



**City of Kingston
Report to Council
Report Number 15-241**

To:	Mayor and Members of Council
From:	Cynthia Beach, Commissioner, Corporate & Strategic Initiatives
Resource Staff:	Colin Wiginton, Cultural Director
Date of Meeting:	April 21, 2015
Subject:	Approval to Amend the Scope of the Business Plan for the Tett Centre for Creativity and Learning to Allow for the Inclusion of a Café-style Food Service as Part of the Facility Operations

Executive Summary:

The purpose of this report is to ask Council to approve an amendment to the scope of the original business plan for the Tett Centre for Creativity and Learning to allow for the inclusion of a café-style food service as part of the facility operations.

The operation of a café was not something included as part of the business plan approved by Council in 2010, however it was identified that the Facility Operator would need to be able to generate revenue through different means to support the operations while at the same time positioning the facility as a cultural hub that successfully integrates the arts, culture and heritage and engages a diverse range of constituents.

In more recent years, the desire to include a café-style food service has emerged as an added feature viewed to provide greater potential for programming by the Board of the Tett Centre for Creativity and Learning. This service is also viewed by the Tett Board as an important way to position the facility as a cultural hub that draws people together and supports a combination of creativity, learning and community building.

It has been recognized, however, that such a venture is not without risk and the Tett Board has indicated a willingness to take on that risk to ensure the facility becomes the kind of gathering place that was imagined from the beginning. This report has been prepared by City staff to support the Tett Board with their proposal and to provide Council with an overview of what is required to make it happen.

Currently, operating support is provided to the Tett Board through the City's budgeting process on an annual basis and changes to the business plan require Council approval. As the facility

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has only been officially open since January 30, 2015 there may be other changes brought forward to Council over time. In most cases it is expected that changes to the business plan and the Master Lease Agreement would only be brought forward as part of an annual review designed to ensure the long-term success of this endeavour. An exception is being made in this case to allow the Tett Board to establish a service that has the potential to further the mandate of the organization and develop a new revenue stream.

Recommendation:

That the Mayor and City Clerk be authorized to execute an amendment to the Master Lease Agreement with the Tett Centre for Creativity and Learning, dated May 30, 2014, on terms and conditions satisfactory to the Director of Legal Services and the Commissioner, Corporate Services & Strategic Initiatives to amend the scope of the business plan for the Tett Centre for Creativity and Learning to include café-style food service as part of the facility operations; and

That Council direct staff to prepare an amendment to By-Law No. 2012-115, "A By-Law to Authorize an Agreement for the Provision of a Municipal Capital Facility at 370 King Street West, Kingston, Ontario" to allow for the café space to be deemed as separate from the rest of the facility and therefore subject to taxation; and

That Council direct staff to prepare an amendment to the Municipal Alcohol Policy to allow for a café-style food service to be operated as part of the J.K. Tett Centre subject to approval of an application of the Tett Centre for Creativity and Learning to the Alcohol and Gaming Commission of Ontario for a liquor sales licence as well as the undertaking of all required processes, including server training certification; and

That subject to the provisions of the Master Lease Agreement and on terms and conditions satisfactory to the Director of Legal Services and the Manager of Real Estate & Land Development, the Commissioner, Corporate Services & Strategic Initiatives be delegated the authority to approve an agreement between the Tett Centre for Creativity and Learning and a prospective vendor for the operation of a café style food service subject to the following conditions:

- a. **That** the Tett Centre for Creativity and Learning submit a detailed business plan to the satisfaction of the Cultural Director that articulates how the combination of space rentals and food services will generate revenue while, at the same time, support the mission and mandate of the Tett Centre as a municipal facility for cultural purposes;
- b. **That** the agreement with the prospective vendor be required to align with the terms of the Master Lease Agreement;
- c. **That** the Tett Centre for Creativity and Learning only be allowed to proceed with the fit-out necessary only when it has been determined by the City that the space is no longer under the control of the project Contractor and the Director, Facilities Management & Construction Services and the Director, Legal Services, have confirmed that the

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warranties that exist would not be impacted by the work required to achieve all building and health permits and approvals;

- d. **That** the Tett Centre for Creativity and Learning submit detailed working drawings to the City for approval prior to the commencement of the construction in accordance with Section 11 of the Master Lease Agreement; and
- e. **That** the Tett Centre for Creativity and Learning be wholly responsible for all costs and risks, including insurance, associated with establishing a café-style food service and that the Tett Board be required to report back to Council through City staff as to the status of this endeavor each year as part of the annual reporting requirements.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

**Cynthia Beach, Commissioner,
Corporate & Strategic Initiatives**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

Gerard Hunt, Chief Administrative Officer

Consultation with the following Members of the Corporate Management Team:

