



## **AUDITOR GENERAL'S REPORT ACTION REQUIRED**

### **Review of the Redevelopment of the Sony Centre for the Performing Arts**

<b>Date:</b>	April 24, 2014
<b>To:</b>	Board of Directors of the Hummingbird Centre for the Performing Arts (operating as the Sony Centre for the Performing Arts)
<b>From:</b>	Auditor General
<b>Wards:</b>	All
<b>Reference Number:</b>	

#### **SUMMARY**

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The Auditor General's revised 2013 Work Plan included a review of the redevelopment of the Sony Centre for the Performing Arts ("Sony Centre"). The objective of this review was to assess the management of the redevelopment of the Sony Centre for the Performing Arts and its effectiveness in achieving the objectives in its business plan.

The attached audit report contains 12 recommendations. Four of the recommendations relate to improving coordination and co-operation between the City and its agencies and corporations. The remaining eight recommendations relate to improving Board oversight, improve existing policies and procedures, and the need to strengthen management and administrative controls at the Sony Centre.

The audit results and recommendations are contained in the attached report entitled "Review of the Redevelopment of the Sony Centre for the Performing Arts". Both the Sony Centre and the City's management responses to the audit recommendations are also attached.

While the recommendations in this report relate to the Sony Centre, they should be viewed as having relevance for the Toronto Centre for the Arts and the St. Lawrence Centre for the Arts, particularly given the renovations planned for the former.

## RECOMMENDATIONS

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### **The Auditor General recommends that:**

1. City Council request the City Manager, in consultation with the Board of Directors of the Sony Centre for the Performing Arts, to conduct a comprehensive review of the Centre's operating agreement following any Council decision on the future of the Centre.
2. City Council request the Deputy City Manager and Chief Financial Officer to re-evaluate the role of the City's Facilities Management Division in all future construction projects at the City's agencies and corporations.
3. City Council request the City Manager to make available a centralized resource containing City of Toronto Act requirements and City policies and procedures that City agencies and corporations are required to follow.
4. The Board of Directors of the Sony Centre for the Performing Arts, in consultation with the City Manager, prepare a long-term strategic plan and a five-year business plan as requested by City Council. Such plan to include strategies to improve operating results, as well as a funding plan for the capital program.
5. The Board of Directors of the Sony Centre for the Performing Arts, ensure that where a business plan is amended or discontinued, that a replacement plan be prepared and presented for City Council approval. Such business plan, and any subsequent amendments, be consistent with any Council-approved strategic objectives for the Centre.
6. The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to report the total funding received from all sources as well as the total of all costs related to all phases of the redevelopment.
7. The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to report on the status of required and optional deferred lifecycle maintenance works identified in previous building condition review reports. Such report to include:
  - a. Explanations for why work originally anticipated was omitted from the redevelopment;
  - b. Identification of required and optional lifecycle maintenance works that have been included in the current 10-year Capital Plan; and
  - c. Estimates of the cost to complete the remaining work.
8. The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer submit for Board approval a comprehensive procurement policy.

The development of this policy be conducted in consultation with the City Manager.  
The procurement policy to include but not be limited to:

- a. Acceptable methods of procurement including appropriate dollar value thresholds for requiring open, competitive procurement;
  - b. Circumstances where sole sourcing is allowed and the reporting requirements and authorizations required to approve sole source awards;
  - c. Approval authorities required where purchases exceed previously authorized commitment levels; and
  - d. The level of documentation required to be retained in support of procurement decisions.
9. The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to review the administrative controls over the procurement process and ensure that such controls are appropriate. In addition, an internal quality control process be established to ensure compliance with such controls.
  10. The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to implement processes to ensure future compliance with the City's "Policy on Donations to the City for Community Benefits".
  11. The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to confirm the appropriate accounting treatment of identified transactions with the Centre's external auditors.
  12. City Council request the Deputy City Manager and Chief Financial Officer review transactions reported in the financial statements of the City's agencies and corporations which relate to the capital works program recorded in the City's accounts.
  13. This report be forwarded to the City's Audit Committee for action.
  14. City Council request the City Manager to forward this report to the Boards of Directors of the Toronto Centre for the Arts and the St. Lawrence Centre for the Arts for information.

## **Financial Impact**

The implementation of recommendations in this report will enhance Board oversight, improve existing policies and procedures, and strengthen management and administrative controls at the Sony Centre. The extent of any resources required or potential cost savings resulting from implementing the recommendations in this report are not determinable at this time.

## DECISION HISTORY

At its meeting of November 19, 2012, the City's Executive Committee recommended that *"City Council request the Auditor General to consider undertaking a complete audit of the Sony Centre for the Performing Arts during the years 2006-2011 inclusive of business plans."* City Council adopted this recommendation on November 27, 2012.

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX25.5>)

The request to conduct a "complete audit of the Sony Centre" was considered too broad and would take an inordinate amount of audit resources. Because of the significant funds involved from both a financing and expenditure perspective, the Auditor General determined that the 2013 audit work plan would be revised to include an audit of the Sony Centre focused on the redevelopment of the Sony Centre site.

The review of the redevelopment of the Sony Centre site did however address the various business plans for the period 2006-2011 which was included in the request of Executive Committee.

The revision to the 2013 audit work plan was reported to the Audit Committee in a report dated September 17, 2013.

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.AU13.5>)

## ISSUE BACKGROUND

City Council first requested a business plan from the Board of the Sony Centre in October 2002, to address the anticipated loss of revenue from the impending 2006 relocation of the Centre's two major tenants, the Canadian Opera Company and the National Ballet of Canada to the Four Seasons Centre for the Performing Arts.

The business plan which was first submitted to City Council in 2003 included the development of a new facility, called CityCentre, which would include arts, culture, media, and dining components to augment the existing theatre's operations. The estimated cost of the CityCentre project was \$75 million with anticipated funding of \$60 million from the federal and provincial governments as well as private sector donations and capital reserve funds. The balance of \$15 million was to be provided by the City through the sale of air rights and surplus land.

In 2008, it became apparent that the required funding for the CityCentre from both the federal and provincial governments would not be realized. As a result, City Council authorized the construction of a public plaza instead of the CityCentre cultural attraction or commercial space. The anticipated cost of this revised plan was estimated to be \$28.5 million. The total cost of the redevelopment is now expected to exceed \$40 million.

## COMMENTS

The objective of this review was to assess the management of the redevelopment of the Sony Centre for the Performing Arts and its effectiveness in achieving the objectives in its business plan.

Our review identifies a number of significant issues including:

- City involvement in the redevelopment project was minimal
- Policies and procedures at the Sony Centre do not adequately address legislated or Council-directed requirements
- The redevelopment project did not meet objectives set out in the original business plan, in particular, the City continues to subsidize the Sony Centre's ongoing operating and capital requirements
- Certain transactions were not appropriately accounted for
- Deficiencies in procurement, construction management and contract administration procedures

It is the City's position that the arms-length relationship with the Sony Centre restricted City staff authority over local board decisions. This resulted in limited involvement by appropriate City staff in the management of the Sony Centre redevelopment.

Nevertheless, the Sony Centre is a City-owned asset. Given its inexperience in managing large-scale construction projects, clearly there was a missed opportunity for the Sony Centre to benefit from the construction management expertise at the City. If the City had been more involved in the redevelopment of the Sony Centre, many of the issues identified in this report would not have occurred. City staff could have provided ongoing advice and guidance on procurement and construction management issues throughout the project.

Although the redevelopment of the Sony Centre has been the largest investment at the Centre since its original construction in October 1960, it is unlikely that further redevelopment projects of this magnitude will occur for many years. Consequently, while we identified a significant number of issues in connection with the management of the redevelopment project, recommendations emanating from these issues will likely not have any future relevance to the Sony Centre. Consequently, we have not provided specific recommendations in relation to project management.

The attached audit report contains 12 recommendations. Four of the recommendations relate to improving coordination and cooperation between the City and its agencies and corporations. The remaining eight recommendations relate to improving Board oversight, improve existing policies and procedures, and the need to strengthen management and administrative controls at the Sony Centre.

The audit report entitled “Review of the Redevelopment of the Sony Centre for the Performing Arts” is attached as Appendix 1. Both the Sony Centre and the City’s management responses to each of the recommendations contained in the report is attached as Appendix 2.

## **CONTACT**

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## **SIGNATURE**

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Jeff Griffiths, Auditor General

13-HCA-01

## **ATTACHMENTS**

Appendix 1: Review of the Redevelopment of the Sony Centre for the Performing Arts

Appendix 2: Management’s Response to the Auditor General’s Review of Review of the Redevelopment of the Sony Centre for the Performing Arts

# **AUDITOR GENERAL'S REPORT**

## **Review of the Redevelopment of the Sony Centre for the Performing Arts**

**February 7, 2014**

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**Jeffrey Griffiths, CPA, CA, CFE**  
**Auditor General**



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## EXECUTIVE SUMMARY

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### Introduction

#### ***Mandate of the Board***

The Sony Centre for the Performing Arts (“Sony Centre”), owned by the City of Toronto, is Canada’s largest soft-seat theatre with over 3,000 seats. The mandate of the Board of Directors (“the Board”) of the Sony Centre is to operate, manage, and maintain the Sony Centre, as a theatre and auditorium, and as a centre for meetings, receptions and displays.

#### ***The City is financially liable for any shortfall of operating and capital funds***

The City of Toronto is financially liable, by statute, for decisions of the Board relating to all aspects of the Sony Centre, including its programming commitments and other contracts, as well as staffing issues. In particular, the City is liable for any shortfall of operating and capital funds.

#### ***Executive Committee requested a complete audit of the Sony Centre***

The City’s Executive Committee requested the Auditor General “to consider undertaking a complete audit of the Sony Centre for the Performing Arts during the years 2006-2011 inclusive of business plans.” City Council adopted this recommendation on November 27, 2012.

#### ***Audit focused on the redevelopment of the Sony Centre***

The request to conduct a “complete audit of the Sony Centre for the Performing Arts during the years 2006-2011” was considered too broad and would take an inordinate amount of time and audit resources. Consequently, because of the significant funds involved and considering the request of Executive Committee, the Auditor General determined that the 2013 audit work plan would be revised to include an audit of the Sony Centre focused on the recent redevelopment of the Sony Centre site as well as the renovations to the theatre.

#### ***Review did address business plans***

The review of the redevelopment of the Sony Centre site did, however, address the various business plans for the period 2006-2011 which was included in the request of Executive Committee.

#### ***Audit work plan revised***

The revision to the 2013 audit work plan to accommodate this review was reported to the Audit Committee in a report dated September 17, 2013.

***Objective of this review***

The purpose of this review was to assess the management of the redevelopment of the Sony Centre and its effectiveness in achieving the objectives in its various business plans.

**Background**

This report has been prepared in the context and in recognition of the establishment of a Council-endorsed Theatre Working Group. The Theatre Working Group was established to explore a new Performing Arts Centre model for the City. The mandate of the Theatre Working Group included the possibility of exploring

*“closer cooperation between the St. Lawrence Centre for the Arts, the Toronto Centre for the Arts, and the Sony Centre for the Performing Arts and third parties with respect to providing greatly enhanced services to the City, directly and through co-operating third parties and explore means to realize significant efficiencies and leverage each other’s human and physical assets.”*

While the recommendations in this report relate to the Sony Centre, they should be viewed as having relevance to all three theatres.

***City Council first requested a business plan from the Board in October 2002***

City Council first requested a business plan from the Board of the Sony Centre in October 2002 to address the anticipated loss of revenue from the impending 2006 relocation of the Centre’s two major tenants, the Canadian Opera Company and the National Ballet of Canada, to the Four Seasons Centre for the Performing Arts.

***CityCentre business plan was first submitted in 2003***

The business plan which was first submitted to City Council in 2003 included the development of a new facility, called CityCentre, which would include arts, culture, media, and dining components to augment the existing theatre’s operations.

***Estimated cost was \$75 million***

The estimated cost of the CityCentre project was \$75 million with anticipated funding of \$60 million from the federal and provincial governments as well as private sector donations and capital reserve funds. The balance of \$15 million was to be provided by the City through the sale of air rights and surplus land.

City Council at that time adopted, in principle, the Board's redevelopment project and approved, also in principle, the transfer of surplus development density as the City's contribution to the capital costs of the project.

***Request for Expressions of Interest initiated in 2003***

The Sony Centre commenced a Request for Expressions of Interest (REOI) process to explore private interest in the development on the site in late 2003. As a result of the REOI, the development concept which was submitted by Castlepoint Realty Partners Ltd. (the "Developer") was selected as the preferred solution. On this basis, in 2004, City Council authorized the City and the Board to enter into direct discussions with the Developer to refine the details of the development plan.

***Council in 2005 authorized the sale of surplus land and development rights***

In 2005, City Council authorized the sale and/or lease of surplus land and development density rights to the Developer as the City's contribution to the redevelopment. The sales proceeds of \$15 million was based on the market value established in an appraisal commissioned by the Sony Centre reduced by an allowance for incremental construction costs for the CityCentre that would be borne by the Developer.

***City Council approved the final business plan for the redevelopment in 2006***

City Council approved the final business plan for the CityCentre redevelopment in 2006 on the basis that it would protect the civic asset and provide the Board with the means to remain financially self-sufficient in the future.

***City Council authorized the construction of a public plaza and renovations to the theatre in lieu of the CityCentre in 2008***

In 2008, it became apparent that the required funding for the CityCentre from both the federal and provincial governments would not be realized. As a result, City Council authorized the construction of a public plaza instead of the CityCentre cultural attraction or commercial space. The anticipated cost of this revised plan was estimated to be \$28.5 million with funding provided from the following sources:

- \$15 million in proceeds from the original sale of the surplus land and development density
- \$4 million in proceeds from the sale of additional residential density
- \$9.5 million in negotiated payments from the Developer.

## **Audit Findings**

A summary of our audit findings follows. Detailed commentary on each of these issues is included in the body of the report.

