



ADMINISTRATIVE REPORT

Report Date: December 8, 2008
Contact: M. D'Agostini/J. Gijssen
Contact No.: 604.873.7172/604.871.6843
RTS No.: 7817
VanRIMS No.: 08-2000-20
Meeting Date: December 18, 2008

TO: Standing Committee on City Services and Budgets

FROM: Director of Planning in consultation with Director of Public Art, Planning and Facility Development, Cultural Services and Directors of Real Estate and Legal Services

SUBJECT: York Theatre - 639 Commercial Drive

RECOMMENDATIONS

- A. THAT Council support the ongoing efforts to retain the York Theatre;
- AND THAT Council support in principle a partnership funding model including a City contribution of approximately one-third of the capital costs, subject to:
1. approval of total capital costs;
 2. inclusion of the density transfer approach as outlined in this report; and
 3. confirmation of financial support from other sources in principle.
- B. THAT the property owners, the Vancouver East Cultural Centre, York advocacy group and their partners be thanked for their continued cooperation and support.

CONSIDERATION

- C. THAT the property owners be requested to not demolish the York Theatre until they are ready to proceed with the property development.

GENERAL MANAGER'S COMMENTS

The General Manager of Community Services RECOMMENDS approval of A and B with C for CONSIDERATION.

COUNCIL POLICY

Heritage Policies (1986)

Transfer of Density Policy and Procedures (1993)

2008-2018 Culture Plan (2008)

Cultural Facility Priorities Plan (2008)

SUMMARY AND PURPOSE

The purpose of this report is to update Council on the current status of the York Theatre at 639 Commercial Drive. Since Council approved a 120-day temporary protection order on September 18, 2008, an operational feasibility study and capital restoration plan have been completed. These documents provide an order of magnitude capital cost and indications that the York Theatre could be operationally viable within parameters outlined in the study. An advocacy group lead by the Vancouver East Cultural Centre (VECC) has requested the City consider supporting the capital costs of the project (at or very near 100%) through density transfer. This report recommends approval in principle of 1/3 level of support as per previous policy and practice.

During the 120-day period discussions have taken place between the advocacy group and the current property owners but no agreement to sell has been reached. The 120-day period is set to expire on January 15, 2009 after which the current owners could proceed with demolition and redevelopment once all the required permits have been obtained.

BACKGROUND

On September 18, 2008 Council approved a 120-day temporary protection order for the exterior and interior of the York Theatre at 639 Commercial Drive to allow for completion of capital cost estimates and an operational feasibility study to assess the long term viability of operating a theatre in the existing building at this location and the resources required to undertake its restoration. The temporary protection period is set to expire on January 15, 2009. The September 18 report is attached as Appendix A and provides additional background information on the heritage and cultural value of the theatre.

The report on the temporary protection for the York Theatre was brought forward to Council in response to a demolition permit application submitted by the property owners. These owners acquired the site in October 2007 for redevelopment. They have submitted a development permit application to construct a new 3-storey 5 unit townhouse development which is conditionally permitted in the zoning. They are in the process of responding to outstanding prior-to conditions which, when addressed, will lead to development permit issuance. Subsequently a building permit application would be submitted and reviewed by staff. In staff's opinion, the 120-day protection period has not held up the project from proceeding, as the other requisite permits are not in place. Staff have met with and communicated regularly with the owners to keep them apprised of events.

Staff have advised Council that requests for transfer of density need to be managed to take into consideration the existing balance in the "density bank". A more detailed report on the

current status of the density bank, management of the density bank and consideration of future requests for transfer of density will be presented to Council in first quarter of 2009. Further, it is anticipated that the Downtown Capacity Options Review scheduled for completion by the end of 2009 will provide more clarity on the transfer of density issue. In addition, Council was also advised that if urgent or priority circumstances arose, they would be reported to Council for advice and direction.

The recommendation to consider the York Theatre as a potential candidate for transfer of density represents an urgent situation that if not granted could result in the demolition of an important cultural/heritage resource. It also represents an opportunity that meets a number of policy objectives. Preliminary analysis of the project feasibility indicates a supportable opportunity within certain parameters, primarily that of the community raising additional funds necessary to complete this project. Support by the City, in principle, would provide the opportunity for the community proponents to leverage capital support from other sources, which ultimately would achieve multiple public benefits (heritage and culture).

DISCUSSION

The Theatre Proposal

Earlier this year, the Vancouver East Culture Centre undertook to lead the commissioning and evaluation of a capital restoration plan and operational feasibility study. The Save the York advocates have been working with the VECC in this undertaking. At the October 20, 2008 meeting of the VECC Board, a motion was passed to "endorse the Feasibility Study and Operations Plan for the York Theatre and that the Society (VECC) is willing to operate the facility as outlined in the operations plan."

