



Office of the Auditor General / Bureau du vérificateur général

2009 AUDIT OF THE LANSDOWNE PARK PROPOSAL PROCESS

2009

**VÉRIFICATION DU PROCESSUS DE DEMANDES DE
PROPOSITIONS CONCERNANT LE PARC LANSDOWNE**

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EXECUTIVE SUMMARY

Introduction

At its meeting of 2 September 2009 Council approved the following two motions:

MOTION NO. 71/34

Moved by Councillor C. Doucet

Seconded by Councillor G. Bédard

WHEREAS a solicited proposal requires a competitive process for purchase of city goods and services, and construction; and

WHEREAS City Council has approved a process refining a proposal from OSEG; and

WHEREAS city staff have been working diligently with the proponents to clarify and define the proposal;

THEREFORE BE IT RESOLVED that the Auditor-General be requested to determine if the OSEG bid remains unsolicited or should be considered as a project subject to the process under the Purchasing By-Law for Requests for Proposals, and that this report be made available prior to the Committee of the Whole discussion.

MOTION NO. 71/36

Moved by Councillor J. Legendre

Seconded by Councillor G. Bédard

WHEREAS as Council has requested an unsolicited proposal for a Lansdowne Park Partnership Plan;

WHEREAS City staff have reviewed the proposal for value-for-money;

THEREFORE BE IT RESOLVED that the Auditor-General be requested to consider auditing the staff review of the proposal and that his audit report be tabled prior to Council's scheduled approval of this partnership proposal.

This report contains the results of the audit requested by Council related to Lansdowne Park.

Background

The table below presents a brief chronology of key events related to the re-development of Lansdowne Park since 2007.

9 May 07	2006 Audit of Property Management released with recommendation 2 stating <i>"That the Branch develop, for City Council approval, a long-term plan and vision for Lansdowne Park in order that future usage of the park be done in conjunction with the citizens' expectations."</i> Follow-up audit indicates that Management's intention was to use the Design Lansdowne approach to develop this strategy.
28 Nov 07	Design Lansdowne process initiated by Council based on a "Right to Develop" approach.
8 July 08	Memo from Deputy City Manager, Infrastructure Services and Community Sustainability to Planning and Environment Committee indicating Design Lansdowne is on hold pending complete review of building condition of stadium and arena and a "review of the Shenkman business plan/CFL proposal." Per meeting minutes report was received without comment. Memo does not appear on any subsequent Council agenda.
12 Nov 08	A Council motion to re-start Design Lansdowne process is tabled and will "...rise for consideration when the City Manager's evaluation has been completed and is before Council for consideration." Motion carried without discussion.
11 Mar 09	<ol style="list-style-type: none"> 1. "Needs Assessment and Location Analysis for Multi-Purpose Sport and Entertainment Facility" to Council. Report indicates 23 possible sites with Bayview and Carleton University as #1 and Lansdowne as #6. 2. "Stadium Opportunity Assessment Framework" to Council. Includes criteria to be used in evaluating unsolicited proposals: <ul style="list-style-type: none"> o Overall Need o Business Plan o Site Considerations o Facility Design and Overall Concept o Risk to City o Financial Impacts to City 3. Framework used to evaluate Ottawa Sports and Entertainment Group (OSEG) and Senators Sports and Entertainment (SS&E) proposals.
22 Apr 09	"Assessment of Stadium Proposals from OSEG and SS&E" to Council. Direction from Council to proceed with OSEG negotiations with several conditions, including in part (see Appendix 1 for complete direction): <ul style="list-style-type: none"> o No housing component; o No big box retail; o Commercial uses to be "boutique" in nature; o Public transit be considered; and, o Any revenues generated not to be used to subsidize any professional sports.
11 June 09	City contracts with GBA for "Development Advisory Services for Lansdowne Revitalization Project Lansdowne Live". Total value of the contract is \$85,400 with an additional \$75,884 sub-contract to Price Waterhouse Coopers for "...preparation of the business plan and financial aspects of the project..."
2 Sep 09	OSEG/City proposal tabled at Council.

Audit Objectives

As specified in the motions from Council, the objectives of this audit are to:

- Determine if the OSEG bid remains unsolicited or should be considered as a project subject to the process under the Purchasing By-Law for Requests for Proposals; and,

- Audit the staff review of the OSEG proposal.

Conclusion

In response to the first Council motion to the Auditor General, it is our opinion that this represents a sole source response to an unsolicited bid. However, no contravention of the Purchasing By-Law has occurred and furthermore Council effectively approved this action at its meeting on November 12, 2008 when a motion to re-start the design competition was tabled pending the results of the City Manager's evaluation of the OSEG proposal. This decision was reinforced on 11 March 2009 when Council approved the Assessment Framework and was further reinforced at the Council meeting of 22 April 2009 when the City Manager was given direction to negotiate an agreement with OSEG. As such, the process being followed is legitimate and is neither inappropriate nor illegal.

In response to the second Council motion to the Auditor General, it is our opinion that, notwithstanding any potential issues with the current proposal, staff, in response to Council direction, completed a substantive negotiation process in an effort to ensure the best interests of the City were achieved.

What can also be concluded is that the current proposal does not fully comply with the conditions Council placed on the solution and contains a number of elements that remain undeveloped and which could significantly affect the viability of the project. Nevertheless, Council may determine that the current proposal is acceptable. In making this decision, it may be prudent to re-visit the conditions Council has placed on the negotiations and consider whether an approach that does not meet all of them is still satisfactory.