### ***The Centre is operating under an agreement in place since 1968***

- There is a need to update the operating agreement between the City and the Sony Centre. The mandate, structure, and responsibilities of the Board, as well as the relationship between the City and the Sony Centre are largely described by an operating agreement which has been in place since 1968. We appreciate that the development and approval of a new operating agreement is likely premature at this time due to the potential changes being considered by the Theatre Working Group. Nevertheless, at the appropriate time the operating agreement should be revisited.

### ***Many reports issued on construction management and procurement***

- The Auditor General has issued a significant number of reports on constructions contracts, contract management and procurement related issues over the years. Many of the issues identified in this report could have been avoided if the recommendations contained in previously issued audit reports had been considered. Reports issued by the Auditor General include:
  - Management of Construction Contracts – Toronto Zoo
  - Management of Construction Contracts – Toronto Water
  - Management of Construction Contracts – Technical Services
  - Management of Construction Contracts – Transportation Services
  - Contract Management Issues
  - Contract Management Procedures
  - City Purchasing Card Program
  - Process for Non-Competitive Procurement (Sole Sourcing)
  - Improving the Procurement Process - Unbalanced Bids
  - Procurement Processes Review
  - Departmental Purchase Orders - Enforcement and Compliance Measures

***Recommendations  
from audit reports  
not considered***

Each one of these reports contained a significant number of recommendations which have been implemented at the City level. Based on our review, it is clearly evident that these recommendations were not communicated to Sony Centre management by the City. Even though there was no communication from the City, it would have been prudent for Sony Centre staff to familiarize themselves with the content of previously issued audit reports. The need to share audit recommendations across all City divisions, agencies and corporations continues to be a concern.

***The project did not  
meet the objectives  
of the original  
business plan***

- Generally, the major objectives of the various business plans over the years centred around the need for the Centre to become financially independent from the City. This has not occurred even though an investment of over \$40 million has been made in the redevelopment of the Centre. In fact, the City continues to provide operating subsidies of approximately \$1 million annually. The Sony Centre is also largely relying on the City to finance its capital plan of \$8.2 million over the next 10 years.

***Renovation costs  
have exceeded  
original estimates***

- The budget for interior renovations and capital maintenance of the Sony Centre building has evolved from an original amount of \$15 million to \$35 million. The increased spending was funded in part by \$11 million in additional negotiated payments from the Developer. The original estimated cost for renovations was identified in building condition assessments conducted prior to the redevelopment, \$7 million being identified as required and \$8 million as optional. The actual renovations also included additional elements that were not contemplated in the assessments. Management prioritized these new elements over items in the building condition assessment which they deemed unnecessary at the time. Therefore, although all available funds have been spent, there are several items in the original building condition assessments, intended to be addressed with the funding approved, that were omitted from the redevelopment. The Sony Centre has not formally tracked the status and estimated the cost to complete all known remaining items included in the building condition assessment reports which were not completed during the first phase of the redevelopment.

***Policies and procedures are inadequate***

- Policies and procedures currently in place at the Sony Centre are inadequate. In particular, improvements are needed to the Sony Centre's procurement policy and records retention policy. In developing these policies consultation needs to take place with the City.

***Open and competitive procurement processes not utilized***

- The majority of contracts we reviewed were not awarded through open and competitive procurement processes such as publicly issued requests for proposals, requests for quotations, or requests for tenders. In addition, documentation relating to the justification for sole sourcing contracts is deficient and in some cases does not exist.

***Records were incomplete***

- The records retained by the Sony Centre for the construction project were incomplete and restricted our ability to evaluate the effectiveness of certain internal controls, including controls over the procurement of trade contractors and the quality controls relating to the renovations.

***Certain transactions not appropriately accounted for***

- A number of financial transactions which occurred during the redevelopment have not been appropriately accounted for. In our view, these transactions should have been identified and questioned by City staff during their review of the Sony Centre's annual financial statements.

We have reviewed these transactions with the external financial auditors of the Centre who will determine whether or not the Centre's financial statements require amendment.

- We identified a number of specific deficiencies in construction management and contract administration procedures.

## **Ongoing City Involvement in the Project Was Minimal**

### ***City had minimal involvement***

The redevelopment of the Sony Centre has been, and continues to be, a complex and time consuming project involving the preparation of a number of business plans and the management of a major multi-million dollar construction project. It is the City's position that the arm's length relationship with the Sony Centre restricted City staff authority over local board decisions. This resulted in limited involvement by appropriate City staff in the management of the Sony Centre redevelopment. Nevertheless, the Sony Centre is a City-owned asset. Given its inexperience in managing large-scale construction projects, clearly there was a missed opportunity for the Sony Centre to benefit from the construction management expertise at the City.

### ***Issues identified were preventable***

In certain cases, management at the Sony Centre were not aware of applicable policies since there had been no communication from the City to the Centre. In addition, if the City had been more involved in the redevelopment of the Sony Centre, many of the issues identified in this report could have been prevented. City staff could have provided ongoing advice and guidance on procurement and construction management issues throughout the project.

## **Relevance of Audit Findings and Recommendations Relating to Construction Management**

### ***Redevelopment was largest capital investment since original construction***

The redevelopment of the Sony Centre has been the largest investment at the Centre since its original construction in October 1960. It is unlikely that further redevelopment projects of this magnitude will occur for many years. Consequently, while we identified a significant number of issues in connection with the management of the redevelopment project, recommendations emanating from these issues will likely not have any future relevance to the Sony Centre.

### ***Recommendations in relation to project management have not been made***

Consequently, we have not provided specific recommendations in relation to project management. However, in the interest of providing a comprehensive and complete report, we have provided information in relation to contract management deficiencies which we identified during the course of our audit.



## Conclusion

Until recently, the City had historically taken a “hands off” approach to the operations of its agencies and corporations. The general consensus was to allow these agencies and corporations to operate at arm’s length from the City.

For many years the Auditor General has been advocating a closer relationship with the City particularly as the City provides significant funding to these agencies and corporations. In a similar vein, in a 2009 report entitled “Blue Print for Fiscal Stability and Economic Prosperity” (the Mayor’s Fiscal Review Panel Report) one of the recommendations was:

*“The City should develop a program to require much more coordination, cooperation with shared best practices, and cost sharing between the City and the agencies and corporations.”*

While we understand that each of these entities are legislatively independent arm’s length organizations, the City is the ultimate shareholder/owner and as such has a responsibility to ensure that they operate as efficiently and effectively as possible.

The issues identified through this review clearly demonstrate the need for a protocol to address the extent of the City’s involvement in major construction projects undertaken by the City’s agencies and corporations.

This report contains 12 recommendations which specifically address concerns identified during this review.

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## BACKGROUND

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### ***Mandate of the Board of Directors***

The Sony Centre for the Performing Arts (“Sony Centre”), owned by the City of Toronto, is Canada’s largest soft-seat theatre with over 3,000 seats. The mandate of the Board of Directors (“the Board”) is to operate, manage, and maintain the Sony Centre, as a theatre and auditorium, and as a centre for meetings, receptions and displays.

***Prior to 2006 the Centre was self financing***

Prior to 2006, operating deficits were uncommon and the Centre turned over its operating surpluses to the City at the end of each year. Since 1996, the Sony Centre has also self-financed its capital improvements and rehabilitation projects through a surcharge on ticket sales. During the period from 1996 to 2012, over \$15 million generated primarily from ticket surcharges, naming rights, and related investment income was transferred to the Sony Centre's capital reserve fund. The Sony Centre's expenditures on capital improvements and rehabilitation projects were then drawn against the reserve fund.

Prior to 2006, the Centre benefited from the revenue generated from its two major tenants, the Canadian Opera Company and the National Ballet of Canada. Once these tenants moved to their own facility, the Centre had significant difficulty in maintaining financial independence.

***Business plan for the redevelopment***

City Council first requested a business plan from the Board in October 2002 to address the anticipated loss of revenue from the impending 2006 departure of the Canadian Opera Company and the National Ballet of Canada.

In 2003, the Board submitted its business plan which included the development of a new facility that would augment the existing theatre's operations. This facility, called CityCentre, was to include arts, culture, media, and dining components.

***Estimated cost was \$75 million***

The estimated cost of the CityCentre project was \$75 million with anticipated funding of \$60 million from the federal and provincial governments as well as private sector donations and capital reserve funds. The balance of \$15 million was to be provided by the City through the sale of air rights and surplus land.

City Council approved the redevelopment because it was expected to protect the civic asset and provide the Centre with the means to remain self-sufficient in the future.

***A Request for Expressions of Interest initiated in 2003***

The Sony Centre commenced a Request for Expressions of Interest (REOI) process to explore private interest in the development on the site in late 2003. As a result of the REOI process, the development concept which was submitted by Castlepoint Realty Partners Ltd. (the “Developer”) was selected as the preferred solution. On this basis, in 2004, City Council authorized the City and the Board to enter into direct discussions with the Developer to refine the details of the development plan.

***Council authorized sale of a portion of Sony Centre site***

In 2005, City Council considered the revised business plan for the Sony Centre and authorized the \$15 million sale of a portion of the Sony Centre site directly to the Developer for a proposed condominium tower. City Council also authorized the long-term lease of the CityCentre space for commercial uses if the Board was unable to raise the remaining \$60 million in funds necessary to build CityCentre from both the federal and provincial government as well as the private sector. The final version of the business plan was approved by City Council in 2006.

***The business plan cost \$3.4 million to develop***

Approximately \$3.4 million in costs were incurred between 2003 and 2008 to develop the CityCentre business plan. Funding for this cost was drawn from the Sony Centre’s capital reserve fund.

In 2008, after it became apparent that the required funding for the CityCentre plan would not be realized, City Council authorized construction of a public plaza instead of the CityCentre project or commercial space. The additional residential density available from the cancelled CityCentre project was then sold directly to the Developer for an amount of \$4.0 million.

***Exhibit 1 contains Council decision history***

City Council’s decision history for the redevelopment is complex and is presented in Exhibit 1 to this report.

***The revised development was divided into three phases***

The revised redevelopment project consisted of three phases:

- Interior renovations to the theatre itself
- Construction of new backstage facilities
- Public plaza and exterior renovations

***Phase 1  
renovation and  
restoration  
highlights***

The Sony Centre closed for the first phase of renovations in June 2008 and reopened on October 1, 2010. The restoration and renovations included, amongst other things:

- Relocation of mechanical and electrical systems
- Set-up of temporary backstage space to replace the old backstage space which was demolished
- Restoration of bronze and wood elements
- Replacement of the auditorium seating and theatre furniture
- Renovation of the existing facilities, including washrooms, lounges, and catering kitchen

***Interior  
renovations cost  
\$35.4 million***

The \$35.4 million actual cost of the interior renovation, as reported to City Council through the 2012 Capital Budget, included:

• Construction management & trade contracts	\$20,971,000
• Other contracts	8,993,000
• Consultants and professional services	3,409,000
• Allocation of Sony Centre management costs	1,050,000
• Sony Centre labour costs	1,025,000
	<hr/>
	\$ 35,448,000

***Sources of  
funding for the  
interior renovation***

The interior renovation of the Sony Centre was funded through various sources including:

- \$19.0 million in proceeds from the sale of the surplus land and development density on the site
- \$11.0 million in negotiated payments from the Developer
- \$1.4 million from balances in the capital reserve fund (generated through ticket surcharges, naming rights, and interest earned)
- \$6.6 million long-term interest bearing loan from the City.

The funding as indicated above totalled \$38 million. While the Sony Centre shut down operations in June 2008 in anticipation of the closing of the real estate transaction, management advised that several factors outside of the control of the Sony Centre delayed the commencement of the theatre renovations until late 2009. Approximately \$2.6 million of the \$38 million in available funding was used to offset operating deficits during the two year period the theatre was closed for the renovations. Factors management attributes to the extended period of closure include:

- Longer than anticipated time lines for processing of the Developer's zoning and site plan applications
- Additional requirements imposed on the Developer to be able to obtain construction financing from the Canada Mortgage and Housing Corporation (CMHC) in late 2008, subsequent to the approval of the development applications.

***Exhibit 2 – costs and funding***

A detailed analysis of costs and sources of funding for the interior renovations is provided in Exhibit 2 to this report.

***Phases 2 and 3 are still to be completed at a total cost of approximately \$4 million***

Phase two of the redevelopment, construction of new permanent backstage facilities, began in 2011 with completion anticipated in 2014. The replacement backstage facilities are being built and funded by the Developer. However, the Sony Centre will incur costs of approximately \$622,000 to complete various connections to the existing facility. These expenditures will be paid using draws against the capital reserve fund. In addition, the 2014 – 2023 Capital Plan includes \$400,000 to fit out new space created under the public plaza.

The final phase of the redevelopment includes the Sony Centre's exterior renovations and the public plaza with costs estimated at \$2.0 million and \$1.0 million respectively. Construction will commence following the completion of the condominium development which is scheduled for 2015. The Sony Centre's exterior renovations and the public plaza will be funded through a combination of negotiated payments from the Developer, development charges, and through the issue of new City debt.

Consequently, \$4 million in estimated costs related to Phases 2 and 3 of the redevelopment are still to be incurred.

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## AUDIT OBJECTIVES, SCOPE AND METHODOLOGY

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***Executive Committee requested a complete audit of the Sony Centre***

At its meeting of November 19, 2012, the City's Executive Committee recommended that "*City Council request the Auditor General to consider undertaking a complete audit of the Sony Centre for the Performing Arts during the years 2006-2011 inclusive of business plans.*" City Council adopted this recommendation on November 27, 2012.

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX25.5>)

***Audit focused on the redevelopment of the Sony Centre***

The request to conduct a "complete audit of the Sony Centre" was considered too broad and would take an inordinate amount of audit resources. Because of the significant funds involved from both a financing and expenditure perspective, the Auditor General determined that the 2013 audit work plan would be revised to include an audit of the Sony Centre focused on the redevelopment of the Sony Centre site.

***Review did address business plans***

The review of the redevelopment of the Sony Centre site did however address the various business plans for the period 2006-2011 which was included in the request of Executive Committee.

