




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
 Economic Development Division

TO:	Chair and Members West Harbour Development Sub-Committee
COMMITTEE DATE:	January 17, 2022
SUBJECT/REPORT NO:	Pier 8 Animation Program and Hamilton Waterfront Trust (HWT) (Discovery) Centre - Status Update (PED21090(a)) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	David McCullagh (905) 546-2424 Ext. 1647 Chris Phillips (905) 546-2424 Ext. 5304 Andrea Smith (905) 546-2424 (6256)
SUBMITTED BY:	Norm Schleeahn Director, Economic Development Planning and Economic Development Department
SIGNATURE:	

Discussion of Confidential Appendix “B” to Report PED21090(a) and Confidential Appendix “C” to Report PED21090(a) in closed session is subject to the following requirement(s) of the City of Hamilton’s Procedural By-law and the *Ontario Municipal Act, 2001*:

- A proposed or pending acquisition or disposition of land for City or a local board purpose.

RATIONALE FOR CONFIDENTIALITY

Appendix “B” to Report PED21090(a) and Appendix “C” to Report PED21090(a) proposes a potential real estate transaction, and therefore it is appropriate to address in-camera, pursuant to the *Ontario Municipal Act*.

RATIONALE FOR MAINTAINING CONFIDENTIALITY

Appendix “B” to Report PED21090(a) and Appendix “C” to Report PED21090(a) is to remain Confidential as real estate transactions involve commercially confidential information and the outcome of negotiations, pending approval of Council.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

RECOMMENDATION (CLOSED SESSION)

N/A

RECOMMENDATION (OPEN SESSION)

- (a) That staff be authorized and directed to negotiate and finalize a Lease Agreement between the City of Hamilton (Landlord) and The Waterfront Shores Corporation (Tenant) for a portion of the Discovery Centre facility, that is identified as areas of Exclusive-Use of the tenant in Appendix "A" to Report PED21090(a) attached, based substantially on the Major Terms and Conditions outlined in Confidential Appendix "B" to Report PED21090(a) attached, and such other terms and conditions deemed appropriate by the General Manager of Planning and Economic Development Department;
- (b) That staff be directed to negotiate terms and conditions for a proportionate share of The Waterfront Shores Corporation (Tenant) usage for the Non-Exclusive and Common-Use areas, as identified in Appendix "A" to Report PED21090(a), and report back to the Sub Committee on the results;
- (c) That all net rent proceeds from the Lease Agreement at the Hamilton Waterfront Trust (HWT) (Discovery) Centre be received and credited to Account No. 46000-Dept. ID No. 791554;
- (d) That all costs related to the Lease Agreement at the HWT (Discovery) Centre, including the real estate and legal costs of \$45,750, be funded from Account No. 55778-Dept. ID No. 791554 and credited to Account No. 55778-Dept. ID No. 812036 (Real Estate – Admin Recovery);
- (e) That the General Manager, Planning and Economic Development Department or designate, acting on behalf of the City as Landlord, be authorized to administer the Lease and provide any requisite consents, approvals, and notices related to the Lease Agreement at the HWT (Discovery) Centre;
- (f) That the City Solicitor be authorized to amend and waive terms and conditions on such terms as considered reasonable to complete the leasing transaction, respecting the Lease Agreement at the HWT (Discovery) Centre;

- (g) That the Mayor and Clerk be authorized and directed to execute the Lease Agreement at the HWT (Discovery) Centre, or such other form and all other necessary associated documents with all such documents to be in a form satisfactory to the City Solicitor;
- (h) That Appendix “B” to Report PED21090(a) and Appendix “C” to Report PED210909(a) remain confidential.

EXECUTIVE SUMMARY

On April 28, 2021, Council approved GIC Report 21-009 approving West Harbour Development Sub-Committee Report 21-001, April 13, 2021 (Item 10.3), approving Report PED21090, which directed staff outlined as follows:

That staff be directed to promote the availability of the Hamilton Waterfront Trust (former Discovery) Centre property for lease, on the following conditions, and report back to the West Harbour Development Sub-Committee:

- (a) Any currently unoccupied and available space within and outside of the building;
- (b) Suitable uses being restricted to permitted zoning/land use regulations, with a preference for outdoor year-round programming/animation, and a desire for variety, including some food and beverage;
- (c) Minimum Term of 1-year and a Maximum Term of 5 years, with potential for options;
- (d) Structured on a Fully Net and Carefree basis; and,
- (e) A portion of the space be available for some public meetings or events.