Lanie Hurdle, Community Services	Not required
Denis Leger, Transportation, Facilities & Emergency Services	
Jim Keech, President and CEO, Utilities Kingston	Not required
Desiree Kennedy, Chief Financial Officer & City Treasurer	

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Options/Discussion:

In May 2014, the City of Kingston signed a Master Lease Agreement with the Board of the newly-formed Tett Centre for Creativity and Learning to be the sole operator of the J.K. Tett Centre. This Agreement was predicated on a number of recommendations outlined in the original business plan for the J.K. Centre for Creativity and Learning endorsed by Council in 2010 and that provided the basis for proceeding with the rehabilitation of the facility. Occupancy was achieved on December 24, 2014 and the building itself officially re-opened to the public on January 31, 2015 under the management of the J.K. Tett Centre for Creativity and Learning as the Facility Operator.

A number of arts cluster operations were examined including private sector owned and operated and municipally owned and not for profit board operated. It was understood when the business plan was approved that the operators would have to develop a business plan that would work for the unique Kingston campus site and that over time, some changes to the business model may be required.

The original business plan itself was the a result of comprehensive planning process designed to reinvigorate the J. K. Tett Centre as a place for learning, creative production, community participation and cultural and artistic expression. The process of developing the business plan and proposed governance structure was lengthy and rigorous and involved an extended period of public and stakeholder consultation. The business plan was also predicated on a number of assumptions, including the following:

- The need to achieve an affordable gross rental rate for the tenants with a municipal subsidy that would be targeted to decrease or remain constant over time;
- The on-going challenge of establishing with certainty the exact costs of operating, maintaining and insuring the newly renovated facility which may require an adjustment;
- The need for the City of Kingston to consider other potential tenants as a way to support the costs associated with operating, maintaining and insuring the facility; and
- That the Malting Tower be developed in ways that would provide the Facility Operator with an income stream essential to maintaining affordable rents

An additional operating assumption identified within the original business plan was that the Facility Operator be allowed to retain control over the Malting Tower, community exhibition space and multi-media rooms and manage them as rental spaces to provide an income stream to support overall operations. From the outset, it was also recognized that the Facility Operator would need to have the potential to generate revenue from additional sources while, at the same time, promoting the facility as a hub that integrates the arts, culture and heritage and engages a diverse range of constituents.

Capacity Building and Revenue Generation

In an effort to ensure the success of this project, the business plan also highlighted the need to support capacity building among the tenant groups. It was identified that support for this would be required through the development phase of the project to ensure the tenants had the chance

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to build up the skills and experience needed to operate the facility successfully in the long term. This work has been supported by the Cultural Service Department over the past few years with a focus on developing an effective governance model along with organizational development, human resources, programming, marketing and financial planning.

Another issue that continues to be a focus of much effort is the business side of the operation and, particularly, the ability of the Facility Operator to generate income to cover the expenses associated with establishing the Tett Centre as a sustainable venture. As identified in the original business plan, the primary source of income was to be the rental revenue earned from the anchor tenants. This represents the most significant percentage of the income to be earned with the potential for it to be supplemented by additional income earned from the Malting Tower and the other rental spaces that now exist. During the development phase of the project, it was also identified by multiple stakeholders that the ability to offer a café-style food service would provide a further opportunity to generate much needed revenue on a more regular basis.

The inclusion of a café-style food service also emerged as an added feature providing even greater potential to establish the Tett Centre as a cultural hub and community centre. While this concept was not included as part of the original business plan, it has been identified more recently that providing some sort of food service on an on-going basis is both desirable and crucial to creating a place that draws people together and supports a combination of creativity, learning and community building.

During the development phase of this project, Artscape Inc. (the authors of the original feasibility Study commissioned in 2006) was engaged as consultants to support City staff as well as the Board of the Tett Centre for Creativity and Learning in their work. This relationship involved numerous meetings but also site visits to the facilities operated by Artscape Inc. in Toronto. A recurring topic of discussion was the importance of providing food services as part of these operations and the challenges faced when they were not included, as in the case of Wychwood Barns. On numerous occasions representatives from Artscape Inc. encouraged members of the Board, as the Facility Operator, to consider including food services as part of the Tett Centre as a way to generate revenue but also as a mechanism with which to build community.

The Provision of Food Services and the Master Lease Agreement

The Master Lease Agreement between the City of Kingston and the Board of the Tett Centre for Creativity and Learning very clearly sets out standards to be met in the operation of the facility, including those related to Municipal Capital Facility requirements, landlord service level standards, and other roles and responsibilities of both parties involved. It does not preclude the Board from providing food services on the premises but does state the facility must be operated as “a cultural facility within the municipality” and in accordance with By-Law 2012-115 passed by Council on July 19, 2012.

