TORONTO CITY CLERK

Consolidated Clause in Policy and Finance Committee Report 8, which was considered by City Council on September 28, 29 and 30, 2005.

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Proposed Transaction between the Hummingbird Centre and Castlepoint Development

City Council on September 28, 29 and 30, 2005, amended this Clause by:

(1) amending the recommendations of the Policy and Finance Committee as follows:

(a) revising Recommendation (2)(e) to now read as follows:

"(2)(e) that staff be authorized to negotiate all aspects of the contingency being Option 3(B), including but not limited to the length of the lease and details and options for the early termination of the lease and staff ensure that, in the report to the December Council meeting, the potential mitigation of risks associated with the City's interests in the implementation of Option 3(B) is addressed;";

(b) inserting in Recommendation (2)(l), after the words "City staff", the words "in conjunction with HC", so that Recommendation (2)(l) now reads as follows:

"(2)(l) authority be granted to City staff, in conjunction with HC, to negotiate a sponsorship agreement with any naming sponsor, and taking into account the City's Sign By-law, the terms of such agreement be brought back to Council for approval and in order that all necessary steps to change the name of the Theatre and the Board be taken, including any required By-law amendments;"; and

(c) adding the following new Recommendations (2)(p), (q) and (r):

"(2)(p) authority be granted to the City and HC to jointly retain Borden Ladner Gervais to provide legal services in respect of the proposed redevelopment project, in accordance with the fee schedule attached as Schedule 'A'; and

(q) authority be granted to the City and HC to jointly retain PriceWaterhouseCoopers to conduct the due diligence review of Castlepoint Realty Partners Limited and its principals and to provide any other such advice and assistance as is appropriate with respect to the Project in accordance with the fee schedule attached as Schedule 'B'; and

(r) funds from the Hummingbird Centre Capital Improvement Reserve Fund, Cost Centre XR 3003, be used to continue to retain Borden Ladner

Gervais in the range of $60,000.00 and PriceWaterhouseCoopers in the range of $50,000.00 to $100,000.00 in accordance with Chapter 227 of the Municipal Code;";

so that the recommendations of the Policy and Finance Committee now read as follows:

"The Policy and Finance Committee recommends that:

(1) City Council pursue Options 3(A) and 3(B) of the Hummingbird Business Plan;

(2) the following steps be taken:

(a) all discussions regarding the development plan be conducted without prejudice or legal obligation on either party until and unless approved by Council, including, but not limited to, any fettering of the discretion or derogation from Council's responsibilities as a planning authority in accordance with the laws of the Province of Ontario;

(b) a portion of the property municipally known as 1 Front Street East, being part of Water Lot 1 on Plan 5A Toronto; part of Walks and Gardens on Plan 5A Toronto; part of bank of Toronto Bay lying between southeasterly limits of Walks and Gardens and northeasterly limits of Water Lots 1 and 36 on Plan 5A Toronto, shown as Parts 1 and 2 on Sketch No. PS-2005-070 (the 'Private Lands'), attached to this Appendix "A", be declared surplus to the City's requirements, with the intended manner of disposal to be by way of a sale and/or lease to Castlepoint Realty Partners Limited;

(c) all steps necessary to comply with Chapter 213 of the City of Toronto Municipal Code be taken;

(d) authority be granted to City staff in conjunction with HC to enter into negotiations with Castlepoint Realty Partners Limited of an umbrella agreement, taking into account the Proposed Memorandum which is attached as Appendix 'A' to the Business Plan, such umbrella agreement to include a greater role for the City in decision making, and as a minimum, decision making with respect to the Development Agreement, and containing the key terms of the sale of land and/or lease, naming and parking arrangements, securing a world-class quality architect such as Libeskind, compliance with Housing First Policy, and such other agreements as are necessary to protect the City's interests on terms satisfactory to the Deputy City Manager and Chief Financial Officer and the Chief Corporate Officer and in a form satisfactory to the City Solicitor, and to report back on the results of such

negotiations and all legal, operational, financial and budget considerations, by the December 2005 Council meeting;

(e) *that staff be authorized to negotiate all aspects of the contingency being Option 3(B), including but not limited to the length of the lease and details and options for the early termination of the lease and staff ensure that, in the report to the December Council meeting, the potential mitigation of risks associated with the City's interests in the implementation of Option 3(B) is addressed;*

(f) *authority be granted to request a comprehensive due diligence report regarding Castlepoint Realty Partners Limited and its principals to the satisfaction of the City Solicitor and Deputy City Manager/Chief Financial Officer;*

(g) *any structure or building proposed to be built be required to comply with the new St. Lawrence Neighbourhood Focused Community Urban Design Guidelines;*

(h) *any proposed development be required to adhere to Council's policies in respect of obtaining public benefits for increases in height and/or density;*

(i) *authority be granted to City staff in conjunction with HC to enter into negotiations with GO Transit and/or Castlepoint with respect to parking with the understanding that no above-grade parking will be requested as part of the development;*

(j) *authority be granted for a request to be made to the Province of Ontario for amending legislation, to expand the scope of the statutory purposes of the Board of Directors of HC for the Performing Arts to include (i) the authority to present theatrical performances in theatres other than HC and (ii) the authority to own and/or operate parking spaces;*

(k) *authority be granted to HC to market the naming rights to the theatre in compliance with the City's Sign By-Law including that no sign will be erected on a location on a wall facing the street and shall not be erected above the 4th floor or 15 metres above grade on the condominium tower;*

(l) *authority be granted to City staff, in conjunction with HC, to negotiate a sponsorship agreement with any naming sponsor, and taking into account the City's Sign By-law, the terms of such agreement be brought back to Council for approval and in order that all necessary steps to change the name of the Theatre and the Board be taken, including any required By-law amendments;*

(m) *authority be granted to establish a reserve fund for the purposes of extraordinary programming, as contemplated in the Business Plan;*

(n) *HC provide an interim report to Council on the status of its fundraising in March 2006;*

(o) *the appropriate City officials be authorized and directed to take the necessary action to give effect thereto;*

(p) *authority be granted to the City and HC to jointly retain Borden Ladner Gervais to provide legal services in respect of the proposed redevelopment project, in accordance with the fee schedule attached as Schedule 'A';*

(q) *authority be granted to the City and HC to jointly retain PriceWaterhouseCoopers to conduct the due diligence review of Castlepoint Realty Partners Limited and its principals and to provide any other such advice and assistance as is appropriate with respect to the Project in accordance with the fee schedule attached as Schedule 'B'; and*

(r) *funds from the Hummingbird Centre Capital Improvement Reserve Fund, Cost Centre XR 3003, be used to continue to retain Borden Ladner Gervais in the range of $60,000.00 and PriceWaterhouseCoopers in the range of $50,000.00 to $100,000.00 in accordance with Chapter 227 of the Municipal Code; and*

(3) *City staff be directed to begin the process of heritage designation of the building."; and*

(2) *adding the following:*

"That:

(a) *a Working Committee comprised of City of Toronto staff and the Hummingbird Board and its staff be established;*

(b) *the following words, which were a proposed amendment to revised Recommendation (2)(e) of the Policy and Finance Committee, be referred to the Working Group outlined in Recommendation (1), above, for a report to the December meeting of Council, through the Policy and Finance Committee:*

‘and include a review of other civic options, including but not limited to:

(i) a humanitas project;

(ii) a facility to promote environmental advancements, innovation and sustainability projects; and

(iii) a sports complex;’; and

(c) the following staff recommendations contained in the Recommendations Section of the supplementary report (September 29, 2005) from the Chief Corporate Officer, be adopted:

‘It is recommended that:

(1) Council recognize the market value of the residential component in the Part 1 lands is \$19.3 million based on a value of \$45.00/ft² of permissible GFA of 428,571 ft², with an appropriate amount to be deducted for the expected incremental construction costs to be borne by Castlepoint, and that the resultant purchase price shall in no event be less than \$15 million;

(2) Council recognize the market value for the 99-year lease on the commercial/retail component is \$4.5 million based on a value of \$45.00/ft² of permissible GFA of 100,000 ft², with an appropriate amount to be deducted for the expected incremental construction costs to be borne by Castlepoint, and that the resultant value shall in no event be less than \$3.5 million;

(3) City staff, in conjunction with HC, be directed to audit the details/breakdown of the incremental costs provided by Castlepoint with a view to verifying the appropriate amount that is attributable to the expected additional construction costs to be borne by Castlepoint of the HC site development and report to Council in December, 2005; and

(4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.’ ”

This Clause, as amended, was adopted by City Council.

Council also considered additional material, which is noted at the end of this Clause.

The Policy and Finance Committee recommends that:

(1) City Council pursue Options 3(A) and 3(B) of the Hummingbird Business Plan;

(2) the following steps be taken:

(a) all discussions regarding the development plan be conducted without prejudice or legal obligation on either party until and unless approved by Council, including, but not limited to, any fettering of the discretion or derogation from Council's responsibilities as a planning authority in accordance with the laws of the Province of Ontario;

(b) a portion of the property municipally known as 1 Front Street East, being part of Water Lot 1 on Plan 5A Toronto; part of Walks and Gardens on Plan 5A Toronto; part of bank of Toronto Bay lying between southeasterly limits of Walks and Gardens and northeasterly limits of Water Lots 1 and 36 on Plan 5A Toronto, shown as Parts 1 and 2 on Sketch No. PS-2005-070 (the "Private Lands"), attached to this Appendix "A", be declared surplus to the City's requirements, with the intended manner of disposal to be by way of a sale and/or lease to Castlepoint Realty Partners Limited;

(c) all steps necessary to comply with Chapter 213 of the City of Toronto Municipal Code be taken;

(d) authority be granted to City staff in conjunction with HC to enter into negotiations with Castlepoint Realty Partners Limited of an umbrella agreement, taking into account the Proposed Memorandum which is attached as Appendix "A" to the Business Plan, such umbrella agreement to include a greater role for the City in decision making, and as a minimum, decision making with respect to the Development Agreement, and containing the key terms of the sale of land and/or lease, naming and parking arrangements, securing a world-class quality architect such as Libeskind, compliance with Housing First Policy, and such other agreements as are necessary to protect the City's interests on terms satisfactory to the Deputy City Manager and Chief Financial Officer and the Chief Corporate Officer and in a form satisfactory to the City Solicitor, and to report back on the results of such negotiations and all legal, operational, financial and budget considerations, by the December 2005 Council meeting;

(e) staff ensure that in the report to the December Council meeting the potential mitigation of risks associated with the City's interests in the implementation of Option 3(B) is addressed;

(f) authority be granted to request a comprehensive due diligence report regarding Castlepoint Realty Partners Limited and its principals to the satisfaction of the City Solicitor and Deputy City Manager/Chief Financial Officer;

(g) any structure or building proposed to be built be required to comply with the new St. Lawrence Neighbourhood Focused Community Urban Design Guidelines;

(h) any proposed development be required to adhere to Council's policies in respect of obtaining public benefits for increases in height and/or density;

(i) authority be granted to City staff in conjunction with HC to enter into negotiations with GO Transit and/or Castlepoint with respect to parking with the understanding that no above-grade parking will be requested as part of the development;

(j) authority be granted for a request to be made to the Province of Ontario for amending legislation, to expand the scope of the statutory purposes of the Board of Directors of HC for the Performing Arts to include (i) the authority to present theatrical performances in theatres other than HC and (ii) the authority to own and/or operate parking spaces;

(k) authority be granted to HC to market the naming rights to the theatre in compliance with the City's Sign By-Law including that no sign will be erected on a location on a wall facing the street and shall not be erected above the 4th floor or 15 metres above grade on the condominium tower;

(l) authority be granted to City staff to negotiate a sponsorship agreement with any naming sponsor, and taking into account the City's Sign By-law, the terms of such agreement be brought back to Council for approval and in order that all necessary steps to change the name of the Theatre and the Board be taken, including any required By-law amendments;

(m) authority be granted to establish a reserve fund for the purposes of extraordinary programming, as contemplated in the Business Plan;

(n) HC provide an interim report to Council on the status of its fundraising in March 2006; and

(o) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto; and

(3) City staff be directed to begin the process of heritage designation of the building.

Action taken by the Committee:

The Policy and Finance Committee requested the Chief Corporate Officer to report directly to Council for its meeting to be held on September 28, 2005, on the fair market value of pursuing Options 3(A) and 3(B) of the Hummingbird Business Plan.

The Policy and Finance Committee submits the communication (August 2, 2005) from the City Clerk:

City Council on July 19, 20, 21 and 26, 2005, referred this Clause back to the Policy and Finance Committee for consideration at its meeting on September 20, 2005, and directed that copies of this Clause be forwarded to the Hummingbird Centre for the Performing Arts Board of Directors and to the St. Lawrence Neighbourhood Association.

(Consolidated Clause 55 of the Policy and Finance Committee Report 7,
entitled "Proposed Transaction between the Hummingbird Centre
and Castlepoint Development, which was considered by
City Council on July 19, 20, 21 and 26, 2005)

City Council on July 19, 20, 21 and 26, 2005, referred this Clause back to the Policy and Finance Committee for consideration at its meeting on September 20, 2005, and directed that copies of this Clause be forwarded to the Hummingbird Centre for the Performing Arts Board of Directors and to the St. Lawrence Neighbourhood Association.

Council also considered additional material, which is noted at the end of this Clause.

The Policy and Finance Committee referred the communication (July 6, 2005) from Councillor Gloria Lindsay Luby to the Deputy City Manager and Chief Financial Officer and the City Solicitor, for report thereon directly to Council for its meeting scheduled to be held on July 19, 2005; and also requested staff to provide a presentation to Council when this matter is being considered.

The Policy and Finance Committee submits the communication (July 6, 2005) from Councillor Gloria Lindsay Luby:

It has just come to my attention that there are one or two minor items that remain to be resolved between city staff and the Hummingbird on this important matter. It is imperative that the proposed redevelopment plan be considered no later than the July Council meeting or we seriously risk losing the developer.

I understand that staff are prepared to report to Council in July at which point all items will have been resolved.

Dan Brambilla, CEO of the Hummingbird will attend the Policy and Finance meeting to answer any questions the Committee may have of him.