The revision to the 2013 audit work plan was reported to the Audit Committee in a report dated September 17, 2013.

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.AU13.5>)

***Audit objective***

The objective of this review was to assess the management of the redevelopment of the Sony Centre for the Performing Arts and its effectiveness in achieving the objectives in its business plan.

The audit included a review of:

- Contract administration and project management practices implemented to control project scope, cost, and schedule of the Sony Centre's renovation project
- Procurement of goods and services for the interior renovation project
- Administrative controls over the funding and disbursements for the project.

***Audit scope***

The review covered transactions that occurred primarily during the period from 2008 to 2011.

***Audit methodology***

Our audit methodology included the following:

- Review of City and Sony Centre policies and procedures
- Interviews with staff of Sony Centre as well as staff from the City's Accounting Services, City Planning, Corporate Finance, Financial Planning, Legal Services, and Real Estate Services Divisions
- Examination of documents and records retained by the Sony Centre as well as by the City's Real Estate Services Division
- Review of the Auditor General's previously issued construction contract and contract management audit reports and related reports of other municipalities
- Physical observation of the project site

***Compliance with generally accepted government auditing standards***

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## AUDIT RESULTS

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### A. RELATIONSHIPS BETWEEN THE CITY AND THE SONY CENTRE FOR THE PERFORMING ARTS

*Levels of authority delegated*

City Council has delegated varying levels of authority to its agencies and corporations to deliver services on Council's behalf. In general, the Board of Directors of the Sony Centre operates at arm's length from the City.

*The Centre is operating under an agreement in place since 1968*

The mandate, structure, and responsibilities of the Board, as well as the relationship between the City and the Sony Centre are largely described by an operating agreement which has been in place since 1968.

#### A.1. The Operating Agreement Between the City and the Board of Directors of the Sony Centre Should Reinforce the Strategic Direction for the Theatre

*A comprehensive review and update of the operating agreement has not been completed*

Over the years, various Council policy decisions and bylaws were enacted to add to, modify, or revoke individual clauses of the agreement. However, a comprehensive review and update of the existing operating agreement has not been completed. Therefore, any strategic directives and changes to the Centre's operating principles have not been captured collectively in an up-to-date agreement.

City Council is currently in the process of determining the future of the Sony Centre along with the City's other major civic theatres. A Council endorsed Theatre Working Group has been established for this purpose. An opportune time to revisit the operating agreement would be at the conclusion of that process.

#### **Recommendation:**

- 1. City Council request the City Manager, in consultation with the Board of Directors of the Sony Centre for the Performing Arts, to conduct a comprehensive review of the Centre's operating agreement following any Council decision on the future of the Centre.**



## **A.2. City Involvement in the Redevelopment Project Was Minimal**

### ***Missed opportunity for City involvement during construction***

Based on our review, it is apparent that while the City was involved in the real estate development transaction, it had no involvement during the renovation and construction phase of the redevelopment project. One of the roles of the City's Facilities Management Division is project management which includes construction implementation. Given the extent of the renovation itself, clearly there was a missed opportunity for the Sony Centre to benefit from the construction management expertise at the City.

#### **Recommendation:**

- 2. City Council request the Deputy City Manager and Chief Financial Officer to re-evaluate the role of the City's Facilities Management Division in all future construction projects at the City's agencies and corporations.**

## **A.3. Policies and Procedures at the Sony Centre Do Not Adequately Address Legislated or Council-Directed Requirements**

### ***City of Toronto Act has certain requirements***

The City of Toronto Act (the "Act") includes legislated requirements that a local board must adopt and maintain policies with respect to its procurement of goods and services. In addition, the Act specifies that a local board has a duty to retain and preserve records. Based on the issues identified during the audit, the Sony Centre's policies need to be enhanced to adequately address these requirements.

Furthermore, the issues identified during this audit, particularly with respect to procurement and construction management, have been raised by the Auditor General in previous reviews of City divisions and other agencies and corporations.

We continue to have concerns that recommendations contained in previous audit reports do not receive the appropriate level of attention at other entities throughout the City.

***Issues identified in audits of City divisions and other agencies and corporations were applicable to the Sony Centre***

In September 2013 in a report to Audit Committee, the Auditor General made a recommendation that “*City Council request the City Manager to develop a process to communicate to Division heads and management of Agencies and Corporations, recommendations made by the Auditor General which are specific to individual Divisions, Agencies and Corporations but which generally have applicability to other entities throughout the City.*”

(<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.AU13.8>)

The City Manager advised that the City communicates with agencies regarding procurement policy matters as necessary and as matters arise. The City Manager’s Office also relays Council directives and incorporates them as required in relationship frameworks and briefing and orientation material.

***No direction provided by the City***

Management of the City’s agencies and corporations are responsible for monitoring and ensuring the implementation of Council requests and directives. Sony Centre management indicated that it received no direction with respect to the need to follow particular policies and procedures relating to the construction project. They further suggested that they would have found it useful if there was a specific information handbook containing all pertinent policies that must be followed by agencies and corporations.

**Recommendation:**

- 3. City Council request the City Manager to make available a centralized resource containing City of Toronto Act requirements and City policies and procedures that City agencies and corporations are required to follow.**

## **B. THE REDEVELOPMENT PROJECT DID NOT MEET THE OBJECTIVES SET OUT IN THE BUSINESS PLAN**

### ***The CityCentre concept proposed cultural and entertainment attractions in a new building***

The “CityCentre concept” was proposed by the Board of Directors of the Sony Centre in 2002 as a business strategy to augment the performing arts elements that had, to date, defined the Sony Centre. The CityCentre concept incorporated a series of cultural and entertainment attractions in a new building to be developed on the Sony Centre site.

### ***The intent of the CityCentre was to generate sufficient revenues to support the existing theatre***

In presenting the CityCentre plan, Sony Centre management stated that “*the Main Stage by itself is likely not a sustainable business absent subsidy.*” The original 2003 business plan as well as the revised plans submitted in 2004 and 2005 made clear that without the CityCentre the Sony Centre would not be able to operate without subsidy.

### ***Funding of \$75 million required***

The estimated cost to implement the CityCentre plan was in the range of \$75 million with required funding in the amount of \$60 million from the federal and provincial governments as well as private sector donations.

The City’s contribution to the redevelopment in the amount of \$15 million was to be limited to the surplus land and development density rights to be sold to a private developer.

In 2005, City staff recommended to City Council that the sale of property not proceed until it was clear that the \$75 million in required funding could be raised because the business plan options which did not include the CityCentre were not financially viable. At the time, City Council adopted the Sony Centre’s preferred option to proceed with plans for the CityCentre and the sale of property.

### ***CityCentre redevelopment plan abandoned***

Due to the difficulties in obtaining government funding, the CityCentre plan was essentially abandoned. The full amount of the financing received from the City and the private developer was directed towards major renovations at the existing Sony Centre facility.

Even though the major objective of the various business plans developed by the Sony Centre was to ultimately make the Centre financially independent, the City continues to provide ongoing financing of both the Centre’s operating and capital expenditures.

## **B.1. Ongoing Operating Requirements – The City Continues to Subsidize the Operations of the Sony Centre**

***The Sony Centre continues to receive over \$1 million annually in operating subsidies***

Since the departure of the Canadian Opera Company and the National Ballet of Canada in 2006, the Sony Centre has continued to receive annual operating subsidies ranging from \$0.7 million to \$1.2 million to offset the Centre's net expenditures. These subsidies are approved by Council each year.

***Alternatives to the CityCentre for addressing operating shortfalls were not approved by City Council***

From the outset, there was uncertainty as to whether sufficient funding would be raised to finance the CityCentre concept which required funding of \$75 million. The business plan presented to City Council included two other alternatives for addressing operating shortfalls. These alternatives focused on enhancing existing programming with or without the funding that would have been realized from a sale of land and development density. For both alternatives, the City subsidy was projected to range from \$375,000 to \$1.6 million depending on targeted attendance levels.

A comparison of the business plan projections and actual operating results is presented in Exhibit 3.

Although City staff recommended further analysis of these two alternative options in 2005, Council only directed staff to proceed with the CityCentre concept. Consequently, all subsequent planning revolved around implementing the CityCentre concept.

***Evident in 2008 that CityCentre concept would not be realized***

In 2008, it became evident due to funding shortfalls that the CityCentre concept would not be realized. Once the CityCentre project was discontinued, Council authorized the construction of a public plaza along with the renovation of the Centre itself.

In the absence of the new CityCentre, the Sony Centre's operations, by default, then focussed on enhancing programming and promoting corporate events and catering. As a result, the Sony Centre has required annual subsidies consistent with the original projections.

City staff advised that the only option that would have allowed the City to permanently avoid the need for ongoing subsidies was to divest itself of the whole theatre site. However, by 2008, the City had already entered into the development agreement with the Developer and it was too late to begin reconsidering alternatives.

**B.2. Ongoing Capital Requirements – The Sony Centre is Relying on the City to Finance its Current 10-Year Capital Plan Through New Debt**

***The Sony Centre self-financed its capital program for 10 years***

Prior to the redevelopment, the Sony Centre self-financed its capital program through the collection of a ticket surcharge which was set aside in a reserve fund. At the end of 2006, the reserve fund had a balance of approximately \$3 million. These funds, together with the proceeds received from the Developer and a \$6.65 million loan from the City, were to be used to fund the redevelopment. However, all of these funds have since been spent and only \$341,000 remained in the reserve fund by the time the interior renovations of the redevelopment were completed.

The ticket surcharge and naming rights revenues historically used to replenish the reserve fund for future capital work must now be applied towards the repayment of the City's loan which was required to finance certain of the renovation costs.

Management have indicated that the Sony Centre cannot generate sufficient funds to service both the City loan and fund the \$8.2 million in capital maintenance requirements included in its 2014-2023 Capital Plan.

***Projects included in the 10-year capital plan***

The projects included in the 10-year capital plan include:

- Public plaza – \$1.000 million
- Heritage Easement Agreement upgrades – \$1.990 million
- Upgrades to permanent capital assets – \$5.245 million

***\$7.2 million in new debt is needed to fund the Centre's 10-Year Capital Plan***

These projects will be financed through:

- New debt – \$7.235 million
- Development charges – \$0.300 million
- Developer payment – \$0.700 million

### **B.3. Despite Numerous Studies, Neither the City Nor the Board Have Been Able to Develop a Business Plan that Eliminates the City’s Subsidy**

***Divestment of the Sony Centre was previously explored in 1996***

In 1996 the City initiated an attempt to divest itself of operating responsibility for the Sony Centre. The attempt was not successful and the proposed divestment was eventually abandoned in 2003 when the Board presented the CityCentre business plan to City Council.

***The 2011 Core Service Review recommended the integration or sale of the three civic theatres***

As part of the 2011 Core Service Review, City Council adopted recommendations to consider the amalgamation of all three civic theatres under a single board structure. This resulted in a Request for Expression of Interest (REOI) to determine the options for sale, lease, operation, or other arrangement of the three civic theatres. The 2012 REOI did not generate any acceptable options.

***The Mayor’s Task Force and the City Manager both recommended divestment of the Sony Centre***

In 2011, the Mayor’s Task Force – Arts and Theatres recommended that the City “*aggressively pursue a third party purchaser, or a long term, subsidy and risk free, third party management agreement*” of the Sony Centre. In response to this, the City Manager, in 2012 recommended “*City Council authorize the City Manager to work with City staff to determine how to structure a potential divestment of the Sony Centre for the Performing Arts*”.

The City’s Executive Committee deferred consideration of the recommendation for 120 days. Instead, Executive Committee requested the Board to develop and submit a long-term strategic plan and a five-year business plan for the Sony Centre to continue as a City-owned theatre, while substantially reducing or eliminating the City’s subsidy.

***An external consultant was engaged to recommend options to reduce financial dependence on the City***

The Board engaged an external consultant to review the Sony Centre and recommend options to reduce financial dependence on the City of Toronto. At its September 2013 meeting, the Board received a briefing summarizing the consultant’s draft report on Business Analysis and Strategic Options. Although the report did include a number of actions, it did not identify steps to reduce or eliminate the City’s subsidy.

The consultant indicated that the Sony Centre could not be financially independent within its current operating model (mandate, corporate structure and governance). The consultant's report chronicles the financial success of the Centre from 1980 to 2006 but does not offer workable solutions to eliminate the City subsidy to the Sony Centre going forward.

Management advised that the Sony Centre's long-term strategic plan and five year business plan would be submitted shortly by the Board to the City's Executive Committee.

**Recommendations:**

- 4. The Board of Directors of the Sony Centre for the Performing Arts, in consultation with the City Manager, prepare a long-term strategic plan and a five-year business plan as requested by City Council. Such plan to include strategies to improve operating results, as well as a funding plan for the capital program.**
- 5. The Board of Directors of the Sony Centre for the Performing Arts, ensure that where a business plan is amended or discontinued, that a replacement plan be prepared and presented for City Council approval. Such business plan, and any subsequent amendments, be consistent with any Council-approved strategic objectives for the Centre.**

## **C. COMMENTS ON THE REDEVELOPMENT PROJECT**

### **C.1. The Cancellation of the CityCentre Project Did Not Preclude the Sale of Land Directly to the Developer**

#### **Process to explore private interest in the development**

*In 2003, the Sony Centre conducted an REOI process to explore private interest in developing the site*

The Sony Centre commenced a Request for Expressions of Interest (REOI) process to explore private interest in the development on the site in late 2003. While the REOI generated a variety of responses including proposals for a condominium and hotel tower, amusement attraction, and parking structure, the Developer's proposal was the only response that incorporated the CityCentre.

*Council authorized the sale directly to the Developer*

The results of the REOI process were reported to City Council in 2004 where Council authorized the direct negotiation of the sale with the Developer on the basis that its response included construction of the CityCentre cultural attraction. In September 2005, City Council declared surplus a portion of the Sony Centre site to be sold and/or leased directly to the Developer.

