

SCHEDULE 1 TO THE MINUTES  
OF THE REGULAR MEETING OF  
COUNCIL HELD ON MONDAY,  
FEBRUARY 25<sup>TH</sup>, 2008



**City of Richmond**  
Planning and Development Department

**Memorandum**

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**To:** Mayor & Councillors **Date:** February 22, 2008  
**From:** Joe Erceg, MCIP **File:** 01-185-01/20008-Vol 01  
General Manager, Planning and Development  
**Re:** **The Garden City Lands Additional Information**

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The following material provides an update on issues that were raised at the General Purposes Committee held on February 18, 2008, as follows:

1. Advice from Mr. Anthony Knight of Lang Michener LLP, dated February 22, 2008, and November 22, 2007, addressing a variety of issues including ownership, City risks and school site consideration.
2. Memorandum from the Senior Manager of Corporate Communications, addressing concerns that were raised regarding the Open House surveys.
3. Memorandum from the Manager, Parks – Programs, Planning & Design, responding to the open space material that was tabled at the General Purposes meeting and providing additional information regarding park needs.

In addition the following staff comments are offered in response to discussion that occurred at the General Purposes meeting:

- If Council wishes to provide greater certainty that approved Richmond uses will occur on the site, a restrictive covenant may be registered on the site. Registration of a covenant prior to subdivision would require approval of all partners. As an alternative, Council could consider a resolution to register a covenant in the future following subdivision of the site.
- Staff estimate that the development lands could house between 10,000 and 12,000 residents. This represents between 12.5% and 15% of projected City Centre growth as noted in the staff report. It is however noted that this growth is expected to occur over 10 or more years.
- It is noted that the Richmond Agricultural Advisory Committee has not concluded a position on use or administration of the Agricultural Endowment fund. RAAC discussed a variety of ways including education and research, improvement to soil to increase productivity, production technologies, buying land to add to the ALR if the opportunity arises, and so on, but the RAAC preferred not to decide on any specific projects to maintain maximum flexibility.

February 22, 2008

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If you have any further question, please do not hesitate to contact me at 604-276-4083.

A handwritten signature in black ink, appearing to read "Joe Erceg". The signature is written in a cursive, slightly slanted style.

Joe Erceg, MCIP  
General Manager, Planning and Development

Lang Michener LLP  
LAWYERS – PATENT & TRADE MARK AGENTS  
1500 Royal Centre, 1055 West Georgia Street  
P.O. Box 11117, Vancouver, British Columbia, Canada V6E 4N7  
Telephone: (604) 689-9111  
Facsimile: (604) 685-7084

**CONFIDENTIAL MEMORANDUM**

**To:** City of Richmond **Date:** February 22, 2008

**From:** Anthony H.S. Knight **File:** 57467-0006  
Direct Line: (604)691-7406  
Direct Fax: (604) 893-2360  
E-Mail: tknight@mls.com

**Re:** Garden City Lands (the "Lands") – Memorandum of Understanding ("MOU")  
and Purchase Agreement ("PSA") – City of Richmond ("COR") and  
Musqueam Indian Band ("MIB") – Canada Lands Company CLC Limited  
("CLC")

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You have asked us to comment regarding issues arising from recent discussions about the Garden City Lands ("GCL").

**1. City Risk Associated with COR not fulfilling its obligations under the MOU/PSA prior to Agricultural Land Reserve ("ALR") Exclusion.**

Our previous memorandum dated November 22, 2007, (attached) deals in detail with the consequences of the City not satisfying the conditions precedent for exclusion of the Lands from the ALR. In summary, the City would have no rights to ownership of the Garden City Lands and we are not aware of any provision for reversion of the GCL to the Federal Government.

In our view, the GCL would be of greatest interest and value to the MIB as they have the legal ability to bypass the ALR through negotiations with the Province and could utilize Federal process to seek "Reserve" status, in which case the COR would not have jurisdiction regarding development of the Lands.

**2. City Risk Associated with MOU/PSA following ALR Exclusion.**

You have also asked us to comment on concerns that have arisen that following exclusion of the GCL from the ALR, an impasse could develop between the parties to the PSA and lead to termination of the MOU/PSA and loss of City ownership of its portion of the GCL as a result of one of the conditions in the PSA not being satisfied.

The PSA requires as a condition precedent, that an OCP Adoption be obtained within 3 years of exclusion of the GCL from the ALR.