Councillor Gloria Lindsay Luby addressed the Policy and Finance Committee.

City Council – July 19, 20, 21 and 26, 2005

Council also considered the following:

- Report (July 21, 2005) from the Deputy City Manager and Chief Financial Officer and the City Solicitor [Communication 39(a)]:

Subject: Financial and Legal Implications of the May 27, 2005 Hummingbird Centre for the Performing Arts Business Plan

Purpose:

To report on the Hummingbird Centre for the Performing Arts ("HC") Business Plan dated May 27, 2005 and supplementary documents provided to July 8, 2005 (the "Business Plan").

Executive Summary:

Council first requested a business plan from the Board of HC in October 2002, to address the loss of revenue from the departure of two major tenants in 2006 [Clause 1 of Report 14 of the Policy and Finance Committee at its meeting of October 29, 30 and 31, 2002 (the "2002 Report")].

In 2003, the Hummingbird developed an initial plan for a new facility called CityCentre that would be located on the Hummingbird site at the south-east corner of Yonge and Front Streets. It was proposed that this facility would accommodate a wide range of activities related to the arts, media, dining and computer gaming. It was intended that these activities would generate revenues to supplement those generated by the existing theatre. Declining revenues were forecast for the existing theatre as a result of the upcoming departure of the two key tenants.

By adopting the recommendations in Report 8, Clause 1 of the Policy and Finance Committee, at its meeting of July 22, 23 and 24, 2003 (the "2003 Report"), Council approved, in principle, the CityCentre concept and a funding strategy for the CityCentre concept that included utilizing some of the City's land value in the site in lieu of cash contribution to the capital budget for the proposal. The remainder of the capital costs was to be raised by HC through various means, including but not limited to public and private donations and selling naming rights (the "Capital Financing Strategy"). The contribution of the land value on the HC site was subject to the condition that the HC submit a revised business plan that indicated, among other matters, how HC intended to remain financially self-sustaining in its new configuration.

The revised business plan submitted by HC in response to the 2003 Report identified an $18 million capital cost shortfall. It also contemplated, among other things, the potential sale of a portion of the HC site as part of the Capital Financing Strategy. This potential was examined, in part, through the issuance of a Request for Expression of Interests in 2004 to which Castlepoint Realty Partners Limited ("Castlepoint") responded.

By adopting the recommendations in Report 6, Clause 3 of the Policy and Finance Committee, adopted by Council at its meeting of July 20, 21 and 22, 2004 (the "2004 Report"), Council reconfirmed that the Capital Financing Strategy adhere to the principle that uses land value in lieu of cash be the City's capital contribution and that there be no need for further contributions from the City. Further, Council directed that the City and HC enter into preliminary, without prejudice, discussions with Castlepoint to refine the details of the business plan.

HC has submitted a revised Business Plan dated May 27, 2005 (the "Business Plan") for consideration by Council along with recommendations. The Business Plan also includes a draft memorandum which Castlepoint proposes as a draft transaction document containing certain terms and conditions (the "Memorandum").

The Business Plan outlines three potential options (see Table 1 for a summary) for the future of the overall HC site. The legal structure for implementation of the transactions underlying the options requires the primary involvement of the City, as owner of the HC site. But for the purpose of describing the various options and for consistency with the descriptions contained in the Business Plan and the Memorandum, this report will only reference HC (e.g., the "HC lease" or "HC option" which would actually be grants from or to the City).

The Business Plan recommends a "Selected Development Model" - Option 3 - that makes use of the HC site's land value through the proposed sale of a portion of the site to Castlepoint for a residential/hotel development (the "residential development") for $15 million, together with the construction and building of an additional structure to the HC theatre which may contain the CityCentre activities.

Option 3 has a secondary option (A) or (B) which allows HC to decide whether HC will maintain possession of the additional structure or lease it to Castlepoint for retail/commercial purposes for an additional $3.5 Million. The selection of Option (A) or (B) is contingent upon HC achieving its entire capital financing objective in a given point in time.

Hence, if HC is able to raise an additional $56 million for capital financing from other sources to supplement the $15 million from the sale of land and the $4 million in reserves, six months prior to Castlepoint's decision to commence construction of the residential development (which results in a deadline of November 2006), the Business Plan proposes Option (A) will be selected. At that time of the construction of the additional structure, the renovation of the existing theatre and the construction of a residential development would be carried out as part of one overall construction project. The additional structure will house the new CityCentre activities.

If the full CityCentre concept is implemented, there is a possibility that HC will become financially self-sustaining. However, the HC has not yet received any formal expressions of interest from the Federal and Provincial governments or potential donors with respect to potential capital funding.

Table 1 – Summary of Staff Assessment of Options Within the HC Business Plan

Option	Description	Advantages	Disadvantages
3(A)	Enhanced Base Case with CityCentre and Sale of Land (Residential Only)	best achieves the key qualitative objective of promoting social cohesion and improving the resident and tourist experience potentially generates $1.1 million surplus if Business Plan's attendance targets met	has the potential for $2.4 million annual loss if only 60 percent of Business Plan's attendance target is achieved uncertainty that sufficient capital funding will be realized in time automatic defaults to Option 3(B)
3(B)	Enhanced Base Case with Sale of Two Parcels of Land (Residential and Commercial Mixed Use) with Possible CityCentre Eleven Years Later	provides funding for all of HC's proposed lifecycle works and thereby preserves and modernizes existing HC building naming rights revenue provides reserve that will likely fund the operating subsidy for at least six years	ultimate implementation of CityCentre uncertain uncertainty that parking and residential signage revenues will be realized land sale and long-term lease not carried out on open market site encumbered with residential development site may be encumbered with 100,000ft2 retail use for 99 years remainder of HC site can no longer be sold for highest possible value City must fund operating deficit of $400,000 to $1.6 million after reserve is exhausted
2	Enhanced Base Case with Sale of Land (Residential Only)	Same as 3(B)	Same as 3(B) but with no additional structure built and therefore no retail/commercial land use or CityCentre (no long-term lease)
1	Enhanced Base Case without Sale of Land	provides funding for HC's primary lifecycle works and thereby preserves existing HC building holds open possibility that overall site can potentially be sold for highest possible value alternatively, holds open possibility that land for residential development can be sold through market sale and that CityCentre can be implemented in the future	no stabilization reserve created annual operating subsidy of between $400,000 and $1.6 million required immediately overall land market may decline and reduce value realized for potential land sale in the future

In the event that HC does not achieve its full capital financing objectives within the given time period, this Option contemplates Option B will automatically occur. HC would then be obligated to lease the additional structure on the HC site to Castlepoint for a 99 year period for retail/commercial uses, for an additional $3.5 million. HC would retain the option for a period of nine years (effective at the end of eleven years) to make a payment to terminate the lease and then convert at the City's cost the additional structure from retail/commercial uses to the full implementation of the CityCentre concept. Specifically, Option 3 (B) has the potential to result in two real estate transactions, being a sale of land for residential uses as well as a long-term ninety-nine year lease for retail/commercial uses (also considered a "sale" pursuant to section 268 of the Municipal Act), that have been negotiated on an exclusive basis with Castlepoint, with the proceeds flowing to HC.

The Business Plan proposes that under Option 3(B) the proceeds from the land sale and long-term lease would be used to fund the lifecycle maintenance and upgrade projects on the existing theatre. Revenue derived from corporate naming rights for the existing theatre would then be available to offset operating deficits incurred by the existing theatre. It is also proposed that operating deficits could be offset by additional revenues received through a proposed off-site pay parking joint venture with Castlepoint and through additional naming rights revenues received as a result of advertising signage on the residential development. However, there appear to be a number of very significant planning and legal obstacles that would have to be overcome in order to realize these additional revenues.

In the absence of these additional revenues, the reserve funds created through a naming rights agreement for the existing theatre operations will potentially be exhausted in as little as six years and the City will once again be responsible for any deficits incurred by HC.

The possibility that the Selected Development Model (Option 3) may never result in the full implementation of the CityCentre concept, appears to conflict with one of the principal rationales for entering into exclusive discussions with Castlepoint and not proceeding with any further process, including any Request for Proposals. In addition, Council has never previously been presented with the possibility of a relatively large-scale retail/commercial development on the HC site.

For these reasons, staff are recommending that Council consider a number of alternative default scenarios, in the event HC is unable to raise the necessary capital funding within the required timeline. These defaults are based on two other scenarios that are presented in the Business Plan. One of these scenarios (Option 2) also involves the sale of the land parcel for development of the residential tower but does not involve the leasing of the CityCentre site for a retail/commercial development. Staff are recommending that Council consider two permutations of this option based on either selling the site to Castlepoint (Option 2(A)), as contemplated in the Business Plan, or selling the land parcel on the open market (Option 2(B)).

Another option that staff are recommending for consideration, as a default, is an enhanced status quo option in which no land sales occur (Option 1). This option incorporates the same proposed revenue enhancement measures for the existing theatre, such as increased programming staff, that are incorporated in the other proposed scenarios.

Staff have prepared Appendix "A" to advise of the steps necessary to give further consideration to the various options.

Financial Implications:

The HC Business Plan presents three options to address the substantial fiscal operating shortfalls anticipated as a result of its two major tenants relocating in 2006. Each of the three options has varying degrees of financial and risk exposure implications on the City.

HC Selected Development Model – Option 3

HC's stated preferred option (Option 3) contains two variations that are contingent on HC's ability to raise capital funding for the implementation of the CityCentre concept. Under the first variation (Option 3(A)), described as immediate implementation of the CityCentre concept, HC contemplates entering into two prime transactions, the first being comprised of the sale of a portion of land on the HC site, the second a contract providing for the construction of the CityCentre and the renovations of the existing theatre.

To achieve immediate implementation of CityCentre, HC must raise $56 million to supplement $4 million in existing reserve funds and $15 million from the proposed sale of City land (see Table 2). The total funding of $75 million would be used to finance the construction of the CityCentre, implement the CityCentre programmes within the new programming space, as well as carry out deferred lifecycle maintenance on the existing HC building. There is no cash contribution from the City contemplated towards these works in the Business Plan. The City's contribution will be the actual land being sold, together with accepting a "down-zoned" value on the retained lands in light of the proposed "up-zoning" of the sold lands.

If the CityCentre is built, there is a potential for HC to generate an operating surplus of $1.1 million annually (at 100percent of target attendance) as shown in Table 3. However, because of the difficulty in forecasting operating results for the facility, there is also a significant risk of large operating deficits. The staff analysis indicates that without the forecast parking revenues, the CityCentre will have to consistently achieve an average of 88 percent of the target attendance in order to break even. At attendance levels of 60 percent of target amounts, the CityCentre is forecast to generate annual deficits of approximately $2.4 million. The City is, by statute, responsible for any operating deficits incurred by HC.

However, it appears unlikely that the immediate implementation of the CityCentre concept will be realized because of the many conditions which must be satisfied. According to the documentation provided, HC must notify Castlepoint of its decision as to whether or not to proceed with the immediate implementation six months prior to the date at which Castlepoint elects to begin construction of a residential development on the sold portion of the HC site. This means that the requisite fundraising may have to be successfully raised as early as November, 2006.

Table 2 – HC Proposed Capital Financing for Option 3(A) (Immediate Implementation of Full CityCentre Concept)		
		Amount ($000's)
Expenditures		
	Closure and Ramp-Up Costs	6,470
	Branding	500
	FF&E and Content	15,700
	Construction and Lifecycle Costs during shutdown	50,188
	Endowment Reserve Fund	2,142
	Total Expenditures	75,000
Funding		
	Capital Reserve Account	4,000
	Cash from Sale of Land For Residential Development	15,000
	Naming Rights	16,000
	Private Sector Contributions	10,000
	Federal and Provincial Contributions	30,000
	Total Funding	75,000

Table 3 – Sensitivity Analysis of Forecast Stabilized Annual Operating Results ($)(deficit)				
		% of Business Plan Target Attendance Level		
Option	Description	60%	80%	100%
3 (A)	Immediate Implementation of Full CityCentre Concept	(2,365,578)	(650,895)	1,114,229
3 (B)	Automatic Default from 3(A) to 3(B) Land Sale with Potential Deferred CityCentre Implementation	(1,560,811)	(1,048,769)	(372,318)
2	Enhanced Base Case with Land Sale	(1,560,811)	(1,048,769)	(372,318)
1	Enhanced Base Case without Land Sale	(1,560,811)	(1,048,769)	(372,318)

On July 8, 2005, HC provided staff with further documentation regarding the proposed default scenario (i.e., Option 3(B), if the requisite funding for full CityCentre implementation is not obtained in time). The scenario provides that the sale of land for the residential development would proceed and that an additional portion of land would be "sold" by way of a ninety-nine year lease to Castlepoint in the proposed location of the CityCentre. Castlepoint would then develop this parcel for retail/commercial uses and pay HC, in addition to the $15 million, a further $3.5 million. HC would have the option to retake possession of the commercial/retail parcel by terminating the lease, effective as at the end of the 11th year of operation of the commercial/retail lease.

This termination option could be exercised by HC in return for a payment that results in Castlepoint realizing a 10% annual rate of return on its equity investment during the eleven year period after taking into account all of the revenues and expenditures associated with financing, constructing, leasing and operating the retail/commercial component. These amounts would all have to be audited to ensure that they represent true values and to ensure that all transactions have been made at market rates with arm's-length parties.

There is significant uncertainty in estimating the amount that HC might ultimately have to pay in order to terminate the lease. The return that Castlepoint achieves during the first eleven years will depend on retail leasing market conditions and a large variety of business decisions that would be entirely within Castlepoint's control. If these decisions result in an unexpectedly low return on Castlepoint's original investment, this would result in a higher-than-forecast termination amount, meaning that, in effect the City would share in the risk of Castlepoint's retail/commercial venture to the extent that the City wishes to exercise the termination option.