Acknowledgement

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.

RÉSUMÉ

Lors de sa réunion du 2 septembre 2009, le Conseil municipal a approuvé les deux motions suivantes :

MOTION N°. 71/34

Motion du conseiller C. Doucet

Appuyée par le conseiller G. Bédard

ATTENDU QU' une proposition découlant d' un appel d' offres repose sur un processus compétitif visant l' achat par la Ville de biens et de services ou un projet municipal de construction;

ATTENDU QUE le Conseil municipal a approuvé un processus améliorant une proposition de l' OSEG;

ATTENDU QUE le personnel de la Ville travaille avec les promoteurs à préciser et à définir la proposition;

IL EST DÉCIDÉ QUE le vérificateur général sera prié de déterminer dans un rapport, soumis avant la tenue des délibérations du comité plénier, si l' offre de l' OSEG demeure une proposition spontanée ou s' il faut plutôt la considérer comme un projet soumis au processus de demandes de propositions aux termes du Règlement sur les marchés.

MOTION N°. 71/36

Motion du conseiller J. Legendre

Appuyée par le conseiller G. Bédard

ATTENDU QUE le Conseil a demandé une proposition spontanée relativement au projet de partenariat pour le parc Lansdowne;

ATTENDU QUE le personnel de la Ville a passé la proposition en revue afin d' en analyser les avantages par rapport aux coûts;

IL EST DÉCIDÉ QUE le vérificateur général sera prié d' auditer l' examen de la proposition effectué par le personnel et de soumettre son rapport à ce sujet avant la date prévue d' approbation par le Conseil du projet de partenariat.

Le présent rapport renferme les résultats des vérifications demandées par le Conseil en ce qui concerne le parc Lansdowne.

Contexte

Le tableau ci-dessous trace une brève chronologie des événements clés du réaménagement du parc Lansdowne depuis 2007.

9 mai 2007	Publication de la vérification de la gestion des biens immobiliers réalisée en 2006. La recommandation 2 précise « <i>Que la Direction élabore, pour l'approbation du Conseil municipal, un plan et une vision à long terme pour le parc Lansdowne de sorte que l'utilisation future du parc se fasse en harmonie avec les attentes des citoyens.</i> » La vérification de suivi révèle que l'intention de la direction était d'utiliser l'approche Design Lansdowne pour l'élaboration de cette stratégie.
28 novembre 2007	Lancement du processus Design Lansdowne sur la base de l'approche du « Droit d'aménagement ».
8 juillet 2008	Note de service du directeur municipal adjoint, Services d'infrastructure et Viabilité des collectivités, au Comité de l'urbanisme et de l'environnement, précisant que Design Lansdowne est en attente jusqu'à l'examen complet de l'état du stade et de l'aréna et « l'examen du plan d'affaires Shenkman / de la proposition de la CFL ». D'après le compte-rendu de la réunion, le rapport est accueilli sans commentaire. La note ne figure à aucun ordre du jour subséquent du Conseil.
12 novembre 2008	Une motion du Conseil visant à relancer le processus Design Lansdowne est déposée et « sera mise à l'étude lorsque l'évaluation par le directeur municipal sera terminée et soumise à l'examen du Conseil. » Motion adoptée sans discussion.
11 mars 2009	<ol style="list-style-type: none"> 1. « Évaluation des besoins et analyse de l'emplacement pour des installations sportives et de divertissement polyvalentes » soumise au Conseil. Le rapport indique 23 endroits possibles; Bayview et l'Université Carleton constituent les premiers choix et Lansdowne, le sixième. 2. « Cadre d'évaluation des possibilités du stade » soumis au Conseil. Inclut les critères à utiliser pour l'évaluation de propositions spontanées : <ul style="list-style-type: none"> o Besoin global o Plan d'affaires o Considérations liées à l'emplacement o Conception d'installations et de l'ensemble o Risque pour la Ville o Incidence financière pour la Ville 3. Cadre employé pour évaluer les propositions d'OSEG et de Senators Sports and Entertainment (SS&E).
22 avril 2009	« Évaluation des propositions de stade d'OSEG et de SS&E » soumise au Conseil. Le Conseil accepte qu'il soit procédé aux négociations d'OSEG à plusieurs conditions, incluant entre autres (voir l'annexe 1 pour les directives complètes) : <ul style="list-style-type: none"> o aucun volet logement; o aucun magasin à grande surface; o les utilisations commerciales doivent être des boutiques; o le transport en commun doit être pris en compte; et o les revenus produits ne doivent pas servir à subventionner de sports professionnels.
11 juin 2009	Les contrats municipaux avec GBA pour « des services-conseils en aménagement pour le projet de revitalisation Lansdowne Live ». La valeur totale du contrat est de 85 400 \$, plus 75 884 \$ sous-traités à Price Waterhouse Coopers pour « ... la préparation du plan d'affaires et des aspects financiers du projet... »

2 septembre 2009

Proposition d'OSEG/de la Ville présentée au Conseil.

Objectifs de la vérification

Comme il est précisé dans les motions du Conseil, les objectifs de cette vérification sont les suivants :

- déterminer si l'offre d'OSEG est spontanée ou doit être envisagée comme un projet soumis au processus de demandes de propositions aux termes du Règlement sur les marchés; et
- vérifier l'examen de la proposition d'OSEG par le personnel.

