TORONTO

STAFF REPORT ACTION REQUIRED with Confidential Attachment

Potential Sale by Toronto Port Lands Company/TEDCO of Corus Quay

Date:	March 4, 2011
To:	Executive Committee
From:	City Manager Deputy City Manager and Chief Financial Officer
Wards:	Ward 28
Reason for Confidential Information:	This report involves the security of property belonging to the City or one of its agencies, boards, and commissions.
Reference Number:	P:\2011\Internal Services\SP\ec11002sp (AFS #13527)

SUMMARY

The primary purpose of this report is to seek the City's approval for the sale by City of Toronto Economic Development Corporation (now operating as Toronto Port Lands Company and referred to herein as "TPLC") of the Corus Quay lands and building (the "Project" – municipally known as 25 Dockside Drive) and to direct TPLC to use a portion of the proceeds to repay in full the outstanding balance on the construction loan provided for the Project by the City.

In order to enable the effective re-use of any surplus funds realized by TPLC through the sale of the Project, this report also recommends that TPLC's articles of incorporation be amended so that the restrictions on the use of profits and the prohibition against dividends are removed and so that property sales are specifically included in TPLC's purposes.

This report also recommends that once the sale is complete, TPLC's board of directors be directed to declare a dividend in an amount that will serve to remit to the City the net profit.

RECOMMENDATIONS

The City Manager and the Deputy City Manager and Chief Financial Officer recommend that:

1. City Council consent to TPLC's proposal to offer the Project (being the lands and premises municipally known as 25 Dockside Drive) for sale on the terms identified in the confidential attachment to this report and on the condition that the proceeds from the sale be used to repay in full the construction loan provided by the City.

2. A by-law be enacted, pursuant to s. 145 of the *City of Toronto Act, 2006*, granting authority, in the form of a special resolution within the meaning of the Ontario Business Corporations Act, to amend TPLC's articles of incorporation by:

    a. deleting the restrictions on the corporation's power requiring that the corporation's activities be carried on without purpose of gain for its shareholder, that any profit accretion be used only to promote its purposes, and that no part of the income of the corporation be payable or otherwise available for the personal benefit of the shareholder of the corporation;

    b. deleting the restriction attaching to the corporation's shares requiring that the directors not declare, nor the corporation pay, any dividends; and

    c. expanding the purposes to include sales

    and authority be granted to introduce the necessary bill in Council.

3. A declaration by the City, in its capacity as sole shareholder of TPLC, be delivered to the Board of Directors of TPLC, directing that, once the articles of incorporation have been amended in accordance with Recommendation #2 and the Project has been sold, TPLC use the net proceeds from the sale of the Project to provide a dividend to the City in a specific amount to be determined by the board of directors in consultation with the Deputy City Manager and Chief Financial Officer.

4. The Deputy City Manager and Chief Financial Officer be directed to deposit the dividend amount received from TPLC in the City's Capital Financing Reserve Account (XQ0011).

5. City Council consent to the extension of the maturity date for the construction loan provided for this project by the City from March 31, 2011 to December 31, 2011.

6. Confidential Attachment 1 remain confidential under the provisions of the *City of Toronto Act, 2006*, as it relates to the security of property of municipality or local board, until the closing of the sale transaction.

DECISION HISTORY

At its meeting of May 23, 24, and 25, 2007, City Council considered a report from staff which provided an assessment of the proposed building development.

City Council consented to an agreement proposed by the Board of Directors of TEDCO (as it was then known) to lease the majority of the space in the proposed development to Corus Entertainment Inc. ("Corus") for a minimum period of twenty years.

Council also authorized the provision by the City of financing to TEDCO for the Project based on the following terms:

- the City's construction loan not exceed $132 million;
- the construction loan be advanced with an interest rate of 5%;
- in the event that long-term financing of the Project by a third-party is not available or permitted, the City would provide first mortgage financing to a maximum of $132 million; and
- the long-term financing be provided for a twenty-year term at an interest rate equal to the greater of the City's cost of capital and 5.5%.

The City financing was necessary because the special 1985 legislation which authorized the creation of what is now TPLC as a business corporation prohibited borrowing from any lender other than the City.

ISSUE BACKGROUND

Project Objectives

In the period leading up to late 2006, TPLC considered a number of alternatives for the redevelopment of its property on Queen's Quay near the intersection with Sherbourne Ave. and immediately east of the Redpath Sugar Refinery (see map in Appendix 1).

Ultimately, TPLC proposed the construction of a seven-storey, approximately 458,000 sq.ft. building, containing video/film studios and associated office space, on this site with Corus as the principal tenant. This form of redevelopment was proposed primarily because it would result in significant new employment in this location and therefore contribute towards the overall City objective of creating a live-work community on the revitalized waterfront. The selection of this type of tenant also contributed towards the more specific goal of attracting knowledge or media-based employment to the new waterfront community.