#### **Determination of the market value of the property**

*Sale based on a third-party appraisal*

Since the market value of the surplus property was not determined by listing the property and inviting offers, the Sony Centre arranged for a third-party appraiser to provide an independent estimate of the market value of the property to be sold. The sales proceeds of \$15 million was based on the market value established in an appraisal commissioned by the Sony Centre reduced by an allowance for incremental construction costs that would be borne by the Developer. The City's Real Estate Services staff reviewed the third-party appraisal reports and concluded that the market rate established in the reports was reasonable.

*The development agreement was already in place by the time CityCentre was abandoned*

In 2008, the CityCentre concept was abandoned completely. However, by that time, the original agreement to sell the land directly to the Developer had already been executed. Consequently, the City was committed to selling the land to the Developer even though the basis for their selection, the construction of the CityCentre, would never occur.



***Staff did not retain evidence of their review of two appraisals for additional density sold to the Developer***

At that time, additional density was made available after City Council authorized the construction of a public plaza in lieu of the CityCentre or leased commercial space. Two third-party appraisals were obtained to determine the sale price of the additional density.

- An April 30, 2008 appraisal estimated that the additional residential density was worth approximately \$70/ft<sup>2</sup> of gross floor area, (total value \$5.3 million).
- An August 19, 2008 appraisal reduced the valuation to approximately \$52.50/ft<sup>2</sup>, (total value \$4.0 million), due to the lack of parking for the units and the fact that they were on lower floors, some with obstructed views.

***No appraisal documentation retained***

Both appraisals were reviewed by the City's Real Estate Services Division. However, the Division did not retain any documentation to support its review, analysis and conclusions on these appraisals. Despite this, we were able to retrieve some evidence that the Division approved the 2008 appraisals.

The inadequate retention of documentation related to the Real Estate Services Division's review of market appraisals appears to be isolated in nature. Furthermore, during the Auditor General's 2012 audit of the City's Appraisal Services Unit, the retention of documents was not identified as a concern. Consequently, this report does not contain a recommendation in relation to this matter.

## **C.2. Capital Spending Was Directed to Theatre Renovations After the Cancellation of the CityCentre Project**

***The budget for interior renovations and capital maintenance increased from \$15 million to \$35 million***

The Council-approved capital budget for the theatre renovations was initially estimated at \$7 million in 2008. A building condition assessment estimated that an additional \$8 million was required for optional renovations and capital maintenance work. At that time, it was understood that the proceeds from the land sale, combined with the balance in the Sony Centre's capital reserve, would fund 100 percent of the costs.

Since that time, various amendments brought the Council approved capital budget for this work to \$35.4 million in 2011. The increased spending was funded in part by \$11 million in additional negotiated payments from the Developer.

***Exhibit 1 contains  
a history of  
Council decisions***

A summary of City Council's approvals of the initial capital budget and subsequent revisions are outlined in Exhibit 1 to this report.

Subsequent to City Council's 2008 decision to cancel the CityCentre concept and proceed with the public plaza, the Sony Centre submitted their 2009 capital budget of \$28.5 million to complete:

- mechanical and electrical work - \$11.5 million  
(Partially attributable to changes resulting from the cancellation of the CityCentre and funded by \$8 million in negotiated developer payments)
- theatre renovations - \$16.0 million
- public plaza construction - \$1.0 million.

Detailed explanations were not submitted to Council to support recommended capital budget increases or loan amounts, although quarterly capital variance reporting did include a very brief explanation which indicated the overspending on the renovation of the theatre was *“mainly due to unanticipated sewage problems, leaking roof, additional asbestos remediation, and unexpected issues in working with a heritage building.”*

***Increases to the  
capital budget***

Subsequent budget increases of \$3.5 million in 2010 and \$3.4 million in 2011 included:

- \$2 million for temporary dressing rooms and related site work
- \$1.5 million to increase construction contingencies
- \$0.4 million for roof repairs
- \$0.7 million for asbestos remediation
- \$0.6 million for chattel assets
- \$0.9 million for remediation of the sewage backup which was subsequently reimbursed through an insurance payout
- \$0.8 additional costs incurred to maintain a state of construction readiness during the nearly one year delay in closing the real estate transaction and commencing construction.

***Financial pressures created by theatre closure***

In addition to the increased capital costs, the Sony Centre also experienced financial pressures on its operations during the two year period the theatre was closed for renovations. Therefore, it was necessary to transfer \$2.6 million from the capital reserve fund to fund operations.

***Council authorized a \$6.65 million loan***

The proceeds from the sale of the surplus land and development density were not sufficient to fund the increased cost arising from the redevelopment and financial pressures created by the extended closure of the theatre. Therefore, as part of the annual capital budget process, City Council authorized a \$6.65 million long-term loan. Sony Centre management indicated the loan was needed to address operating costs from the 1 year delay in commencing construction, the need to retain the Construction Manager on site during this period, the cleanup of the sewage flood from the Scott Street pumping station, and unforeseen asbestos remediation.

**The \$35.4 million reported cost of the redevelopment does not include all costs to complete the project**

***The overall project cost of \$35.4 million was not reported until the completion of the interior renovations***

The overall anticipated cost of the interior renovations was not reported to City Council each time additional funds were requested. The total cost was reported once the project was completed. Even then, management limited the reported cost of the redevelopment to expenditures incurred during a fixed period from 2008 through 2011. For example, approximately \$413,000 in pre-construction services provided prior to 2008 by various consultants including the architect, structural engineer, mechanical engineer and the Construction Manager were not included in the total cost reported to City Council.

***\$4 million in costs for the remaining phases of the redevelopment are still to be incurred***

Only the cost of the first phase of the renovations, including interior renovations and mechanical and electrical upgrades, were included in the \$35.4 million reported cost of the redevelopment. As of August 2013, the forecasted cost to complete the remaining phases of the redevelopment include:

- \$984,000 for the public plaza
- \$400,000 for fit out of additional space under the public plaza
- \$622,000 for the permanent backstage facilities
- \$1,990,000 for the Heritage Easement Agreement renovations

Consequently, although the reported costs of \$35.4 million appear to match the final approved budget of \$35.4 million, some \$4 million in estimated costs are still to be incurred.

**Items in the building condition assessments that were omitted from the redevelopment were not formally tracked**

***No proceeds from the development transaction have been held in reserve for required post-renovation work***

Council approval of the redevelopment budget was based on the building condition assessments completed prior to the redevelopment. The actual renovations included additional elements that were not contemplated in the assessments. Management prioritized these new elements over items in the building condition assessments which they deemed unnecessary at the time. For example, replacement and upgrading of mechanical and electrical equipment and stage and theatrical systems and equipment not completed during the renovation, as well as the replacement of roof areas, and elevator and escalator upgrades.

Management advised that post-renovation work was always contemplated. However, no funds were held in reserve to complete this work. The Sony Centre has not formally tracked the status and estimated cost to complete all items identified in the building condition review reports.

Management further advised that the Sony Centre's 10-year capital plan for the most part reflects new and ongoing state-of-good-repair requirements following the renovation, as well as mechanical and electrical items that were deferred as items of ongoing preventative maintenance. The capital plan, however, does not clearly identify which items were included in the building condition reviews and were already funded in the redevelopment budget approved by Council. In other words, all the money has been spent but all the funded work has not been completed.

**Recommendations:**

- 6. The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to report the total funding received from all sources as well as the total of all costs related to all phases of the redevelopment.**

7. **The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to report on the status of required and optional deferred lifecycle maintenance works identified in previous building condition review reports. Such report to include:**
  - a. **Explanations for why work originally anticipated was omitted from the redevelopment;**
  - b. **Identification of required and optional lifecycle maintenance works that have been included in the current 10-year Capital Plan; and**
  - c. **Estimates of the cost to complete the remaining work.**

### **C.3. Procurement Policies Were Inadequate**

***Existing purchasing policies and procedures are inadequate***

The Sony Centre's existing purchasing policies and procedures are inadequate and need to be reviewed.

The purchasing policies and procedures currently in existence at the Centre are generally limited to describing requirements for the issuance of purchase orders and specifying levels of commitment authority for purchases.

***Purchasing policy does not describe the appropriate types of procurement processes to be used and when they should be used***

The policy did not describe standard approaches for:

- selecting the appropriate type of procurement process to be used including thresholds for competitive procurement
- the circumstances under which non-competitive processes or sole sourced purchasing is allowed
- evaluating bids and proposals
- maintaining records on vendor performance under contracts
- retention of documentation in support of procurement decisions.

Based on our review we identified circumstances where:

***Competitive procurement processes were not used to hire contractors and consultants***

- Formal, open, competitive processes such as publicly issued request for proposals, request for quotations, or request for tenders were not used to hire contractors and consultants for the redevelopment. For over \$11 million in contract awards reviewed, the Sony Centre indicated that specific due diligence measures were carried out prior to awarding contracts; however, there was no supporting documentation for these measures. A further \$12 million in trade contracts were tendered by the Construction Manager to a pre-qualified list of bidders; however, insufficient documentation was retained to validate the steps taken in the pre-qualification and bidding process.
- Appropriate documentation was not retained to support decisions for sole sourcing contractors and consultants and the steps taken to demonstrate that the Sony Centre obtained best value and/or lowest price. There was also no evidence in the Board meeting minutes or staff reports to indicate that this information was communicated to the Board.

***Negotiation of sponsorship arrangement coincided with purchase***

- A sponsorship arrangement, whereby the Sony Centre received goods free of charge from a vendor, was negotiated at the same time as a contract for the purchase of goods and services was awarded to the vendor. The total value of goods and services purchased from the vendor was \$299,000.

***Significant purchases made with personal credit cards***

- There were several instances where staff made purchases of up to \$20,000 of capital assets with personal credit cards. These purchases were then processed as expense reimbursements.

***Appropriate  
authorizations of  
contract awards  
were not obtained***

In addition, appropriate authorizations of contract awards were not always obtained. In particular,

- There was no documented evidence of the Board's required approval of a number of contract awards exceeding \$100,000. In some cases, even where Board approvals were obtained, the total contracted value significantly exceeded the authorized level of commitment. The existing policies and procedures did not define the authorizations required for significant increases in purchasing. There was no reporting back to the Board on expenditures incurred in excess of those originally authorized.
- Board authorization was not sought when the cumulative amount of spending exceeded \$100,000. For example, there was no evidence of the Board's approval of the award of work to the architect, engineers, and other consultants. The initial fees for the architect, engineers, and other consultants were generally below \$100,000; however, the fees escalated such that the cumulative amount of work awarded to each vendor ranged from \$170,000 up to \$994,000.
- There were instances where actual spending exceeded the approved contract or purchase order value, where no purchase order or contract was issued to the vendor, or where purchase orders were issued with no contract value established.

**Recommendations:**

- 8. The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer submit for Board approval a comprehensive procurement policy. The development of this policy be conducted in consultation with the City Manager. The procurement policy to include but not be limited to:**
  - a. Acceptable methods of procurement including appropriate dollar value thresholds for requiring open, competitive procurement;**
  - b. Circumstances where sole sourcing is allowed and the reporting requirements and authorizations required to approve sole source awards;**
  - c. Approval authorities required where purchases exceed previously authorized commitment levels; and**
  - d. The level of documentation required to be retained in support of procurement decisions.**
- 9. The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to review the administrative controls over the procurement process and ensure that such controls are appropriate. In addition, an internal quality control process be established to ensure compliance with such controls.**

**C.4. The Sony Centre Did Not Comply with the City's Donations Policy**

Donations received from the President of the Developer did not comply with the Policy on Donations to the City for Community Benefits.

***Donation of a condominium unit***

- In December 2007, the Sony Centre accepted the assignment of a \$629,400 condominium unit owned personally by the Developer's President.



***\$200,000 in cash donations***

- During 2010, the Sony Centre received a \$200,000 personal investment from the Developer's president. In 2011, entitlement to the principal and the investment income was waived and the funds were treated as a donation. The amount received was significantly less than the \$1 million corporate investment originally authorized by City Council and the Board in 2009 to address delays in the closing of the transaction.

The donations were received during the planning approval processes. Furthermore, the timing of the donations also coincided with the execution of the Umbrella Agreement and Construction Procedures Agreement as well as the endorsement of amendments including the sale to the Developer of the additional residential density. Accepting donations during such periods is not allowed under the City policy and no prior approval of the donations was sought from the Board and City Council.

**Recommendation:**

- 10. The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to implement processes to ensure future compliance with the City's "Policy on Donations to the City for Community Benefits".**

**C.5 Accounting Treatment of Non-Routine Transactions**

***Non-routine transactions were not appropriately accounted for***

A number of non-routine financial transactions were not appropriately accounted for. The accounting for certain transactions related to the redevelopment were complicated by the fact that the funding and costs related to the capital works program were generally not recorded in the Sony Centre's financial statements, but were recorded in the City's accounts.

We have discussed the accounting for these transactions with PricewaterhouseCoopers LLP, the Centre's external financial statement auditors, who will assess whether or not the Centre's prior financial statements need to be corrected. These transactions are as follows:

***Certain one-time payments received by the Sony Centre were recorded to operations rather than a source of capital funding for the redevelopment***

Transactions recorded as one-time revenue by the Sony Centre:

- \$270,000 received from the Developer to address delays in commencement of construction were not included as a source of funds for the redevelopment. The accounting standards allow for the recognition of the revenues in the Sony Centre's financial statements. However, consistent with all other proceeds from the development agreement, the amounts should have been reported in the City's accounts as contributions to the capital reserve fund which could be drawn upon to fund the redevelopment.
- \$1 million in insurance proceeds related to the backup of sewage into the Sony Centre were not included as a source of funds for the redevelopment. The accounting standards allow for the recognition of the revenues in the Sony Centre's financial statements. However, given that the proceeds were for costs previously charged to the redevelopment project, the proceeds should have been reported in the City's accounts as contributions to the capital reserve fund.
- \$230,000 loan by the food services vendor which is being repaid to the vendor over the term of the contract.
- \$450,000 gain on sale of temporary dressing rooms. This should have been offset against the initial cost of the dressing rooms which was charged to the redevelopment in September 2010. To date, the proceeds from the December 2010 sale have not been received. The Sony Centre continues to retain possession of the dressing rooms.

