the required Business Plan, and any necessary changes to governance elements will be recommended in the Chief Administrative Officer's report to Council on the Plan.

#### Dedicated Donations Reserve Fund:

The Board of Directors of the Hummingbird Centre for the Performing Arts is a corporation established by the *Municipality of Metropolitan Toronto Act*, and continued by the *City of Toronto Act, 1997, No. 2*. In 1981, the Board was granted tax-exempt status as a registered charity under the *Income Tax Act (Canada)*. As such, the Board is permitted to issue charitable tax receipts for income tax purposes to corporate and other sponsors in certain circumstances for donations and contributions received by the Board. This has allowed the Board to benefit from the generosity of numerous donors through the years.

In 1996, the Board secured its largest single donation to that point. This was the donation, which resulted in the renaming of the facility to the Hummingbird Centre for the Performing Arts. In that instance, because the donation was made in relation to the naming of a City-owned building, the City receipted and held the donated funds on behalf of the Board. While it is possible for the City to maintain a donations reserve fund for the new Hummingbird Centre proposal, bearing in mind the magnitude of the current proposal, consideration should be given to the perception of donors regarding the future uses of their donations. Whether it is a purely philanthropic donation, or a donation with naming rights associated with it, it is unlikely that an individual or corporate donor would wish to see donations held by any entity other than the intended recipient.

Few City special purpose bodies are permitted by the City to manage their own funds, but the Hummingbird Centre is one of them. The Board's ability to manage its own funds is, of course, subject to any limitations imposed by the *City of Toronto Act, 1997, No. 2* and, as a result of that Act, any general policies established by Council, by by-law, for the operation and management of the Hummingbird Centre and by any agreements between the Board and the City, such as the September 25, 1968, operating agreement.

In 1983, Metropolitan Toronto Council passed a By-law No. 153-83, which authorized the Board of Management of the then O'Keefe Centre to "establish and operate an endowment fund for the purposes of financing capital improvements and extraordinary programme opportunities". The rationale was that the proposed purposes of the fund, which included building extensions and additions in the pursuit of new cultural and business opportunities, were within the Board's statutory powers.

The report recommending the enactment of By-law No. 153-83 included a companion recommendation that the existing operating agreement be amended to authorize the establishment and operation of such an endowment fund. Because the Metropolitan Corporation was (as the City is now) entitled to any surpluses resulting from the operations of the Board and responsible for any deficits incurred by it, the fund was to be structured in such a way as to keep

it separate and apart from the operations of the Board. The amending agreement was to be in a form satisfactory to the then Metropolitan Solicitor, Metropolitan Auditor and Metropolitan Commissioner of Finance. The files indicate that the parties were not able to come to an agreement on the necessary amendments, though the reasons why are not clear, and therefore the Board of Management of the O'Keefe Centre, later the Board of Directors of the Hummingbird Centre, has not been able to proceed with the establishment and operation of its own endowment fund.

By-law No. 153-83 is still in force, and is now a by-law of the City and applicable to the Board of Directors of the Hummingbird Centre for the Performing Arts.

The report recommending the enactment of By-law No. 153-83 did not state what it meant by an endowment fund. Since there is no discussion in the report about "living off of the interest" as would normally be the case with an endowment fund and since what the report describes is a mechanism for the Board to hold funds raised for capital projects, which funds are normally held by the City, a donations reserve fund may have been intended. Accordingly, in the absence of any other information clarifying this, a donations reserve fund should be considered as having been intended. In light of the Board's fundraising effort as described in this report, this fund should be treated as a dedicated donations reserve fund.