According to the Business Plan, if the CityCentre is not immediately implemented, the revenues from the land sale and long-term lease would be used to fund the lifecycle maintenance and upgrade projects on the existing theatre. Revenue derived from corporate naming rights for the existing theatre would then be available to offset operating deficits incurred by the existing theatre. According to the Business Plan, operating deficits can also be offset by additional revenues received through a proposed parking joint venture with the developer and through additional naming rights revenues received as a result of advertising signage on the residential development. However, there appear to be a number of very significant planning and legal obstacles that would have to be overcome in order to realize these additional revenues.

In the absence of these additional revenues, the reserve funds created through a naming rights agreement for the existing theatre will potentially be exhausted in as little as six years and the City will once again be responsible for any deficits incurred by the theatre. It is estimated that these deficits will range between $400,000 and $1.6 million annually.

Options 2 and 1:

The Business Plan discusses, but does not recommend, two other options. Option 2 is similar to the 3(B) default scenario discussed above but without the additional long-term lease for the commercial/retail component. In this case, the operating results would be similar to that forecast for Option 3(B).

Under Option 1, the current HC structure without land sale [Enhanced Base Case] no sale of lands occur. This option includes the same revenue enhancement measures for the existing theatre (e.g. increase in programming staff) as Option 3, with some possible negative impacts to the naming rights revenue because of the absence of the CityCentre structure. As a result, the forecast operating deficit of between $400,000 and $1.6 million in Option 1 is the same as for HC's Selected Development Model in the absence of the CityCentre. A potential advantage of pursuing Option 1 is that it would provide an opportunity to gauge the success of HC's proposed revenue-enhancement measures while still holding open the possibility of realizing the full value of the unencumbered land at a later date.

Legal Implications:

Council approved, in principle, the proposed development of the HC site, as set out in the 2003 and 2004 Reports, based on the concept of CityCentre as a means of generating revenue to allow HC to potentially remain financially self-sustaining after the departure of its main tenants. Council also approved of a funding strategy which used land value in lieu of cash as the City's sole capital contribution towards CityCentre.

In November 2003, HC issued a Request for Expressions of Interest ("REI") to determine the level of developer interest in the CityCentre project. HC chose Castlepoint's response to the REI largely because it contemplated the full implementation of the CityCentre. Council authorized HC and City staff to continue discussions directly with Castlepoint on that basis, and determined not to proceed with any further RFP process.

Option 3 to the extent that it has the potential to implement a CityCentre which could generate enough revenue to off-set the anticipated theatre deficits, is consistent with Council's approval in principle of the development of the HC site. It contemplates the CityCentre concept as a means to assist HC to become financially self-sustaining, and uses some of the land value in lieu of cash as the City's capital contribution towards CityCentre if the additional capital funds are raised to permit immediate implementation.

Option 3 however, as proposed does not guarantee that the CityCentre concept will be fully implemented, although the structure will be constructed. Option 3 is in effect a real estate transaction that flows proceeds from the sale of land to HC and a construction contract with Castlepoint. In the final analysis, it is the ability of HC or inability of HC, to raise the necessary capital funding that would dictate if the CityCentre concept with revenue-generating programming were to be implemented. Should HC not be able to raise the necessary funds in time, under Option 3(A), because of the automatic default to Option 3(B), there would be a completed real estate transaction with Castlepoint, construction of the additional structure would be completed but the CityCentre concept would not be implemented.

If HC does not raise the necessary additional capital funding under Option 3, the Business Plan indicates that the automatic default is to the provisions detailed in Option 3(B), including the requirement to lease the CityCentre structure to Castlepoint for commercial/retail uses. Such uses were never contemplated in any Council approvals, and were not included in Castlepoint's REI response. As well, it is unclear how this contingency would meet Council's stated objective of requiring HC to remain financially self-sustaining after the departure of its anchor tenants.

In addition, Option 3(B) does not provide for implementation of the CityCentre concept for at least eleven years, if at all. If HC does not have the necessary funding and the option to terminate the commercial/retail use is not exercised in time, the commercial/retail use will continue for the remainder of the ninety-nine year lease term. In that event, the CityCentre concept will not be realized. That eventuality is inconsistent with Council's approval, in principle, of the CityCentre concept, which utilizes land value in lieu of any of cash as the City's capital contribution towards CityCentre, and would not appear to address the long-term goal of making the theatre financially self-sustaining.

Accordingly, Recommendation No. 3 contained in this report does not recommend endorsing Option 3(B) as the default scenario in the absence of the necessary fundraising by November 2006. Rather, Recommendation No. 3 provides insofar as a real estate transaction is concerned, simply for a possible default scenario in which there is a sale of a portion of land of the HC site and a flow through of the real estate proceeds to HC to be dealt with as appropriate.

There a number of legal hurdles which must be overcome in order to implement the Business Plan. The proposed development, including the requisite parking facilities, do not conform with the current land use planning regime and will require amendments to the Official Plan and Zoning By-law. Some of the activities contemplated in the Business Plan are outside the current scope of HC's statutory authority and therefore will require legislative amendments in order to permit HC to own and/or operate a pay parking facility and to operate in venues outside HC site.

Further, Option 2 and Option 3 are dependent on achieving revenues from naming rights and the proposed associated signage on the residential development and possibly the additional structure. The Business Plan proposes that third party signage be placed at the top of the residential development, although no further details respecting such signage is provided. It is likely that any such proposed signage for the residential development will require a variance from or potentially an amendment to the City's Sign By-law.

Further, the Business Plan contemplates a decision making model which would place the ultimate control over several key issues in the hands of Castlepoint and/or HC. A legal structure must be put into place among Castlepoint, HC and the City which recognizes the City's ownership of the site, its statutory liability for any HC deficits and which establishes the scope of requisite control by Council, including over the issue of naming rights.

The Business Plan is currently silent on the impact of the City's Fair Wage Policy and the City's union obligations, therefore any option involving further structural development of the HC site will require consideration of the necessity to comply with these policies and any financial impact arising from such compliance.

In addition, given the project's profile and significance, there should be a due diligence report provided on Castlepoint and its principals which is acceptable to the City Solicitor and Deputy City Manager/Chief Financial Officer.

<u>Recommendations</u>:

It is recommended that:

(1) this report be referred to Policy and Finance Committee;

(2) should Council wish to proceed with immediate implementation of the CityCentre concept, consideration be given to HC's Option 3(A), but modified to be conditional upon HC securing the required capital financing of approximately $75 million as set out in its Business Plan for the implementation of CityCentre, by November 1, 2006;

(3) Council determine at the outset, that if HC is unable to secure the capital financing of approximately $75 million by the deadline of November 1, 2006, whether to:

(a) proceed to a land sale of the surplus HC lands, either

(i) to Castlepoint, referred to in this report as Option 2(A); or
(ii) on the open market, referred to in this report as Option 2(B); or

(b) maintain existing HC operations and structure with enhanced programming, being Option 1 in the Business Plan; and

(4) should Council wish to proceed on any of the options described in the above Recommendations that the corresponding steps referred to respectively for the various options in Appendix "A", be adopted.

Background:

HC, which is owned by the City, is located on 2.45 acres (or 0.99 hectares) of land on the southeast corner of Yonge and Front Streets. HC, originally the O'Keefe Centre, was built in 1959/1960 and currently has a seating capacity for an audience of 3,223 people. HC also contains a rehearsal hall, storage facilities, dressing rooms, lounges and other amenities.

Historically, HC has not required operating subsidies from the City. However, HC has a backlog of lifecycle maintenance work and most of the theatre's mechanical and electrical systems have not been updated since HC's construction. HC has identified $9.2 million in required lifecycle maintenance and $8.1 million of modernization works for implementation over the next fifteen years.

The Canadian Opera Company and the National Ballet of Canada are currently HC's major tenants and rent approximately 200 days per year in the Centre. However, in 2002, the Canadian Opera Company announced that it would be relocating in mid-2006 to the new Four Seasons Centre for the Performing Arts. Subsequently, the National Ballet Company announced that it too would be relocating to the new facility.

Council first requested a business plan from the Board of HC in its 2002 Report to address the loss of its two major tenants due to their decision to relocate.
HC management estimated that the departure of these two major tenants will result in a substantial operating shortfall even if existing programming is significantly increased. In order to address this issue, HC management developed a plan for a new facility that would augment the existing theatre's operations. According to the proposal outlined in the 2003 Report, this facility, called CityCentre, would include arts, culture, media, and dining components.

These new program elements were intended to generate sufficient revenues to support continued programming in the mainstage theatre without the two existing anchor tenants.

The 2003 Report confirmed that the current zoning for the HC site permits development up to 59,430 square metres (639,420 square feet) of gross floor area. A renovated HC theatre and the proposed additional structure which would house CityCentre activities would have a proposed gross floor area of 17,419 square metres (187,504 square feet) thereby leaving 42,011 square metres (451,916 square feet) of unused, permitted gross floor area for further potential development. Council adopted the 2003 Report's recommendation that the value of the unused density (captured by a sale of a portion of land on the HC site) be used as the City's sole contribution to the capital costs of the implementation of the full CityCentre concept.

Council also adopted the recommendation in the 2003 Report that the business plan be further refined to include the following:

(a) a detailed market analysis for each programming component in the business plan and for the HC, as a whole;

(b) detailed operating budget projections for the years 2004 through 2010 indicating how HC 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.

The November 2003 REI set out the following objectives for responses received through the process to be assessed:

(a) creation of a cultural attraction that will enhance tourism and stimulate activity in the vicinity of the facility;

(b) generation of a minimum of $2.5 million in annual property tax and rental revenue from on-site activities;

(c) revitalization of the facility at minimum cost to the City;

(d) continued operation of the facility during construction; and

(e) achievement of the heritage preservation, urban design, urban planning, transportation and servicing objectives established in the REI.

Five responses were received by the REI Evaluation Committee. Following the evaluation of these proposals, the Committee and HC Board recommended that the City and HC enter into direct discussions with Castlepoint rather than proceeding with an RFP process. The HC Board provided the following reasons for recommending this course of action:

(a) the REI document was widely advertised and adequate time was available for submission by prospective respondents;

(b) only Castlepoint included the idea of condominium development in its response;

(c) only Castlepoint incorporated the CityCentre concept in its response;

(d) Castlepoint proposed financing any funding shortfall for the CityCentre through a Tax Increment Financing vehicle;

(e) CityCentre was considered more appropriate than the cultural activities proposed by the other respondents;

(f) a further RFP process would take two years to complete; and

(g) HC needed alternative business arrangements before the two anchor tenants departed.

An updated business plan based on the Castlepoint response was submitted to the CAO in April, 2004. In the 2004 Report staff continued to raise a number of concerns over the updated business plan. In particular, the staff review highlighted an $18.1 million shortfall in capital funding identified in the updated proposal. According to the proposal, revenue from the sale of land, federal and provincial grants, naming rights, private donations and other sources of funding were unlikely to cover the full projected $75 million cost of the CityCentre concept.

At its meeting of July 2004, Council adopted the 2004 Report and directed that the City and HC management work with Castlepoint to refine the details of the business plan subject to the following conditions:

(a) all discussions regarding the development plan be conducted without prejudice or legal obligation on either party until and unless approved by Council;

(b) the business plan include details of what portion of HC property should be declared surplus to municipal requirements;

(c) a capital financing strategy be developed that adheres to the principle approved by Council in July 2003 which uses land value in lieu of cash as the City's capital contribution and that there will be no need for further contributions from the City;

(d) HC provide an updated business plan to reflect the refined development plan and financing strategies; and

(e) a further report by the CAO be submitted to Council with the results of this work by December, 2004, if possible, or at the earliest appropriate date.

HC retained PriceWaterhouseCoopers (PWC) to prepare an updated business plan that would meet the conditions laid out in the 2004 Report. This updated business plan initially attempted to address the $18.1 million shortfall through a proposal to use lease-leaseback financing to fund the capital shortfall. Under this arrangement, the City would effectively be borrowing the necessary $18.1 million from the developer. The PWC updated plan suggested that the CityCentre could generate sufficient operating surpluses to fund the lease payments to Castlepoint that would be used to pay back the $18.1 million debt. However, adequate funds for making these payments would only exist if all of the operating components in the CityCentre consistently achieved 100% of their attendance targets. If the attendance levels actually achieved were even modestly below these targets, the City would be exposed to significant financial liabilities.

City staff indicated to PWC and HC management that the proposed lease-leaseback financing did not appear to be consistent with Council's direction that the City's capital commitment be limited to the value of the land for the residential development. In addition, City staff expressed concern over the Business Plan's proposal that HC pay for changes to the theatre that are required solely to facilitate construction of the residential development over the theatre. This proposal appeared to create the possibility that the net revenues ultimately realized from the land sale might be much smaller than anticipated.

Comments:

HC has submitted an updated Business Plan and draft Memorandum setting out proposed terms and conditions of the transaction with Castlepoint and a range of recommendations for consideration by Council. HC has also submitted further documentation to be included as part of the Business Plan in response to requests for clarification of certain issues in the Business Plan from staff from the Finance and Legal Divisions. Appendices 'B(1) and B(2)' provide a flow chart that summarize the decision points in the various options.

The Business Plan refers to three options (see Table 4), which have been renamed to provide clarification for the purpose of this report. For example, the Business Plan and Memorandum make reference to "the sale of density". This report clarifies that this really refers to "the sale of a portion of City land which utilizes all of the unused, permitted density for the HC site, together with a "down-zoning" of density for the portion of land of the HC site to be retained by the City". The three options are set out below and numbered as 1, 2 and 3.

The analysis carried out by HC reached the following conclusions with respect to these options:

(a) Option 3, the immediate implementation of the CityCentre concept, HC is forecast by HC to have the highest present value of earnings from operations;

(b) Option 2, enhanced base case with sale of land of residential portion only (along with use of all unused permitted density on full HC site) and no additional structure on retained City lands, HC is forecast by HC to operate at just below break-even; and

(c) Option 1, enhanced base case and no sale of lands, HC is forecast by HC to operate at substantially below break-even.

In addition to the financial analysis, the Business Plan contains a summary of the qualitative benefits associated with each of the options. This summary states that if HC can raise the additional capital funds to permit the immediate implementation of the CityCentre under Option 3, this best achieves the key qualitative objective of promoting social cohesion and improving the resident and tourist experience. In addition, each of the options involving development options (Option 2 and Option 3) provides funding for HC's lifecycle works and thereby achieves the objective of preserving architectural and historic significance of HC's current structure.