Conclusion

En réponse à la première motion adressée par le Conseil au vérificateur général, nous sommes d'avis que cela représente une réponse de source unique à une proposition spontanée. Cependant, aucune contravention au Règlement sur les marchés n'a eu lieu. Le Conseil a en fait approuvé cette mesure à sa réunion du 12 novembre 2008 lorsque la motion visant à relancer le processus Design Lansdowne fut déposées en attente des résultats de l'évaluation de la proposition d'OSEG du directeur municipal. Cette décision fut réaffirmée le 11 mars 2009 lorsque le Conseil approuva le cadre d'évaluation et réaffirmé de nouveau en vertu de sa directive au directeur municipal du 22 avril 2009, de négocier une entente avec OSEG. En soi, le processus est légitime et n'est ni incorrect ni illégal.

En réponse à la deuxième motion adressée par le Conseil au vérificateur général, nous sommes d'avis que, malgré tous les problèmes potentiels liés à la proposition actuelle, le personnel, en réponse à la direction du Conseil, a effectué un processus de négociations sérieux visant à s'assurer que les meilleurs intérêts de la Ville sont servis.

Nous pouvons également en conclure que la proposition actuelle n'est pas entièrement conforme aux exigences stipulées par le Conseil en ce qui concerne la solution et qu'elle comporte certains éléments qui restent à développer et qui pourraient influencer de manière substantielle sur la viabilité du projet. Néanmoins, le Conseil peut déterminer que la proposition actuelle est acceptable. En prenant cette décision, il peut être prudent de revoir les conditions énoncées par le Conseil en ce qui concerne les négociations et de déterminer si une approche qui ne répond pas à toutes les exigences peut quand même être acceptable.

Remerciements

Nous tenons à remercier la direction pour la coopération et l'assistance dont elle a fait preuve envers l'équipe de vérification.

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3 Audit Objectives

As specified in the motions from Council, the objectives of this audit are to:

- Determine if the OSEG bid remains unsolicited or should be considered as a project subject to the process under the Purchasing By-Law for Requests for Proposals; and,
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4 Audit Scope and Methodology

The audit scope is limited to the two specific objectives identified above. It does not represent a complete audit of the financial information contained in the OSEG

proposal nor does it represent an independent assessment of the value-for-money of this proposal.

The methodology used for this audit included:

- Meetings with individual Councillors;
- Meeting with the City Manager;
- Attendance at public consultations;
- Review of available documentation; and,
- Meeting with Mr. Graham Bird.

5 Procurement Process

As stated above, the Design Lansdowne process which Council approved on 28 November 2007 was intended to be the mechanism by which a long-term strategy for the Park would be developed. Successful completion of the process would have likely been an effective way for Council to debate options for the use of the Park and enabled Council to have greater assurance of the value-for-money of various alternatives. It may have also afforded Council the opportunity to debate the larger issue of the desired strategy for the Park in the future.

Management suspended the Design Lansdowne competition on 8 July 2008 in order to more fully assess the condition of the buildings on the site as well as to consider a forthcoming proposal for the Shenkman/CFL group. Rather than informing the Planning and Environment Committee of this decision via a memo, in our view, it would have been advisable for management to seek a formal resolution from the entire Council for taking this action. The City Manager has repeatedly and publicly acknowledged that this would have been a preferred course of action.

Having stated this, and in consideration of comments from both internal and external legal counsel, it is our opinion that there was nothing improper in management's decision on this matter. Indeed, it can be argued that the City Manager had an obligation to suspend the process given the new and growing concerns about the state of the buildings, an unanticipated circumstance that would significantly affect the specifics of any proposal for re-development. Council effectively approved this action at its meeting on 12 November 2008 when a motion to re-start the design competition was tabled pending the results of the City Manager's evaluation of the OSEG proposal. This decision was reinforced on 11 March 2009 when Council approved the Assessment Framework and was further reinforced at the Council meeting of 22 April 2009 when the City Manager was given direction to negotiate an agreement with OSEG.

In our view, the decision to negotiate with the OSEG representatives does amount to a sole-source approach. Although two proposals were evaluated using the Council-approved Framework, these proposals were for two very distinct projects and as such

the evaluation exercise cannot be viewed as typical of the City's competitive procurement process. While the consideration of an unsolicited proposal and the pursuit of a sole source proponent may be considered unusual, the City's current Purchasing By-Law makes provision for such an approach and so this mechanism should not be viewed as inappropriate or, as some have suggested, illegal. Even without the provisions of the Purchasing By-Law, it is completely within the authority of Council to waive any conditions contained in its By-Laws. In this case, such a waiver was not required and furthermore the negotiations with OSEG were approved by Council in any event.

In light of these considerations, we conclude that the procurement process used in this case is legitimate.

6 Staff Negotiation Process

Our discussions and review of related documentation indicates that a negotiation process did take place in an effort to ensure the benefits to the City arising from this agreement were maximized.

7 Financial Summary

Given the limited time frame associated with this audit, a full assessment of all financial information contained in the OSEG proposal could not be completed. However, in order to assist Council in its deliberations, the following presents a high-level synopsis of the finances for this initiative.

7.1 Costs

PHASE 1 CAPITAL COSTS (\$ million)		
ITEM	OSEG	CITY
Stadium/Infra./Bldg./Lawn		\$110 ¹
Parking Garage	\$17.5	\$19.3
Retail/Cinema/Infra./Lawn	\$80.1 ²	
CFL/OHL Franchise Fee/Start-up Costs	\$19.6 ³	
Phase 1 Total	\$117.2	\$129.3

Not included in the above is the City's deemed equity for the value of the land involved of \$20 million. In addition to the above, \$7.1 million per year will be

¹ Front Lawn (\$2.5 million) and City share of required Infrastructure related to the stadium, are included in the \$110 million amount.