***Additional transactions were not appropriately recorded***

Transactions with a multi-period impact that have not been accounted for:

- Expense for temporary dressing rooms rented back since their sale in December 2010. The cost is currently estimated to be over \$200,000. To date, no rental payments have been made.
- Revenue from delayed re-opening payable by the Developer at a rate of \$20,000 per month since July 2011.
- Revenue and assets received and expenses for services provided in relation to certain sponsorship arrangements.

Although the treatment of many of these transactions was acceptable for financial statement reporting, more transparent reporting would be the norm in disclosing such information to the City. In addition, the impact of these transactions on the Statement of Operations and Changes in Net Assets (Liabilities) is of concern since certain employee bonuses were to be based on pre-established financial and non-financial performance measures.

Regardless, the Sony Centre should have reviewed all unusual transactions with the City's Accounting Services Division to ensure the appropriateness of their recording, presentation, and disclosure. In addition, the Sony Centre should have reviewed these unusual items with their Board.

***Financial impact presented in Exhibit 4***

A summary of the potential impact of the transactions on the financial statements is presented in Exhibit 4 to this report.

**Recommendations:**

- 11. The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to confirm the appropriate accounting treatment of identified transactions with the Centre's external auditors.**

12. **City Council request the Deputy City Manager and Chief Financial Officer review transactions reported in the financial statements of the City's agencies and corporations which relate to the capital works program recorded in the City's accounts.**

#### **D. CONTROLS OVER THE CONSTRUCTION PROJECT WERE INADEQUATE**

***Redevelopment  
was a major  
project***

The redevelopment project was the Sony Centre's first major construction undertaking since the original construction of the facility. Prior to the redevelopment, the Centre only carried out capital repairs and maintenance projects. It is unlikely that further redevelopment projects of this magnitude will occur for many years. Consequently, while we identified a significant number of issues in connection with the management of the redevelopment project, recommendations emanating from these issues will likely not have any future relevance to the Sony Centre.

***No  
recommendations  
made in relation to  
project  
management***

Consequently, we have not provided specific recommendations in relation to project management. However, in the interest of providing a comprehensive and complete report, we have provided information in relation to contract management deficiencies which we identified during the course of our audit.

This section of the report contains detailed information on the management of the construction project.

**Records for the construction project were incomplete**

The ability of the Auditor General's Office to evaluate the effectiveness of construction management practices and controls over the performance of the Construction Manager's contract was limited because the Sony Centre did not retain complete records related to the following:

*Certain records were not retained limiting our ability to evaluate internal controls*

- Pre-qualification of bidders, tendering of work to trade contractors, and certain trade contracts
- Supporting documentation for change orders – trade contractor quotes and evidence of review by architects and consultants
- Reports of deficiencies identified during ongoing site visits and inspections by the architect, engineers, consultants, and testing agencies
- Post construction activities such as warranty reviews.

*Limited records retained of ongoing inspection and materials testing*

Only limited records of ongoing inspections and materials testing conducted throughout construction were retained. In the event of a mechanical or other significant construction failure, the absence of such records may impede the Sony Centre's ability to respond to potential claims and increases the risk of legal liability. Any records related to the quality control over construction including all inspections and testing records retained by the Construction Manager and/or the Sony Centre's consultants should be obtained.

*The records retention policy does not address records related to construction*

The Sony Centre's records retention policy does not address the retention of records related to construction and renovation projects. The City of Toronto Act, which applies to the Centre, requires the retention of all original records that are not subject to a retention policy.

*The contract requires the turnover of records at the completion of the project*

The Construction Management Agreement required the Construction Manager to maintain construction related documents and deliver these records to the Sony Centre at the completion of the project. Management advised that the Sony Centre retained the construction records they needed, and had not required any other documents held by the Construction Manager since completion of construction.

**The contract for construction management services was not awarded through an open and competitive procurement process**

The Construction Manager's services together with the trade contracts engaged and managed by the Construction Manager, totalled \$21.0 million, or approximately 60 per cent of the total cost of the redevelopment.

***The Construction Manager was not selected through a formal procurement process***

The Construction Manager was not selected through a formal Request for Proposal process. According to Sony Centre management, the Construction Manager, was selected after interviewing two other major contractors. However, there is no documentation supporting the process the Sony Centre used to select the Construction Manager.

***Services conducted before contracts were signed***

The Construction Management Agreement was dated December 4, 2009. However, approximately \$1.2 million in costs were billed for services performed and payments from November 2007 up until the agreement was executed in December 2009.

***No agreement governing \$102,400 in pre-construction services***

For the period between July 2008 and November 2009, fees were calculated based on a percentage of construction costs as well as weekly rates for staff costs. These provisions were included in a proposal submitted by the Construction Manager, and were subsequently incorporated into the 2009 contract. However, between November 2007 and June 2008, \$102,400 in fees were paid for pre-construction services which were not included in the fees payable under the 2009 contract. The invoices relating to these fees do not include a detailed description of the services provided. Consequently, we were unable to evaluate the reasonability of the fees charged for such services.

**Legal documents were not reviewed by the City's Legal Services Division**

***City's Legal Services division did not review the construction contract***

The agreement with the Construction Manager was not reviewed by a third party such as the City's Legal Services Division prior to it being executed. Usual and best practice would suggest that agreements of this magnitude should be subject to legal review and advice.

### **Construction Manager fees**

***Construction  
Manager was paid  
\$2.9 million in  
addition to the  
contract fixed fee***

According to the Construction Management Agreement, the Sony Centre agreed to pay the Construction Manager a set fee of \$450,000 for services performed during the pre-construction and construction phases. In addition to the fixed fee, the Sony Centre paid the Construction Manager \$2.9 million for: on-site project staff (\$1.5 million); general conditions (\$0.6 million); and work performed by the Construction Manager's own labour force (\$0.8 million). These expense categories were stipulated in the contract as reimbursable expenses payable to the Construction Manager in addition to the fixed fee.

***\$1.5 million actual  
cost for the  
Construction  
Manager's on-site  
project staff nearly  
doubled the  
amount budgeted***

The \$1.5 million in fees paid for on-site project staff was almost double the amount budgeted for such costs. Fees for project staff were based on weekly rates established in the contract. No upset limit or conversion of staffing costs to a fixed cost was implemented.

The Construction Manager's project staff remained on-site through the almost full year delay to the start of construction. Given the uncertainty of when the real estate transaction would close, management advised that the Construction Manager's staff remained on-site at all times to maintain a state of construction readiness. It is our understanding that these staff performed duties such as assisting with tender document preparation during this period. Management further advised that had construction commenced as planned, approximately \$775,000 in costs could have been saved.

There was no evidence that a pre-approval process was implemented for the assignment of the \$0.8 million in work completed by the Construction Manager's own labour force.

**Insufficient documentation retained to confirm the Construction Manager fulfilled all its obligations**

***The contract does not refer to the Construction Manager's proposal***

The original proposal from the Construction Manager described certain services, such as a tailored risk management approach and a customized quality assurance plan, which were not included in the actual contract. The contract did not refer to these provisions in the proposal. Consequently, the Construction Manager was not under any legal obligation to fulfill all of the originally proposed services. If the contract had been reviewed by external legal counsel, this omission would likely not have occurred.

***The Construction Manager did not fulfill some of the obligations stipulated in the contract***

The Sony Centre did not retain sufficient documentation to evidence performance of all services set out in the Construction Management Agreement. In some cases, the Construction Manager clearly did not fulfill its contracted obligations, including:

- Turnover of construction documents
- Preparation and monitoring of a comprehensive construction schedule
- Prompt payment of trades and submission of all statutory declarations required under the trade contracts.

***Sony Centre management not aware of construction lien***

In regard to the prompt payment of trades, a construction lien was registered December 23, 2010 for \$1.4 million by one trade contractor who had not been paid by the Construction Manager. The lien was not discharged until April 4, 2011. Sony Centre management was not aware that such a lien had been registered.



**Additional costs incurred to meet theatre re-opening requirements**

***\$250,000 in additional costs were incurred to meet theatre's grand re-opening date***

The contract specified the Construction Manager's best efforts would be used to achieve substantial performance by August 21, 2010.

A Certificate of Substantial Performance under the Construction Lien Act was not signed until November 4, 2010. However, the Centre was able to hold its grand re-opening on October 1, 2010 and host its scheduled programming. Overtime and additional shift work costing \$250,000 was needed to achieve the Centre's re-opening requirements. Management indicated that in large part these costs were incurred to recover from construction time lost as a result of the Scott St. Pumping Station's sewage backup into the Sony Centre. Management further advised that overtime and additional shift work were only authorized when it became clear such work would be necessary to open on time.

The Construction Manager was paid a fixed fee for the construction project as well as additional amounts for project staff time. Consequently, there was no incentive for the Construction Manager to control the construction schedule.

***Sony Centre bore the full risk of construction delays***

The contract did not include any penalty clauses for failing to meet the targeted completion date. In the event of a delay in re-opening, the Sony Centre could have been subjected to significant lost revenues or penalties for cancellation of contracted performances. Therefore, a liquidated damages clause should have been incorporated into the contract to share or transfer some of the risk of construction delays.

***Contractual requirements for a Project Schedule were not met***

The minutes of a number of construction meetings indicate that management continuously requested that a comprehensive construction schedule be provided. However, this schedule was not provided in accordance with the terms of the contract. The contract also required that a detailed report highlighting any areas which might endanger the completion date be provided as part of the monthly project billing package. Such a report was not included in any of the billing packages reviewed during the audit.

### **Process for managing and monitoring change orders needs improvement**

***Change orders make up ¼ of the total project cost***

The \$5.7 million cost of change orders represented 27 per cent of the \$21.0 million in costs incurred under the Construction Management Agreement.

***Reasons for change orders***

Change orders appear to have arisen for five main reasons:

- trade contracts were tendered based on incomplete designs and specifications
- unforeseen site conditions related to the renovation of a 50-year old building
- evolving requirements for fixtures and finishes and additional areas being renovated
- additional work resulting from the Scott St. Pumping Station's sewage backup into the Sony Centre
- to authorize overtime towards the end of the renovation to ensure the Centre was open in time for the first scheduled events.

***Causes of change orders are not formally tracked***

The cause of change orders, whether by error or omission on the part of the architect or engineers, damage or deficiency caused by trades, unforeseen site conditions, or changes in the Sony Centre's requirements, was not tracked. Tracking such causes could have facilitated the negotiation of recoveries or fee reductions. In addition, improved tracking of the cause of changes would have facilitated analysis and reporting of variances in the budget.

### **Management scrutiny of change orders was inadequate**

***Construction Manager responsible for reviewing change orders***

The Construction Manager was responsible for reviewing and processing change orders. This included reviewing trade contractor requests for changes, submitting recommendations to the Sony Centre, and assisting in the negotiation of change orders.

However, in a sample of change orders reviewed, there were instances where:

- Work commenced prior to a change order being approved and issued
- Documentation was not always retained and a budget or ceiling price was not always established for work on a time and materials basis
- Detailed pricing proposals or quotes were not always retained to support change order pricing and rates.

***Incorrect labour rates***

In addition, incorrect labour rates were used and/or mark-up, profit and overhead were inappropriately applied in the price determination for some change orders.

***Sony Centre overcharged***

One contractor charged a combined labour and overhead rate that was higher than the rate quoted in their tender document. Based on our review, we estimate that the Sony Centre was overcharged between \$27,000 and \$48,000 on the \$1.35 million in change orders issued to the trade contractor.

A second contractor's tender submission quoted an all-inclusive hourly labour rate but did not identify a rate for change orders. The trade contractor applied a 24 per cent markup on labour costs incurred on change orders.

**Payment controls need improvement**

***Documentation not retained to evidence that progress draws were appropriate***

Management advised that contractor progress draws and invoices were not authorized for payment until confirmation was received from the architects and engineers, as appropriate, that draws were reasonable. Management provided examples of such confirmations. However, in a number of construction payments reviewed, there was no evidence that the architect and/or consulting engineers confirmed progress draw requests were appropriate, a standard control for major construction projects.

***Other control weaknesses identified***

In addition, in a sample of cash disbursements reviewed, the following controls were not performed on a consistent basis. In particular,

- Invoices were not always matched to an authorized purchase order
- Invoices did not always include sufficient detail on how the amount payable was arrived at
- Payment approvals were rarely dated; therefore, the timeliness of authorizations could not be determined.

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## **CONCLUSION**

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This report represents the results of our review of the redevelopment of the Sony Centre for the Performing Arts. Even though there has been a significant investment in the renovation of the Centre, the Centre continues to rely on financial contributions from the City for its ongoing operations as well as future capital requirements.

In addition, many of the issues identified throughout this review reinforce the need for more City oversight on projects of this nature. City staff had very little involvement in the management of the Sony Centre redevelopment.

This report contains 12 recommendations. In our view, the implementation of recommendations will improve existing policies and procedures and strengthen management and administrative controls at the Sony Centre.

## EXHIBIT 1

### RELEVANT COUNCIL DECISIONS REGARDING THE SONY CENTRE REDEVELOPMENT

***City Council  
Reference / Date***

**Description of Council and/or Committee Decision**

**Authorization of the Board's Original Business Plan and Subsequent Revisions**

City Council approved the Board's proposed redevelopment project and subsequent changes which resulted in the cancellation of the CityCentre cultural project.

July 2003

Clause 1 in Report No. 8 of the Policy and Finance Committee  
*"Hummingbird Centre for the Performing Arts - CityCentre  
Proposal"*

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

City Council adopted, in principle, the Board's proposed redevelopment project and approved, in principle, the transfer of the surplus development density as a contribution to the capital costs of the project.