Based on their analysis, HC management have chosen Options 3 as the "Selected Development Model", which has a default to 3(B) if 3(A) is not achievable. HC has recommended the immediate or deferred implementation of the full CityCentre concept depending on HC's ability to obtain the necessary funding prior to the start of construction.

Another of the options in the Business Plan, Option 2, includes the implementation of Option 1 as well as a sale of a portion of the land of the HC site which also utilizes all of the unused permitted density for the entire site for the construction of a residential development together with a "down zoning" of the retained lands. CityCentre is not built. The City receives $15 million in land sale proceeds which are used to renovate the theatre. A portion of the proceeds are placed in a reserve fund. HC proposes that it will receive $16 million in naming rights due to the ability to name the residential development. HC proposes a parking arrangement to generate additional revenues. The theatre is closed for two years.

The Business Plan proposes that, should this Option 2 proceed, the City lands be sold by way of sole-source to Castlepoint for $15 million.

Staff note that there has not been a comprehensive real estate appraisal of HC site since 2004. Since that time there have been a number of condominium projects either proposed or approved in this immediate area which have varying degrees of increases in density and height, which could affect the value of HC site. Although the Business Plan includes an appraisal update of May 18, 2005, with the value of the City lands as $13.5 Million, it is simply an estimate, and the only way for the City to ascertain whether it is in fact getting fair market value is to list the land for sale on the open market.

Accordingly, should Council determine to give preference to an option providing for the sale of lands to generate revenue (i.e. without building CityCentre), Council should determine whether to commit to a direct sale of the City lands to Castlepoint, or whether to list the land for sale on the open market. Another option which could be considered in the event that HC does not achieve its capital funding objectives is Option 1, being the maintenance of the HC operations and structure, with enhanced programming and fundraising.

Table 4 – Summary of Development Scenarios in May, 2005 HC Business Plan		
Option	Scenario	Description
1	Enhanced Base Case without Sale of Land	(a) CityCentre is not constructed; (b) No development on site; (c) Maintains value of all unused permitted density of HC site; (d) Only primary lifecycle capital maintenance works carried out and no closure of theatre; (e) Additional staff to be hired by HC to achieve: (i) Enhanced new programming; (ii) Enhanced food, beverage, catering and merchandising revenues; and (iii) Enhanced government, community, corporate and signage revenues; and (f) New naming rights agreement to be negotiated for an estimated $4.5 million.
2	Enhanced Base Case with Land Sale (Residential Only)	(a) Same as (1) but with sole-sourced sale of portion of HC site to Castlepoint and development of residential development; (b) HC receives $15 million in gross revenues from Castlepoint for development land; (c) Proposal assumes using up all unused permitted density of HC site for development; (d) “down zoning” of remaining HC site, thereby affecting value of remainder of site; (e) 2-year closure of theatre while development is constructed and lifecycle capital maintenance works carried out with associated loss of operating revenue; (f) New naming rights agreement to be negotiated for an estimated $16 million (g) HC may enter into parking project with Castlepoint depending on off-site availability and granting of any required changes to the planning regime - HC would fund the land acquisition and construction of parking spaces from which it would derive parking revenues
3(A)	Enhanced Base Case with CityCentre and Sale of Land (Residential Only)	• Same as (2) but with construction of CityCentre by Castlepoint at same time as a residential development constructed • CityCentre to include: Artslab, TV Dinner, Cyberspace, CityLink and The Gallery

Table 4 – Summary of Development Scenarios in May, 2005 HC Business Plan		
Option	Scenario	Description
		• CityCentre to be financed through revenue from development land sale, Fed & Prov grants, private donations, sponsorships and naming rights • HC must raise $56 million for construction of CityCentre six months in advance of date that Castlepoint intends to begin construction of development – potentially within approx. one year of Council approval of Business Plan • Proposal assumes “up zoning” of development lands and “down zoning” of remaining HC site, thereby affecting value of remainder of site. • 2-year closure of theatre while CityCentre and development constructed • sole-sourced sale of land to Castlepoint for residential development • non-tendered contract granted to Castlepoint to construct CityCentre and project manage the renovations of the theatre
3(B)	Enhanced Base Case with Sale of Two Parcels of Land (Residential and Commercial Mixed Use) with Possible CityCentre Eleven Years Later	• Same as (2) above but also includes sole-sourced lease for 99 years to Castlepoint of additional parcel on HC site to be used for construction of a commercial/retail structure for Castlepoint use • Castlepoint pays $35 for each square foot of gross floor area developed in retail/commercial parcel (i.e. $3.5 million) • City has the option to reacquire possession of retail/commercial parcel after eleven years by terminating lease o HC must make payment to Castlepoint that will result in Castlepoint realizing a 10% annual rate of return of its equity investment over the 11 year period of the construction of the retail/commercial component • Retail/commercial structure can then potentially be converted into CityCentre, at HC’s cost • If the City does not terminate, portion of commercial/retail space which comprises the footprint of the residential development is deeded to Castlepoint, for no additional payment

Staff note however, that should Council determine in the event that HC does not raise the required funds within the required time-line that the default is either Option 2(B) [Sale of Lands on the Open Market], or Option 1 [Enhanced Base Case without Sale of Land], Castlepoint may determine at this time that it no longer wishes to participate in the process, since it will not have certainty as to whether in fact it will be involved in a real estate transaction until the time at which HC is required to have the CityCentre funding in place.

Staff note that it is HC's position that the sale of the City lands have been listed for sale on the open market through the REI process and that if the City determines to list the City lands for sale on the open market, rather than sole-source the sale to Castlepoint, the City may not receive offers equal to or greater than the Castlepoint offer of $15 million.

Staff note that the REI did not simply contemplate the sale of City lands. The REI included a number of other considerations, including among other things, the CityCentre concept or consideration of alternative cultural attractions.

Financial and Legal Analysis of the Business Plan

Appendix 'C' contains the detailed staff analysis, which is important to appreciate the complexity of the HC Business Plan options and ensure full disclosure of financial and legal implications to Council. This analysis contains the following elements:

Capital Finance

Assessment of the prospects for funding and realizing the immediate CityCentre implementation
Requirements for secured donations prior to implementation of the CityCentre concept
Evaluation of the buyback option contemplated as part of the proposed fallback option in the event that immediate implementation of the CityCentre cannot be achieved
Assessment of the prospects for financing of the required lifecycle maintenance works in the status quo option that does not contemplate any land sales

Operating Results

Sensitivity analysis of operating results for each of the options based on attendance level
Discussion of the likelihood that the forecast naming rights and parking revenues will be realized
Assessment of the length during which the proposed stabilization fund will fund operating deficits in the absence of the CityCentre

Legal Implications

The extent to which the HC has statutory authority to enter into the ventures proposed within the Business Plan; particularly with respect to the proposed off-site parking venture
The extent to which the existing land use planning regime will have an impact on elements of the Business Plan such as:
The form of the proposed redevelopment of the HC site
Proposed advertising signage on the residential tower
The proposed parking structure to be constructed as a joint venture off-site with Castlepoint

Other issues with a potential bearing on the Business Plan such as:
Project Control
The HC's authority to establish reserve funds as proposed in the Plan
Fair Wage and Labour Related Issues
Due Diligence Review of Castlepoint

Conclusions:

In the event that the necessary funding for CityCentre cannot be raised, the proposed Business Plan has recommended a default scenario. This scenario (Option 3(B)) involves the sale of a land parcel on the HC site to Castlepoint for the development of a residential tower along with the leasing of the proposed CityCentre site to Castlepoint for a retail/commercial development. The possibility that the preferred option may never result in the full implementation of the CityCentre concept, appears to conflict with one of the principal rationales for entering into exclusive discussions with Castlepoint and not proceeding with the originally planned Request for Proposals. In addition, the leasing of part of the HC site for up to 99 years for retail/commercial purposes has not been incorporated in previous versions of the CityCentre concept that have been presented to Council.

Therefore, staff are recommending that Council consider, as a default to the ability of HC to raise the required capital funding for CityCentre by November, 2006, a number of alternative default options based on two other scenarios that are presented in the HC Business Plan. One of these scenarios (Option 2) also involves the sale of the land parcel for development of the residential tower but does not involve the leasing of the CityCentre site for a retail/commercial development. Staff are recommending that Council consider two permutations of this option based on either selling the site to Castlepoint, (Option 2(A)) as contemplated in the Business Plan, or selling the land parcel on the open market (Option 2(B)).

Another option that staff are recommending for consideration, as a default, is an enhanced status quo option in which no land sales occur (Option 1). This option incorporates the same proposed revenue enhancement measures for the existing theatre, such as increased programming staff, that are incorporated in the other proposed scenarios.

Staff have prepared recommended steps in Appendix "A", in the event that Council wishes to proceed with any of the options presented in the Business Plan.

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List of Attachments: - Appendices A, B, C and D

APPENDIX "A"

STEPS TO FURTHER CONSIDER OPTIONS OF HC BUSINESS PLAN

OPTIONS:

1. Enhanced Base Case without Sale of Land

2. Sale of Lands (Residential Site Only) but No CityCentre Structure Built
   (A) Sale of Land to Castlepoint
   (B) Sale of Land on Open Market

3. Sale of Lands (Residential Site) and Building CityCentre Structure
   (A) Sale of Lands to Castlepoint and Contract with Castlepoint to Build CityCentre
   (B) Sale of Lands to Castlepoint and Castlepoint to Build and Lease Structure (99 Year Lease)

Option 1 – Enhanced Base Case Without Sale of Land

If Council decides to proceed with further consideration of Option 1, then the following steps would need to be taken:

(a) all discussions regarding naming rights be conducted without prejudice or legal obligation on either party until and unless approved by Council;

(b) authority be granted to HC to market the naming rights to HC;

(c) authority be granted to City staff to negotiate a sponsorship agreement with HC and any naming sponsor, the terms of such agreement be brought back to Council for approval and in order that all necessary steps to change the name of the Centre and the Board be taken, including any required By-law amendments;

(d) HC report back on the budget implications of Option 1 as part of the 2006 budget process; and

(e) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Option 2: Sale of Lands (Residential Site Only) but No CityCentre Structure Built

Option 2(A):Sale of Lands to Castlepoint

If Council decides to proceed with further consideration of Option 2(A), then following steps would need to be taken:

(a) all discussions regarding the development plan be conducted without prejudice or legal obligation on either party until and unless approved by Council, including, but not limited to, any fettering of the discretion or derogation from Council's responsibilities as a planning authority in accordance with the laws of the Province of Ontario;

(b) a portion of the property municipally known as 1 Front Street East, being part of Water Lot 1 on Plan 5A Toronto; part of Walks and Gardens on Plan 5A Toronto; part of bank of Toronto Bay lying between southeasterly limits of Walks and Gardens and northeasterly limits of Water Lots 1 and 36 on Plan 5A Toronto, shown as Part 1 on Sketch No. PS-2005-070 (the "Private Lands"), attached to this Appendix "A", be declared surplus to the City's requirements, with the intended manner of disposal to be by way of a sale and/or lease to Castlepoint Realty Partners Limited;

(c) all steps necessary to comply with Chapter 213 of the City of Toronto Municipal Code be taken;

(d) authority be granted to City staff to enter into negotiations with HC and Castlepoint Realty Partners Limited of a Memorandum of Understanding, taking into account the Proposed Memorandum which is attached as Appendix "A" to the Business Plan, such Memorandum of Understanding to include a greater role for the City in decision making, and as a minimum, decision making with respect to the Development Agreement, and containing the key terms of the sale of land and/or lease, naming and parking arrangements, securing a world-class quality architect such as Libeskind, compliance with Housing First Policy, and such other agreements as are necessary to protect the City's interests on terms satisfactory to the Deputy City Manager and Chief Financial Officer and the Chief Corporate Officer and in a form satisfactory to the City Solicitor, and to report back on the results of such negotiations and all legal, financial and budget considerations, by the December 2005 Council meeting;

(e) authority be granted to request a comprehensive due diligence report regarding Castlepoint Realty Partners Limited;

(f) any proposed development be required to comply with the new St. Lawrence Neighbourhood Focused Community Urban Design Guidelines;

(g) any proposed development be required to adhere to Council's policies in respect of obtaining public benefits for increases in height and/or density;

(h) authority be granted to City staff to enter into negotiations with GO Transit and/or Castlepoint with respect to parking;

(i) authority be granted for a request to be made to the Province of Ontario to amend the City of Toronto Act, 1997 (No.2), to expand the scope of the statutory purposes of the Board of Directors of HC for the Performing Arts to include (i) the authority to present theatrical performances in theatres other than HC and (ii) the authority to own and/or operate parking spaces;

(j) authority be granted to HC to market the naming rights to the theatre;

(k) authority be granted to City staff to negotiate a sponsorship agreement with HC and any naming sponsor, and taking into account the City's Sign by-law, the terms of such agreement be brought back to Council for approval and in order that all necessary steps to change the name of the theatre and the Board be taken, including any required By-law amendments;

(l) authority be granted to establish a reserve fund for the purposes of extraordinary programming, as contemplated in the Business Plan; and

(m) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Option 2(B): Sale of Land on Open Market

If Council decides to proceed with further consideration of Option 2(B), then following steps would need to be taken:

(a) a portion of the property municipally known as 1 Front Street East, being part of Water Lot 1 on Plan 5A Toronto; part of Walks and Gardens on Plan 5A Toronto; part of bank of Toronto Bay lying between southeasterly limits of Walks and Gardens and northeasterly limits of Water Lots 1 and 36 on Plan 5A Toronto, shown as Part 1 on Sketch No. PS-2005-070 (the "Private Lands"), attached to this Appendix "A", be declared surplus to the City's requirements, with the intended manner of disposal to be by way of a sale on the open market;

(b) all steps necessary to comply with Chapter 213 of the City of Toronto Municipal Code be taken;

(c) any proposed development be required to comply with the Housing First Policy and new St. Lawrence Neighbourhood Focused Community Urban Design Guidelines;

(d) any proposed development be required to adhere to Council's policies in respect of obtaining public benefits for increases in height and/or density;