An endowment fund or, more appropriately, a dedicated reserve fund, could provide a means by which the Board would be able to hold donations raised for the purpose of financing the Board's redevelopment proposal. Staff will continue to investigate this possibility, including what effect, if any, such a fund might have on the Board's tax-exempt status as a registered charity. In view of the time constraints associated with the Board's redevelopment proposal, staff are now seeking the authority to negotiate the amending agreement required for the establishment and operation of such a fund and, if negotiations are successful, the additional authority to have the City enter into the resulting amending agreement with the Board and to have the Chief Administrative Officer execute it on behalf of the City. This assumes that there are no current legal impediments to establishing and operating a fund for capital improvement and extraordinary programming opportunities financing purposes, including using the fund for the purpose of financing the capital improvements required to implement the Board's redevelopment proposal.

Accordingly, it is recommended that the City negotiate and enter into an agreement with the Board of Directors of the Hummingbird Centre for the Performing Arts amending the September 25, 1968, operating agreement between the parties to provide for the establishment and operation of a dedicated donations reserve fund by the Board for the purposes of financing capital improvements and extraordinary programming opportunities in accordance with and subject to the considerations set out in this report. Further, it is recommended that such amending agreement contain terms and conditions in the interests of the City satisfactory to the Chief Administrative Officer and Chief Financial Officer and Treasurer and, in addition, be in a form satisfactory to the City Solicitor. Finally, it is recommended that the Chief Administrative Officer be authorized to execute such an amending agreement on behalf of the City.

Unless and until the required amending agreement can be successfully negotiated by the parties, any donations or contributions received by the Board for the purpose of financing the Board's redevelopment proposal will be held by the City and dedicated to that purpose.

#### Governance:

The current governance structure of the Board is that of a corporation established and continued by statute. As a result of Clause No. 1 of Report No. 14 of the Policy and Finance Committee, adopted (as amended) by Council on October 29, 30 and 31, 2002, the Board is now composed of three City Councillors and nine citizens appointed by Council. While the City is the owner of the land and building that comprises the Hummingbird Centre for the Performing Arts, the Board is responsible for the operation, management and maintenance of the Centre as a theatre and auditorium and as a centre for meetings, receptions and displays. This is subject to any general policies established by Council, by by-law, for the operation and management of the Centre. The City is entitled to any surplus resulting from the Board's activities and is responsible for any deficit the Board incurs.

The Chief Administrative Officer's staff will review the appropriateness of this governance structure in view of the redevelopment proposal and in the context of the Business Plan to be submitted by the Board. Specifically, staff will consider whether other governance options might not be better suited to the new business model embodied in the proposal and, if so, whether present legislation permits them or whether special legislation is required. The capacity of the Board to acquire and hold an interest in the building or the site and to enter into design and construction contracts for material changes to the building is an issue. Asset ownership is also an issue with regard to authority to assign naming rights. It is recommended that, when the Chief Administrative Officer reports to Council on the Board's Business Plan and status reports, that the report also make recommendations on changes to governance elements, if necessary.

#### Next Steps:

Through this first inter-departmental review of the redevelopment proposal submitted by the Board in February 2003, it has become clear that the City requires further detail on a number of aspects of the plan, including but not limited to:

- (a) a detailed market analysis for each programming component in the plan, and for the Centre overall;
- (b) detailed operating budget projections for the years 2004 through 2010 indicating how the Hummingbird Centre intends to remain self-sustaining in its new configuration;
- (c) multi-year capital budget projections over the term of the redevelopment indicating that there will be no need for any further contribution from the City in order to successfully complete the project as proposed;
- (d) updated plans the proposed development component of the project;

- (e) information to assist in the resolution of any planning and real estate legal issues raised by the City Solicitor relating to the proposed development component of the project as it develops; and
- (f) responses to the issues listed in the Preliminary Planning Assessment (Appendix 2);

It is therefore recommended that the Board continue to refine its proposal and prepare a comprehensive Business Plan to be submitted to the Chief Administrative Officer for review by December 31, 2003. It is also recommended that, along with the Business Plan, the Board submit, by the same date, a status report on its fundraising efforts including evidence in a form satisfactory to the Chief Financial Officer and Treasurer that the Board's private-sector and other public-sector fundraising targets will be met. The Board is also requested to submit, by the same date, a status report on community consultations.