The Master Lease Agreement also acknowledges that the ability of the Landlord to provide certain financial benefits to the Board, as the main tenant, is subject to regulatory standards that are not within the power of the Landlord to ignore or amend. In signing the Master Lease Agreement, the parties agree that the following conditions must be met in order to maintain the

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benefits associated with the operation of the premises as a municipal capital facility for cultural purposes:

- a. the Landlord must continue to own the property;
- b. Council of the Corporation of the City of Kingston must maintain in force a by-law confirming the Premises as a municipal capital facility for the cultural purposes of the municipality and also confirming the financial benefits related to the operation of the municipal capital facility; and
- c. the J.K. Tett Centre must be operated for public use as a cultural facility.

The Master Lease Agreement includes a series of Schedules, including Schedule "C" that outlines a Tett Centre Operations and Programming Service Agreement between the City of Kingston and the Board. The main function of this Schedule is to define the services to be provided by the Board as the Facility Operator of the Tett Centre as an arts cluster, which is defined as "a unique destination that will contribute to a vibrant arts community in Kingston by bringing together artists, students and the community that will be accessible to Kingston residents and visitors alike".

Included among the many services identified are the following:

- Administer the activities of the Centre that includes its governance, operations, maintenance, financial management, staffing, programming, and rental.
- Act as the Sub-landlord and enter into subtenant agreements with organizations and individuals whose mandates and/or work support and enhance the development of an arts cluster
- Facilitate the rental of public spaces within the Centre in accordance with the Terms of Use attached as Schedule "F" for spaces within the Centre, including the lobby, exterior patio, Malting Tower, Rehearsal Room, Community Exhibition Space and Activity Room and to use the revenues from the rental of these spaces to support the operations of the Centre.

While food services are not explicitly identified, there is additional language with the Master Lease Agreement that does state:

The Centre shall be operated as a first class facility suitable for use by organizations and individuals whose mandates and/or work support and enhance the development of an arts cluster and rent the available public spaces for arts events, private functions, meetings and seminars, including the selection and control of support services such as catering companies, which shall help to maximize the revenue potential of the Centre.

There is also additional language that indicates: "All Services provided by the TCCL will be developed and managed in ways that support the achievement of the City's goals for the Centre as described herein and also as amended by the City from time to time in collaboration with the TCCL." At this time, the Board is seeking approval to amend the terms of the Master Lease Agreement to expand the range of services it provides to strengthen its role as a cultural hub and increase its potential for revenue generation.

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Possible Impacts of Amending the Business Plan as Approved

The main issue of concern related to amending the business plan as approved is the potential impact it could have on the designation of the Tett Centre as a Municipal Capital Facility. A by-law to that effect was passed in 2012 to clarify that the Tett Centre, located at 370 King Street West, is to be recognized as “a municipal facility for cultural purposes to operate for public use by any person” and also means the municipal facility is exempt from property taxation. The latter is the most crucial point that requires consideration because the City of Kingston needs to feel confident that amending the business plan will not trigger a change in the status as afforded by By-Law 2012-115.

As previously stated, the City of Kingston as the Landlord can only provide certain financial benefits to the Board as long as both parties meet the conditions as described as they relate to the operation of the premises as a municipal capital facility for cultural purposes. While it is anticipated the addition of a café-style food service as part of the Tett Centre would not trigger a change on status, staff are recommending the space to be used to house the café (Exhibit A, Suite 118) be deemed as separate from the rest of the facility. The result would be that the café space is subject to taxation so it would be necessary for any agreement between the Tett Board and the prospective vendor to clarify how those costs will be paid.

In order to facilitate this change in status, the original By-law will need to be amended.

The Plan to be Pursued Pending Council Approval

Over the past few years, City staff and the Board of the Tett Centre for Creativity and Learning have engaged in a number of conversations with potential vendors to provide food services on-site given the unique nature of the project, the desirability of the location and the lack of similar such services in this area. Numerous meetings have been organized and a call for expressions of interest was even issued to test the level of interest. As many as 15 different vendors expressed interest in pursuing such an opportunity but it proved challenging to formalize an arrangement given the construction project delays and the significant number of unknowns associated with the project.

In 2014, the Board entered into a discussion with Epicurious Catering as a potential vendor to provide a café-style food service at the Tett Centre. This relationship has continued to evolve over time and the proprietors of Epicurious Catering have made a commitment to taking on this project and have developed a business plan designed to forward the mission and mandate of the Tett Centre while meeting their own business needs. City staff have reviewed the business plan as proposed and can confirm the commitment on the part of Epicurious Catering to further the mission and mandate of the Board along with their own commitment to community involvement and social responsibility.