Although Staff received several inquiries about the site, Waterfront Shores Corporation (WSC) was the only group to submit an Offer to Lease (Offer) for a portion of the facility. The Offer is detailed in Confidential Appendix “B” to Report PED21090(a) entitled “Major Terms and Conditions, Lease Agreement - Portion former Discovery Centre - 57 Discovery Drive”. The proposed use is for a temporary sales centre within a portion of the building for a time period of up to five years.

WSC is a consortium of established development industry companies Cityzen Development Corporation, Tercot Communities Limited, and Greybrook Realty Partners Inc. Council approved WSC as the Preferred Proponent to develop the residential and mixed-use community proposed for the 9 development-blocks on Pier 8, after an

extensive public RFQ/RFP process. Since then, the City and WSC have worked collaboratively on the Planning approvals process for the site, and in 2021, executed a Development Agreement (DA), which details the contractual relationship between the parties, throughout the life of the development.

The proposed Offer seeks Exclusive-Use for the former interior restaurant space, while maintaining City control over significant Non-Exclusive and Common Use areas, including the public restrooms, multi-purpose rooms, lobby, theatre, and outdoor patio areas. Appendix "A" to Report PED21090(a) depicts the respective building areas and illustrates the floor plan. Those areas deemed Non-Exclusive and Common Use will continue to be managed by the City and could be available for public-use and public animation on an event-by-event basis.

Staff have reviewed the proposed Offer and believe it is consistent with the Council direction. The intended use is consistent with the existing zoning regulations, allows for year-round occupancy, allows for alternative programming and temporary events, fits within the time constraint, and continues to allow for temporary public uses year-round. Financially, the proposed Offer reflects market-value consideration and would generate a significant increase in revenue from previous years.

This Report seeks approval to negotiate and finalize a Lease Agreement that is consistent with the framework and direction approved by Council as outlined in this Report PED21090(a).

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Transaction as outlined in Appendix "B" to Report PED21090(a) attached;

The rentals and additional rents received pursuant to the Lease Agreement based substantially on the Major Terms and Conditions outlined in Appendix "B" and Financial Terms outlined in Appendix "C" to Report PED21090(a) be received into Account No. 46000-Dept. ID No. 791554; and

Real estate and legal costs of \$45,750 will be funded from Account No. 55778-Dept. ID No. 791554 and credited to Account No. 55778-Dept. ID No. 812036 (Real Estate – Admin Recovery).

Staffing: N/A

SUBJECT: Pier 8 Animation Program and Hamilton Waterfront Trust (HWT) (Discovery) Centre - Status Update (PED21090(a)) (Ward 2)- Page 5 of 13

Legal: Legal Services will be required to assist in the preparation of the contemplated lease agreement and any necessary documents required to complete this leasing transaction.

HISTORICAL BACKGROUND

On June 16, 2018, Council approved GIC Report 18-013 which recommended that WSC be approved as the Preferred Proponent for the Request for Proposal Contract Number C11-66-17 entitled Pier 8 Development Opportunity for Prequalified Proponents. Subsequently, on September 11, 2019, Council approved Confidential Report PED14002(i), entitled Pier 8 Development Agreement (DA) between the City of Hamilton and Waterfront Shores Corporation, identifying the general transactional framework to be used between the parties, and a formal DA was executed earlier in 2021.

On January 24, 2018, Council approved GIC Report 18-002, which included direction to investigate the feasibility of incorporating the former Parks Canada lands/building, into the Pier 8 Request for Proposals (RFP) process and to report back with a recommendation that best maximizes the disposition value, does not adversely affect the value the City can expect to receive from the Pier 8 lands, and best ties into the vision of Setting Sail and the successful developer. Staff informed the RFP Proponents of the Council direction and the general public on March 29, 2018, during a comprehensive Community Conversation Meeting. Although the future of the building was discussed during the DA negotiations, the building was not incorporated into the final agreement. Although not a condition of the DA, WSC explicitly and consistently expressed an interest in seeking a short-term lease for the building.

Also, on January 24, 2018, Council approved GIC Report 18-002, including Report CM18002, entitled "Hamilton Waterfront Trust - Staff Response to Council's October 25, 2017 Direction", that authorized and directed staff to negotiate a Lease Termination and Surrender Agreement with the Hamilton Waterfront Trust (HWT) of the former Federal Government head lease. The proceeds of disposition were approved to be used to fund the outstanding balance of the leasehold buyback, as well as any and all accrued maintenance, utilities, property taxes, with any leftover funds to be deposited to the City Unallocated Capital Reserve.