² Building Relocation (\$5 million), OSEG share of required Infrastructure related to Retail and Front Lawn (\$2.5 million) are included in the \$80.1 million amount.

³ Of the \$30 million in minimum required equity by OSEG, \$24 million in cash (including \$19.6 million for franchise fees/start-up costs) and \$6 million in line of credit are required.

required to cover the City's financing (interest and principle) costs which will be covered by allocating 75% of the property taxes generated from the retail development as well as projected savings from the maintenance costs of the existing facilities.

7.2 Revenues

After the first priorities including property taxes, servicing of interest and principle on OSEG debt, and any other expenses related to the project are addressed, the following allocation of profit occurs:

PROFIT DISTRIBUTION		
Level 1	\$1.5 million at 2013	Annual payment to the City/MSD for life-cycle maintenance of the new site.
Level 2	\$1.6 million at 2013	Annual interest payment of 8% to OSEG on \$19.6 million in franchise fees and start-up costs for the CFL and OHL teams.
Level 3	Not specified	Annual principle payments by 2014 to OSEG for 30-year return on \$30 million equity (rate of return not specified).
Level 4	\$1.6 million at 2013	Annual interest payment of 8% to City for return on deemed equity of \$20 million (value of land).
Level 5	Not specified	Any remaining revenue after Levels 1-4 are met; to be split evenly between OSEG and City.

As a result of this disbursement schedule, the City recoups its debt and interest charges largely by way of the property taxes generated from the site while OSEG recoups its debt and interest by way of rental revenues on the retail development. OSEG then receives an interest payment of 8% on \$19.6 million of its equity by way of revenues from the site and then, at Level 3, recovers the principle of its total equity over 30 years.

At Level 4, the City receives 8% interest on the \$20 million deemed value of the land provided until year 30 when the City begins to receive rent on the land directly.

8 Observations

The comments contained in this report should not be interpreted as an assessment of the merits of the proposed agreement. It should be noted that in some cases these comments go beyond the mandate for the audit established by the motions of Council, however, in an effort to assist Council in its decision to proceed or not, the following observations are offered.

1. No long-term strategy for Lansdowne Park has been developed, as was recommended and approved by Council, as part of the 2006 audit of Property Management.
2. As discussed above, although it would have been advisable to obtain formal Council approval for the suspension of the design competition, the process used was acceptable and authorized by Council.
3. The current proposal does not fully comply with Council's direction in the following areas:
 - a) The inclusion of an optional housing component may be seen as not fully compliant with Council direction;
 - b) The use of revenues to reimburse franchise fees and start-up costs related to the proposed CFL and existing OHL teams; and,

Management Comment:

Over the 30-year term OSEG is able to recover their investment in the sports franchises. In consideration of the this the City has been able to acquire, at its option, a potential interest in these teams, for example: if OSEG disposes of a franchise, the revenue comes into the closed system; if OSEG defaults on its commitments, the City retains first right of refusal for acquisition of the franchises subject to league approval. The operation of the sports franchisees are expected to generate \$53 million of the \$173 million to the closed system over the 30 years which represents 96 per cent of the OSEG's total return of \$55 million over the same period.

- c) Enhancement of the on-site trade show facilities is not included in the proposal.
4. Council's direction for this facility to be "confirmed as the City's stadium priority for Federal and Provincial infrastructure funding" was addressed when the City Manager contacted representatives at both the Federal and Provincial levels of government. The letters received from both levels of government indicate that should Council wish to proceed with the renovation of an open-air stadium, the respective governments would give consideration to a request for funding should it be made under existing funding mechanisms.

Subsequent to these letters, correspondence was sent from the Minister of Municipal Affairs and Housing to Council indicating the "any joint project must adhere to a proper Request for Proposal process in order to be eligible for provincial funding." See Appendix 2. Management was not included in

- the distribution of this letter. Since stadium construction would proceed on a competitive basis, it would appear the project is eligible for this funding.
5. Despite concerns regarding the amount of additional retail space included in the proposal, Council's direction did not place a cap on this component of the project.
 6. The timing of the proposed housing development is not clear. Both the staff report and the Business Plan indicate that housing is to be part of Phase 2 which is considered optional. However, the Memorandum of Understanding presented on 2 September 2009 indicates that the construction of townhouses is to be part of Phase 1 and must occur in concert with other components of this Phase.

Management Comment:

The option of residential was highlighted in Phase 2 to reinforce that it is solely an option. If Council decided to include the residential option it would be constructed at the same time as the retail component part of Phase 1.

7. The proposed use of property tax revenue to provide a direct revenue stream is unusual and could establish an undesired precedent.
8. With estimated annual property tax revenue from the new site of \$3.9 million, utilizing 75% for debt servicing amounts to \$2.9 million annually. Assuming an additional \$3.8 million annually in savings from no longer maintaining the existing facilities (see item 24 below) results in a total of \$6.7 million available annually to cover the required \$7.1 million in principle and interest payments; a shortfall of \$400,000 per year.

Management Comment:

The September 2, 2009, staff report indicates on page 17, that for the years 1 through 6 there will be a shortfall, which will be funded out of parking reserves that will be repaid in years 7 through 11. The debt service coverage ratio goes to 1.0 by year 2024 of the agreement.