In addition to achieving these employment goals, the creation of a large new non-residential building beside the sugar refinery was also proposed because such a proposed use would not be adversely affected by the occasional overnight ship-unloading activities at the sugar refinery. The new building would also facilitate residential development to the east as it would buffer that development from any noise arising from the refinery's operations.

Project Implementation

Following initiation of the Project in late 2007, construction proceeded largely according to the original schedule and budget.

As per the terms of the lease, Corus began paying rent to TPLC in January, 2010 and subsequently began carrying out improvements to its leased space.

The overall Project reached substantial completion in April, 2010 and Corus began occupying its leased space in May, 2010.

City Financing for the Project

During construction, TPLC received monthly loan draws from the City and the sum of the draw amounts, including interest, now totals approximately $128.5 million. At Waterfront Toronto's request (Waterfront Toronto contributed $12.5 million towards the construction cost of the Project), the loan agreement between the City and TEDCO limits the total loan advance to $128.5 million until the Project has been awarded a "LEED Gold" certification from the Canada Green Building Council. This certification is pending. Therefore, no further loan draws are being advanced and TPLC is paying monthly interest on the current loan balance.

The maturity date under the existing construction loan agreement with the City is currently scheduled for March 31, 2011. If at the maturity of the current construction loan TPLC is unable to make suitable arrangements for permanent financing for the Project from a third-party lender, the City is obliged, pursuant to the terms of the existing construction loan agreement, to provide TPLC with a permanent loan facility to repay the existing construction loan (which would have a 20-year term and a 30-year amortization period).

COMMENTS

In lieu of putting in place the permanent loan (with the City as lender, as contemplated under the existing construction loan agreement and outlined above), TPLC proposes, instead, to extend the term of the construction loan and begin a marketing program in order to sell the Project. TPLC has received opinions from its real estate market advisors which indicate that there is currently a strong demand amongst large institutional investors for a building with the characteristics of the Project. TPLC's advisors predict that the Project can now be sold for an amount considerably in excess of the Project's development cost.

TPLC's shareholder direction requires that it seek City Council approval for the sale of its properties and the existing construction loan agreement with the City also requires that TPLC seek the City's approval for a sale of this specific Project.

As TPLC has agreed to use the proceeds from the sale to immediately repay the construction loan in full, there does not appear to be any reason for the City to withhold its approval of the proposed sale. A successful sale of the Project followed by immediate repayment of the construction loan would allow the City to avoid the long-term risk exposure that would result from the provision of permanent financing for the Project.

The original City objectives for the Project have been achieved and the capital employed in the Project by TPLC and the City can now be recovered. As discussed above, it is anticipated that TPLC will realize a significant profit after repayment of the City loan and the recovery by TPLC of its equity investment and its expenses related to the Project.

Currently, TPLC is prohibited from transferring any of its profits to the City. In accordance with the special 1985 legislation referred to above, TPLC's articles of incorporation require that TPLC's activities be carried on without purpose of gain for its shareholder, that any profit or other accretion be used only to promote its purposes and that no part of its income be payable to or otherwise available for the personal benefit of the shareholder of the corporation. As well, the articles include among the corporation's purposes the “provision, operation and improvement of sites, buildings and facilities”, but make no reference to sales.

The City Solicitor has advised that under subsection 145(1) and section 146 of the *City of Toronto Act*, *2006*, the City has power to pass a by-law to “change a local board” (with certain exceptions not applicable to TPLC) including expansion of the board's mandate. The advice explains that TPLC is a local board to which those “change” provisions apply and that since TPLC was created under the *Business Corporations Act*, any such change, which could properly include removal of the impediments described above, must be by way of an amendment to its articles of incorporation. Such an amendment requires an authorizing special resolution from the City as sole shareholder.

Therefore, this report recommends that TPLC's articles of incorporation be amended to clarify that sales are included among its purposes and to remove the prohibitions against payment of income and dividends to the City. This report also recommends that TPLC's board of directors be directed, in consultation with the Deputy City Manager and Chief Financial Officer, to declare a dividend in an amount representing the net profits from the sale of the Project.

CONTACT

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SIGNATURE

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Joseph P. Pennachetti
City Manager

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Cam Weldon
Deputy City Manager and Chief Financial Officer

ATTACHMENTS

Appendix 1: Map of Corus Project Area
Confidential Attachment 1 – Potential Sale by Toronto Port Lands Company/TEDCO of Corus Quay

APPENDIX 1
Map of Corus Project Area