As proposed, the result of such a relationship between the Board and Epicurious Catering would be the establishment of a full-service café serving breakfast, lunches, meals to-go, gourmet coffee and sweets, all made with locally sourced ingredients. It would also be set up to serve the needs of the Tett Centre itself as well as the adjacent Isabel Bader Centre for the

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Performing Arts and the local community. It is also expected that having access to the waterfront patio built as part of the construction project would make the café a desirable destination for residents and visitors alike given the few opportunities that exist in Kingston to sit outside directly alongside the waterfront. It has also been agreed between the Board and Epicurious Catering that the Board will be responsible to provide all the fit-out necessary in order to make the café space a turnkey operation providing the greatest flexibility possible.

As part of the planning process, the Board has been working to answer a number of concerns raised over time in connection to this endeavour. They have sought legal counsel to ensure that providing food services as part of their overall operations would not impact their charitable status under the rules and regulations of the Canada Revenue Agency, and have been advised that would not be the case. The Board has also researched a range of similar operations within a Kingston context to determine an appropriate and competitive rental rate for the space to be made available for this purpose. This research took into consideration both the virtues and challenges associated with the location being proposed, such as the availability of parking, foot traffic, visibility, access and the distance from downtown and other food services. A rental rate was determined as a result of this research and that amount has been factored in the business plan developed by Epicurious Catering.

The Board has also done significant work to prepare for the possible inclusion of a café-style food service as part of their overall operations. This is considered by the Board to be a significant addition to their overall business plan and as a means to support their long-term financial sustainability. In anticipation, much work has been done to foster community support through word-of-mouth and the start of an informal fundraising campaign. The Board has also determined the fit-out costs required (approximately \$75,000) and are projecting that it will take a minimum of eight weeks to complete the work necessary to fit-out the space appropriately. Should Council give its approval, the Board is also ready to initiate a more formal and aggressive fundraising campaign built on a number of pledges that have already been promised by supporters of the project. The City of Kingston will not be involved in the fundraising activities.

City staff have also confirmed that there are no expectations on the part of the Board that the City of Kingston will contribute to this project financially except for a modest amount of funds already allocated to provide basic furnishings. This includes a total of \$7,000 that was included as part of the construction budget to purchase chairs and tables to create a communal meeting space as part of the overall budget for Fixtures, Furnishings and Equipment.

Conditions of Approval

It is apparent that the Board of the Tett Centre for Creativity and Learning is aware of the risks associated with establishing a café-style food service as part of their overall operations. It is still early days as the facility has only been open since the beginning of 2015 but already a lot of expectation has built up around the need for food services to be provided. This is true of the Tett tenants themselves but also on the part of their different constituencies, among the users of the Isabel Bader Centre for the Performing Arts, local residents and members of the community at large.

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Interest in the facility has been significant since it opened and it is only expected to grow over time. A major focus of effort for the Board and staff has been developing the rental component of their operations. This has included developing fee schedules, rental policies and procedures as well as promotional material, which has required significant work. Systems are still being put in place and an area that requires increased attention is the potential for events to generate revenue through catering. It has always been anticipated that this will be an area of particular importance and especially in relation to the Malting Tower that is emerging as a very desirable venue for meetings, events and presentations that require food services.

It is anticipated this aspect of the operations can be successfully developed and that the addition of a café-style food service will also help to raise the profile of the Tett Centre and what people can expect when they use such a facility. Given that it is still early days, however, City staff are recommending that Council request the Board of the Tett Centre for Creativity and Learning meet a set number of conditions as part of the approval to amend the scope of the business plan as is being requested.

The first condition would be to require the Tett Board to develop a business plan that outlines how the combination of space rentals and food services supports the mission and mandate of the Tett Centre and generates revenue to support operations.

A second condition would be to require the Tett Board consult with City staff to devise an agreement with the prospective vendor as a condition of this approval.

Given the complexity of the construction project itself, a third condition would be to require that any fit-out of the café space only be allowed to proceed once it has been determined by City staff that the space is no longer under the control of the project Contractor and that the warranties that exist would not be impacted by the work required to achieve all building and health permits and approvals. At the time of writing this report the construction is not complete and proposed renovations will be reviewed and approved to ensure warranties and the City's construction contract is not impacted.

A fourth condition would be the need for the Tett Board to submit detailed working drawings to the City for approval prior to the commencement of the construction in accordance with Section 11 of the Master Lease Agreement.