9. The use of an 8% rate of return is not fully justified in the proposal and could be subject to further analysis.

Management Comment:

Eight per cent is the rate that was negotiated as a risk-adjusted rate of return. OSEG was initially proposing a risk-adjusted rate of return of 15%.

10. The rate of return for Level 3 revenue disbursement is not clearly defined.

Management Comment:

The Memorandum of Understanding indicates that the OSEG cannot take out any capital for the first 3 years of the agreement, for the remainder of the term it is drawn down on a straight-line basis.

11. All related expenses as well as both gross and net cash flows are not clearly defined.
12. The Municipal Services Corporation (MSC) concept is not fully developed or explained to ensure that adequate oversight by Council is established and maintained. The 2006 audit of Public-Private Partnerships (P3) identified ongoing weaknesses in oversight by the City for these initiatives.

Management Comment:

The Municipal Services Corporation (MSC) was introduced in the September 2 report, however in this report staff indicated that the concept would be more fully explored in the November implementation report which would be before Council for consideration.)

13. Also as part of the 2006 P3 audit it was recommended, and reinforced by the discussion at Council, that the City's standard requirements regarding issues such as bilingualism, health and safety, accessibility, etc. be clearly addressed in any of these arrangements.

Management Comment:

This is recognized and these are considerations that will be addressed in the wording of any final project agreements.

14. After the City's and OSEG's debt (principle and interest) is recovered via property taxes and retail revenue respectively, Level 1 is intended to provide funding to the City/MSC for the life-cycle maintenance of the new site which would otherwise require funding from overall tax revenues.

Management Comment:

In addition, it should be highlighted that these contributions are guaranteed by the OSEG regardless of whether there is a net positive cash flow to fund them or not.)

15. The demand/need for the increase in retail space for the area has been analyzed by two separate studies with conflicting results and as such requires resolution.
16. The development of new trade show facilities has not been fully analyzed for feasibility, functionality or the anticipated cost to the City.

Management Comment:

Staff has identified this as a potential option, however, this proposal is being pursued and additional information will be gathered and provided to Council regarding this scenario.

17. The proposed re-location of the Central Canada Exhibition (CCE) to the Albion Road site is assumed and not fully developed, including the cost to City of such a move. The CCE has indicated that as much as \$60 million may be required to facilitate this re-location.

Management Comment:

The \$60 million estimate was the Central Canada Exhibition Association's (CCEA's) approximation for the inclusion of tradeshow space as part of the overall development of the Albion Road site. The City did work with the CCEA and funded an engineering study to determine the costs of the CCEA's relocation to the Albion Road site. Staff resources with the Real Estate Partnership and Development Office (REPDO) are working with the CCEA to assist in the development of alternative strategies to facilitate their relocation. Please refer to July 24, 2002 Lansdowne Park and Albion/Rideau Road Site – Central Canada Exhibition Association Report and July 9, 2008 Lansdowne Park – CCEA Agreement Renewal Report - regarding Council's approval of the relocation of the CCEA from Lansdowne.

18. For the previous two items, the time requirements for the development approval process have not been identified.
19. No formal arrangements have been made with the National Capital Commission or Parks Canada regarding the proposed use of Queen Elizabeth Drive for transit. The National Capital Commission has expressed concerns in this regard in a recent letter to the City.

Management Comment:

The Transportation Management Strategy does not propose the use of the Queen Elizabeth Driveway for anything other than significant major events, which would occur once or twice a year. This is consistent with past practices for similar sized events.

20. The term "greenspace" has not been clearly defined and the amount of existing versus additional greenspace has not been identified.
21. Although Council may waive any Official Plan requirements, the proposal does not clearly identify where these requirements are not being met (e.g., parking, affordable housing, mixed use development, etc.).

Management Comment:

In addition to respecting the specific directions set by Council on April 22, 2009, ensuring that the development program would respond to and advance as many directions and policies as possible that are set out in the Official Plan (OP) related to a number of matters including sustainable transportation, intensification, mixed use, urban design, place making, compatibility, and integration was central to the redevelopment proposal for Lansdowne.

As such, staff is of the view that the development concept for the Lansdowne revitalization is in full accord with the OP and do not consider there to be any elements where there is non-compliance or inconsistency with OP directions and policies. In fact, staff sees the development concept as advancing a number of important strategic directions articulated in the OP.

With respect to the matter of affordable housing which has been cited by some as an area of non-compliance with the OP, the OP policies dealing with affordable housing are set out in the strategic directions section and are focused on encouraging, supporting and promoting the development of affordable housing through various means. The policies do not stipulate that affordable housing must be provided as part of development. In following through on the OP directions to set out various means to achieve the plan's affordable housing objectives, Council has as one means approved a "Housing First Policy".

22. Long-term OSEG solvency and the potential implications for the City need to be confirmed.

Management Comment:

While the issue of solvency has not been explicitly dealt with, information was developed which highlights what the situation for the City would be should the partnership dissolve and provided at all public consultation sessions. Additionally, staff did provide an overview to Corporate Services and Economic Development Committee on October 6, 2009, which spoke to the following:

- a) *The partnership is not dependant on the success of the CFL franchise. While OSEG believes that football will be successful, the business model assumes that the CFL operation will not begin contributing a net profit to operations until 2020.*
- b) *If OSEG was to cease to exist, or if the OSEG defaulted on any of its contractual obligations, the City would been in the following position:*
 - *OSEG would forfeit all of its rights under its agreements with the City.*
 - *The retail lease would be assumed by the mortgage holder.*
 - *The City would immediately begin receiving land rent from the mortgage holder.*

- *The City would continue to receive property taxes from the retail development.*
 - *The City would continue to be able to fund its debt service costs from the current budget requirement for Lansdowne and a share of the property taxes generated from the retail development.*
 - *The ownership of the sports franchises would revert to the City, at its option, subject to league approval.*
23. No financial variance analysis is provided to identify the implications of changes in interest rates, rates of return, retail occupancy rates, etc.
24. No variance analysis is provided for possible changes in the elements of the development (e.g., reduced retail space, reduced/no housing component etc.).