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030722/pof8rpt/cl001.pdf>

July 2004

Clause 3 in Policy and Finance Committee Report 6  
*"Revitalization of the Hummingbird Centre for the Performing  
Arts"*

This report recommends a course of action in response to the Consolidated Business Plan for revitalization of the Hummingbird Centre submitted by its Board of Directors on April 30, 2004. This report also reports on the results of the Request for Expressions of Interest process undertaken by the Centre.

City Council authorized the City and the Board to enter into direct discussions with The Castlepoint Group to refine the details of the development plan for further consideration.

<http://www.toronto.ca/legdocs/2004/agendas/committees/pof/pof040708/it019.pdf>

September 2005

Clause 1 in Policy and Finance Committee Report 8 “*Proposed Transaction between the Hummingbird Centre and Castlepoint Development*”

To report on the revised Business Plan dated May 27, 2005.

City Council approved pursuing Option 3(A) and 3(B) of the Business Plan.

- Option 3(A) was described as the immediate implementation of the CityCentre concept, with two prime transactions: the first being the sale of a portion of surplus land and development density; and the second a contract providing for the construction of the CityCentre and the renovations of the existing theatre.
- Option 3(B) was the default scenario if the requisite funding for full CityCentre implementation was not obtained in time. The sale of land for the residential development would proceed and the space allocated for the CityCentre would be sold by way of a ninety-nine year lease to the Developer for retail/commercial uses.

Council approved declaring the land and development density surplus for sale / lease to the Developer.

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050928/pof8rpt/cl001.pdf>

July 2006                      Clause 59 in Policy and Finance Committee Report 6 “*Proposed Redevelopment of the Hummingbird Centre for the Performing Arts*”

City Council approved the Business Plan of The Board of Directors of the Hummingbird Centre for the Performing Arts.

City Council authorized funds from the sale of the Site, leasing payments, private sector contributions, and Federal and Provincial contributions, be held in Centre’s capital reserve fund.

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060725/pof6rpt/cl059.pdf>

July 2008                      EX22.36 “*Sony Centre for the Performing Arts - Re-development Activities*”

Council adopted amendments to the Umbrella Agreement to provide for a change in the Board’s Business Plan, so that a public plaza development could be considered, in place of the CityCentre cultural project or a commercial development.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.EX22.36>

### **Authorization of the Umbrella Agreement and Subsequent Amendments**

City Council authorized the execution of the Umbrella Agreement and a number of subsequent amendments between the City, the Board, and the Developer.

September 2005              Clause 1 in Policy and Finance Committee Report 8 “*Proposed Transaction between the Hummingbird Centre and Castlepoint Development*”

Council recognized the market value of the residential component in the Part 1 lands as \$19.3 million based on a value of \$45.00/ft<sup>2</sup> for 428,571 ft<sup>2</sup>. An appropriate amount was to be deducted for the expected incremental construction costs to be borne by the Developer, with the resultant purchase price to be no less than \$15 million.

<http://www.toronto.ca/legdocs/2005/agendas/council/cc050928/pof8rpt/cl001.pdf>

- July 2006                      Clause 59 in Policy and Finance Committee Report 6 “*Proposed Redevelopment of the Hummingbird Centre for the Performing Arts*”
- Council authorized execution of agreements between the City, the Board, and the Developer.
- <http://www.toronto.ca/legdocs/2006/agendas/council/cc060725/pof6rpt/cl059.pdf>
- July 2007                      EX10.5 “*Hummingbird Centre Redevelopment – Commercial Component Lease*”
- Council approved terms under which the City may exercise its right to terminate the Lease in future and re-take possession of the City lands.
- <http://www.toronto.ca/legdocs/mmis/2007/ex/bgrd/backgroundfile-5065.pdf>
- March 2008                      EX17.6 “*Sony Centre - Proposed Amendments to Umbrella Agreement*”
- Council adopted amendments to provide for the sale of two additional floors to be added to the residential condominium development.
- <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.EX17.6>
- October 2008                      EX24.4 “*Sony Centre Redevelopment - Public Plaza Option*”
- Council authorized amendments that would result in the creation of a public plaza instead of the CityCentre or commercial development.
- <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.EX24.4>



February 2009

MM31.2 “*Amendments to the Umbrella Agreement - Sony Centre for the Performing Arts*”

Council approved amendments adjusting the timing of payments and financial securities to be provided by the Developer.

City Council authorized the Chief Executive Officer of the Sony Centre to approve any further amendments consistent with the principles established in the term sheet attached to the staff report.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.MM31.2>

August 2009

EX33.46 “*Sony Centre - Bridge Loan Increase / Extension*”

Council approved negotiated amendments addressing concerns raised by the Developer’s lenders.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EX33.46>

September 2009

GM24.42 “*Sony Centre - Conveyance of Additional Strata Area*”

City Council approved amendments to convey to the Developer an additional area underneath the condominium tower and revisions to the closing date for the transaction.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.GM24.42>

### **Authorization for Short-Term Borrowing Provided to the Sony Centre**

City Council authorized increases to the facility for short-term borrowing provided to the Sony Centre in order to fund preliminary costs incurred by the Centre as a result of the redevelopment project. City Council also approved extensions to the deadline for repayment of the bridge loan.

December 2008

MM27.15 “*Sony Centre - Temporary Bridging Loan*”

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.MM27.15>

February 2009 MM31.2 “*Amendments to the Umbrella Agreement - Sony Centre for the Performing Arts*”  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.MM31.2>

April 2009 MM35.10 “*Sony Centre - Extension of Bridge Loan*”  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.MM35.10>

August 2009 EX33.46 “*Sony Centre - Bridge Loan Increase / Extension*”  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EX33.46>

## **Operating Budget**

City Council approved the annual Operating Budget for the Sony Centre which included draws from the Facility Fee Reserve Fund to fund operations during the shutdown of the theatre. These draws were in addition to the City’s annual subsidy.

March 2009 EX30.1 “*2009 Operating Budget*”  
[http://www.toronto.ca/budget2009/pdf/op09\\_an\\_theatres.pdf](http://www.toronto.ca/budget2009/pdf/op09_an_theatres.pdf)

- The Centre increased its draw from Reserve Funds by \$1.3 million (up from \$2.6 million to \$3.9 million) to cover the remaining shortfall in revenues for 2009.
- The Reserve Fund is derived from proceeds from the sale of air rights and other revenues raised by the Centre in an agreement with the developer of the condominium project on the theatre site.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EX30.1>

April 2010 EX42.1 “*2010 Operating Budget*”  
[http://www.toronto.ca/budget2010/pdf/op2010\\_analystnotes\\_theatres.pdf](http://www.toronto.ca/budget2010/pdf/op2010_analystnotes_theatres.pdf)

- A draw of \$1.367 million from the Reserve Fund was needed to fund operations during the shutdown of the theatre until renovations are completed, as well as ramp-up costs associated with resuming full operations of the theatre.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX42.1>

## Capital Budget

City Council approved the annual Capital Budget and 10-year Capital Plan for the Sony Centre. City Council also authorized a loan to address the balance of the capital renovation and rehabilitation of the Centre as part of the annual Capital Budget process.

December 2007      EX15.1 “*Budget Committee Recommended 2008 Capital Budget and 2009 - 2012 Capital Plan*”  
[http://www.toronto.ca/budget2008/pdf/an\\_sony.pdf](http://www.toronto.ca/budget2008/pdf/an_sony.pdf)

- The Sony Centre’s 5-Year Capital Plan was based on the assumption that sufficient funds would be raised to implement the CityCentre concept. Therefore, the approved capital plan was for \$75 million.
- In the event that the total funding was not secured, the plan would default to Option B which allowed for the 15-month restoration of the theatre only, resulting in a revised project cost of \$7 million.

<http://www.toronto.ca/legdocs/mmis/2007/ex/reports/2007-11-26-ex15-cr.pdf>

December 2008      EX27.1 “*Budget Committee Recommended 2009 - 2013 Capital Budget and Plan, and Proposed 2014 - 2018 Capital Forecast*”

- A \$38.1 million reduction to the previously approved project cost. (The initial project budget of \$75 million was also reduced by \$12.5 million in the 2008 capital budget. Therefore, the combined impact of the two reductions left a budget of \$24.4 million.)

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.EX27.1>

December 2009

EX38.1 “2010 Capital Budget and 2011 - 2019 Capital Plan”

- Project cost increase of \$3.461 million. *No description of the project cost increase or analyst notes were submitted to City Council.* (Therefore, the total project budget was revised to \$27.9 million. In-year overspending of \$3.3 million, raised the total to \$31.2 million at the end of 2010)
- Loan of up to \$4.650 million, at a 5 per cent fixed interest rate compounded semi-annually, and repayable in ten equal annual payments of principal and interest beginning on January 1, 2011 and ending on January 1, 2020. *No staff report was submitted to City Council.*

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EX38.1>

February 2011

EX3.3 “2011 Capital Budget and 2012-2020 Capital Plan and Forecast”

- Project cost increase of \$3.415 million. *No description of the project cost increase or analyst notes were submitted to City Council.* (Therefore, the total project budget was revised to \$34.6 million)
- Additional loan of \$2 million to address the balance of the capital renovation and rehabilitation of the Centre, increasing the total loan provision to \$6.650 million. *No staff report was submitted to City Council.*

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX3.3>

January 2012

EX14.1 “2012 Capital and Operating Budgets”

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX27.1>

- The \$5.0 million Exterior Plaza project to be fully funded by Section 37 contributions, fund raising efforts, naming rights, sponsor revenues and uncommitted facility fee revenues.
- Approval of the Sony Centre Exterior Plaza project contingent on the receipt of third-party financing; if such financing was not forthcoming, the project was to be deferred until funding was available

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX14.1>

January 2013

EX27.1 “2013 Capital and Operating Budgets”

[http://www.toronto.ca/budget2013/2013\\_budget\\_summary/pdf/capital/cap13\\_an\\_theatres.pdf](http://www.toronto.ca/budget2013/2013_budget_summary/pdf/capital/cap13_an_theatres.pdf)

- 2-year deferral of interest and principal on the \$6.65 million capital loan; payment to commence Dec 31, 2014.
- 10-Year Capital Plan totaling \$7.3 million in project estimates for:
  - \$2.4 million for Heritage Easement Agreement Upgrades
  - 5.0 million for Upgrades to Permanent Capital Assets
  - Costs related to the construction of the public plaza were not included in the Capital Plan.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX27.1>

January 2014

EX27.1 “2014 Capital and Operating Budgets”

[http://www1.toronto.ca/City%20Of%20Toronto/Strategic%20Communications/City%20Budget/2014/PDFs/Analyst%20Notes/Sony\\_2014%20BC%20Capital%20Analyst%20Notes%20\\_final.pdf](http://www1.toronto.ca/City%20Of%20Toronto/Strategic%20Communications/City%20Budget/2014/PDFs/Analyst%20Notes/Sony_2014%20BC%20Capital%20Analyst%20Notes%20_final.pdf)

- 10-Year Capital Plan totaling \$8.235 million in project estimates for:
  - \$1.000 million for Public Plaza
  - \$1.990 million for Heritage Easement Agreement Upgrades
  - \$5.245 million for Upgrades to Permanent Capital Assets
- The 10-year Recommended Capital Plan requires new debt funding of \$7.235 million.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX37.1>

### **Public Plaza Funding**

City Council approved the Sony Centre Exterior Plaza project contingent on the receipt of third-party financing; if such financing was not forthcoming, the project was to be deferred until funding was available.

July 2012

MM25.43 “Resolution of 8 The Esplanade (L Tower) Cash-in-lieu for Parkland”

- City Manager to investigate options for financing and completion of the Sony Centre public plaza.
- Negotiated settlement of cash-in-lieu contributions to include the provision of additional funding in the approximate amount of \$1 million for the completion of the Sony Centre public plaza.
- Capital project expenditures for the construction of the public plaza be capped at the value of funds secured from non-City debt funding sources.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.MM25.43>

October 2013

EX34.17 *“Sony Centre Redevelopment - Public Plaza Funding”*

- Addition of a new project to the 2013 Capital Budget for the Sony Centre to deliver the Public Plaza.
- The \$1 million project (gross) to be funded by the following sources:
  - \$700,000 from the Developer; and
  - \$300,000 from Development Charge funds designated for civic improvements

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX34.17>

## EXHIBIT 2

### SUMMARY OF RENOVATION COSTS AND FUNDING

#### Detailed Analysis of Interior Renovations Costs

		\$
<b><i>Reported cost of the capital program was \$35.4 million</i></b>	Construction Management & Trade Contracts	
	• Construction Manager's fee, staffing costs, general conditions, own forces	3,296,000
	• Trade contracts	17,675,000
	Consultants	
	• Architectural	994,000
	• Mechanical & electrical	839,000
	• Legal	378,000
	• Structural	342,000
	• Acoustic Engineer	237,000
	• Project management	233,000
	• Signage Work	170,000
	• Others	216,000
	Other	
	• Brass, bronze, and wood	1,695,000
	• Lobby and audio visual program costs	1,031,000
	• Auditorium seating	993,000
	• Temporary dressing room trailers	876,000
	• Asbestos abatement	706,000
	• Public Plaza	386,000
	• Kitchen upgrades (excludes work by Vanbots' trades)	322,000
	• Auditorium roof replacement	304,000
	• Others	2,680,000
	Allocation of Sony Centre management costs	1,050,000
	Sony Centre union labour costs	1,025,000
	Total	<u>\$ 35,448,000</u>



## Detailed Analysis of Sources of Funding for the Interior Renovation

		\$
<b><i>\$38.113 million in funding was available for the redevelopment</i></b>	Initial sale of residential density	15,000,000
	Additional sale of residential density	3,964,000
	Other developer payment obligations towards the capital program	11,020,000
<b><i>\$2.665 million was used to offset operating shortfalls</i></b>	Contribution from Capital Improvement Reserve Fund, 2008	847,000
	Facility fee surcharges, 2010	311,000
	Interest earned on reserve funds	73,000
	Contribution from Facility Fee Reserve Fund, 2011	133,000
	Loan from the City	6,650,000
	Other	115,000
	Total financing available	<u>\$ 38,113,000</u>
	Less: Transferred to offset operating shortfalls	(2,665,000)
	Net financing	<u>\$ 35,448,000</u>
<b><i>Amount reported does not include funds recorded in the Sony Centre's financial statements</i></b>	The net financing available for the Capital Program does not include additional amounts which were recorded by the Sony Centre as operating revenues including:	
	<ul style="list-style-type: none"> <li>• \$200,000 in cash donations from the President of the Developer.</li> </ul>	
	<ul style="list-style-type: none"> <li>• \$1,500,000 in cash proceeds received from one-time revenues identified in section C.5 of this audit report.</li> </ul>	

## **Estimated Costs and Sources of Funding for the Remaining Phases of the Redevelopment**

### ***Remaining phases of the redevelopment expected to cost \$4 million to complete***

As of December 2013, the forecasted cost to complete the remaining phases of the redevelopment include:

- \$622,000 for the permanent backstage facilities
- \$400,000 for fit out of additional space under the public plaza
- \$984,000 for the public plaza (net \$300,000 City)
- \$1,990,000 for the Heritage Easement Agreement renovations

### ***Sources of financing***

These projects are expected to be financed through:

- Draw from the capital reserve fund – \$0.622 million
- New City debt – \$2.390 million
- Development charges – \$0.300 million
- Developer payment – \$0.684 million

## EXHIBIT 3

### A COMPARISON OF ACTUAL OPERATING RESULTS TO THE BUSINESS PLAN'S PROJECTIONS

***Projections of  
the annual net  
operating  
surplus (deficit)***

The business plan included two alternatives to the implementation of the CityCentre which were not approved by City Council. In both alternatives, the theatre would operate at “enhanced status quo” meaning:

- Enhanced programming
- Enhanced food, beverage, catering and merchandising revenues
- Enhanced government, community, corporate and signage revenues

For both alternatives, at 100 per cent of business plan target attendance levels, the City subsidy was projected to be only \$375,000. However, at 60 per cent of target attendance levels, the subsidy was forecasted to increase to \$1.6 million.