(e) authority be granted to City staff to enter into negotiations with GO Transit with respect to parking;

(f) authority be granted for a request to be made to the Province of Ontario to amend the City of Toronto Act, 1997 (No.2), to expand the scope of the statutory purposes of the Board of Directors of HC for the Performing Arts to include (i) the authority to present theatrical performances in theatres other than HC and (ii) the authority to own and/or operate parking spaces;

(g) authority be granted to HC to market the naming rights to the theatre;

(h) authority be granted to City staff to negotiate a sponsorship agreement with HC and any naming sponsor, and taking into account the City's Sign By-law, the terms of such agreement be brought back to Council for approval and in order that all necessary steps to change the name of the theatre and the Board be taken, including any required By-law amendments;

(i) authority be granted to establish a reserve fund for the purposes of extraordinary programming, as contemplated in the Business Plan; and

(j) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Option 3(A): Immediate Implementation of CityCentre, including Sale of Residential Lands to Castlepoint, and City/HC contract with Castlepoint to Build CityCentre

If Council decides to proceed with further consideration of Option 3(A), then the following steps would need to be taken:

(a) all discussions regarding the development plan be conducted without prejudice or legal obligation on either party until and unless approved by Council, including, but not limited to, any fettering of the discretion or derogation from Council's responsibilities as a planning authority in accordance with the laws of the Province of Ontario;

(b) a portion of the property municipally known as 1 Front Street East, being part of Water Lot 1 on Plan 5A Toronto; part of Walks and Gardens on Plan 5A Toronto; part of bank of Toronto Bay lying between southeasterly limits of Walks and Gardens and northeasterly limits of Water Lots 1 and 36 on Plan 5A Toronto, shown as Part 1 on Sketch No. PS-2005-070 (the "Private Lands"), attached to this Appendix "A", be declared surplus to the City's requirements, with the intended manner of disposal to be by way of a sale and/or lease to Castlepoint Realty Partners Limited;

(c) all steps necessary to comply with Chapter 213 of the City of Toronto Municipal Code be taken;

(d) authority be granted to City staff to enter into negotiations with HC and Castlepoint Realty Partners Limited of a Memorandum of Understanding, taking into account the Proposed Memorandum which is attached as Appendix "A" to the Business Plan, such Memorandum of Understanding to include a greater role for the City in decision making, and as a minimum, decision making with respect to the Development Agreement, and containing the key terms of the sale of land and/or lease, naming and parking arrangements, securing a world-class quality architect such as Libeskind, compliance with Housing First Policy, and such and such other agreements as are necessary to protect the City's interests on terms satisfactory to the Deputy City Manager and Chief Financial Officer and the Chief Corporate Officer and in a form satisfactory to the City Solicitor, and to report back on the results of such negotiations and all legal, operational, financial and budget considerations, by the December 2005 Council meeting;

(e) authority be granted to request a comprehensive due diligence report regarding Castlepoint Realty Partners Limited;

(f) any structure or building proposed to be built be required to comply with the new St. Lawrence Neighbourhood Focused Community Urban Design Guidelines;

(g) any proposed development be required to adhere to Council's policies in respect of obtaining public benefits for increases in height and/or density;

(h) authority be granted to City staff to enter into negotiations with GO Transit and/or Castlepoint with respect to parking;

(i) authority be granted for a request to be made to the Province of Ontario to amend the City of Toronto Act, 1997 (No.2), to expand the scope of the statutory purposes of the Board of Directors of HC for the Performing Arts to include (i) the authority to present theatrical performances in theatres other than HC and (ii) the authority to own and/or operate parking spaces;

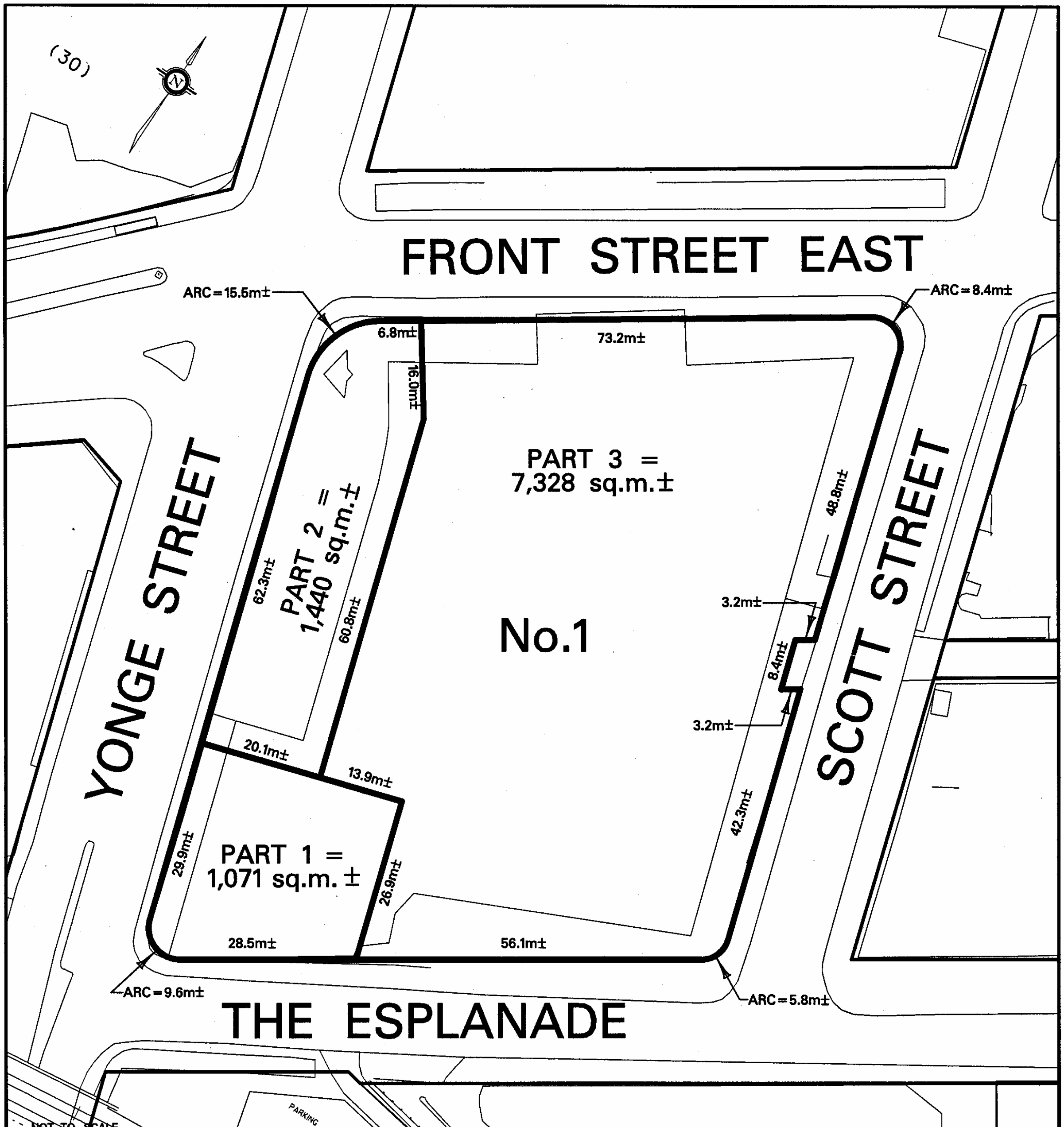
(j) authority be granted to HC to market the naming rights to the theatre;

(k) authority be granted to City staff to negotiate a sponsorship agreement with HC and any naming sponsor, and taking into account the City's Sign By-law, the terms of such agreement be brought back to Council for approval and in order that all necessary steps to change the name of the theatre and the Board be taken, including any required By-law amendments;

(l) authority be granted to establish a reserve fund for the purposes of extraordinary programming, as contemplated in the Business Plan;

(m) HC provide an interim report to Council on the status of its funding six months following any Council decision to proceed with further consideration of Option 3(A); and

(n) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.



TORONTO
WORKS & EMERGENCY SERVICES
TECHNICAL SERVICES DIVISION
SURVEY & MAPPING

PROPERTY INFORMATION SHEET

CITY OWNED LAND
No. 1 FRONT STREET EAST
(HUMMINGBIRD CENTRE FOR THE PERFORMING ARTS)

NOTE: THIS SKETCH HAS BEEN COMPILED FROM OFFICE RECORDS.

WARD 28 – TORONTO CENTRE-ROSEDALE
DATE: JULY 14, 2005

SKETCH No. PS–2005–070

APPENDIX 'B'

FIGURE B(1) - OPTIONS REFERRED TO IN REPORT RECOMMENDATIONS

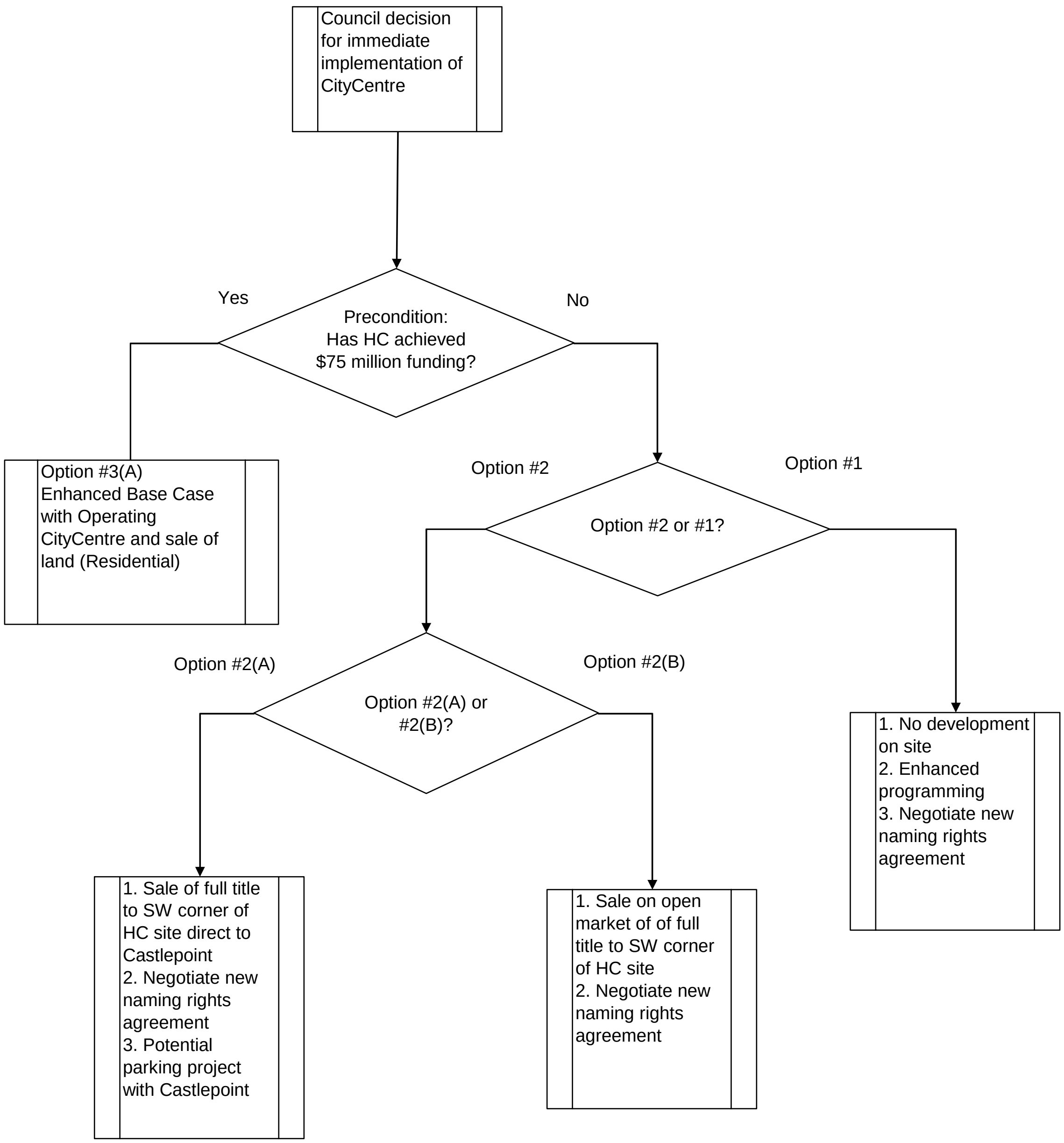
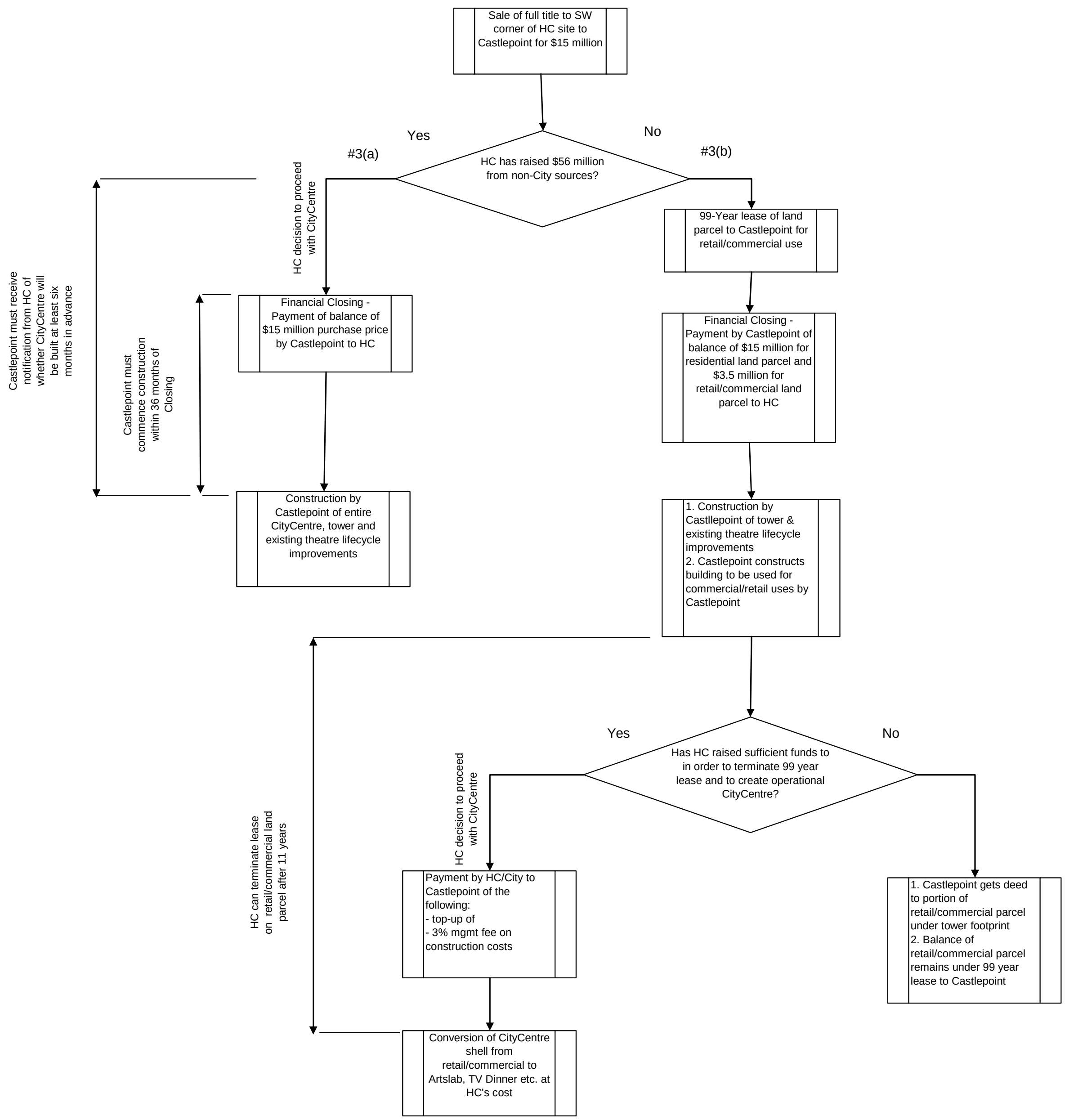