Management Comment:

This is underway at this point in time.

25. The estimate within the proposal for annual maintenance costs of the existing site is \$3.8 million. This figure is based upon the 10-year average of current projections for operating costs, minor capital and life-cycle renewal. Therefore utilizing the \$3.8 million figure beyond the 10-year horizon is an extrapolation that is not based upon a full analysis of the required expenditures should the existing facility continue to operate. In our view, further analysis is required to determine what are the realistic costs savings of replacing the current facility.

Management Comment:

Management believes that the \$3.8 million estimate for the annual average budget requirement to remediate, operate and maintain Lansdowne Park over the next thirty years in its current configuration, is a conservative estimate of the costs, i.e., it will likely cost more.

As the Auditor General indicates, this total includes an amount for: a net annual operating subsidy of \$650,000; an annual minor capital expenditure of \$750,000; and for major life-cycle capital. Management has estimated \$1.4 million for the first two of these components based on actual results over the last five years. The estimate for the last component, \$2.4 million, is not based on actual past spending, because the City has been deferring these investments for that last few years. This amount is based on a definitive lifecycle capital plan that was developed following a structural assessment of the Frank Clair stadium and Civic Center complex in 2008. This capital plan identifies the need to spend \$24 million over the next ten years on Lansdowne Park and its facilities.

For forecast years eleven to thirty, management has extrapolated the total estimate by applying inflation at 3.0% per year to the first two components and by assuming an ongoing requirement for lifecycle capital spending based on a percentage identified as the industry standard. Work has been completed on preliminary lifecycle capital spending plans that support the extrapolated estimates.

Management agrees with the Auditor General's recommendation and will complete additional work on the future budgetary requirements of the current Lansdowne Park, in particular, definitive lifecycle capital spending plans for the outer years of the forecast.

26. The estimated 2040 \$3 million reserve fund may appear inadequate, however, this fund will be drawn upon over the facilities life to ensure operational integrity. The amount represents \$298,000 in 2009 dollars (based upon an 8% discount rate) which seems minimal.
27. A number of transit issues remain to be resolved.
28. Justification for the 2 September – 12 November 2009 time frame is not clear.
29. By its own admission, the work undertaken by Price Waterhouse Coopers (PwC) did not constitute an audit. PwC has indicated that it does not express an opinion or any other form of assurance on the financial or other information and that its work was conducted on the basis that information provided by the City and OSEG was accurate and complete.

9 Conclusion

In response to the first Council motion to the Auditor General, it is our opinion that this represents a sole source response to an unsolicited bid. However, no contravention of the Purchasing By-Law has occurred and furthermore Council effectively approved this action at its meeting on 12 November 2008 when a motion to re-start the design competition was tabled pending the results of the City Manager's evaluation of the OSEG proposal. This decision was reinforced on 11 March 2009 when Council approved the Assessment Framework and was further reinforced at the Council meeting of 22 April 2009 when the City Manager was given direction to negotiate an agreement with OSEG. As such, the process being followed is legitimate and is neither inappropriate nor illegal.

In response to the second Council motion to the Auditor General, it is our opinion that, notwithstanding any potential issues with the current proposal, staff, in response to Council direction, completed a substantive negotiation process in an effort to ensure the best interests of the City were achieved.

What can also be concluded is that the current proposal does not fully comply with the conditions Council placed on the solution and contains a number of elements that remain undeveloped and which could significantly affect the viability of the project.

Nevertheless, Council may determine that the current proposal is acceptable. In making this decision, it may be prudent to re-visit the conditions Council has placed on the negotiations and consider whether an approach that does not meet all of them is still satisfactory.

10 Acknowledgement

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.

Appendix 1: April 22, 2009 - Corporate Services and Economic Development Committee and Planning and Environment Committee Joint Report 1

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| <p>1. ASSESSMENT OF STADIUM PROPOSALS - OSEG (LANSDOWNE LIVE) AND SENATORS SPORTS & ENTERTAINMENT (SS&E), KANATA</p> |
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JOINT COMMITTEE RECOMMENDATIONS AS AMENDED

That Council consider the following:

1. The acceptance of the staff assessment of the two unsolicited proposals as summarized in this report;
2. That, should Council deem that the construction or reconstruction of a sports and entertainment facility at a capital cost in excess of \$100 million dollars represents an infrastructure investment priority for Council at this time, then:
 - a. That Council direct staff to proceed to the next stage of the evaluation process as per the Opportunity Assessment Framework with the Ottawa Sports and Entertainment Group (OSEG) and Senators Sports and Entertainment (SS&E) proponents. This stage will involve completing the necessary due diligence of the two proposals to ensure all costs have been accounted for and the City is receiving best value in accordance with the process outlined in this report and prior to end of September 2009, or
3. That, should Council not deem that the construction or reconstruction of a sports and entertainment facility at a capital cost in excess of \$100 million dollars represents an infrastructure investment priority for Council at this time, then:
 - a. That both proposals not be pursued further on the basis that the total cost of either proposal prevents them from being an investment priority for Council at this time;
 - b. That staff be directed to immediately develop alternative redevelopment scenarios for Lansdowne Park in accordance with the process outlined in this report so that Council may establish a new vision for the long-term redevelopment of Lansdowne Park prior to the end of this year; and
 - c. That staff be directed to immediately complete a comprehensive study to determine the best location for a new sports and entertainment

facility that would be designed to serve the needs of the City of Ottawa for the next seventy-years in accordance with the process outlined in this report.