On December 16, 2020, Council approved GIC Report 20-023, which included the West Harbour Development Sub-Committee Report 20-001 dated December 2, 2020 including Report PED17181(b) entitled West Harbour Waterfront Re-Development Plan – Implementation Status Update, which identified the short-term and long-term future of

SUBJECT: Pier 8 Animation Program and Hamilton Waterfront Trust (HWT) (Discovery) Centre - Status Update (PED21090(a)) (Ward 2)- Page 6 of 13

the HWT Centre building as an important emerging issue over the 2021-2022 timeframe.

On April 28, 2021, Council approved GIC Report 21-009 approving West Harbour Development Sub-Committee Report 21-001, April 13, 2021 (Item 10.3), approving Report PED21090, which directed staff outlined as follows:

- (a) Pier 8 Animation Program and Hamilton Waterfront Trust (HWT) (Discovery) Centre - Status Update (PED21090) (Ward 2) (Item 10.1)
 - (i) That staff be directed to prepare a long-term strategy including an assessment of the existing conditions of the Hamilton Waterfront Trust (former Discovery) Centre building, the cost of existing operations, future capital requirements, planning approvals, parking requirements, real estate evaluations, market soundings, and other relevant due diligence, and report back to the West Harbour Development Sub-Committee identifying options for future uses of the property, as well as various ownership and/or operating models; and,
 - (ii) That staff be directed to promote the availability of the Hamilton Waterfront Trust (former Discovery) Centre property for lease, on the following conditions, and report back to the West Harbour Development Sub-Committee:
 - (1) Any currently unoccupied and available space within and outside of the building;
 - (2) Suitable uses being restricted to permitted zoning/land use regulations, with a preference for outdoor year-round programming/animation, and a desire for variety, including some food and beverage;
 - (3) Minimum Term of 1-year and a Maximum Term of 5 years, with potential for options;
 - (4) Structured on a Fully Net and Carefree basis; and,
 - (5) A portion of the space be available for some public meetings or events.

This report PED21090(a) responds to item (ii) in the April 28, 2021 direction, being the short-term utilization of the Discovery Centre property. Staff will be presenting to

Council through a separate report a proposed process for determining the longer-term use for the site.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Land-Use Designation and Zoning

The Setting Sail Secondary Plan (Setting Sail) was adopted by Hamilton City Council in 2005 and approved by the Ontario Municipal Board in 2012. During the planning process for Setting Sail, the former Parks Canada Marine Discovery Centre Museum was recognized as an existing institutional use, and as such, the Official Plan designated the building as “Institutional” and the building was zoned as “Community Institutional”.

In conducting a preliminary assessment of the Policies and Zoning currently in effect on the Property (being defined for this Report as applicable to the building only) staff in the Planning Division and those responsible for zoning within the Building Division, determined that the permitted uses are extremely limited and restricted to institutional uses such a long-term care facility, day care, and place of worship. Any commercial uses such as restaurants and outdoor commercial patios are excluded.

Although more recent uses of the Property did include a restaurant and outdoor patio, this is the result of pre-existing zoning and jurisdictional permissions afforded to the Federal Government as the previous landowner rather than current applicable policies and zoning regulations.

The Property-use constraints significantly limit the ability to market the building for a traditional commercial lease.

As a City-owned municipal facility however, the Zoning By-law would permit a variety of municipal uses to occur on the site. Uses such as events and programming with an inherent public interest would be examples of such uses but would have to be evaluated on a case-by-case basis.

Proposed Use of Building in Relation to Potential Lease

The proposed primary use of the subject lease is for a temporary sales centre by way of a City lease to the Tenant for a period of up to 5 years. Zoning By-law 05-200 permits

this use (Section 4.18 (b)). This use would only be for the Exclusive-Use Area of the subject lease. The City will maintain control over the Non-Exclusive and Common Use areas, including the public restrooms, multi-purpose rooms, lobby, theatre, and outdoor patio areas. Appendix “A” to Report PED21090(a) depicts the respective building areas and illustrates the floor plan. Those areas deemed Non-Exclusive and Common Use will continue to be managed by the City and could be available for public-use and public animation on an event-by-event basis.

Portfolio Management Strategy – Real Estate Management Plan

City Council, at its meeting of November 24, 2004, adopted the City’s Portfolio Management Strategy Plan, which established a formalized process to be consistently applied across all areas of the City to guide the management of the City’s real property.

