

BRIEFING NOTE

Casa Loma Governance and Operations – EX45.54 Staff comments on letter dated June 30, 2010 to Councillors from Kiwanis Club of Casa Loma

1. Introduction

The letter from the President of the Kiwanis Club of Casa Loma (KCCL) addressed to all Councillors and dated June 30, 2010 challenges the accuracy of the City Staff Report and suggests that KCCL was "blindsided" by taking these issues to Council.

- This Briefing Note addresses point by point the issues raised by KCCL in its letter. The information provided in the Staff Report is factual and backed up by clauses in the Management Agreement between KCCL and the City approved by Council and previous information provided in correspondence received by the City. In addition, this Note explains that KCCL was fully aware of the many issues raised in the Staff Report and the fact that these would be raised at Council.
- As is demonstrated in the Staff Report, there have been numerous attempts to address these issues with both Casa Loma staff and board and/or with the President of KCCL over a substantial period of time. There has been no significant action towards resolution of these issues nor acceptance of the City's offer to help. This report to Council was the only remaining option.

KCCL is seeking a mechanism to allow both parties to discuss their points of view and explore what can be done to constructively resolve the matter.

- Recommendation 1 of the staff report begins the dispute resolution process outlined in the Management Agreement for resolving differences of opinion; we are in agreement that the first step is the dispute resolution process.

2. Secretive Manner in which the report was prepared and published

- KCCL was informed via letter from the Mayor dated May 3, 2010 that this issue would be going to Council following May 14 if KCCL did not take action regarding the Chair
- Next Executive Committee deadline following May 14 was for the June 14 meeting and this Council, so KCCL was aware that a report was to be prepared
- City staff awaited the outcome of the May Casa Loma board meeting and key deliverables before preparing the report including the interior restoration plan now due which was not received
- CMO notified KCCL on June 11 that the report was to become public on June 14 and they would receive a copy at that time
- Staff could not share a report marked confidential with an outside party, so only the public portion of the report was provided to KCCL initially; the confidential portion was provided to KCCL once Executive Committee made it public
- Prior to Exec consideration of this report, City Clerk's staff were approached by an individual asking if she would be permitted to stay in the room for the closed session. The Clerk advised that Exec would have to determine that, but that confidential items are normally discussed in camera with only Council Members and City Officials in the room. Clerk's staff did not advise that the public report would be discussed in camera.

3. The requirements of the Management Agreement

KCCL contends that starting the dispute resolution process is really conducting the 3-year review in advance.

- There are 2 separate clauses in the Agreement that deal with the 3 year review (Clause 2.5) and the dispute resolution process (Section 13).
- The definition of dispute is any controversy, claim or dispute that could result in termination. The City's position is that not meeting deadlines and not completing the work outlined in the Strategic Vision constitute such a dispute and the appropriate action is to begin the dispute resolution process.

KCCL contends that the City has no legal right to require the actions in Recommendation 2 of the Report.

- It is true that there is no mechanism in the Agreement to force KCCL to accept City help to resolve its problems in managing Casa Loma, nor to have board meetings more frequently than quarterly.
- However, Casa Loma, by its own admission in several letters, has said that they do not have the capacity to complete the plan as outlined in the Agreement. The City therefore has offered to provide staff expertise and experience to assist them, has suggested that the board needs to meet more frequently to resolve their problems, has been trying to provide governance training for board members for over a year – all to no avail.
- KCCL does not dispute the fact that they have not been able to complete the work set out in the Strategic Vision for the first 2 years. The City is willing to help. KCCL President has verbally stated that KCCL is willing to proceed with Rec. 2 i, ii, and iii. These are designed to help KCCL meet the objectives outlined in the Agreement. However this letter indicates an unwillingness and argues that the City has no right to ask for commitments to make these improvements.

4. Inaccuracies in the Report

- a) The report accurately describes the financial arrangements. It is not clear where KCCL sees any inaccuracy since their description is the same as ours. One deferral has already been agreed to by the City as permitted in the Agreement and as described in the Report. While Section 6.9 of the Agreement contemplates occasional cashflow shortfalls and permits payment delays and draws from CLIF for this purpose, it was not contemplated that this would be a regular way of subsidizing operations. This too is clear in the Report.
- b) KCCL claims that they are not obligated to make the investments outlined in the Report. Council approved the Management Agreement based on KCCL's plan to make investments and complete interior renovations and these plans were included as part of the Management Agreement. The numbers and plans in the Report were taken from the Agreement. Section 2.1(d) of the Agreement states that KCCL acknowledges that the City is entering into this Agreement for the purpose of implementing the Strategic Visions and KCCL will use its best efforts to implement the Strategic Vision that includes these plans and financial contributions. The Report also outlines the assumptions on which these were based, again as stated in the Agreement. The report accurately reflects what is in the Agreement in this regard.
- c) The Building Condition Audit was completed by the City and provided to Casa Loma staff in the Spring of 2009 – less than 1 year into the Agreement. This was on the Board

agenda June 15, 2009. The 1- and 5-year capital plans are the City's capital budget for Casa Loma and have been updated every year. City staff have engaged Casa Loma staff in preparing the capital plans both in the past and intend to continue in the future.