**FIG. B(2) - SUMMARY OF OPTIONS #3(a) and (b)
IN PROPOSED BUSINESS PLAN**



Appendix C

Staff Review: Comments on Identified Financial and Legal Issues

Capital Financing

Option 3

HC's stated Selected Development Model (Option 3) involves the sale to Castlepoint of one parcel of land on the HC site for a residential development and the construction of an additional structure proposed to house the CityCentre activities. However, this option does not guarantee the implementation of the CityCentre concept as originally contemplated in Council's approval of the recommendations in the June 25, 2003 staff report. Option 3 has a secondary option (A) or (B) which allows HC to decide whether HC will maintain possession of the additional structure for the immediate implementation of CityCentre concept or lease it to Castlepoint for retail/commercial purposes for an additional $3.5 Million. The selection of Option (A) or (B) is contingent upon HC achieving its entire capital financing objective in a given point in time.

Option 3(A)

To achieve immediate implementation of CityCentre concept (Option 3(A)), HC must raise an additional $56 million ($30 million from other levels of government, $10 million from private donations and the projected $16 Million in naming rights revenue) to supplement $4 million in existing reserve funds and $15 Million from the proposed sale and leasing of City land. The total funding of $75 million would be used to finance the construction of the CityCentre as well as carry out deferred lifecycle maintenance and upgrade works on the existing HC building. There is no cash contribution from the City contemplated towards these works in the Business Plan. The City's contribution will be the proceeds from sale of lands which utilized all the unused, permitted density, together with accepting a "down-zoned" therefore devalued lands retained by the City on the HC site.

However, the terms in the Memorandum provided by HC require HC to notify Castlepoint of whether to construct the CityCentre six months in advance of the date on which Castlepoint intends to commence construction of a residential development, which may include a hotel (see Fig. B2). Therefore, the decision of which option to pursue will have to be made relatively soon after Council approval of the Business Plan, which leaves relatively little time for fundraising.

In meetings with staff, HC management have suggested that HC be allowed to implement Option 3(A) if it has received pledges for the estimated $50.1 million cost of constructing the raw shell of the CityCentre and carrying out lifecycle maintenance costs. HC would then equip the interior of the CityCentre at a later stage as further funds become available.

Staff have two serious concerns with respect to such an approach. The first concern is that pledges do not represent secure funding commitments and the City is, by statute, liable for any of HC's funding shortfalls. The second concern is that by accepting donations that result in a partially completed CityCentre, HC would create an implied obligation for the City to complete the CityCentre if sufficient donations for the interior requirements are not forthcoming. Accordingly, it is recommended that HC be required to demonstrate, to Council's satisfaction, that it has secured funding for the full cost of implementing the CityCentre prior to proceeding with Option 3(A), if Council decides to proceed further with this option.

Table C1 – Capital Financing for Option 3(A) (Immediate Implementation of Full CityCentre Option)		
		Amount ($000’s)
Expenditures		
	Closure & Ramp-Up Costs	6,470
	Branding	500
	FF&E and Content	15,700
	Construction and Lifecycle Costs during shutdown	50,188
	Endowment Reserve Fund	2,142
	Total Uses	75,000
Sources of Funds		
	Capital Reserve Account	4,000
	Cash from Sale of Land For Residential Development	15,000
	Naming Rights	16,000
	Private Sector Contributions	10,000
	Federal and Provincial Contributions	30,000
	Total Sources	75,000

Option 3(B)

If the funding for the immediate implementation of the CityCentre concept cannot be raised (Option 3(B)), the Business Plan recommends that the land sale for the residential development proceed. The land sales revenue, together with the existing balance in HC’s capital reserve, would be used to carry out all of the required and optional deferred lifecycle maintenance works identified in a report prepared for HC by Helyar Associates. It would also be used to pay for the costs incurred as a result of the two-year closure of the existing theatre while this work is carried out and the residential development is constructed.

Along with the Business Plan, HC has submitted an appraisal prepared by Altus Group indicating an estimated market value for the residential land of $13.5 million. This is lower than the price proposed by Castlepoint. However, it should be noted that the Altus appraisal is only an estimate and the land could conceivably attract a higher price if it were listed on the open market.

As part of Option 3(B), the Business Plan also indicates that should HC is not be able to raise the necessary funds in time prior to construction, the proposed CityCentre site will automatically be leased to Castlepoint for ninety-nine years for the construction of a structure that will be used for retail/commercial purposes. This structure is to conform with the general form of the proposed CityCentre concept in order to facilitate potential conversion into CityCentre uses at some point in the future. In return for receiving this lease Castlepoint would pay HC a further $3.5 million based on the same $35/ft2 of gross floor area value proposed for the residential development. A separate appraisal has not been carried out to determine the value of this parcel based on a proposed retail/commercial land use.

The Memorandum and supplemental information contemplate the potential termination of the lease of the land on which the retail/commercial structure is located after a minimum eleven-year period. This termination option could be exercised by the HC upon notification at any time before the ninth year of the lease in return for a payment that "tops up" the return that results in Castlepoint realizing a 10% annual rate of return during the eleven year period on its equity investment after taking into account all of the revenues and expenditures associated with financing, constructing, leasing and operating the retail/commercial component. These amounts would all have to be audited to ensure that they represent true values and that all transactions have been made at market rates with arm's-length parties.

Even if all of the figures used in the calculation can be adequately confirmed, there is significant uncertainty in estimating the amount that HC might ultimately have to pay in order to terminate the lease. The return that Castlepoint achieves during the first eleven years will depend on market conditions and a large variety of business decisions that would be entirely within Castlepoint's control. If these decisions result in an unexpectedly low return on Castlepoint's original investment, this will result in a higher-than-forecast termination amount that would have to be paid by HC, meaning, in effect that the City would share in the risk of the commercial /retail venture.

If HC proceeds with the proposed land sale and long-term lease of the two parcels of land, the City's opportunity cost will not be fully reflected by the value of the payments received from Castlepoint. In selling/leasing these parcels, the City would be foregoing the greater revenues that could be realized by demolishing the existing theatre and realizing the full unencumbered value of the land. As well, Option 2 and Option 3 assume a sale of lands which utilize all the unused, permitted density of the HC site, with a concurrent "down zoning" of the lands retained by the City, resulting in limitations on any future development of the of these lands. A 2004 estimate indicated that the overall HC site, if vacant, would have a value of approximately $26 million.

Option 2

The capital financing implications for Option 2 are similar to those of Option 3(B) with the only exception being that the retail/commercial component is not constructed and HC does not receive the $3.5 million payment for the 99-year lease on the proposed CityCentre site.

Option 1

One of the principal changes to the Business Plan is the sharp reduction from a previous version of the Business Plan in the projected naming rights revenue for Option 1 from $10 million to $4.5 million. As a result, the plan states that this option will result in insufficient funds to carry out the deferred lifecycle capital maintenance works. This is one of HC's stated reasons for not selecting Option 1 [Enhanced Base Case without Sale of Land] as its preferred option.

Even if HC only realizes the forecast $4.5 million amount for naming rights, this amount together with the $4 million balance in the capital reserve would provide sufficient funds for all of the required deferred lifecycle maintenance works identified in the Helyar Associates report. The optional items, such as the auditorium modernization, would then be carried out over time as the capital reserve is replenished from the surcharge on ticket sales.

The implementation of this option would also provide an opportunity to measure the success of HC's proposed revenue-enhancement measures while still holding open the possibility of realizing the full value of the City's unencumbered land at a later date. Alternatively, this option would also hold open the possibility that the land value for the residential development can eventually be sold through an open market sale and that CityCentre can be implemented at some future date.

Operating Results

To assess the potential operating implications of each of the options, staff have carried out a sensitivity analysis using a range of potential annual attendance values. In carrying out this sensitivity analysis, staff have used the pro-formas submitted by HC and made a number of key revisions.

The Business Plan indicates that the construction of the CityCentre has the potential to generate very significant operating surpluses if the following is achieved:

- Attendance reaches 100 percent of the target volumes originally estimated by PKF
- HC is successful in purchasing and operating an off-site parking lot that generates revenues according to HC pro-formas

However, the potential for variability in the attendance results is quite substantial. There are no precedents for some of the proposed CityCentre components such as Artslab and TV Dinner. The CityCentre's overall blend of components is also unique and there are no directly comparable facilities with established attendance records. As Table C2 indicates, the CityCentre attendance levels forecast by PKF are significantly higher than those of the Hockey Hall of Fame, which is a well-established facility in a similar location with a broad potential market in Canada and the United States.

Table C2 – Attendance Comparison for Toronto Attractions	
Royal Ontario Museum	1.0 million
Ontario Science Centre	1.0 million
Art Gallery of Ontario	568,000
Thomson Hall	540,000
Hockey Hall of Fame	325,000
HC with City Centre Concept (forecast)	400,000

Staff have examined the potential financial results at attendance levels significantly lower than the projected volumes. In addition, the results have been assessed without the parking revenues forecast by HC. HC has included parking revenues in the Business Plan pro-formas because Castlepoint has suggested that it may be possible to allocate parking spots to HC in the garage it is proposing to build on GO Transit lands at the south-east corner of the Esplanade and Yonge St. Castlepoint is proposing to build off-site parking because it is not feasible to construct parking for the residents of the proposed residential development on the HC site.

However, the Memorandum specifically states that there is no obligation for Castlepoint to provide HC with any parking spaces in this proposed parking arrangement. The terms of a potential purchase of the GO Transit lands have not been negotiated by Castlepoint. In addition, a successful application would have to be obtained to change the current Land Use Planning Regime to allow for a parking lot sufficiently large to meet both the residential development's prescribed parking needs and additional parking spots for HC.

The staff analysis, summarized on Table C3, indicates that without the forecast parking revenues, the CityCentre will have to consistently achieve an average of 88% of the target attendance in order for HC to break even. At attendance levels of 60% of target amounts for CityCentre, HC is forecast to generate annual deficits of approximately $2.4 million.

As discussed above, the immediate implementation of the CityCentre concept may, in any case, be difficult to achieve because of the capital fundraising requirements. Therefore, it is more likely that one of the options other than Option 3(A) will be implemented. Without the CityCentre concept, the projected revenues for HC at the target attendance levels are significantly reduced. However, the variability is also lower as the market for traditional theatre operations is better established.

As with Option 3(A), HC has assumed that parking will be created as part of Options 2 and 3(B). With the projected parking revenues incorporated, Options 2 and 3(B) are forecast to generate a modest surplus at the target attendance levels.

However, if parking is not created, the annual operating results of Options 2 and 3(B) will be no different from those of the Option 1 [Enhanced Base Case], during the first ten years. Option 3(B) has the potential to generate higher revenues only after year eleven if HC exercises its option to terminate the lease of the commercial/retail lands.

Table C3 – Sensitivity Analysis of Forecast Stabilized Annual Operating Results ($)

		% of Forecast Target Attendance Level				
Option	Description	60%	70%	80%	90%	100%
1	Enhanced Base Case Without Sale of Land	(1,560,811)	(1,304,790)	(1,048,769)	(792,749)	(372,318)
2	2 with parking revenues removed	(1,560,811)	(1,304,790)	(1,048,769)	(792,749)	(372,318)
3(A)	3(A) with parking revenues removed	(2,365,578)	(1,508,237)	(650,895)	206,446	1,114,229
3(B)	(3(B) with parking revenues removed (prior to potential implementation of CityCentre)	(1,560,811)	(1,304,790)	(1,048,769)	(792,749)	(372,318)

If parking is not created for HC, the only financial difference between the results of Options 1, 2 and 3(B) will be that the revenue from the sale of City lands can be used in Options 2 and 3(B) to finance the lifecycle capital works on the existing HC building. This will free up revenue from the naming rights and surplus land sales revenue to finance a more generous stabilization reserve to offset operating losses.