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While there is some City risk associated with the MOU and PSA, they reflect the reality that the City had no ownership entitlement to the GCL when it entered negotiations.

In our view, the City risk is modest and is considerably outweighed by the risk associated with the City attempting to obtain ownership of the GCL by other means, if the MOU and PSA are terminated.

The existing agreements reflect a spirit of co-operation between the parties. In the case of disagreement there are provisions for negotiation, and the option of seeking assistance to resolve a dispute through mediation.

We believe that it is in the best interests of CLC and MIB to continue to work in a co-operative manner within the MOU and PSA with the City, following exclusion. It is noted that the Lands are zoned AG-1 Agricultural District. Therefore, CLC would be unable to develop the land other than in accordance with the existing zoning, without obtaining the City's development approvals in the normal course.

While the MIB has the ability to seek "Reserve" status, this is likely to be a time consuming and controversial process. We note that servicing GCL would still have to be negotiated with the City. In view of the parties stated desire to develop their respective portions of the GCL in the short term, to realize early income, it is our view that proceeding within the MOU and PSA is their best option.

CLC and MIB have to act in good faith, as does COR, in seeking to satisfy the conditions precedent. This has negative legal consequences to CLC and MIB.

### 3. Can the City apply to return the GCL to the ALR without owner consent?

Under Section 17 of the Agricultural Land Commission Act, the City can make an application to the Agricultural Land Commission to have the lands designated as part of the ALR, without consent of the owners. This option could be utilized by the City, in the event that the MOU and PSA terminate following exclusion of the GCL from the ALR. While the ALC would be responsible for determining the application, we believe that the application would have considerable merit, particularly if exclusion was granted on the basis of the COR's Community Need, which could no longer be achieved.

### 4. Provision of a School Site

There is currently a School Site Acquisition Charge (SSAC) scheme in place within the COR. The School District does not have any more specific claim to the GCL than they would to any other development site. In the event that a new school site is required, the School District must work within the SSAC scheme to raise funds for new sites. COR's staff position is that any new school site would need to be accommodated within the development lands (i.e., within the CLC/MIB portion of the site).

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## 5. Other comments.

- a. The City has no inherent right to ownership of the GCL and there is no requirement for return of the Lands to the Federal Government. Therefore, we believe that the City is unlikely to be successful in establishing ownership of the GCL, in the absence of the MOU and PSA.
- b. We understand that it has been suggested that COR should terminate the MOU and PSA and negotiate purchase of the Garden City Lands from CLC and MIB. Under this scenario, COR would have to negotiate with CLC and MIB well after the existing spirit of co-operation and goodwill has been severed. We believe CLC's and/or MIB's expectations might increase and these factors would reduce the likelihood of a new agreement. We also reiterate our earlier view that in such a situation, the Lands would be of greatest interest and value to the MIB for reasons noted previously who accordingly would be far less likely to wish to renegotiate anything with COR.

We would be pleased to discuss this memorandum with you further.



Anthony H.S. Knight

Attachment (1)

**Lang Michener LLP**  
LAWYERS – PATENT & TRADE MARK AGENTS  
1500 Royal Centre, 1055 West Georgia Street  
P.O. Box 11117, Vancouver, British Columbia, Canada V6E 4N7  
Telephone: (604) 689-9111  
Facsimile: (604) 685-7084

**CONFIDENTIAL MEMORANDUM**

**TO:** George Duncan  
**FROM:** Anthony H.S. Knight  
Direct Line: (604) 691-7406  
Direct Fax: (604) 893-2360  
E-Mail: tknight@lmls.com

**DATE:** November 22, 2007

**FILE NO.** 57467-0006

**RE:** ~~Garden City Lands~~ (the "Lands") – Memorandum of Understanding ("MOU") and Purchase Agreement ("PSA") – City of Richmond ("COR") and Musqueam Indian Band ("MIB") – Canada Lands Company CLC Limited ("CLC")

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What follows is a summary of certain matters arising under the MOU and PSA.

**1. Can COR approach CLC with a request it sell the Lands to COR for \$10,000,000?**

Unless factual matters have changed without notice to us, CLC on its own behalf and MIB through a Limited Partnership continue to be owners each as to an undivided 50% interest in the Lands. CLC holds the 50% interest of MIB in trust for MIB.

Any approach in this regard to sell the Lands would require the agreement of both CLC and MIB.