5. Allegations regarding the Chair

- a) The fact that the Chair was a lawyer acting on behalf of Kiwanis prior to the Agreement is irrelevant and not the City's concern. It was impossible for anyone to know that the intent was for the Chair to act in the future on behalf of Casa Loma under the new Agreement on a fee for service basis while fulfilling his duties as Chair.
- b) A review of invoices for legal services shows that Keel Cottrelle billed \$107,938 for 260 hours of work from January 1, 2008 to June 30, 2008 – prior to the Agreement. In addition, Keel Cottrelle billed an additional \$111,000 from July 1, 2008 to June 30, 2009 and other legal firms billed \$15,400 for that same period. Billings reflect that the Chair personally worked on behalf of Casa Loma during this period including writing the Conflict of Interest Policy that exempted his firm. In accordance with the procedure by-law approved by KCCL as of July 1, 2008, any board member having an interest in a decision before the board must declare an interest. KCCL's letter indicates that the Chair did not feel it necessary to declare an interest since everyone should have known who he worked for and that he personally was providing legal services. There is no board minute of the Chair's abstention from voting on the Conflict of Interest Policy. There is a minor misinformation in the Staff Report that says that in January 2009 the Vice Chair was asked to sign invoices for \$118,000. According to KCCL, the invoices in January amounted to \$40,000. The balance of invoices for the period July 1, 2008 to June 30, 2009 were paid at other times during the year, with a total payment for the year of \$111,000.
- c) KCCL was given ample opportunity to state their position with the Mayor:

March 2, 2010	Mayor met with KCCL to discuss lack of progress, governance issues, and the Chair's conflict
March 18, 2010	KCCL letter to Mayor saying they will get back to him on the issue of the Chair
March 25, 2010	Mayor's letter to KCCL giving a deadline of April 15, 2010
April 14, 2010	KCCL letter to Mayor indicating it was unwilling to deal with the issue of the Chair and unable to complete the planned renovations due to lack of resources and funding
April 19, 2010	Chair's email to the board divulging the dispute over the Chair and postponing the April 26 board meeting until the Chair issue is resolved and accusing the City of a plan to undermine Casa Loma's accomplishments
April 26, 2010	email to board members from Mike Williams urging the board to continue to meet and offering once again resources to help improve operations
May 3, 2010	Mayor's letter to KCCL asking once again for action on the issue of the Chair by May 14, 2010 and indicating that a report would be brought to next Council meeting if no such action was taken

6. City did not comply with confidentiality agreement

KCCL and the City Manager met on June 18, 2010 and subsequently made an informal agreement to avoid media interviews on these matters. It was also agreed that if one party broke the silence then the other party could also be interviewed. KCCL provided a media release on June 18, 2010. During the week of June 28, the City was contacted by the media to respond to comments made by the Chair. The City did so to ensure accurate information was presented.

7. Conclusion

KCCL asks for deferral of this report in order to enable the parties sufficient time to discuss the matter and attempt to reach an amicable solution. The Report recommends entering into a dispute resolution process specifically designed to that end. City Staff have been trying for a year and the Mayor has been engaged in this for 6 months to get KCCL and Casa Loma to move forward on some of these issues. More recently the President of KCCL and the City Manager have also had discussions with only some action being confirmed in a verbal agreement to proceed with Rec 2 items i, ii, and iii. The letter from KCCL however refutes the City's authority to require such actions and suggests that such actions would be pre-empting the dispute resolution process.

City Staff's intent in bringing this report forward was to inform Council at an early stage that the current model was not working well so far in the City's opinion, to gain Council agreement to proceed with dispute resolution, to gain support for providing staff assistance to Casa Loma to resolve some of the problems facing Casa Loma, and to initiate an audit. Because council will not be in session for quite some time, if all of these attempts to resolve the problems are unsuccessful, to delegate authority to begin termination of the agreement and recommend a way to manage Casa Loma in the future.

Prepared for: Joseph P. Pennachetti, City Manager
Date: July 5, 2010

Staff comments on Casa Loma Response to City Staff Report Attached to letter from KCCL dated June 30, 2010

A. Casa Loma Business Model

- The Casa Loma document incorrectly describes the revenue sharing arrangement. There is no mention in the Management Agreement of the City and KCCL sharing 25% of annual revenue. The Agreement states that KCCL will receive \$250,000 per year as a management fee and the City will get \$800,000 per year payable on a set schedule outlined in the Agreement.