Staff's preliminary review of the capital restoration costs and theatre preparation indicate a cost range of \$10-11 million. This capital cost excludes land acquisition and any future operating costs.

The VECC is working with an anonymous developer (developer/donor) who has provided support for the feasibility studies and is prepared to consider purchasing and developing the land to include the theatre. The developer/donor and VECC have asked the City to consider a density transfer to a site yet to be determined, that would cover the costs of the theatre restoration. Staff have advised them that \$10-11 million in density is not supportable through City policy and practice. A more viable target for City support would be approximately 1/3 of the total capital costs with additional support provided by other funders, the private sector, and corporate partners.

The operating model developed by VECC would include the York Theatre at approximately 400 seats within existing VECC operations including the main theatre at 250-300 seats and the new VanCity Culture Lab at 60-100 seats. There are tremendous operational efficiencies to be gained from the incorporation of the York within existing VECC operations. The VECC feasibility study indicates full long-term financial viability as long as no significant financial impact results from the capital campaign to restore the Theatre. The VECC is also seeking a waiver of property tax on the site.

The project has many strengths, however its one weakness (primarily single source capital funding) is significant. The York proponents are seeking close to 100% support for the capital costs from the City. The VECC will have to explore additional sources of capital funding as the

City currently does not have the policy or precedent to support a majority of funding of a capital project through density transfers, unlike on-site density bonusing which is not contemplated for this site.

The need to source other financial support (from other levels of government, private sector, corporate sponsorships) is complicated by the VECC capital campaign project currently underway. They have been recent recipients of \$9 million from the Province of BC, \$2.4 million from the Federal Government, \$2.5 million from the City of Vancouver and \$1 million from VanCity Savings Credit Union. It could be difficult for the VECC to return to these funders for new funding so closely upon these past requests. A York Theatre fundraising team will be required and the VECC proposal will need to be re-imagined to include outside fundraising.

Similarly, the request for waiver of property taxes will need to be investigated once the ownership of the theatre is determined and city policy further examined.

Both the capital restoration plan and the operational feasibility plan were assessed by staff using Council's recently approved Cultural Facilities Assessment Criteria. Project strengths and weaknesses may be summarized as follows:

Project Strengths:

- General policy support in Cultural Facilities Priorities Plan (400 - 600 seat theatre; demand for smaller incubator spaces; and improvements to existing performance spaces);
- Strong well-developed vision with community support;
- Contribution to neighbourhood/cultural district, economic sustainability for Commercial Drive;
- Logical, viable operations under umbrella of VECC;
- Partnership with anonymous private developer with track record in cultural facility development; and
- VECC staff/Board with capital development experience.

Project Weaknesses:

- Project costs are primarily dependent on one source (transferable density); VECC will need to source other levels of support to realize the project; and
- Request for waiver of property taxes requires further information on final ownership model and examination of Council policies.

Staff met with VECC representatives and the developer/donor to better understand the proposal and financing model as well as what support is being requested from the City.

The developer/donor and current property owners have discussed sale/acquisition of the site however, negotiations have not resulted in securing the property. The developer/donor is not in a position to make an unconditional offer as requested by the current owners.

Options

Density Bonus and Transfer

The VECC and developer/donor have proposed a transfer of density to a site yet to be determined, that would cover the costs of the theatre restoration. Staff have advised them that \$10-11 million in density is not supportable through City policy and practice. The recommendations outlined in the report reflect a target for City support of approximately 1/3 of the total capital costs.

There could also be other development options whereby adjacent sites could be consolidated with the theatre site and an on-site bonus density scheme could be considered. However, this option would require acquisition of additional sites resulting in higher capital costs.

In a similar vein, a transfer of density could be considered through rezoning or a Heritage Revitalization Agreement when bonus density required to support a building's rehabilitation cannot be used on site. The policy has limitations on where density can be transferred as it must be within the same zoning district or generally within Downtown and Central Broadway. It is anticipated that potential requests could seek to transfer density beyond the areas noted.

City Cultural Infrastructure Grants

Other options for City support include the new Cultural Infrastructure Grants Program to be launched in Spring 2009 (as per Cultural Facilities Priorities Plan). The York Theatre could apply to the new Infrastructure Program for 1/3 matching support. All applications will be assessed by a peer review committee against the previously mentioned Assessment Criteria. While staff analysis indicates a high ranking against these criteria, funding cannot be guaranteed. It should also be noted this fund is limited in scale at \$4.5 million which must cover all cultural infrastructure projects over the 3-year period of the City's Capital Plan. \$1 million from this fund has been previously allocated by Council to the VECC main theatre project.