We expect it is unlikely any sale would be considered by CLC and MIB until it is definitively determined whether the Lands will be removed from the ALR. If the Lands are removed from the ALR, we expect the value of the Lands will rise dramatically.

If it is determined that the Lands will not be removed from the ALR, it is entirely possible that at that time CLC could sell the lands to MIB as we understand that CLC's mandate is to develop land and not hold it long term for investment. This is not an unrealistic scenario as we understand that MIB has recently indicated a willingness to acquire CLC's interest in the Lands.

**2. Can COR abandon the application to remove the Lands from the ALR?**

Under Section 4.1 of the PSA, it was a condition precedent that COR Council resolve to recommend to the ALC that the Lands be removed from the ALR. This condition precedent was satisfied in connection with the first application to the ALC by CLC, but because there is a new application by COR to the ALC, COR Council must reconsider and resolve to make a recommendation to the ALC. If COR Council does not make this recommendation, the PSA is terminated.

Under Section 4.2 of the PSA, it is a condition precedent that the Lands be released from the ALR.

This condition precedent has not been satisfied.

Section 4.6(a) of the PSA provides that each of CLC and the City will be entitled, by written notice to all other parties to the PSA, to extend from time to time the date for satisfaction of this condition precedent for 1 or more periods of time which will not exceed 2 years in the aggregate.

This period has been extended by the parties for 1 year expiring December 31, 2007 and can be unilaterally extended by either CLC or COR until December 31, 2008 without the consent of any other party to the PSA.

In our view, COR does not have the legal ability to withdraw its recommendation to remove the Lands from the ALR while the process for satisfaction of this condition precedent is still ongoing.

Pursuant to Section 3.2, COR is required to employ commercial reasonable efforts to expedite and complete the development approval process (part of which was the Council recommendation), and in our view, if COR were to withdraw the recommendation, this could expose COR to allegations of bad faith and a claim for a breach of contract.

If this condition is not satisfied by December 31, 2007 or, if extended to December 31, 2008 and not satisfied, the PSA is at an end.

**3. What happens to the MOU if the PSA terminates as a result of the non-satisfaction of the condition precedent regarding the release of the Lands from the ALR?**

As a general principal of law, unless the parties otherwise specify, a memorandum of understanding or letter of intent "merges" in the subsequent purchase contract. It is, in effect, superseded and no longer exists unless the parties otherwise specify.

Section 4.6(c) of the PSA provides only Sections 1(22), 1(23) and 2(1) of the MOU continue to be binding on the parties.

Sections 1(22) and 1(23) provide that if certain events do not occur after the Lands are removed from the ALR which are rezoning, increased FAR or approval of OCP amendment, the parties are to meet to renegotiate to give effect to the spirit of the MOU and Section 2(1) provides for a mediation option should the parties reach an impasse.

In our view, the obligation to renegotiate under these Sections only arises where the City has refused to act in rezoning, increasing the FAR or approving the OCP.

Where the PSA is terminated as a result of the failure to have the Lands removed from the ALR because of the actions of the ALC, Sections 1(22) and 1(23) are not relevant and the MOU is expired.

We do not, at this point, have an opinion how a court would decide this issue if there was ever a challenge of this interpretation.

The MOU is drafted in such a way that there are different interpretations possible.

#### 4. Additional Comments

(a) If the PSA is terminated and the MOU has expired:

(i) COR has no interest in the Lands and no right to claim any interest in the Lands, including the right to use the Lands for community uses without the agreement of the owner(s) of the Lands;

(ii) we do not know what course of action MIB will take in the future with respect to the Lands, but MIB has indicated it will assert an interest in the Lands through any remedy available to it; and

(iii) pursuant to the PSA, there is a No Development Covenant registered against title to the Lands. It provides that there is to be no development of the Lands unless COR is assured of its 50% interest of the Lands. If the PSA terminated as a result of COR Council's failure to recommend to the ALC that the Lands be removed from the ALR, this Covenant must be discharged from title to the Lands pursuant to the PSA.

(iv) with respect to MIB:

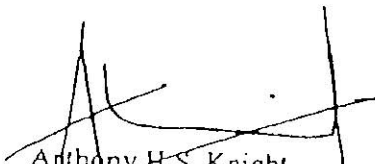
(A) MIB might acquire the Lands from CLC (see our comments in paragraph 1 above).