A fifth and final condition would be to assert that the Tett Board is wholly responsible for costs and risks associated with establishing a café-style food service, including all fundraising and payment of all applicable taxes and that it be required to report back to Council through City staff as to the status of this endeavor after one year.

In regard to this final condition, City staff feel it is important to clarify that the Tett Board is taking responsibility for integrating this service as part of their overall operating plan but that City staff also wish to work with the Board to ensure this endeavour proceeds in a manner that will help foster the long-term success and financial sustainability of the Tett Centre for Creativity and Learning itself.

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Other Issues for Consideration

City staff have also confirmed the zoning of the property does not preclude the operation of a café-style food service. The J.K. Tett Centre is zoned P1.387 and, as part of the uses deemed permissible in the P zone, Section 32.2(o) of By-law No. 8499 allows for “accessory buildings, including food concessions or restaurants”. In addition, a café could be permitted as an accessory use to a use permitted in the P1 zone as long as it does not occupy more than 25% of the floor space of the building, which it would not in this instance.

In order to proceed, it will also be necessary for Council to approve a number of amendments to documents that relate to the operation of the J.K. Tett Centre as the Tett Centre for Creativity and Learning. That would include the following:

1. An amendment to the Master Lease Agreement in a form satisfactory to the Director Legal Services and the Commissioner of Corporate & Strategic Initiatives to amend the scope of the business plan for the Tett Centre for Creativity and Learning to allow for a café-style food service to be operated as part of the J.K. Tett Centre
2. An amendment to By-Law No. 2012-115, “A By-Law to Authorize an Agreement for the Provision of a Municipal Capital Facility at 370 King Street West, Kingston, Ontario” to allow for the café space to be deemed as separate from the rest of the facility and therefore subject to taxation; and
3. An amendment to the Municipal Alcohol Policy. This would be necessary to allow for alcohol to be sold and consumed within a City-owned facility. This is typically not allowed except under the authority of a Special Occasion Permit or a Caterer’s endorsement. Some exceptions do exist which is why it would be necessary to amend this policy to allow the J.K. Tett Centre to be identified as one of those exceptions. At this juncture, it is not possible for City staff to advise Council if the Tett Board would be able to obtain approval to serve alcohol as it will be up to the Board to make an application to the Alcohol and Gaming Commission of Ontario and await a decision.

As previously stated, a lot of expectation has built up over time around the need for food services to be provided at the Tett Centre. This is in spite of the fact that it was never formally identified as part of the business plan approved by Council in 2010. The awareness of the benefits of a café has grown over time, however, and has emerged as a focus of public interest and debate among the Tett tenants themselves, their constituencies, users of the Isabel Bader Centre for the Performing Arts, local residents and members of the community at large.

There are risks associated with pursuing the development of a café-style food service at the Tett Centre but it has been made clear the Board of the Tett Centre for Creativity and Learning is aware of the risks and is willing to take them on to ensure the facility becomes the kind of gathering space that has been imagined from the beginning. They have also indicated their willingness to provide all the fit-out necessary to make the café space a turnkey operation in order to provide the greatest flexibility possible should it be necessary to look at other models of providing food services in future years.

Existing Policy/By-Law:

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By-Law No. 2012-115, A By-law to Authorize an Agreement for the Provision of a Municipal Capital Facility at 370 King Street West, Kingston, Ontario.

City of Kingston Municipal Alcohol Policy.

By-Law No. 8499 "Restricted Area (Zoning) By-Law"

Notice Provisions:

Not applicable

Accessibility Considerations:

Not applicable

Financial Considerations:

Currently, the Cultural Services Operating budget includes an allocation of \$125,000 per year to support the Board of the Tett Centre for Creativity and Learning as the Facility Operator of the J.K. Tett Centre. It is anticipated this amount will decrease over time as the Tett Board increases its capacity to generate revenue. Tenant rentals provide the main source of income that is further supplemented by revenues generated through space rentals. The provision of a café-style food service has the potential to provide additional revenue to foster long-term sustainability and potentially reduce the need for municipal support. The only financial commitment that has been made on the part of the City of Kingston is to provide \$7,000 for furnishings to help create a community gathering space within the building. These funds were allocated as part of the construction budget for the project as part of the City's contribution to providing Furnishings, Fixtures and Equipment.

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Building Planning and Licensing Services

Kathy Gray, Property Specialist, Real Estate and Property Development

Speros Kanellos, Director, Facility Management and Construction Services

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Rob Crothers, Project Engineer, Facility Management and Construction Services

Exhibits Attached:

Exhibit A – Leased Premises

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Schedule "A"
Leased Premises