The Business Plan has assumed that the sale of the lands for residential development will result in almost a 300 percent increase in the potential naming rights revenue as a result of being able to place signage at the top of the residential development. Although no further details have been provided by HC respecting the proposed signage on the residential development, appears to be in non-compliance with the City's Sign By-law. The Signage By-law limits third party signage to a location on a wall not facing the street, and not erected above the fourth floor or fifteen metres above grade, whichever is less. It is therefore likely that HC will be required to obtain a variance from or potentially an amendment to the City's Sign By-law.

If such variance or amendment is not granted, it appears that Option 3 and Option 2 could potentially result in the same naming rights revenues as Option 1. The Business Plan indicates that only $4.5 million in naming rights would likely be realized in this scenario. As Table C4 indicates, the stabilization reserve created from the naming rights revenue would then only result in a temporary cushion against potential operating deficits. It is conceivable that the fund can be exhausted in as little as six years under adverse attendance conditions. After the fund is exhausted, the City would be responsible for any operating deficits.

As a result, it appears that, under Options 2 and Option 3(B), the Business Plan fails to achieve the objective of financial self-sustainability that Council established in adopting the recommendations in the 2003 Report.

Table C4 – Impact of Stabilization Reserve on Option 2 and 3(B)		
% of Business Plan Forecast Attendance Level		
60%	80%	100%
Reserve can offset losses for 6 years	Reserve can offset losses for 10 years	Reserve not utilized

Statutory Authority

The Business Plan and a subsequent resolution of the HC Board request that the City take the necessary action in order to amend the statutory authority of HC in order to allow it to own and/or operate parking facilities and to operate outside of the HC site itself. In order to make changes to HC's purposes and mandate, a request must be made of the Provincial Legislature to amend the City of Toronto Act, 1997, (No. 2), sections 66 and 67.

Changes to Existing Land Use Planning Regime

The Business Plan is silent on the consequences of the proposed options on the existing land use planning regime and any necessity to obtain amendments to that regime. As well, the Business Plan does not provide a detailed description or site plan of any proposed redevelopment, including any description of height, density and accurate building dimensions. Also there are limited details regarding the proposed signage which is considered to be a revenue generator associated with naming rights. Accordingly, the following comments are speculative and are based upon staff's understanding of the size, scale and nature of the proposed building.

Staff note that HC recently provided staff with correspondence addressed to a third party which describes some of the characteristics of the current land use planning regime but does not provide a complete description or analysis of the impact of the proposed development to the City.

HC Site

In all of the options where a development transaction is contemplated (being Options 2, 3(A) and 3(B)), associated amendments to the land use planning regime would be required, including amendments to the Zoning By-law, and, potentially, amendments to the Official Plan as well as a satisfaction of site plan requirements.

The Official Plan designates the site as "High Density Mixed Commercial-Residential" with a density of 6.0 times lot coverage. Staff understand the proposed private development will require more density than this. Accordingly, there will likely be a requirement to obtain an amendment to the Official Plan.

As well, the Zoning By-law does not currently permit the proposed height and lot configuration, or the proposed density. Accordingly, amendments to the Zoning by-law will be necessary.

Further, each of these options would also be required to meet certain parking objectives. The HC site does not easily permit parking to be provided on-site. The Business Plan currently proposes providing parking which is not in compliance with the Zoning by-law or the Official Plan.

Finally, in all cases where a development transaction is proposed, an associated "down zoning" of the residual land to be retained by the City would be required. It is understood that amendments to the land use planning regime will be site specific to the approved project, thereby making the possibility of any further redevelopment on the residual land retained by the City for additional gross floor area more remote, and thereby decreasing the value of the City's retained lands and limiting any potential for redevelopment of the remaining City owned site.

Public Benefit

It is Council's policy to request and receive public benefits for the community in exchange for the granting of additional height and density benefits provided to a development site. These are detailed in the amendments to the Zoning By-law and secured through a "Section 37 Agreement" between the City and the developer. The Business Plan is silent on this issue. There are no public benefits or contributions described. The Business Plan options which contemplate a real estate transaction provide only that the City will receive certain proceeds from the sale land but does not propose any other contributions.

Parking – Proposed Esplanade Site

The City has parking requirements for all new proposed uses. Although the Business Plan and Memorandum do discuss parking requirements for the residential development, and potentially for HC, all such parking is proposed to be off-site and at an above-grade facility. There is no discussion of building or providing for parking on the HC site.

The Business Plan is also silent on the parking requirements of the proposed CityCentre or the mixed commercial/retail uses contemplated in Option (3). Parking would be required for each of these new uses, in accordance with the Zoning By-law.

The Business Plan refers to documents provided by third parties for building parking on a site across a public street (the Esplanade) which site is currently owned by GO Transit. It does not contemplate a direct relationship between GO Transit and the City, but only a relationship between GO Transit and Castlepoint. It is the understanding of staff that GO Transit is not prepared to sell this land to HC or Castlepoint, but rather to lease them certain spaces.

The proposed site for parking is not currently configured as a parking lot and would require parking to be built. The Official Plan documents, namely the St. Lawrence Secondary Plan, expressly discourage above-ground parking spaces on this site. It is likely then, in order to permit the proposed parking, that an amendment to the Official Plan would be necessary.

The current Zoning By-law for this site also does not permit a parking garage and there are also restrictions in general, to the building of an above grade parking facility. Amendments to the Zoning By-law for this site would also be required. It should be noted that recently Council instructed staff to attend the Ontario Municipal Board to uphold the parking principles set out in the Official Plan documents and the Zoning By-law for the 40 Esplanade development which is located directly across from the HC site, on the East side. As of the date of this report, the Ontario Municipal Board has not issued its decision on this matter.

In addition to the difficulties with parking as a “use” on the proposed site, the Business Plan provides insufficient details regarding the proposed development to allow staff to determine the quantity of parking required for any of the proposed uses (residential, mixed-commercial/retail and/or CityCentre). From the information provided, however, there appears to be insufficient parking proposed to meet with the requirements of the Zoning By-law. It is therefore anticipated that in addition to the amendment to permit a new use on the Esplanade site, an amendment may also have to be obtained to permit a decrease in the number of parking spots provided for all of the anticipated uses.

Signage Associated with Naming Rights

The Business Plan proposes placing signage at the top of the residential development. Staff note that under the City’s Sign By-law, third party signage is permitted on a residential building if it is not facing the street and is not place above the fourth floor or fifteen metres above grade, whichever is less. Accordingly, it is likely that the type of signage contemplated for the residential development which is hoped to generate the projected naming rights revenue would require a variance to the Sign by-law. Should such variance not be granted, this would potentially affect the revenue projections regarding naming rights.

Urban Design

The City has recently undertaken a significant study of urban design in the St. Lawrence Area. At its meeting scheduled for July, 2005, staff will be requesting that Council adopt the “St. Lawrence Neighborhood Focused Community Urban Design Guidelines” for implementation in this area.

The Business Plan is silent on these urban design guidelines. It is recommended that any redevelopment of HC site be required to comply with these guidelines.

Council as Planning Authority

In any of the options where a development transaction is contemplated, and is conditional on amendments to the land use planning regime, the following may have to be obtained, from a planning perspective:

(a) amendments to the Official Plan
(b) amendments to the Zoning By-law to:

- permit "use for parking"
- permit a decrease in parking requirements
- permit an increase in height
- permit increased density

amendments to the Sign By-law
permit Third Party signs on a residential building

The Business Plan itself does not acknowledge that the City also has a role as the planning authority for these lands although the Memorandum does.

If the development agreement is terminated because the planning approvals are refused, Castlepoint would assume all costs related to the process of applying for the approvals. If planning approvals are granted, the Memorandum provides that the City would be financially responsible for any costs associated with this process that relate to any property that it owns. These costs have not been detailed in the Business Plan.

Physical Structure of Development

In all options where a development transaction is contemplated, there would be some sharing of facilities between HC and Castlepoint. Any proposed redevelopment would have various levels of private property area which would be above or below property owned by the City. Accordingly, any option which contemplates a development transaction will have further legal and financial implications with respect to any shared facilities, the extent and liability for which are as yet undetermined.

Further, neither the Business Plan nor the Memorandum proposes to secure the nature or quality of the residential development to be built. There is no reference that Daniel Libeskind will be the architect or guarantee that this "type and quality" of architect is to be retained for the project.

Housing First Policy

Any proposed disposal of surplus City land must comply with the City's Housing First Policy. The Business Plan provides that two agencies have expressed interest in acquiring a number of units in the residential development to be offered as affordable hosing for artists.

Naming Rights

HC has requested that Council authorize it to sell its naming rights when they become available in 2006.

While in the opinion of the City Solicitor, the City may authorize HC to market the renaming opportunity for the theatre, as between HC and the City, it is the City that has jurisdiction to change the name of the theatre, as the City owns the asset, and has the statutory authority pursuant to the provisions of Ontario Regulation 214/96 to rename the Board and the theatre. This would be done by further amending former Municipality of Metropolitan Toronto By-law No. 133-96 (which renamed the theatre from O'Keefe to HC, and which By-law is now a By-law of the City). Presumably, the name of the Board would also be changed at that time. Accordingly, any agreement with a naming sponsor to rename the theatre should be between the City and the sponsor.

As well, the Business Plan provides for increased naming rights value due to the fact that Castlepoint has agreed to allow a corporate sponsor to place its name on the residential development, but that all consideration for the naming rights would be payable to HC and/or the City. It should be noted that, once sold, the City would not have ownership jurisdiction over the residential development. However, legal counsel for HC have advised that a legal structure will be set up allowing the corporate sponsor to enforce its naming rights against the owner of the residential development. As that arrangement has only been orally described in brief fashion, the City Solicitor is not in a position to comment on any risks to the City and/or HC respecting such arrangement.

Staff advise that the City's Sign By-law may not permit the type of third party signage that is contemplated for the residential development. If that is the case, then a variance from the City Sign By-law may be required. Staff notes that there is a significant reliance on the potential revenues generated by the sale of naming rights, which may not be attainable given this non-compliance issue. Staff further notes that the Business Plan and the supplementary material supporting the naming rights is silent on compliance with the City's Sign by-law.

Project Control

If either of Options 2 or 3 are pursued, a development agreement will be required. The Business Plan states that any development agreement in respect of the development will be between Castlepoint and the City, subject to HC's approval of the terms and conditions. This is inconsistent with the Memorandum which, as presented, has HC as the main party to the agreement and as the main decision maker with respect to all matters, including financial.

It is inappropriate for HC to be the sole or main party to any agreement in respect of the proposed major redevelopment of the City-owned land and theatre, for the following reasons:

- The City, by statute, is responsible for all HC deficits and the current Board composition has relinquished City voting control.

- The statutory purposes and limited mandate of the Board are "the operation, management and maintenance of the Centre as a theatre and auditorium, and as a centre for meetings, receptions and displays" (see City of Toronto Act, 1997 (No. 2), subsection 66(2)), which results in the opinion of the City Solicitor that a project for the redevelopment of the property falls outside of the allowable scope of HC's statutory purposes.

- The theatre and surrounding lands are owned by the City. As such, the City retains liability relating to any construction that takes place on the property, including with respect to any liens that are registered against the property. This includes both the CityCentre portion of the site as well as the lands on which the residential development will be built, since such lands will initially be leased to Castlepoint during the construction phase and thus will still be owned by the City. Although HC is responsible for upkeep and repair of the HC on a day to day basis, given the magnitude of the proposed project, it is important for the City to have a greater measure of control.

Fair Wage and Labour Related Issues.

The Business Plan provides that Castlepoint would hire the contractor to complete the renovations of the theatre and to build the CityCentre component of the development. The Memorandum provides that Castlepoint will comply with City policies with respect to construction of CityCentre and the renovations of the theatre, which would include compliance with the City's Fair Wage Policy, and, depending on the nature and scope of the City's involvement with the project, compliance with the City's obligations to various unions in the construction industry., This may have an impact on the projected capital costs of the project, including construction of CityCentre and the theatre renovations.

Reserve Funds

(a) Endowment Reserve Fund

The Business Plan states that HC intends to create an Endowment Reserve Fund to be used to pursue extraordinary programming, such Fund to contain amounts from Federal and Provincial government grants, the proceeds of sale of the City asset and proceeds from the sale of naming rights. The Business Plan states that the directive to establish such a fund was contained in the 2003 Report and states that this fund would be in addition to the existing Capital Reserve Fund and Stabilization Reserve Fund.

Recommendations (7) and (8) of the 2003 Report provided as follows:

> "(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."

In the opinion of the City Solicitor, there is no authority to establish an Endowment Reserve Fund as contemplated in the Business Plan. The 2003 Report clearly states that authority is to establish a dedicated donations reserve fund, which would hold receipted donations only. The Business Plan would therefore appear to contemplate a new reserve fund solely for the purposes of funding extraordinary programming. If this is the case, then further authority must be granted to establish such a reserve fund.

As well, the stated intent to place funds from the proceeds of sale of the City asset into this fund to fund what are essentially operating costs is contrary to Council's directive in the 2003 Report which provide that proceeds of the sale of the asset are to be used as the City's only capital contribution, not to fund operating costs.

(b) Dedicated Donations Reserve Fund

The Business Plan provides that, should HC be unable to achieve the required funds for the construction of CityCentre by November 2006 (6 months prior to the start of construction in April of 2007), Castlepoint will construct the building shell for its own purposes and HC will have the opportunity to take possession of the commercial/retail lands after a period of eleven years, should it then have all funding in place. This implies a 9 year period of time for fundraising for the cost of reacquiring the commercial/retails lands and retrofitting the building shell to HC's purposes (or at least sufficient prospect of successful fundraising within 10 years that the exercise of the HC option to terminate the lease can be given in the necessary 9 year timeframe).

The Business Plan states that any tax receipts for donations should be issued by HC and not the City, as donors require the clarity that comes from being able to make their donations directly to, and receive tax receipts from the benefiting agency, without involvement by the City as intermediary. It is unclear what is meant by the phrase "without involvement by the City as intermediary". It is staff's position that HC may issue tax receipts for donations, but that donation funds will be held by the City in a City reserve fund.

Property Taxation

Under the Assessment Act, HC is exempt from property taxation (see section 66(10) of the City of Toronto Act, 1997, (No.2) which provides that the HC Board's occupation, management and control of HC is deemed, for the purposes of the Assessment Act to be occupation, management and control by the City).