(B) we are aware of a general desire of aboriginal groups to have land they have acquired included in their reserves, and there is a Federal process to accomplish this. If Lands were to attain reserve status, COR would have no jurisdiction regarding development of the Lands.

(C) If MIB were to acquire all of the Lands, they could negotiate with the Province to have the Lands removed from the ALR. We expect MIB has a greater chance of doing this than COR.



We would be please to discuss this memorandum with you further

  
Anthony H.S. Knight





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**To:** Mayor and Councillors, TAG  
**From:** Ted Townsend  
Senior Manager, Corporate Communications  
**Date:** February 21, 2008  
**File:** 01-0185-01/2008-Vol 01  
**Re:** Garden City Lands public consultation

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This memo is to respond to questions that have been raised about the recent Garden City Lands public consultation and the feedback form at General Purposes and Planning Committee by members of the public and/or Councillors, including the letter tabled by Coun. Steves commenting on the process.

This process was an added public consultation activity conducted by the partners as an enhancement to the statutorily-required, formal Public Hearing, which will be conducted by the City under all legislated municipal standards.

As directed by Council, the public consultation process was conducted and funded jointly by the three partners to the Garden City Lands agreement. All materials used were collaboratively developed by the partners.

The materials, including the feedback form, were focussed on the terms of the existing agreement between the three partners and the proposed future uses of the lands as stipulated in the agreement and, in the case of the City portion of the lands, as further defined by the recommendations approved by Council on December 17, 2007.

In addition to information boards and printed materials developed and printed feedback form developed for use at the four public open houses and various information displays, a Garden City Lands page was developed on the City's website, within the Planning and Development section. In order to make this page easier to access, a shortcut link to this page was specially created ([www.richmond.ca/gardencitylands](http://www.richmond.ca/gardencitylands)) which was featured in all advertising and publicity. This webpage will continued to be updated as new information becomes available, including all related reports to Council, with a link to it from the home page.

During the recent consultation process, the webpage included an online version of the feedback form. The City's feedback form software provides an option to require that certain fields be completed in order for the form to be accepted. Initially, a decision was made to make all fields, with the exception of those seeking personal information, to be required fields. This was simply intended as a mechanism for encouraging respondents to be thorough in completing the form.

The form became live on Feb. 8 the first day of the public open houses. On Saturday, February 9, a complaint was received from an open house attendee, who objected to the requirement to complete all fields arguing that it forced respondents to choose from a list of pre-selected answers that they

would not have otherwise chosen. The City agreed to remove this requirement at the first opportunity. This was done shortly after the beginning of business on Monday, Feb. 11 which was the first time website staff were available to make the change.

The primary concerns expressed were with Questions 4 and 5 of the survey, where respondents were asked to choose from a list of pre-selected answers, which some respondents felt did not provide them with adequate options. However, in both cases, respondents had the opportunity to select "Other" as an option and stipulate any answer of their choice. As well, all of the survey questions provided respondents space for written comments allowing respondents ample opportunity to clearly express their opinions, regardless of the wording of the questions or answers.

In addition to the online feedback form, printed forms were made available at the open houses and information displays and people were able to complete those forms and return in person, by fax or mail by Feb. 15.

Those who filled out printed copies of the feedback form were not restricted in anyway in choosing which questions to answer or how to answer. Of the 129 submitted forms received during the consultation process, 23 were completed online. Of those 23, six were completed during the period in which the field requirements were in place.

In response to a specific concern raised by Coun. Steves, as with all survey form respondents, whether written or online, and in fact identification provided by speakers at public meetings, the City relies on the good faith of participants in providing accurate personal information.

An additional concern has been raised in regard to the use of the term "Smart Growth" in question 6. The "Smart Growth principles" referred to in this question are taken directly from the City Centre Area Plan as endorsed by Council: which are (as cited in the actual question) building a complete community; building green, building economic vitality and fostering a legacy.

The partners are presently preparing a report that will summarize both the selected answers and written comments to the feedback form, which will be provided to Council. In addition, all completed forms and any additional written feedback received during the initial public consultation will be forwarded to be part of the Public Hearing record.

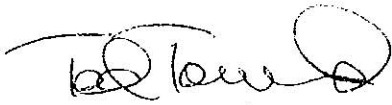
This phase of the public consultation is now complete. The feedback form has been removed from the website. All further public input will be channelled through the Clerk's Department to become part of the Public Hearing record as per normal procedures.