RELEVANT CONSULTATION

- Planning and Economic Development Department, Municipal Land Development Office;
- Planning and Economic Development Department, Corporate Real Estate;
- Planning and Economic Development, Building Engineering and Zoning;
- Planning and Economic Development Department , Planning Division;
- Public Works, Facilities Planning and Business Solutions Section;
- Corporate Services Department, Legal and Risk Management Services Division; and,
- Financial Planning Administration and Policy Division.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The former Discovery Centre facility is a City-owned building that has been primarily vacant for the past few years. Initially, the facility was built and owned by the Federal Government and operated as the Parks Canada Marine Discovery Centre until its closure in 2010, at which time the Federal Government retained ownership and sub-leased the building and related property to the HWT. The Federal Government formally transferred the ownership to the City of Hamilton in 2015, and in 2018 the City and the HWT agreed to a negotiated Lease Termination and Surrender Agreement.

In conducting a preliminary assessment of the policies and zoning currently in effect on the property (being defined for this Report as applicable to the building only), it was determined that the permitted uses are extremely limited and restricted to institutional uses, and any commercial uses such as restaurants and outdoor patios are excluded.

Although more recent uses of the property did include a restaurant and outdoor patio, the research indicates this use was more the result of pre-existing zoning and

jurisdictional permissions afforded to Federal Government as the previous landowner, rather than current applicable policy and zoning regulations. As well, upon closure of the former restaurant, most of the significant furniture, fixtures and equipment were removed from the facility, leaving this portion of the building fully vacant open interior space.

Appendix “A” to Report PED21090(a) entitled “Location, Identification of Building Areas & Floor Plan”, visually depicts the various spaces within the Discovery Centre, which are summarized in Table 1 below:

Table 1: Summary – Identification of Building Areas

Existing Areas	Area Type
1. Parks Canada Office	Existing Parks Canada Leasehold Interest
2. Restrooms	Common Use Area
3. Cyber-Café / Multi-Use Room and Storage Area	Non-Exclusive Use Area* / Available for Bookings
4. Lobby and Hallway	Common Use Area
5. Theatre	Non-Exclusive Use Area / Available for Bookings
6. Restaurant / Kitchen	Contemplated Waterfront Shores Leasehold Interest for Sales Centre, Presentation Centre, Construction Office
7. Small Patio	Non-Exclusive Use Area / Available for Bookings
8. Large Patio	Non-Exclusive Use Area / Available for Bookings
	*Note: Areas identified as non-exclusive use areas are available for bookings for public uses and/or temporary uses by various parties, subject to City approval.

WSC is a single-purpose entity established by a consortium for the purpose of acquiring and developing the lands on Pier 8. WSC combines the established residential and mixed-use development experience of Cityzen Development Corporation, Tercot Communities Limited, and the real estate investment expertise of Greybrook Realty Partners Inc. The City and WSC executed a DA in 2021, which details the contractual agreement and relationship between the parties, throughout the life of the development.

As indicated in previous Reports, during the DA negotiation process, WSC indicated a desire to lease the Discovery Centre building as an option for their sales presentation centre. Understanding the City's desire to maintain some public space, both within and exterior to the building, WSC indicated a willingness to work this concept into any proposed lease arrangement.

Confidential Appendix "B" to Report PED21090(a) contains the major terms and conditions of the proposed lease agreement, for those areas deemed as Exclusive-Use of the tenant. The Chief Corporate Real Estate Officer is satisfied that the terms and conditions outlined in Confidential Appendix "B" to Report PED21090(a) are deemed fair, reasonable and at fair market value. As well, the recommendations in this Report PED21090(a) are consistent with Council's direction as outlined in Report PED21090 respecting leasing a portion of the former Discovery Centre facility municipally located at 57 Discovery Drive.

The following is a brief analysis of the key elements of the proposed Offer:

Proposed Areas to be deemed Exclusive-Use to WSC and Intended Use

The Offer proposes the Exclusive-Use of the ground level leasable space (comprised of approximately 9,136 square feet) of the former restaurant area, for a period of 5-years. The specific space is labelled as area 6 in Appendix "A" to Report PED21090(a). The primary use of the area will be for the WSC condominium sales centre, presentation centre and a construction office, to support the Pier 8 development.