Heritage Designation

Should an agreement not be reached before the expiration of the current temporary protection order and the owner not voluntarily agree to a further extension, Council could direct staff to pursue heritage designation. Section 593 of the Vancouver Charter enables Council to protect a property from demolition through heritage designation. Heritage designation of a property requires approval of a by-law at a public hearing, notification of property owners and placing of newspaper ads. In addition, if the property owner does not agree to the designation on a voluntary basis, the local government is required to provide compensation for the reduction in market value of the designated property (sec. 595 Vancouver Charter). The heritage designation option is not recommended due to the financial liability associated with any potential compensation costs. In addition, the City has not designated any heritage property without the owner's consent since 1976 when heritage legislation included a compensation requirement.

Land Acquisition

A final option could be for Council to direct Real Estate staff to purchase the land and existing theatre and hold for future consideration. This option is not recommended as there are limited funds available for such purchase, that being the Property Endowment Fund and/or the funds designated for the restructured Cultural Infrastructure Grants Program as explained

above. A preferred use of the Cultural Infrastructure Funds would be through an application to the grant program which would enable further leveraging of funds from other sources.

Property Owners' Role

The temporary protection order (up to 120 days) currently in place cannot be extended or used again for a period of 2 years according to the Vancouver Charter. If the owners are unwilling to sell the theatre property to the developer/donor, and unwilling to extend the time for further discussion and negotiations, they will be in position to act on their demolition permit after January 15, 2009.

Based on the City's and the VECC commitment to continue pursuing retention and restoration of the York Theatre, Consideration C requests the owners agree to not demolish the theatre until such time as they are ready to proceed with property development. This "voluntary extension" would allow time for further clarification and discussion towards reaching an agreement satisfactory to all parties. The current 120-day temporary protection period has not been enough time to complete a deal and/or secure other funding. Current economic uncertainty may also affect the viability of all development alternatives including townhouse development.

FINANCIAL IMPLICATIONS

There are no financial implications resulting from the recommendations contained in this report. If negotiations are successful and the theatre rehabilitation proceeds, any City support through density bonus and/or transfer and/or capital support would be reported to Council.

CONCLUSION

Completion of the feasibility study on the York Theatre provides an order of magnitude understanding of capital costs, confirmation of its contribution to the cultural facility ecology of the city and confirmation of its operational viability as a theatre. However, further work by the VECC and developer/donor on other funding sources is required to support the project.

Although the developer/donor and property owners have not successfully negotiated a sale of the property, clarity around the City's role, and specifically the level of support (in principle) that the City is prepared to consider will help in moving the project forward. In recognition of the cultural and heritage value of the York Theatre, staff recommend that the City indicate support in principle for the project in terms of a "one-third" funding model with the City portion representing a maximum value of \$3.5 - 4 million towards capital costs. This total value would likely be in the form of density bonus for transfer off site, and a grant through the Cultural Infrastructure Program. In addition, staff put forward for Council's consideration, an option to request the current property owners leave the theatre on the property until their development is ready to proceed.

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CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Report Date: September 9, 2008
Contact: Marco D'Agostini
Contact No.: 604.873.7172
RTS No.: 7633
VanRIMS No.: 08-2000-20
Meeting Date: City Clerks Use Only

TO: Standing Committee on Planning and Environment

FROM: Director of Planning in consultation with the Director of Public Art,
Planning and Facilities Development and the Director of Legal Services

SUBJECT: Temporary protection of the York Theatre - 639 Commercial Drive

RECOMMENDATIONS

- D. THAT Council considers the exterior and interior of the York Theatre, at 639 Commercial Drive, to have heritage value meriting conservation.
- E. THAT pursuant to section 589 of the Vancouver Charter, Council orders that the whole of the exterior and the interior of the York Theatre be subject to temporary protection in accordance with the provision of Section 591 of the Vancouver Charter for a period of 120 days from September 16, 2008.
- F. THAT Council agrees the form of this Order shall be satisfactory to the City's Director of Legal Services and that the Order shall be executed on behalf of Council by the Director of Legal Services.

GENERAL MANAGER'S COMMENTS

The General Manager of Community Services recommends approval of the foregoing.

COUNCIL POLICY

Heritage Policies and Guidelines (1986)
Cultural Facility Priorities Plan (2008)
2008 - 2018 Culture Plan (2008)

SUMMARY AND PURPOSE

This report seeks approval of a Council order to protect the exterior and interior of the York Theatre at 639 Commercial Drive for 120 days. This action will allow time for a feasibility study to be completed to assess the long term viability of operating a theatre in the existing building at this location and the capital costs required to undertake its restoration.

BACKGROUND

The property was purchased by EDG Homes in October 2007 for redevelopment. When the property was for sale, a community group (Save the York) formed to explore purchasing the building and continuing the theatre operation. Save the York has collaborated with another developer (not the current owner) and the Vancouver East Cultural Centre (VECC) to explore options for the retention and operation of the theatre and to prepare a feasibility study to assess the overall physical, financial and operational viability of retaining the theatre. If the study determines there is a viable plan for the future, the Save the York/VECC group could offer to purchase the site from the current owners.