On a final issue of concern, the City's current policy is that public consultation activities are generally conducted in English and materials are primarily published in English. The most recent Census results show that in excess of 85 per cent of Richmond's residents consider themselves conversationally functional in English. However, where possible, efforts are made to accommodate non-English speakers. In the case of the Garden City Lands consultation, it was anticipated that a greater proportion of Chinese speakers would attend the Aberdeen Centre Open House on February 11. As a result, a Chinese language translation of the information board content was made available at that open house and a professional Chinese interpreter was also hired to provide assistance to

February 20, 2008

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those public who required it. This issue, along with other aspects of the City's public consultation practises is currently under review as per a referral from Planning Committee.

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Ted Townsend  
Senior Manager, Corporate Communications

TT:tt



**To:** Mayor & Councillors  
**From:** Mike Redpath  
Manager, Parks - Programs, Planning & Design  
**Date:** February 21, 2008  
**File:** 06-2345-00/Vol 01  
**Re:** Clarification of Parks and Open Space Planning Needs for the City Centre

The purpose of this memo is to provide clarification on the information circulated at the Monday February 18, 2008 General Purposes Committee Meeting regarding the Fact Sheet (Attachment 1) distributed to Council quoting the "2002 Current Reality" document, a background document attachment to the Parks, Recreation & Cultural Services Master Plan.

The document circulated to Committee contained information prepared by a consultant in 2002/03, three years prior to approval of the PRCS Master Plan. This summary proposed that in the year 2021, with a population of 212,000 projected for the City, that Richmond would require 2120 acres of park land based on an assumption of 10 acres per 1000 residents in the future.

Approval of the PRCS Master Plan changed this assumption, and established the following direction which is detailed in Section 7.0, *City Centre Acquisition and Development Policy*:

*"To develop a new standard for open space for City Centre. In City Centre, given high land costs, a new development standard for open space is required. The standard calculation of 7.66 acres per 1000 residents will still be applied to developments to maintain the overall City goal of adequate parkland for all residents.*

*The City will set a target to acquire and physically develop a minimum of 3.25 acres of land per 1000 residents in City Centre due to the high cost and unavailability of land. While there may be less land the focus will be on creating unique and vibrant urban spaces of the highest quality (PRCS Master Plan 2005)."*

#### ***Current City Centre Parks and Open Space Planning***

Quantity + Distribution of open spaces = a complete parks system. With enough open space, equitable distribution is possible. The PRCS Master Plan initiated a standard for open space for City Centre. The standard provides enough parkland for the equitable distribution of each park type providing a level of service similar to that currently enjoyed in neighbourhoods outside of the City Centre.

While the city-wide population projections for the future 2031 OCP update are not yet available, detailed projections have been made for the City Centre and form the basis for the CCAP review.

The recent 2007 population analysis prepared as the basis for Richmond's City Centre growth projects a 'build out' population of 120,000 for the City Centre guiding the CCAP review. Examination of the City Centre open space requirements is detailed below:

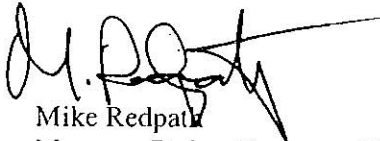
*City Centre Parks & Open Space*

Population	Current 40,000	Year 2031 90,000	Build-out 120,000
Quantity of Open Space	189 acres	292.5 acres	390 acres
Ratio of Acreage to Population	4.75/1000	3.25/1000	3.25/1000
Quantity of Additional Open Space	0	103.5 acres	201 acres

*City Wide Parks and Open Space Planning:*

- The City-wide provision of parks and open space is not a reduction of open space, the 7.66 acre/1000 residents reflects the existing ratio of population to park acreage, maintaining the status-quo as population increases.
- A challenge to maintaining this standard city-wide is the sale of school/park sites that are presently included in the calculation of open space.
- Today the city-wide park inventory is 1427 acres, which represents an allocation of 7.66 acres per 1000 residents, the standard is presently met with our current park inventory.
- Current land acquisition opportunities identified in the Parkland Acquisition program to meet future growth, based on the current OCP are set at 196 acres looking out to the year 2021, this is inclusive of projected City Centre growth up to the year 2021.
- The City's proposed 50% share of the Garden City Lands, or 68 acres, would satisfy 32% of the total new open space required in City Centre
- The process of reviewing the parks and open space acquisition program outside of the city centre is now underway with the current revision of the OCP looking out to the year 2031.