The Chief Administrative Officer will review the Business Plan and status reports and report to Council, through the Policy and Finance Committee, with a consolidated staff response and, if the Business Plan is deemed supportable, a recommended implementation process for the execution of the Plan.

#### Conclusions:

The redevelopment proposal put forward by the Board of Directors of the Hummingbird Centre for the Performing Arts presents exciting possibilities for sustaining this important civic asset as it approaches a new era, post-ballet and opera, in 2006. By re-inventing the site as a celebration of the best that Toronto and its many cultures have to offer, the Hummingbird Centre will appeal to both residents and tourists, and will contribute to the revitalization of both the downtown core in general and, specifically, the St. Lawrence Market district.

Approval, in principle, by City Council of the concept set out in this proposal, and of the concept of the use of land value as a capital contribution to the project, will allow the Board to move forward with refining its redevelopment plans and initiating its fundraising campaign.

Staff from Culture, Tourism, Economic Development, City Planning, Transportation, Technical Services, Legal Services, Facilities and Real Estate and Finance have been consulted in the drafting of this report.

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List of Attachments:

Appendix 1 – The New World of Toronto at City Centre

Appendix 2 – Preliminary Planning Assessment – Issues to be Addressed

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Appendix 2

Preliminary Planning Assessment – Issues to be Addressed

- (1) Height and Mass – an on-site tower of the proposed height and mass will cast significant afternoon shadows to the east. In order to avoid this, the tower height should be reduced, and the mass should be reduced to have a floor plate not exceeding 750 square metres;

Notes:

- (i) Both the in-force and the proposed Official Plans contain policies that may permit the City to allow a limited amount of extra floor area on a site beyond the as-of-right density limit as an incentive to conserve heritage buildings.
- (ii) Excess density not used on site could be considered for transfer off site provided an appropriate built form occurs on the recipient site;
- (2) Street Closure – the closure of Scott Street poses issues regarding the redistribution of traffic as well as the operation and function of Scott Lane. The street closure also runs counter to existing design policies that favour keeping streets lively and open to both cars and pedestrians. Therefore, the urban plaza as proposed should be re-examined. In any case, attention should be paid to enhancing the existing streetscape for pedestrians by improving its amenities. Should the Board wish to pursue the closure of Scott Street, the transportation impacts would have to be studied and the Scott Lane issue addressed;
- (3) Scott Street Utility Impacts – the location of the proposed underground parking facility directly impacts the Scott Street sanitary pumping station, a number of municipal services and other utilities. A detailed assessment is required to determine if these infrastructure elements can be accommodated within the proposal or must be relocated. If relocation is proposed, the feasibility of the overall servicing network must be addressed;
- (4) Parking – if on-site parking is not possible, a nearby site (within 300 metres) is required to accommodate parking for the residential component of the development. In addition, an assessment of the appropriate amount of parking for visitors to the Centre needs to be undertaken;
- (5) Traffic Impacts – an analysis needs to be undertaken for critical intersections in the area and at the driveway(s) serving any on-site parking. Measures to mitigate impacts of this traffic should be identified;

- (6) Passenger Pick-up and Drop-off – it will be necessary to estimate the passenger pick-up and drop-off activity for both private automobiles and taxis, and how this activity will be accommodated;
- (7) Charter Buses – an assessment is required to estimate the charter bus/school bus activity generated by the programs and facilities and how the pick-up/drop-off activity will be accommodated. It is also necessary to prepare a strategy that identifies where these buses will be parked during visits and what communication systems will be implemented to advise drivers when to return to the site;
- (8) Loading and Garbage Collection – a loading assessment is required to determine the number and type of loading spaces required to serve this development for both deliveries and garbage collection. It will be necessary to examine opportunities to develop loading facilities that would permit trucks to enter and exit the public streets in a forward motion;
- (9) Servicing – a comprehensive site servicing study will be required to determine how the new components of the site can be serviced. The location of the servicing will be dependent on the closing of Scott Street; and
- (10) Heritage – the details of heritage conservation of the site will have to be finalized with Preservation Services staff.