However, HC is potentially subject to payments in lieu of taxes in accordance with section 27.1 of the Assessment Act and the formula set out in that Act, should the new CityCentre businesses change the mix of programming such that the HC site were then used, other than by a charitable or non-profit organization, on a total of at least 183 days in the taxation year to present live performances with the intention of generating a profit.

Payment of Closing funds for the sale of City Property

The Memorandum provides that Castlepoint will have the option of satisfying closing funds for the purchase of City property by way of letter of credit. The normal City practice when selling City property is to accept payment in the form of cash only.

Corporate Due Diligence of Castlepoint

HC has provided the City with an initial due diligence report regarding Castlepoint. It is neither comprehensive nor complete. Any recommendation which involves a continued relationship with Castlepoint Realty Partners Limited and its principals, should include a requirement that a due diligence investigation be conducted and that a report is submitted to the satisfaction of the City Solicitor and Deputy City Manager and Chief Financial Officer.

Appendix "D"

Table C1 – Summary of Risks Associated with Business Plan Scenarios

Option->	1	2	3a	3b
HC cannot increase revenues in the existing theatre to enhanced levels	x	x	x	x
HC cannot achieve the projected attendance levels in the new CityCentre attractions		x	x	x
HC/City cannot achieve the value of the enhanced naming rights.	x	x	x	x
HC/City cannot achieve the value of the incremental naming rights associated with the signage on the residential development		x	x	x
HC cannot acquire parking spaces with resulting negative impact on revenue generation		x	x	x
HC site would have limited potential for future development with increased gross floor area.		x	x	x
Any future development of HC site might be opposed by the owners of the Residential Development.		x	x	x
The City/HC must enter into agreements with the owner of the Residential Development with respect to cost and facility sharing. The City has lost independent control of its asset.		x	x	x
The compensation payment to be paid by HC/City to take possession of the leased lands after ten years is greater than the current estimated cost to construct CityCentre and HC will have to fundraise a greater amount than currently estimated with the associated greater risk that it would not be able to achieve required fundraising targets.				x
Additional capital investment to convert the retail space, including any leasehold improvements, to the purposes of CityCentre, will be required.				x
HC is never able to raise sufficient funds to regain possession of the leased lands and the building shell, and HC and the City will have given up the use of that space for 99 years.				x

The Policy and Finance Committee also considered the following communications and copies are on file in the office of the City Clerk, City Hall:

(1) (September 13, 2005) from Michael Comstock;

(2) (September 14, 2005) from Lewis Poplak; and

(3) (September 14, 2005) from Georgette Harris.

Mr. Dan Brambilla, Chief Executive Officer, Hummingbird Centre for the Performing Arts provided a presentation on this matter and filed a copy of his presentation.

The following persons addressed the Policy and Finance Committee:

- Mr. Michael Comstock, c/o Chair, St. Lawrence Market Neighbourhood BIA;
- Mr. Michael Fox and filed a written submission with respect thereto;
- Professor Charles Smith, University of Toronto, Scarborough Campus, Cultural Pluralism and the Arts and filed a written submission with respect thereto;
- Mr. Duberlis Ramos, Hispanic Development Council;
- Mr. Corrado Paina, Deputy Director, Editorial Director Partners Italy and Canada, Italian Chamber of Commerce;
- Mr. Pradeep Sood, ParScribe Digital Inc.;
- Mr. Gord Graham, President, IATSE 58;
- Mr. Lester Brown, Sederi Southeast Downtown Economic Redevelopment Initiative, and filed a written submission with respect thereto;
- Mr. Alfredo Romano, Principal, Castlepoint Realty Partners Limited;
- Ms. Marcia Douglas; and filed a written submission with respect thereto;
- Mr. Hugh F. Burns;
- Mr. Andrew Laffey, St. Lawrence Market Neighbourhood BIA;
- Mr. Mel Shipman;
- Ms. Connie Yang;

- Ms. Lorna Ekblad;

- Ms. Stephanie Hickmott;

- Mr. Dennis Glasgow;

- Mr. Cameron Miller;

- Paul Smith; and

- Catherine Nasmith.

Councillor Gloria Lindsay Luby, Etobicoke Centre, also addressed the Policy and Finance Committee.

City Council – September 28, 29 and 30, 2005

Council also considered the following:

- *Report (September 29, 2005) from the Chief Corporate Officer [Communication 34(a)]:*

Subject: *Proposed Sale/Lease of Certain Surplus Portions of the City-owned Land Municipally Known as 1 Front Street East – The Hummingbird Centre (Ward 28 - Toronto Centre-Rosedale)*

Purpose:

To report on the value attributed by Altus Group in its appraisal report dated April 29, 2004 and updated on May 18, 2005, to the residential density for high rise construction that forms part of the land on which the Hummingbird Centre ("HC") is situated and its impact on the recommendations of the Hummingbird Business Plan that the offer by Castlepoint Realty Partners Limited ("Castlepoint") of $15 million for the residential condominium site and $3.5 million for the 99-year ground lease of the commercial/retail site represents fair maket value for the purchase and lease of the lands required for the development.

Financial Implications and Impact Statement:

The sale of the residential component of the proposed redevelopment will result in a minimum revenue of $15 million. If there is no immediate implementation of the CityCentre concept, the leasing of the commercial/retail component will result in an additional minimum revenue of $3.5 million.

The sale/lease of a portion or portions of the HC site will result in a "down-zoned" value on the retained land in light of the proposed sale/lease of a portion of the HC site which utilizes all of the unused permitted density for the HC site.

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

Recommendations:

It is recommended that:

(1) Council recognize the market value of the residential component in the Part 1 lands is \$19.3 million based on a value of \$45.00/ft² of permissible GFA of 428,571 ft², with an appropriate amount to be deducted for the expected incremental construction costs to be borne by Castlepoint, and that the resultant purchase price shall in no event be less than \$15 million;

(2) Council recognize the market value for the 99-year lease on the commercial/retail component is \$4.5 million based on a value of \$45.00/ft² of permissible GFA of 100,000 ft², with an appropriate amount to be deducted for the expected incremental construction costs to be borne by Castlepoint, and that the resultant value shall in no event be less than \$3.5 million;

(3) City staff in conjunction with HC be directed to audit the details/breakdown of the incremental costs provided by Castlepoint with a view to verifying the appropriate amount that is attributable to the expected additional construction costs to be borne by Castlepoint of the HC site development and report to Council in December, 2005; and

(4) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background:

City Council, at its meeting on July 19, 20, 21 and 26, 2005, referred Clause No. 55, Report No. 7 of the Policy and Finance Committee, entitled "Proposed Transaction between the Hummingbird Centre and Castlepoint Development" back to the Policy and Finance Committee for consideration at its meeting on September 20, 2005.

Policy and Finance Committee, at its meeting on September 20, 2005, has considered the above referenced report and directed the Chief Corporate Officer to report directly to Council for its meeting to be held on September 28, 29 and 30, 2005, on the fair market value of proceeding with Options 3(A) and 3(B) of the Hummingbird Business Plan.

This report is to report on the fair market value of proceeding with Options 3(A) and 3(B) of the Hummingbird Business Plan and should be read in conjunction with Clause No. 1, Report No. 8 of the Policy and Finance Committee, entitled "Proposed Transaction between the Hummingbird Centre and Castlepoint Development", also before Council for consideration at its meeting on September 28, 29 and 30, 2005.

<u>Comments</u>:

The HC site consists of a lot area of approximately 2.45 acres or 106,620 ft². The current zoning allows commercial and/or residential development up to a GFA of six times the area of the lot. The maximum development potential of the HC site, in terms of GFA, is approximately 640,000 ft². The Official Plan designates the HC site as "High Density Mixed Commercial Residential Area".

The existing Hummingbird Centre occupies approximately 187,500 ft² of GFA, leaving an excess developable GFA of approximately 452,500 ft² for future development of the site.

The portions of the HC site that are considered to be surplus to municipal requirements are shown as Parts 1 and 2 on the attached Sketch No. PS-2005-070.

Part 1 lands, the residential component, comprising a land area of approximately 11,524 ft² (1,071 m²), is proposed for a development of a 41-storey residential tower on top of a multi-level podium that will form part of the proposed CityCentre or for commercial/retail use by Castlepoint under a land lease agreement with the City, depending on which scenario that will evolve under either Options 3(A) or 3(B).

Part 2 lands, the commercial/retail component, comprising a land area of approximately 15,495 ft² (1,440 m²), is proposed for the balance of the proposed CityCentre or commercial/retail use by Castlepoint under a land lease agreement with the City, again depending on which scenario that will evolve under either Options 3(A) or 3(B).

The total GFA of the proposed development, irrespective of the scenario under Options 3(A) or 3(B), is expected to be in excess of the permissible GFA of the HC site under the current zoning by-law. An application for zoning amendment would be required to allow the proposed development.

Castlepoint's Proposal Relative to Options 3(A) and 3(B):

Option 3(A) contemplates the construction of the commercial/retail component which would house the CityCentre by Castlepoint at the same time as the construction of the proposed residential development. The financing of the CityCentre is to be arranged through revenue from sale of Part 1 to Castlepoint for the residential component, grants from the Federal and Provincial governments, private donations, sponsorships and naming rights.

Under the Option 3(A) scenario, Castlepoint has proposed an offer to purchase Part 1 at a minimum price of $15 million based on a GFA of 428,571 ft². Should Castlepoint eventually achieve a permissible GFA in excess of 428,571 ft² for its residential component, it has agreed to pay an additional price based on $35.00/ft² for the GFA that is in excess of 428,571 ft². The anticipated incremental construction costs due to the land attributes of the HC site have been taken into consideration in the proposed purchase price.

Option 3(B) assumes that HC was unable to finance the implementation of the CityCentre concept in time for the construction deadline set by Castlepoint for the residential component and Castlepoint will, in addition to building its residential tower on Part 1, undertake to *construct a commercial/retail structure on both Part l and Part 2 for its own use under a 99-year lease from the City. The City will be given the option to terminate the lease after 11 years from the lease commencement date based on a formula or price that is to be negotiated with Castlepoint as part of the Umbrella Agreement.*

Castlepoint has made an initial proposal that the termination price be based on the amount that results in Castlepoint realizing a 10% annual rate of return on its equity investment during the 11 year period after taking into account all of the revenues and expenditures associated with financing, constructing, leasing and operating the commercial/retail component. If sufficient funds are available at Year 11, the HC may reacquire possession of the commercial/retail component which can then potentially be converted into the CityCentre at HC's cost. The City will also be given a right of first opportunity to acquire the commercial/retail component in the event that Castlepoint desires to sell the commercial/retail component at any time during the term of the lease. If the City does not exercise the buyback option at Year 11 and Castlepoint does not wish to sell its leasehold interest at another point in the lease term, it is possible that the CityCentre concept may never be implemented and the commercial/retail component would remain as commercial/retail uses.

Option 3(B), from the perspective of Castlepoint is basically the same as Option 3(A) but includes Part 2 to be leased to Castlepoint for a term of 99 years with an option in favour of the City for early lease termination after 11 years from lease commencement date and at a cost to the City to be calculated under a preset formula as summarily described above.

Castlepoint has proposed to acquire the 99-year lease on the commercial/retail component and offered to prepay the rental in a one time payment based on $35.00 for each square foot of GFA developed for commercial/retail use. The proposed lump sum payment for the 99-year lease, if based on a permissible GFA of 100,000 ft², is calculated to be at $3.5 million.

Under both options, City staff is required to estimate the fair market value of the land to be sold and the 99-year leasehold interest in favour of Castlepoint, as the case may be.

Market Value Analysis:

City staff has reviewed an appraisal report and an appraisal update of the HC site attached to the Hummingbird Business Plan. The HC commissioned appraisal reports were completed by the Altus Group Toronto Real Estate Advisory Services Inc. The appraisal finding indicates that the market value of the HC site would be best reflected on the basis of permissible GFA multiplied by the market rate per square foot.

The appraiser concludes that the market rate for the HC site would be $45.00/ft² of permissible GFA as of May 18, 2005. Having reviewed the appraisal reports and analysed available comparable sale data, City staff concurs with the appraisal report finding of the market rate of $45.00/ft² of the permissible GFA.

Since the proposed development will be sited on Parts 1 and 2 which can only provide very tight footprint for the proposed structure and that the construction will inevitably involve preservation and minor modification of the existing HC structure as well as temporary shutdown of the theatre during construction, a higher than normal building construction cost for the development *project is anticipated. The additional construction cost was estimated by the appraiser, with the professional assistance of a quantity surveyor, Helyar Limited, to be at an estimated cost of \$6.12 million inclusive of a 20% contingency allowance for unknown risks. City staff was not provided with sufficient details/breakdown of the incremental costs and therefore are unable to comment on the accuracy of this estimate.*

The proposed development, whether it is under the scenario of Options 3(A) or 3(B), is expected to be in excess of the permissible GFA of the HC site under the current zoning by-law. The ultimate amount of GFA permissible on the HC site is uncertain until the proposed development has gone through the planning approval process including an application to amend the existing zoning by-law. The market value of Part 1 will therefore vary according to the final outcome of the permissible GFA achieved through the planning and development approval process.

Conclusions:

After analysing the available sale data and careful review of the appraisal reports on the HC site, City staff is of the opinion that the market value of the permissible GFA for the residential component should be based on a market rate of \$45.00/ft², with due allowance for the anticipated incremental construction costs attributable to the construction of the residential component to be deducted from the computed market value of Part 1 and that the purchase price of Part 1, taken into consideration of the anticipated incremental construction cost, should not be less than \$15 million.

Similarly, the proposed lump sum payment for the 99-year lease should be based on a market rate of \$45.00/ft² of the achievable GFA for the commercial/retail component, with due allowance for the anticipated incremental construction costs attributable to the construction of the commercial/retail component to be deducted from the computed lump sum payment and that the lump sum payment for the 99-year lease should not be less than \$3.5 million.

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List of Attachments:

Sketch and Site Map

(Copies of the attachments are on file in the City Clerk's Office.)