B.1. Recession

- It is acknowledged that the recession has had an impact on Casa Loma. However, the fact of financial challenges and reduced tourism has been well know for several years and was known before KCCL developed the Strategic Vision and the business plan proposed. In spite of these challenges, KCCL made strong commitments that were relied on when Council decided to continue its relationship with KCCL. Staff had been recommending that the operation of Casa Loma be put out for competition under an RFP.
- Casa Loma has not aggressively pursued alternative revenue sources to defray the impact of the recession. City staff have offered to assist with this but Casa Loma has not taken up the offer.
- Despite these urgent financial matters and the need to find alternative revenue streams, the Board Chair has schedule board meetings quarterly – the minimum required by the Agreement.

B.2. City Intervention in Catering Request for Proposal

- KCCL put out the catering RFP prior to finalizing the new agreement with the City. It was suggested by the City that this should more properly be the work of the new board. In addition, the first RFP was very narrow, not reflecting the new vision for Casa Loma.

B.3. Current Phase of City's Restoration Project

- Again the disruptions to Casa Loma operations were well known in advance of committing to the plans set out in the Agreement. The Agreement specifically states that the financial projections were based on the assumptions that the catering operations and revenues would be impaired for 2009 and 2010 and would have some impact on the full use of the stables and courtyard possibly until 2017.

B.4. No Property Tax Refund has been received to Date

- The exemption from property taxes did not take effect until July 1 2008 with the coming into effect of the Management Agreement, so a full refund of 100% of 2008 taxes makes no sense. While MPAC does not make partial year adjustments, the City of Toronto Act allows for such, but requires MPAC to finalize the assessment for 2008. While MPAC has done so for 2009 onward, it has not for 2008. Technically MPAC has not completed the paperwork on the exemption to this date, but the City has not collected taxes in 2009 or 2010. Note that the City was able to get a full tax exemption from MPAC including café and catering, so Casa Loma has received an even higher operating windfall than expected.

Progress on Implementing the Strategic Vision

KCCL sold City Council on the Strategic Vision as achievable. Many of the issues KCCL now identifies as barriers to success were identified as KCCL financial assumptions in the Strategic vision and the economic downturn and impact on tourism was already predicted.

The Casa Loma staff response to the report illustrates the progress to date on the renovations and improvements of Phase I of the plan to be completed by June 30, 2010. The chart provided below indicates that Casa Loma has spent \$741,532.00 for Phase I as opposed to the \$1.6M estimated from the management agreement. Casa Loma does not generally dispute the fact that many of the projects planned have not been completed.

Item	Status	Estimate from Management Agreement	Casa Loma Expenditure per Casa Loma	Notes
Hunting Lodge	Partial	352,500	53,000	Casa Loma contends this is substantially complete
Services for Stables	Incomplete	190,200	5,450	
3 rd Floor Exhibits	Incomplete	100,000		Currently housing staff
Visitor Centre	Incomplete	250,000		
Audio Guide	Complete	100,000	681,082	2009 budget was \$119,300 and 2010 projection was \$110,891 Note 3
Temporary Exhibit	Incomplete	225,000		
Signage	Incomplete	10,000	2,000	
Casual Dining	Complete	None allocated since to be paid by caterer		\$295,445 by caterer Note 1
Back of House	Complete	None allocated since to be paid by caterer		\$408,200 by caterer Note 1
Restaurant	Incomplete	None allocated since to be paid by caterer		
Gift Shop	On hold	300,000		
Floor	Incomplete	75,000		Awaiting Council approval of grant from the City for \$15,000 Note 2
Woodwork	Incomplete	30,000		
Total Phase I		1,632,700	741,532	
Phase II				
Disability Access	Part ahead of schedule	500,000	61,484	Note 4
Air Conditioning	Part ahead of schedule	600,000	101,165	Note 4
		1,100,000	162,649	

Strategic Plan Commitments

The foregoing table shows a comparison of the estimates in the Management Agreement and the spending on each item provided by Casa Loma. There are a number of points of clarification required.

- 1) The estimates for casual dining and back of house improvements were never included in the original estimates comprising the \$1.6 million since the caterer was to provide these funds. The actual spending by the caterer should therefore not be included in the Casa Loma spending.
- 2) It should be noted that Casa Loma is expecting a City grant to partially fund the flooring work.
- 3) It is not clear what the significant spending for the audio system was used for since Casa Loma's budget approved by the board shows \$119,300 for 2009 and \$110,891 for 2010.
- 4) Two items from Phase 2 (to be completed in years 3-5) have been started ahead of schedule. Since these projects have estimates separate from the \$1.6 million for Phase I, they are shown separately in the table along with their respective estimates included in the management Agreement.