MOTIONS REFERRED BY THE JOINT COMMITTEE

That Council consider the following motions, referred by the Joint Committee:

A. *WHEREAS the City of Ottawa has received an unsolicited proposal from The Ottawa Sports and Entertainment Group (OSEG), called 'Lansdowne Live', designed to revitalize Lansdowne Park and return a Canadian Football League team to Ottawa; and*

WHEREAS the public has said that they would like Lansdowne Park to have more green space, pedestrian linkages to the Rideau Canal, enhanced Trade and Consumer Show space, and public spaces designed to support community initiatives like the Ottawa Farmers Market and festivals; and

WHEREAS revitalizing the Civic Centre and Frank Clair stadium are an important part of the 'Lansdowne Live' proposal, and an engineering study has identified that the structures at Lansdowne Park will require millions of dollars to maintain and restore; and

WHEREAS the City of Ottawa currently spends approximately \$3.8 Million in operations and maintenance and we are limited in sources of new revenue to fund the redevelopment or urgent repairs;

THEREFORE BE IT RESOLVED that staff be directed to negotiate a partnership agreement with The Ottawa Sports and Entertainment Group (OSEG) to redevelop Lansdowne Park, including revitalizing the Civic Centre and Frank Clair stadium, enhancing Trade and Consumer Show space and protecting the Ottawa Farmers' Market, based on a revenue- and value-neutral basis, subject to Committee and Council approval and based on the following conditions:

- 1. That the City continue to support the Central Canada Exhibition's move to the Albion Road site;***
- 2. That the City of Ottawa's contribution to the revitalization of Lansdowne Park be limited to a dollar amount to be established during the negotiations, based on the principle of not increasing the overall cost to the taxpayer; and***
- 3. That any revenues generated from the revitalized Lansdowne Park not be used to subsidize any professional sports teams; and***

BE IT FURTHER RESOLVED that the negotiations take place within a 60-day timetable; and

BE IT FURTHER RESOLVED that revitalizing Lansdowne Park be confirmed as our stadium priority project for Federal and Provincial infrastructure funding.

- B.** *WHEREAS City Council has already approved a series of guidelines for the transformation of Lansdowne Park, including the following:*
- *That a substantial portion of the existing hard surface area must be reserved as, and designed as, public open spaces that are green and sustainable, suitable for recreational use and complementary to Lansdowne Park's overall function;*
 - *That the Aberdeen Pavilion remain in its current location and plans must preserve and enhance sight lines to this building from the surrounding streets and from the Rideau Canal, and the façade of the Horticulture Building be retained;*
 - *That public pedestrian and bicycle access to the Rideau Canal, to the recreational pathways and gardens that abut Lansdowne Park and links to adjacent parks be improved;*
 - *That Frank Clair Stadium and the Civic Centre be enhanced;*
 - *That plans recognize Bank Street's designation as a Traditional Mainstreet in the Official Plan;*
 - *That the opportunities for use of the site by community stakeholders, such as local sports groups, should be enhanced;*
 - *That the plan should provide for the continuation of the seasonal Ottawa Farmers' Market in an exterior public space;*
 - *That the plan should also explore opportunities for outdoor performance and festival areas;*
 - *That any proposed buildings should achieve a minimum standard of LEED Silver;*
 - *That plans are able to be implemented in a timely fashion, and keep in mind the City's financial ability to contribute to the redevelopment; and*

WHEREAS any development of Lansdowne Park must respect the scale and character of the neighbourhood;

THEREFORE BE IT RESOLVED that staff be directed to incorporate the following conditions into any partnership agreement that will be negotiated to redevelop Lansdowne Park, including revitalizing the Civic Centre and Frank Clair Stadium, subject to Committee and Council approval:

1. *That the design principles incorporate the following:*
 - a. *That the composition of retail, commercial, and community-benefit public space, including the Farmers' Market, for the balance of the lands at Lansdowne Park give regard to the criteria established by Council, listed in Document 1 of the Lansdowne Park-Design Competition report, and be determined through a design process; and*
 - b. *That the plan respect the scale and character of the neighbourhood and the public nature of the site, and that:*
 - i. *There be no housing component;*

- ii. *There be no big box retail stores;*
- iii. *Commercial uses be limited to uses that support the main uses on the site, and that the commercial uses be “boutique” in nature;*
- iv. *Public transit options be considered; and*
- v. *The Trade Show and Consumer Show space be enhanced; and*
- c. *That the design process includes a comprehensive public consultation process prior to a final decision by City Council; and*
- 2. *That the City of Ottawa’s contribution to the revitalization of Lansdowne Park be limited to a dollar amount to be established during the negotiations, to be based on not increasing the overall cost to the taxpayer; and*
- 3. *That any revenues generated from the revitalized Lansdowne Park not be used to subsidize any professional sports;*

BE IT FURTHER RESOLVED that the negotiations include consultations with the National Capital Commission and an understanding from the Federal and Provincial Governments regarding their level of financial commitment.