Future planning for parks and open space that is owned by the City is governed by community values and is not subject to the instabilities of the marketplace or the interests of private land owners. Parks and open spaces are long-term investments that produce continually increasing benefits for future generations. The amount, type, and distribution of parks and open space needed to sustain livability, as well as the economic reality of acquiring the lands are primary determining factors that shape the open space system.



Mike Redpat  
Manager, Parks - Programs, Planning & Design  
Att. 1

pc: Joe Erceg, MCIP, General Manager, Planning and Development  
Cathryn Volkering Carlile, General Manager - Parks, Recreation & Cultural Services  
Dave Semple, Director of Parks and Public Works Operations  
Cecilia Achiam, MCIP, BCSLA, Senior Coordinator, Major Projects & Development Applications  
Ted Townsend Senior Manager, Corporate Communications

GARDEN CITY LANDS PARK NEEDS FACT SHEET NO.1

Harold Steves, BscAg,  
 City Councillor, Richmond

The Richmond Parks Recreation and Cultural Services Master Plan states that we presently have a shortfall of 155.4 acres of parkland in Richmond but we will need an additional 676 acres of parkland by 2021 for a population of 212,000 people, just 13 years from now. That is the parkland needed for 40,000 more people but not for 120,000 more people that is proposed.

A look at the Parkland Allocation graph shows that actually 2,120 acres minus 1,288 acres equals 831 additional acres that are required over what is parkland today.

There are only three large acreages in urban Richmond that are available to make up that park deficit, the Garden City Lands, DND Lands and the Quilchena Golf Course. All three together they would compensate for one-half of Richmond's park needs by 2021. As there is no other acreage available all additional parkland will have to be acquired by purchasing, demolishing and rehabilitating older home to parkland at a cost of \$2.5 million for purchase only.

Whether or not the land is removed from the ALR, owned by the City, Crown, or Musqueam, the City should be reserving the entire Garden City Lands site for future park use. At present the agricultural value of the property is under \$100,000 per acre. Once it is out of the ALR it's value increases to over \$2 million per acre.

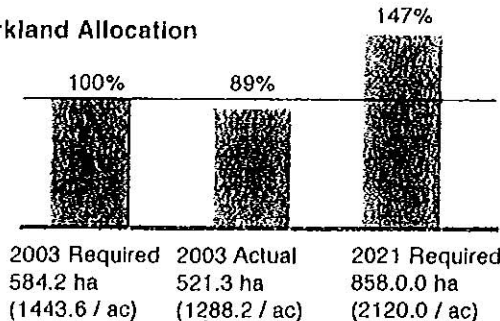
**d - Parks, Recreation and Cultural Services Master Plan**

# Overall

**Facility Quick Facts:**

- Total inventory of buildings in current replacement dollars is \$127,347,000 (incl. Riverport facilities and new Cambie Library)
- Lifecycle upgrades estimated in current dollars at \$13,558,100 or 89% average building life remaining
- Current parkland allocation shortfall of 155.4 acres (62.9 hectares) will increase to a shortfall in 2021 of 676 acres (273 hectares), roughly ten times the area of the existing Minoru Precinct

**Parkland Allocation**

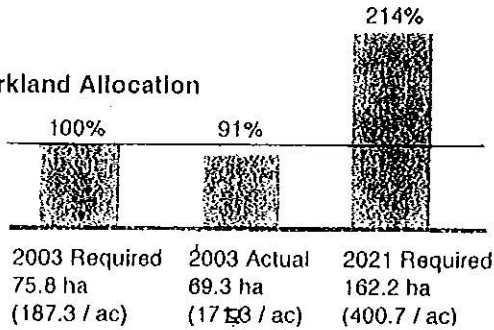


# City Centre

## Facility Quick Facts:

- Brighthouse Library and Cultural Centre built 1992; value \$15.1 million, \$1.4 million in upgrades
- Gateway Theatre built 1984; value \$6.8 million, upgrades \$900,000
- Minoru Chapel built 1891
- Minoru Seniors Activity Centre built 1986; valued at \$2.35 million, upgrades \$854,000
- Centennial and Minoru Pools, built 1958 and 1977
- Minoru Arenas built 1965
- Minoru Sport Pavilion built 1964, valued at \$1.17 million; upgrades \$268,000;
- Minoru Grandstand built 1974

## Parkland Allocation



Link