Proposed Areas to be deemed Non-Exclusive Use and Common-Use to WSC

The Offer also proposes shared use of Common-Use areas such as entrances and washrooms. As well, WSC requests to negotiate fair and proportionate use of the other areas identified as Non-Exclusive Use areas, including the Multi-purpose rooms (identified as area 3), the Theatre for presentations (identified as area 5), and the small and large outdoor patios for both private and public temporary events (indicated as areas 7 and 8). Staff believe that this request is reasonable and will allow for the building's usage to be maximized over time. If approved, recommendation (b) of Report PED21090(a) directs staff to negotiate terms and conditions for a proportionate share of Tenant usage for the Non-Exclusive and Common-Use areas, and report back to the Sub Committee on the results.

City Continues to Control Non-Exclusive Use and Common-Use Areas for Public-Uses

As indicated above, with the exception of the area indicated as Exclusive-Use (indicated as area 6), the remainder of the building's interior foot-print, as well as the exterior patios, remain as City-owned and operated Non-Exclusive and Common-Use areas. This means that the City retains both the right, ability, and the space to continue to utilize the interior and exterior spaces for community-uses. As such, this also means that the tenant has no right to modify or perform leasehold-improvements to the Non-Exclusive Use and Common-Use areas for their own purposes.

Although it is anticipated that WSC will request some consideration for exterior and interior signage, staff anticipate negotiating specific language to limit the types and location of signage, along with a condition that mandates the City's approval of any proposed signage.

Understanding the importance of public animation to the Pier 8 area, it is expected the City will continue to promote and allow for these spaces to be booked by non-profit community groups as well as private-sector organizations, for temporary uses and community events. In 2021 as an example, the "Pop-Ups @ Pier 8" event series was created to provide temporary animation and programming. Using both the outdoor and indoor spaces, the successful series included activities such as kid's workshops, senior coffee meet-ups, outdoor vintage and BIPOC makers markets, beer gardens and live DJ dance parties.

West Harbour staff have begun to explore similar opportunities for 2022 and beyond. The combination of the anticipated opening of Copps Pier and Piers 6 and 7 boardwalk, the attention generated by the WSC presentation centre, and the demand for post-pandemic activities, the area would offer year-round animation opportunities. Initial plans would be for a portion of the financial proceeds of the short-term lease to be allocated for continuing and enhancing the public animation program for the area.

Financial Terms of the Proposed Offer to Lease by WSC

The specific financial terms and analysis are detailed in Confidential Appendix "C" to Report PED21090(a) entitled "Financial Terms of the Proposed Offer to Lease". Generally, the proposed lease payments would be new revenue, that could be used to offset operational costs, and additional net proceeds. As well, since the City still controls the Non-Exclusive Use areas of the building and the outdoor patio spaces, it could be assumed that additional revenue could be generated by leasing or renting the available spaces throughout the year.

At present, the Discovery Centre building, and its exterior patio spaces are significantly under-utilized. Although there are opportunities for increased usage and revenue generation for the building and its facilities as the pandemic restrictions subside, the

zoning permissions for the site significantly constrain the ability to utilize the site for most commercial uses.

The intended use proposed by WSC can comply with existing zoning regulations, while at the same time allow the City flexibility to program a limited amount of indoor-space, as well as the outdoor patio space for public-uses and/or public animation programming throughout the term. The use of the building for a sales presentation centre will draw substantial attention and profile to the area, while at the same time assisting in the timely acceleration of the WSC marketing program.

If approved, staff will assess the business-case of marketing the facility for further revenue generation and prepare a revenue forecast over the 5-year period. Proceeds of the additional revenue could be made available for a variety of purposes including capital and operational improvements to the building and the surrounding grounds. As well, a portion of the financial proceeds could be allocated for continuing and enhancing the public animation program for the area.

A full financial assessment of the Discovery Centre would take place as part of the long-term strategy proposed in Report PED21090(b) entitled “Discovery Centre Strategy Framework”.

ALTERNATIVES FOR CONSIDERATION

N/A

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” – Location, Identification of Building Areas & Floor Pan

**SUBJECT: Pier 8 Animation Program and Hamilton Waterfront Trust (HWT)
(Discovery) Centre - Status Update (PED21090(a)) (Ward 2)- Page 13
of 13**

Appendix "B" – Confidential - Major Terms and Conditions Lease Agreement - Portion
former Discovery Centre - 57 Discovery Drive

Appendix "C" – Confidential - Financial Terms of the Proposed Offer to Lease

DM/CP/RK:jrb