



STAFF REPORT ACTION REQUIRED

Sony Centre – Amendments to Umbrella Agreement and Extension of Bridge Loan

Date:	February 24, 2009
To:	City Council
From:	Acting Deputy City Manager and Chief Financial Officer
Wards:	28
Reference Number:	P:\2009\Internal Services\SP\CC09004SP (AFS# 9529)

SUMMARY

This report has the following two purposes:

- to respond to the recommendation, adopted by Council at its December 1-3, 2008 meeting, that the Deputy City Manager and Chief Financial Officer report back to Council with options to proceed if the development transaction with Castlepoint Realty Partners Ltd. does not close on the expected date; and
- to assess the amendments to the Umbrella Agreement which have been recommended in Notice of Motion MM31.2 in order to facilitate the closing of the development transaction.

Staff have determined that the proposed amendments to the transaction do not have any material financial impact and that these amendments should result in the prompt closing of the transaction. With the closing of the transaction, the Sony Centre for the Performing Arts will be able to repay the bridge loan extended in December.

RECOMMENDATIONS

The Acting Deputy City Manager and Chief Financial Officer recommends that:

1. Authority be given to the Acting Deputy City Manager and Chief Financial Officer to extend the deadline for repayment of the bridge loan to the Sony Centre for the Performing Arts to March 31, 2009.

2. Should the development transaction not close by March 31, 2009, the Acting Deputy City Manager and Chief Financial Officer report back to Council with options to proceed.

Financial Impact

There will be no material financial impact arising from the proposed amendments to the Umbrella Agreement recommended in Notice of Motion MM31.2 which is currently before Council.

If the amendments successfully result in the closing of the transaction, the funds provided on closing by Castlepoint will allow the Sony Centre to repay the outstanding balance on the bridge loan from the City. Therefore, it is anticipated that there will be no financial impact from the extension of the repayment date as recommended above.

Should the closing of the Castlepoint Realty Partners Ltd. transaction be further delayed, this report recommends that the Acting Deputy City Manager and Chief Financial Officer report further on the financial implications arising thereafter.

The Acting Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of September 28, 29 and 30, 2005, Council considered Clause No. 1 of Report No. 8 of the Policy and Finance Committee regarding the updated Business Plan for the Sony Centre and the detailed redevelopment proposal from Castlepoint.

Council directed that the City and the Board of Directors of the Sony Centre pursue the Board's preferred Business Plan option, which contemplated the sale of a portion of the Sony Centre site for a proposed condominium tower.

At its meeting of December 1-3, 2008, Council directed that staff extend and expand the short-term borrowing facility provided to the Sony Centre. The maximum borrowing amount was increased to \$5 million and any amounts outstanding were to be repaid by January 31, 2009. These amendments to the borrowing facility were made as a result of the development transaction not closing on the date originally anticipated.

In order to facilitate the closing of the transaction, the Board of the Sony Centre for the Performing Arts adopted at its meeting of February 12, 2009 amendments to the Umbrella Agreement recommended by Sony Centre staff.

Councillor Moscoe has introduced a Notice of Motion (MM31.2) which recommends that similar amendments be approved by Council at its current meeting.

ISSUE BACKGROUND

Staff of the Sony Centre have been working with Castlepoint Realty Partners Ltd. and City Planning staff to address the remaining conditions which need to be satisfied in order for the development transaction to proceed.

A separate Notice of Motion is before Council which recommends actions to address the remaining Planning-related issues.

A key remaining requirement is that Castlepoint be able to secure construction financing for the project. Castlepoint has indicated that its lender requires that a number of further amendments be made to the Umbrella Agreement.

As the resolution of the remaining issues has taken longer than anticipated, the transaction with Castlepoint has not closed and the Sony Centre has, therefore, not been able to repay its short-term loan from the City.

This short-term loan was necessary to fund the Centre's initial redevelopment work. By December, 2009, the Centre had incurred contracted and consultant costs associated with decommissioning, structural design, and mechanical and electrical engineering work on the interior and exterior of the Sony Centre. Once the transaction with Castlepoint closes, the funds received from Castlepoint are to be used to repay this loan.

COMMENTS

Staff of the Sony Centre have reached general agreement with Castlepoint on a number of amendments to the Umbrella Agreement. The amended terms are attached to Notice of Motion MM31.2. These terms make reference to Ferncastle as the purchasing party as Castlepoint has sold 50% of its interest in the project to Fernbrook Homes (Front St.) Ltd. and together Castlepoint and Fernbrook have appointed Ferncastle Inc. as their nominee and trustee through an Assignment, Assumption and Consent Agreement.

The most substantial amendment is the provision of a deed to Ferncastle earlier in the redevelopment project. According to the original terms of the Umbrella Agreement, Ferncastle was to receive a lease of the strata land during the construction period and only receive title to this land upon substantial completion.

Ferncastle's lender has required that a deed be provided earlier in the project. The amendments provide for this deed once the lender has advanced \$2.5 million in construction financing and various forms of security have been provided to the City by Ferncastle. The amended terms are intended to retain a satisfactory level of assurance that the condominium project will be completed according to the plans and specifications.

The amended terms also contain revisions to the schedule of payments from Ferncastle to the Sony Centre. These revisions partly reflect the fact that the Sony Centre will now be

carrying out a portion of the renovations that are necessary as a result of the demolition of the north-west corner of the existing building as part of the condominium tower construction. Ferncastle will be paying the Sony Centre's costs for this work.

The revisions also allow for the payment of the other financial securities by Ferncastle upon the commencement of construction rather than upon closing of the transaction. This change is necessary to address the timing of available funding for the condominium project.

In return for the amendments which facilitate the financing of the project, Ferncastle is required to close by a fixed date. The amended terms allow the City to cancel the entire transaction in the event the transaction does not close by March 31, 2009.

Staff are satisfied that the proposed amendments will not result in a material financial impact on the City. These amendments will allow the transaction to close, which will result in the Sony Centre receiving payment for the strata lands from Ferncastle. This, in turn, will allow the Sony Centre to repay the bridge loan from the City and commence its renovation in timely manner so that it can reopen in January, 2010.

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SIGNATURE

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