Source: Consolidated Clause 1 in Policy and Finance Committee Report 8, which was considered by City Council on September 28, 29 and 30, 2005

***Actual Operating  
Results***

Since the departure of its anchor tenants in 2006, the Sony Centre has attempted to implement the “enhanced status quo” model but continued to receive operating subsidies ranging from \$0.7 million to \$1.2 million to offset the Centre’s net expenditures.

Fiscal Year	Revenues	Expenditures	Operating surplus (deficit)	City Subsidy	Funding from Facility Fee Reserve Fund
	<i>(before City subsidy and transfer from reserve fund)</i>				
	<i>in \$000s</i>	<i>in \$000s</i>	<i>in \$000s</i>	<i>in \$000s</i>	<i>in \$000s</i>
2006	25,655	25,510	145	(157)	-
2007	19,227	20,419	(1,192)	1,175	-
2008	8,017	9,899	(1,882)	1,093	761
2009	855	3,143	(2,288)	837	1,498
2010	8,628	10,879	(2,251)	1,051	1,167
2011	10,111	11,520	(1,409)	1,061	320
2012	12,283	13,359	(1,076)	694	-
2013	15,182	16,442	(1,260)	1,030	-

## EXHIBIT 4

### SUMMARY OF THE POTENTIAL IMPACT OF THE ACCOUNTING TREATMENT FOR CERTAIN TRANSACTIONS

Throughout the course of the redevelopment several non-routine transactions were recorded in the audited financial statements of the Sony Centre as described in section C.5 of the report.

Although the treatment of many transactions was acceptable for financial statement reporting, these transactions related to the capital works program. Therefore, consistent with the recording of the majority of funding and costs related to the redevelopment, these transactions should not have been recorded in the Sony Centre's financial statements. Instead, these transactions should be recorded in the City's accounts as contributions to and draws from the capital reserve fund.

The recording of these transactions in the City's accounts impact the financial results previously reported by the Sony Centre from 2008 through 2012. In particular, the surplus of revenues over expenses was overstated by approximately \$1.9 million during this period and net assets were overstated by approximately \$2.0 million.

Fiscal Year	Statement of Operations and Changes in Net Assets			Statement of Financial Position		
	Revenues	Expenses	Excess of revenue over expenses	Assets	Liabilities	Net Assets
	<i>overstated / (understated)</i>			<i>overstated / (understated)</i>		
2008	270,000	-	270,000	-	-	270,000
2009	-	-	-	-	-	-
2010	524,000	(26,833)	550,833	(156,000)	(15,000)	691,833
2011	569,000	(196,000)	765,000	(140,000)	(180,000)	725,000
2012	94,000	(196,000)	290,000	(240,000)	(180,000)	350,000
<b>Total</b>	<b>1,457,000</b>	<b>(418,833)</b>	<b>1,875,833</b>	<b>(536,000)</b>	<b>(375,000)</b>	<b>2,036,833</b>

The appropriate recording and reporting of these transactions in the accounts of the City could have reduced the amount of the City's capital loan to the Sony Centre. However, they would also have resulted in an increased operating deficit which the City is obligated to fund.

Fiscal year	Reported excess (deficiency) of revenue over expenses before transfer to/(from) City	Less: Overstatement in revenue over expenses	Adjusted excess (deficiency) of revenue over expenses before transfer to/(from) City
2008	50,000	270,000	(220,000)
2009	354,000	-	354,000
2010	3,000	550,833	(547,833)
2011	( 58,000)	765,000	(823,000)
2012	149,000	290,000	(141,000)

**Management's Response to the Auditor General's  
Review of the Redevelopment of the Sony Centre for the Performing Arts**

Rec No.	Recommendations	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
1.	City Council request the City Manager, in consultation with the Board of Directors of the Sony Centre for the Performing Arts, to conduct a comprehensive review of the Centre's operating agreement following any Council decision on the future of the Centre.	X		<p><b><u>SONY CENTRE MANAGEMENT</u></b> Sony Centre Management notes that if it is Council's directive to have the Centre and other agencies operate at "arm's length", there needs to be some written guidelines from the City Manager's Office as to what this actually means in practice. If the Centre had these guidelines, many if not all of the embedded recommendations would not have had to have been made.</p> <p><b><u>CITY MANAGEMENT RESPONSE TO SONY CENTRE MANAGEMENT COMMENTS</u></b> <i>Sony Centre Management has stated that there needs to be some written guidelines as to what operating at 'arm's length' means and that "if the Centre had these guidelines, many if not all of the embedded recommendations would not have had to have been made". The City acknowledges the need for a relationship framework, but the items outlined in the report, and the recommendations provided, are not solely related to the lack of such a framework.</i></p> <p><b><u>SONY CENTRE MANAGEMENT</u></b> Sony Centre Management agrees that a new agreement should be in place however it is first up to City Council to determine what Council wants to do with the Sony Centre. Following that a new agreement can be drafted. Sony Centre Management would note however that the question of what to do with the Sony Centre has been ongoing for approximately 20 years and Sony</p>	<p><b>The City's Action Plan/Time frame</b> Once the Civic Theatres Study is completed, the City Manager will develop a Relationship Framework with all three City Theatres by December 2015. This will supersede any operating agreements with the City-owned theatres and will set out their financial and governance relationship with the City, consistent with the City's strategic directions.</p>

Rec No.	Recommendations	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
				<p>Centre Management is not encouraged that a resolution to this question will soon be forthcoming. Perhaps a combination of the opinions of a new consultant engaged by the City to determine the possibility of finding more efficient ways of operating the three civic theatres as well as the deliberations of the Theatre Working Group will assist in finding a solution. Once Council makes a determination on how to proceed, a new relationship framework should be entered into.</p> <p>In making such determination however, Sony Centre Management believes that it is important for Council to be informed of the history of funding at the Centre. In this regard, it is important to note that while the Opera and Ballet were tenants of the Sony Centre, the City gave these organizations “rent grants” in order that they may pay the Sony Centre rent for their use of the City venue. These grants represented two-thirds of the Centre’s income. It is inexplicable that following the departure of the Opera and the Ballet to their own venue, that the City has continued to pay them these “rent grants” despite the fact that these sums are no longer accruing to the Sony Centre and therefore to the City. Management has mentioned this to the Mayor’s Office and the former Budget Chief three years ago but nothing seems to have come of that disclosure.</p> <p><b><u>CITY MANAGEMENT RESPONSE TO SONY CENTRE MANAGEMENT COMMENTS</u></b>  Sony Management states that the Opera and Ballet received "rent grants" from the City as tenants of the Sony Centre. This is not correct. This was the original practice of the Metro</p>	

Rec No.	Recommendations	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
				<p>government in the 1970's but the grants to the Opera and Ballet were changed to "cultural grants " in the 1980's when Metro Council decided that it would not cover rent increases through increases to the Opera and Ballet grants. We can't provide the exact year when the tie between rent and grant was broken without going to the Archives, but grants have not been rent grants since prior to 1990. As a point of interest, grant amounts given to the Opera and Ballet are comparable to the grant amount provided to the Toronto Symphony which has never performed in a City owned venue.</p> <p>The Theatres Working Group and the Theatres Study are exploring new strategic directions and operating models for the theatres. However, a Relationship Framework is required to establish clear reporting and accountability requirements for theatres.</p>	

Rec No.	Recommendations	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
2.	City Council request the Deputy City Manager and Chief Financial Officer to re-evaluate the role of the City's Facilities Management Division in all future construction projects at the City's agencies and corporations.	X		<p><b><u>SONY CENTRE MANAGEMENT</u></b>  Sony Centre Management agrees that for years this "hands off" or "arm's length" approach was how the Centre operated viz the City.</p> <p><b><u>CITY MANAGEMENT RESPONSE TO SONY CENTRE MANAGEMENT COMMENTS</u></b>  <i>The City agrees that some agencies and corporations may not have the administrative capacity to undertake large scale capital projects. Accordingly, assistance from the City would be appropriate and necessary in these instances.</i></p> <p><i>Any evaluation of the role of the City must ensure that the City is not seen to assume either the Board's role as employer or the responsibility of the Board for the decisions that the Board must make.</i></p>	<p><b>The City's Action Plan/Time frame</b>  The Chief Corporate Officer will conduct a review, in consultation with various agencies and corporations, of the roles of the Facilities Management Division, and other appropriate City divisions (e.g., Economic Development and Culture division) in future construction projects and prepare recommendations regarding the services and expertise that could be provided with respect to project management and delivery.</p>
3.	City Council request the City Manager to make available a centralized resource containing City of Toronto Act requirements and City policies and procedures that City agencies and corporations are required to follow.	X		<p><b><u>SONY CENTRE MANAGEMENT</u></b>  Sony Centre Management notes that prior to the City of Toronto Act, the Centre was explicitly not a local board (except for OMERS). Upon the passing of the City of Toronto Act, the Centre was not given any direction as to how this Act (which made the Centre a local board for the first time) would affect the Centre's operations and relationship with the City and the application to the Centre of City policies that formerly were not applicable.</p> <p>Sony Centre Management agrees that it was never advised by any department of the City that these reports existed and that it would have been useful for Management to have had reference to the previously issued audit reports. However</p>	<p><b>The City's Action Plan/Time frame</b>  The City Manager's Office is currently developing relevant tools and materials to be made publicly available for all agencies and corporations by the second quarter of 2015.</p>



Rec No.	Recommendations	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
				<p>Management submits that it was not possible for Management to know to even look for these reports as it had no knowledge these reports existed anywhere. Management continues to welcome a best practices guide on construction and other matters to be issued by the City, either through the City Manager's office or, in the case of the audit reports, by the Auditor General's Office.</p> <p>Sony Centre Management agrees that policies and procedures can always be improved. It is fair to say that there should be enhanced policies and procedures in place for large scale construction projects and had Management been advised of these when the City knew the Centre was embarking on a large construction project, those policies would have been implemented.</p> <p><b><u>CITY MANAGEMENT RESPONSE TO SONY CENTRE MANAGEMENT COMMENTS</u></b>  <i>The City Manager's Office (CMO) has recognized the need to make available a centralized resource containing City of Toronto Act requirements and City policies and procedures that City agencies and corporations are required to follow. The CMO is currently developing relevant tools and materials to be made publicly available for all agencies and corporations by the second quarter of 2015.</i></p> <p><i>Agency policies &amp; procedures should comply with City of Toronto Act requirements and reflect City policy principles, but take into account the organization requirements and business mandates of respective agencies.</i></p>	

Rec No.	Recommendations	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
				<i>The City and all agencies and corporations should always follow sound business practice for procurement.</i>	
4.	The Board of Directors of the Sony Centre for the Performing Arts, in consultation with the City Manager, prepare a long-term strategic plan and a five-year business plan as requested by City Council. Such plan to include strategies to improve operating results, as well as a funding plan for the capital program.	X		<p><b><u>SONY CENTRE MANAGEMENT</u></b>  Sony Centre Management would note that the referred to “long term strategic plan” has been presented to the Board but it has not been approved by City Council. Management repeats that the capital program funding has been approved by City Council and Management sees no reason to reopen this issue in order to disadvantage the Centre.</p> <p><b><u>CITY MANAGEMENT RESPONSE TO SONY CENTRE MANAGEMENT COMMENTS</u></b>  <i>Preliminary parts of the Sony “long term strategic plan” were presented to the City in the Fall of 2013 but the plan and the 2014 budget request to start plan implementation were not approved by City Council. In addition, further study by consultants and the work of the Theatres Working Group have not been completed and are to be reported to City Council after mid-year. The outcome of the current Civic Theatres Study is anticipated by Council prior to consideration of specific strategic plans for each theatre. A business plan will be required to support consideration of strategies.</i></p> <p><b><u>SONY CENTRE MANAGEMENT</u></b>  Since 1996, the Sony Centre has been unfairly treated relative to the other City agencies in that it has had to fund its own state of good repair whereas other City agencies such as Exhibition Place have had their state of good repair paid for as part of the City’s capital works program. This</p>	<b>The Sony Centre’s Action Plan/Time frame</b> The Sony Centre Board has already submitted a strategic business plan to the City Manager and Manager of Economic Development. It is Management’s understanding that despite this plan, there is a moratorium on future actions pending the results of the Theatre Working Group study which is supposed to be completed by June or July of this year.