C. *WHEREAS the City of Ottawa has received an unsolicited proposal from the Senators Sports and Entertainment (SS&E) to provide a stadium for professional soccer in Ottawa; and*

WHEREAS the growth in popularity of soccer would benefit from a dedicated facility and the provision of community fields would be beneficial to the City of Ottawa;

THEREFORE BE IT RESOLVED that the City of Ottawa be directed to negotiate an agreement with the Senators Sports and Entertainment (SS&E) to develop 30 acres of City-owned land along Palladium Drive, subject to SS&E receiving confirmation of a Major League Soccer (MLS) Franchise and Committee and Council approval, based on the following conditions:

- 1. *That the subject lands be leased to SS&E for \$1, with the term of the lease to be the subject of negotiations and conditional on the development of a soccer-specific stadium to house an MLS team and community fields; and*
- 2. *That the City in return for the provision of community fields, designate the fields and stadium as a municipal capital facility and provide a contribution of up to \$10 million.*

BE IT FURTHER RESOLVED that the negotiations take place within a 60-day timetable.

Appendix 2: Letter from the Minister of Municipal Affairs and Housing dated September 22, 2009:

**Ministry of
Municipal Affairs
and Housing**

Office of the Minister
777 Bay Street, 17th Floor
Toronto ON M5G 2E5
Tel. 416 585 7000
Fax 416 585 6470
www.ontario.ca/MAH

**Ministère des
Affaires municipales
et du Logement**

Bureau du ministre
777, rue Bay, 17^e étage
Toronto ON M5G 2E5
Tél. 416 585 7000
Télééc. 416 585 6470
www.ontario.ca/MAH



09-46203

September 22, 2009

Mr. Clive Doucet
Councillor
City of Ottawa
110 Laurier Avenue West
Ottawa ON K1P 1J1

Dear Mr. Doucet:

Premier McGuinty asked me to reply to your letter of June 18, 2009 regarding the City of Ottawa's procurement rules for consulting contracts and the redevelopment of Lansdowne Park.

I understand that you have also inquired whether there is any procedure for the Province to intervene in the redevelopment of Lansdowne Park, and to appoint an impartial outsider rather than the City of Ottawa to take control of the project.

Our government believes that municipalities are mature and responsible governments and have been provided with broad powers that enable them to address their concerns, and to make decisions that serve the needs of their community while meeting their legal commitments.

Pursuant to section 270 (1) of the *Municipal Act, 2001* and section 212 (1) of the *City of Toronto Act, 2006*, municipalities are required to adopt and maintain policies relating to the procurement of goods and services. It is the responsibility of municipal staff and, ultimately, City Council to ensure that the City is adhering to its own procurement by-law.

I have also had confirmed to me by Mayor O'Brien that the City will not be requesting any provincial or federal funds for this project and, as a result, we would not be considered a partner in this City-run process.

As you may know, the Province recently put in place new rules regarding consulting procurements. These new rules, which are retro-active to June 16, 2009, require all Ontario government consulting contracts to follow a competitive hiring process. We believe that these rules are the most fair and transparent process for tax payers.

For your information, after the City's meeting with the Ministry of Energy and Infrastructure at the AMO conference in Ottawa this past month, I confirmed that it is our government's policy that any joint project must adhere to a proper Request for Proposal process in order to be eligible for provincial funding.

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Mr. Clive Doucet

However, as the City has not applied, nor been approved, for provincial funding, our government will not direct the City to seek alternative bids.

Once again, thank you for expressing your concerns regarding this issue.

Sincerely yours,

Jim Watson, MPP
Minister

- c: The Honourable Dalton McGuinty, Premier of Ontario
Mr Yasir Naqvi, MPP, Ottawa Centre
Mr. Phil McNeely, MPP, Ottawa–Orléans
Mayor Larry O'Brien, City of Ottawa
Councillor Georges Bedard, Rideau-Vanier, City of Ottawa
Councillor Michel Bellemare, Beacon Hill-Cyrville, City of Ottawa
Councillor Rainer Bloess, Innes, City of Ottawa
Councillor Glenn Brooks, Rideau-Goulbourn, City of Ottawa
Councillor Rick Chiarelli, College, City of Ottawa
Councillor Alex Cullen, Bay, City of Ottawa
Councillor Diane Deans, Gloucester-Southgate, City of Ottawa
Councillor Steve Desroches, Bell South-Nepean, City of Ottawa
Councillor Eli El-Chantiry, West Carleton-March, City of Ottawa
Councillor Peggy Feltmate, Kanata, City of Ottawa
Councillor Jan Harder, Barhaven, City of Ottawa
Councillor Diane Holmes, Somerset, City of Ottawa
Councillor Peter Hume, Alta Vista, City of Ottawa
Councillor Gord Hunter, Knoxdale-Merivale, City of Ottawa
Councillor Rob Jellett, Cumberland, City of Ottawa
Councillor Christine Leadman, Kitchissippi, City of Ottawa
Councillor Jacques Legendre, Rideau-Rockliffe, City of Ottawa
Councillor Maria McRae, River, City of Ottawa
Councillor Bob Monette, Orleans, City of Ottawa
Councillor Shad Quadri, Stittsville, City of Ottawa
Councillor Doug Thompson, Osgoode, City of Ottawa
Councillor Marianne Wilkinson, Kanata North, City of Ottawa