The VECC has applied to the City's Social and Cultural Capital Grants program for support towards the feasibility study. This contribution, subject to Council's approval, would form a small portion of the overall costs which are being resourced by the VECC with private support. Council will consider staff recommendations for the Capital Grants on September 16.

DISCUSSION

Heritage and Cultural Value

The existing theatre is not listed on the Vancouver Heritage Register. On March 17th, 2008 the Vancouver Heritage Commission supported a draft Statement of Significance for the theatre and supported its eligibility for addition to the Vancouver Heritage Register noting also its importance as a neighbourhood public amenity. A preliminary staff assessment indicates the building would likely be considered in the "C" evaluation category on the Vancouver Heritage Register.

The York Theatre is also notable for its association with the Vancouver Little Theatre Association, an amateur theatre company, from 1923-1977, as well as its use as one of the city's early Bollywood cinemas. The heritage value of the theatre is largely attributed to its cultural significance. This is consistent with the approach to the Heritage Register Upgrade work approved by City Council in 2007 which endorsed a change in approach to heritage values to go beyond architectural/aesthetic values and to capture broader community values. This is also consistent with the national approach modeled by the Canadian Register of Historic Places which encourages a much wider range of heritage values, including aesthetic, historic, scientific, cultural, social or spiritual importance or significance for past, present or future generations.

At approximately 500 seats, the theatre has been identified in the recently adopted Cultural Facilities Priorities Plan as a possible key addition to a range of cultural venues available within the City of Vancouver. The York Theatre is valued for its location in this neighbourhood and the size of venue. The Board of the VECC also recently passed a motion to proceed with

the feasibility study described above, noting that operating the York would be a remarkable opportunity for the VECC and the east end neighbourhood where it is located.

Current Status

The site is zoned RM-4N which permits medium density residential use (the existing theatre is a non-conforming use). On April 10, 2008, EDG Homes submitted a development application to replace the existing building with a new 3-storey 5 unit townhouse development as conditionally permitted in the zoning. The application was approved on July 28th, 2008. The development permit has not been issued. Staff are reviewing revised submission drawings. A building permit for the townhouses, which could take six weeks or more to process if a certified professional is not used, has not been submitted to date. It should be noted that the pre-application and development application process has been consistent with other like sites and development proposals and no undue delays have occurred.

As of early 2008, staff asked the owners to withhold making an application for demolition of the theatre, until they absolutely had to (i.e. all permits are issuable). As of the writing of this report, the development permit is not issuable and the building permit application has not been submitted. On August 26, it came to the attention of staff that materials were being removed from the building interior. The district building inspector attended and issued a Stop Work order. The same day, the owners made a building permit application to demolish the theatre.

Section 589 of the Vancouver Charter permits Council to order temporary protection of property for up to 120 days if it considers the property has or may have sufficient heritage value to justify conservation. Section 591 of the Vancouver Charter includes provisions which provide that, if the whole of the building is subject to temporary protection, no alterations to the existing building or any new construction could be undertaken during the temporary protection period except as authorized in a heritage alteration permit. The temporary protection order is intended to prohibit any alterations to the theatre during the temporary protection period.

Support for the temporary protection of the theatre would allow the feasibility study, which has been commissioned by the Vancouver East Cultural Centre Society, to be completed. It is anticipated that the feasibility study including an assessment of the viability of restoring the theatre as well as its long term financial operation will be completed by September 30. The temporary protection order would allow the Save the York advocacy group and the Vancouver East Cultural Centre to review the findings of the feasibility study, and pending the outcomes of that study, consider their options. This may include the possible purchase of the building in order to retain the theatre. City staff will work with the VECC and advocacy group to consider retention options for the theatre.

It is therefore recommended that the temporary protection order be approved. Staff will report back to Council, within the 120 day period, on the conclusions by the community group regarding the feasibility study and options for retention of the theatre for Council's review including recommendations on process and timing.

The owners of the property have expressed concern that the process seems to have become "open ended". Recently the owners asked staff to give them an assurance of when they might

be able to demolish the theatre should they not receive an offer acceptable to them at the end of September. Staff have indicated that the City cannot offer any conclusions on timing until staff have reported to Council and Council has reviewed the matter. As noted above, staff will report back to Council on the status of the matter within the 120 day period.

FINANCIAL IMPLICATIONS

There are no financial implications.

CONCLUSION

The York Theatre at 639 Commercial Drive has heritage value and potentially could fill an important need for a cultural venue of this size and in this part of the city. While a development permit has been submitted to replace the existing building, staff are recommending a temporary protection order of 120 days of the building in order to allow a feasibility assessment to be completed and retention options to be explored.

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