Rec No.	Recommendations	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
				<p>request was made by the Board, recommended by Budget Staff and approved by Council.</p> <p>Sony Centre Management reiterates that having the City pay for the Centre's state of good repair is simply bringing the Centre in parity with other City agencies.</p> <p><b><u>CITY MANAGEMENT RESPONSE TO SONY CENTRE MANAGEMENT COMMENTS</u></b>  <i>The City Capital program support of work required at the Sony Centre resulted when the City undertook an obligation to fulfill certain heritage easements on the site and in 2013 it became clear that the previously planned funding from ticket surcharges could not cover this work by the required deadline.</i></p> <p><i>There is no City policy concerning "parity" for provision of a debt funded Capital Budget for Agencies. Budgets are based on need and debt funding is applied when there are no other available resources.</i></p>	
5.	The Board of Directors of the Sony Centre for the Performing Arts, ensure that where a business plan is amended or discontinued, that a replacement plan be prepared and presented for City Council approval. Such business plan, and any subsequent amendments, be consistent with any Council-approved strategic objectives for the Centre.	X		<p><b><u>SONY CENTRE MANAGEMENT</u></b>  The need for ongoing City subsidy was made crystal clear in the Business Plan should the CityCentre project not proceed. Perhaps if the City had assisted the Centre in fundraising activities, the Centre's preferred Business Plan would have proceeded and ongoing financing of the Centre's operating expenditures would have been eliminated.</p> <p>Sony Centre Management would point out that statements made in the business plan concerning the implementation of the Enhanced Business Case</p>	<p><b>The Sony Centre's Action Plan/Time frame</b>  The Board will be so advised of this recommendation once this Report has been finalized and made public.</p>

Rec No.	Recommendations	Agree (X)	Disagree (X)	<b>Management Comments:</b> <i>(Comments are required only for recommendations where there is disagreement.)</i>	Action Plan/Time Frame
				<p>should the CityCentre concept be unfundable have proven to be accurate as the Centre's operating deficits have run at the level of approximately \$1.0M per year which is in the approximate middle of the anticipated range of required subsidy predicted by Management. Council was well aware of the default provisions of the Business Plan and of the very real possibility that funding for the CityCentre plan might not be realized.</p> <p><b><u>CITY MANAGEMENT RESPONSE TO SONY CENTRE MANAGEMENT COMMENTS</u></b>  <i>Staff recommendation (P &amp; F report #8, cl.1, Sept 28-30, 2005 Council) was that the sale of land to the developer be conditional upon the Sony Centre's raising the \$75 million for City Centre and that Council should determine how to proceed if that condition was not met. Council's decision was to direct staff to proceed with the sale transaction with no condition.</i></p> <p><b><u>SONY CENTRE MANAGEMENT</u></b>  Sony Centre Management notes that Management was never asked to provide a further analysis of the alternative options in addition to what was already included in the Business Plan. Management notes that specifics of the default Enhanced Business Case were in fact imbedded in the business plan reported to Council. When Council voted on the CityCentre plan, it did so with the knowledge that if the funding were not obtained (which was made clear in the Business Plan), that the Enhanced Business Case plan was the only alternative remaining.</p> <p>Sony Centre Management would note that City Council implicitly approved the alternate business</p>	

Rec No.	Recommendations	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
				plan as the preferred business plan made it clear that the alternate plan would be the default position if funding for the CityCentre project was not obtained.	
6.	The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to report the total funding received from all sources as well as the total of all costs related to all phases of the redevelopment.	X			<b>The Sony Centre's Action Plan/Time frame</b> The recommended report will be issued shortly after this Report is finalized and made public.
7.	<p><b>The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to report on the status of required and optional deferred lifecycle maintenance works identified in previous building condition review reports. Such report to include:</b></p> <p><b>a. Explanations for why work originally anticipated was omitted from the redevelopment;</b></p> <p><b>b. Identification of required and optional lifecycle maintenance works that have been included in the current 10-year Capital Plan; and</b></p> <p><b>c. Estimates of the cost to complete the remaining work.</b></p>	X		<p><b><u>SONY CENTRE MANAGEMENT</u></b></p> <p>Sony Centre Management has previously advised that the life-cycle report referred to by the Auditor General is only a guide as to what future state of good repair work might be required. After receiving such reports, it is up to Management to prioritize which items need not be done, and which items should be done and by what date. Replacing equipment that continues to operate without problems is an imprudent use of financial resources. Management would note in this regard that the 10 year capital budget for state of good repair is not all previously identified backlog work; rather it also addresses forward looking replacement and refurbishments not included in the previous life cycle reports.</p> <p>Sony Centre Management has advised as to the reasons for omitting or deferring certain suggested work and has detailed the work to be accomplished over the next 10 years in the submitted Capital Plan together with the estimated cost of such work. The consultants who write such reports do so based on industry metrics for equipment replacement that they do not make an independent investigation or study as to the quality of the actual equipment which, in the case of the Centre, has</p>	<b>The Sony Centre's Action Plan/Time frame</b> The recommended report will be issued shortly after this Report is finalized and made public.

Rec No.	Recommendations	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
				been impeccably maintained. Applying industry life-cycle metrics indiscriminately for our equipment would have caused us to replace many items before their actual life-cycle was finished, which would then cause the earlier subsequent replacement of the replaced items. This is not prudent facilities management.	
8.	<p>The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer submit for Board approval a comprehensive procurement policy. The development of this policy be conducted in consultation with the City Manager. The procurement policy to include but not be limited to:</p> <p>a. Acceptable methods of procurement including appropriate dollar value thresholds for requiring open, competitive procurement;</p> <p>b. Circumstances where sole sourcing is allowed and the reporting requirements and authorizations required to approve sole source awards;</p> <p>c. Approval authorities required where purchases exceed previously authorized commitment levels; and</p> <p>d. The level of documentation required to be retained in support of procurement decisions.</p>	X		<p><b><u>SONY CENTRE MANAGEMENT</u></b></p> <p>The following recitation of “what should have been” must be viewed in light of the fact that the Sony Centre has always been treated as an arm’s length independent body and although the City may have specific purchasing policies applicable to construction projects, they were not at the time applicable to the Sony Centre. Management was simply following the policies that had been put in place by the Board.</p> <p><b><u>CITY MANAGEMENT RESPONSE TO SONY CENTRE MANAGEMENT COMMENTS</u></b></p> <p><i>The City Manager’s Office (CMO) staff provided advice on the Sony Centre’s procurement policy when policy questions were brought to their attention. This was related to section 9 of Policy 303 which was in contradiction to the requirements of Municipal Code Chapter 140, Lobbying, and was also in contradiction of the lobbying and “blackout period” standards in the City’s Procurement Processes Policy (which had been developed through collaboration between CMO and the Purchasing and Materials Management division).</i></p>	<p><b>The Sony Centre’s Action Plan/Time frame</b></p> <p>Sony Centre Management notes that the Board has recently approved new procurement policies dealing with the above recommendation.</p> <p>Management will confer with the City Manager’s Office and the Deputy City Manager and Chief Financial Officer to amplify the policies as may be required pursuant to this recommendation and will do so as soon as this Report is finalized and made public.</p>

Rec No.	Recommendations	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
9.	The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to review the administrative controls over the procurement process and ensure that such controls are appropriate. In addition, an internal quality control process be established to ensure compliance with such controls.	X		<b><u>SONY CENTRE MANAGEMENT</u></b> Although the documentation may be deficient in part, this does not mean that there was no justification for sole sourcing. Had Sony Centre Management known that these decisions would be the subject of scrutiny at a later date, Management would have documented its decision-making process as it occurred.	<b>The Sony Centre's Action Plan/Time frame</b> Sony Centre Management will confer with the City Manager's Office to amplify existing policies as may be required pursuant to this recommendation and will do so as soon as this Report is finalized and made public.
10.	The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to implement processes to ensure future compliance with the City's "Policy on Donations to the City for Community Benefits".	X		<b><u>SONY CENTRE MANAGEMENT</u></b> Sony Centre Management was not aware of the donations policy applying to the Centre however Management would also note that none of the City Councillors on the Board at the time this donation was disclosed raised any issue with respect to the need to follow a donation policy. Furthermore, despite a large article in the Toronto Star being published with respect to the donation, no one from the City ever contacted Management to advise that the policy was not followed.  <b><u>CITY MANAGEMENT RESPONSE TO SONY CENTRE MANAGEMENT COMMENTS</u></b> <i>The CMO has instituted protocols to better track Council policy requests to agencies with a view to ensuring new requests from Council are properly communicated.</i>	<b>The Sony Centre's Action Plan/Time frame</b> Sony Centre Management is currently working on this recommendation in order to implement processes to ensure appropriate compliance with the City's policy of Donations.

Rec No.	Recommendations	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
11.	The Board of Directors of the Sony Centre for the Performing Arts request the Chief Executive Officer to confirm the appropriate accounting treatment of identified transactions with the Centre's external auditors.	X		<p><b><u>SONY CENTRE MANAGEMENT</u></b> This is only an opinion of the Auditor General and has not been confirmed by the independent auditors of the Centre.</p> <p>The financial statements were reviewed in detail by City staff. In addition the external auditors have issued an unqualified audit opinion on the Sony Centre financial statements which included these transactions. We will work with our external auditors to determine whether there are any external audit implications to the AG findings.</p> <p><b><u>CITY MANAGEMENT RESPONSE TO SONY CENTRE MANAGEMENT COMMENTS</u></b> City Accounting, Financial Planning and Corporate Finance staff have neither reviewed these items in detail, nor vetted them. Accounting staff receive Sony Centre financial statements each year end and use these in preparing the City's consolidated financial statements, and calculating the net surplus or deficit on a cash requirements basis. Inter-company accounts such as the loan and related interest are reviewed in detail and were the subject of accounting discussions and an adjustment to Sony's 2012 financial statements to record interest expense which was payable in future years. However, transactions which are not inter-company are not subject to review unless highlighted by Sony Centre staff.</p>	<b>The Sony Centre's Action Plan/Time frame</b> Sony Centre Management is currently working on this recommendation with the external auditors of the Sony Centre as part of the 2013 audit review.



<b>Rec No.</b>	<b>Recommendations</b>	<b>Agree (X)</b>	<b>Disagree (X)</b>	<b>Management Comments: (Comments are required only for recommendations where there is disagreement.)</b>	<b>Action Plan/Time Frame</b>
<b>12.</b>	City Council request the Deputy City Manager and Chief Financial Officer review transactions reported in the financial statements of the City's agencies and corporations which relate to the capital works program recorded in the City's accounts.	X			<b>The City's Action Plan/Time frame</b> The Director, Accounting Services will include in his Year End Letter to each agency and corporation a requirement to disclose matters which relate to the City's capital works program. All matters will be reviewed and reported to both the Treasurer and Deputy City Manager and Chief Financial Officer. This will be put in place by Accounting Services for the 2014 year end, with letters to go out January 2015.

## Management's Response to the Auditor General's Review of the Redevelopment of the Sony Centre for the Performing Arts

It is unlikely that further projects of the magnitude of the Sony Centre redevelopment will occur for many years. Consequently, while the Auditor General identified a significant number of issues in connection with the management of the redevelopment project, no recommendations were made as these issues will likely not have any future relevance to the Sony Centre. Therefore, this Appendix presents Management's response to issues raised in Section D of the Audit Results, "Controls Over the Redevelopment of the Construction Project Were Inadequate"

	Issue	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
	Records for the construction project were incomplete			<p><b><u>SONY CENTRE MANAGEMENT</u></b> Had Sony Centre been made aware of the City's documentation policies with respect to construction and had the support from the City, the Sony Centre would have been able to provide the Auditor General's office with complete documentation.</p> <p>Sony Centre Management agrees that certain records were not 100% complete. Without knowing that there was a retention policy applicable to the Centre, the Centre kept all those documents that it thought pertinent in connection with the construction and post construction time periods. Had Management been alerted to the document retention policy, all of the records would have been available to the Auditor General.</p>	
	The contract for construction management services was not awarded through an open and competitive procurement process			<p><b><u>SONY CENTRE MANAGEMENT</u></b> Sony Centre Management reiterates that although a formal process was not followed, Management exercised appropriate due diligence in choosing the Construction Manager.</p> <p><b><u>CITY MANAGEMENT</u></b> The City Manager's Office is consulting with the City Clerk's Office and Legal Service division on</p>	

	Issue	Agree (X)	Disagree (X)	Management Comments: (Comments are required only for recommendations where there is disagreement.)	Action Plan/Time Frame
				the appropriate communication to agencies regarding legislative requirements and records retention practices.	
	To maintain a state of construction readiness, the Construction Manager provided services prior to the execution of a formal agreement			<b><u>SONY CENTRE MANAGEMENT</u></b> As Sony Centre Management previously explained, Management did not want to enter into a full contract with Vanbots for the entire construction project until Management was sure that the deal with the Developer was closed. Accordingly, Management prudently hired Vanbots personnel on an as-needed month-to-month basis in order to be in a state of construction readiness in order to avoid being in a contract breach with the Developer for failure to deliver the parcel he purchased once the deal closed.	
	Construction Manager fees			<b><u>SONY CENTRE MANAGEMENT</u></b> Sony Centre Management points out that although there may not be written evidence retained that such a pre-approved process existed, Management advises that all such expenditures were in fact pre-approved by Management.	
	Process for managing and monitoring change orders needs improvement			<b><u>SONY CENTRE MANAGEMENT</u></b> Sony Centre Management agrees that carefully tracking the change orders would have facilitated later analysis and reporting of variances.	
	Management scrutiny of change orders was inadequate				
	Payment controls need improvement				