**The Policy and Finance Committee also submits the following communication (May 15, 2003) from the City Clerk:**

Recommendations :

The Toronto Preservation Board recommends to the Policy and Finance Committee, in principle, the restoration, rehabilitation and redevelopment of the property at 1 Front Street East (O'Keefe Centre, now Hummingbird Centre for the Performing Arts), subject to the following conditions:

- (1) City Council state its intention to designate the property at 1 Front Street East (O'Keefe Centre, now Hummingbird Centre for the Performing Arts) under Part IV of the *Ontario Heritage Act*;
- (2) the alterations to the heritage building known as the O'Keefe Centre, now the Hummingbird Centre for the Performing Arts, 1 Front Street East, substantially as shown schematically in the drawings prepared by Kuwabara Payne McKenna Blumberg Architects dated April 2003 on file with the Manager, Heritage Preservation Services, be approved in principle, subject to the applicant providing:
  - (a) final plans for this development:
    - (i) conforming to the April 2003 drawings;
    - (ii) being sympathetic to the heritage elements to be retained;



- (iii) being subject to further review by the Toronto Preservation Board; and
    - (iv) being to the satisfaction of the Manager, Heritage Preservation Services; and
  - (b) an Undertaking to the City prior to any planning approvals for the site agreeing to:
    - (i) protect the heritage features of this site, subject to such alterations as may be permitted in the final approved plans;
    - (ii) prepare a Conservation Plan for the heritage building, and
    - (iii) provide financial security to implement the conservation plan; and
- (3) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

The Toronto Preservation Board, at its meeting held on May 15, 2003, received an in-camera briefing by the following persons on the Hummingbird Centre for the Performing Arts:

- Ms. Debra Lary, Senior Corporate Management and Policy Consultant, Governance Structure and Corporate Performance, Chief Administrator's Office;
- Mr. Dan Brambilla, General Manager and CEO, Hummingbird Centre for the Performing Arts;
- Mr. Thomas Payne, KPMB Architects; and
- Mr. David Jesson, Associate, KPMB Architects.

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The Policy and Finance Committee reports, for the information of Council, having also had before it the following material which was forwarded to all Members of Council with the July 10, 2003, agenda of the Policy and Finance Committee copies of which are also on file in the office of the City Clerk, City Hall:

- Appendix 1 attached to the report (June 25, 2003) from the Chief Administrative Officer, entitled "The New World of Toronto at City Centre"; and
- (June 25, 2003) confidential report, entitled "Estimated Capital Costs of the Proposed Redevelopment at No. 1 Front Street East (Hummingbird Centre for the Performing Arts) and the Estimated Value of the Available Site Density - Toronto Centre-Rosedale (Ward 28)".

The following persons appeared before the Policy and Finance Committee in connection with the foregoing matter:

- Mr. Dan Brambilla, CEO, Hummingbird Centre for the Performing Arts;
- Councillor Anne Johnston, Vice-Chair, Hummingbird Centre for the Performing Arts;  
and
- Councillor David Miller, Parkdale-High Park.

(Mayor Lastman declared his interest in the foregoing matter in that his wife owns a unit in the immediate vicinity.)

*(City Council at its meeting held on July 22, 23 and 24, 2003, had before it, during consideration of the foregoing Clause, a confidential report (June 25, 2003) from the Chief Administrative Officer, such report to remain confidential in its entirety, in accordance with the provisions of the Municipal Act, having regard that it concerns matters related to the security of property of the municipality.)*

*(Mayor Lastman, at the meeting of Council held on July 22, 23 and 24, 2003, declared an interest in the foregoing Clause, in that his wife owns a condominium in the immediate vicinity.)*