



STAFF REPORT ACTION REQUIRED

Transfer of Title Ownership in 679 Queens Quay West from the City of Toronto to Toronto Community Housing Corporation

Date:	September 14, 2015
To:	Government Management Committee
From:	Chief Corporate Officer and General Manager, Shelter, Support & Housing Administration
Wards:	Ward 20 – Trinity - Spadina
Reference Number:	P:\2015\Internal Services\RE\GM15032re (AFS # 21838)

SUMMARY

Toronto Community Housing Corporation ("TCHC"), operating assisted housing on part of the City-owned property known as 679 Queens Quay West (the "Property") under a nominal rent lease expiring November 30, 2047, is obligated, under its refinancing terms with Ontario Infrastructure and Lands Corporation ("OILC"), to request the City transfer of the fee simple ownership in the Property to TCHC. The refinancing was approved by City Council on April 3, 2013 under Item EX29.2.

The remaining part of the Property is leased by the City to a tenant operating a parking garage under a nominal rent lease also expiring November 30, 2047 (the "Dylex Lease") more particularly described in this report.

The City acquired the Property from the Federal Government in 1995 for nominal consideration, subject to the said existing leases.

The purpose of this report is to obtain Council authority to transfer ownership title of the Property to TCHC at nominal consideration.

RECOMMENDATION

The Chief Corporate Officer and the General Manager, Shelter, Support & Housing Administration recommend that:

1. An Offer to Purchase from TCHC for the City-owned property located at 679 Queens Quay West described as the whole of PIN 21418-0008(LT); Parcel Block 6-5, Sec AD1429; Parts 1, 2, 6 and 7 on Plan 66R-14209; Parts 9, 18, 22, 26, 27, 28 and 29 on Plan 66R-15185 except Parts 18, 19 & 24 on Plan 66R-14491; and together with rights of way as in C439834 (the "Property"), for nominal consideration, be accepted substantially on the terms and conditions outlined in Appendix "A" to this report, together with such other terms and conditions as may be deemed appropriate by the Chief Corporate Officer, and that either one of the Chief Corporate Officer or the Director of Real Estate Services be authorized to accept the Offer on behalf of the City.
2. If required by Toronto Hydro, the City be authorized to grant an easement to Toronto Hydro for its existing infrastructure on the Property on terms and conditions acceptable to the Chief Corporate Officer and in form acceptable to the City Solicitor, prior to completion of the sale of the Property to TCHC; and that the granting of such easement be a condition precedent to the sale.
3. City Council declare that it is in the interests of the City to transfer the Property to TCHC for nominal consideration.
4. City Council authorize the Chief Corporate Officer to administer and manage the sale transaction, including the provision of any consents, approvals, waivers and notices (including termination), provided that she may, at any time, refer consideration of any such matters (including their content) to City Council for its consideration and direction.
5. City Council authorize the City Solicitor to complete the transactions on behalf of the City, including making payment of any necessary expenses and amending the closing date to such earlier or later date(s) and on such terms and conditions as she may from time to time consider reasonable.
6. City Council declare that the housing project operated by TCHC on the Property continues to be a social housing program within the meaning of s.453.1 of the City of Toronto Act, 2006.

7. City Council authorize the General Manager, Shelter, Support and Housing Administration (the "General Manager") to execute on behalf of the City an amending agreement to the Assisted Housing Agreement dated December 1st, 1987 as an agreement pursuant to s.453.1 of the City of Toronto Act, 2006 to ensure that the agreement continues until November 1, 2047 following transfer to TCHC and that the required rental rates comply with the requirements of the City's Municipal Capital Facilities Housing By-law, together with such other terms and conditions as the General Manager may require, and in form satisfactory to the City Solicitor, to be registered on title to the Property on closing.
8. City Council authorize the General Manager to execute on behalf of the City an amending agreement to the Operating Agreement dated February 12th, 1986, to ensure that the agreement continues until November 1, 2047 following transfer to TCHC, together with such other terms and conditions as the General Manager may require, and in form satisfactory to the City Solicitor.
9. City Council authorize the General Manager to request and obtain any consents or approvals required under the *Housing Services Act, 2011*.

Financial Impact

There is no financial impact resulting from the approval of this report. The transfer of ownership title of the Property to TCHC is at nominal consideration. The terms of the sale will require TCHC to enter into an amending agreement to the Assisted Housing Agreement and an amendment to the Operating Agreement on closing, to provide housing accommodation at 679 Queens Quay West primarily for persons with low to moderate incomes with the result that such housing may be preserved until at least 2047. The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact statement.

DECISION HISTORY

At its meeting of April 3 and 4, 2013 Council adopted the proposed terms negotiated with Ontario Infrastructure and Lands Corporation ("Infrastructure Ontario") for the refinancing of a first tranche of mortgages on TCHC properties which required renewal in 2013. This refinancing generated \$154.7 million in total financing, of which approximately \$82 million will be available for to address capital needs throughout the entire TCH social housing portfolio. See EX29.2 "Infrastructure Ontario Refinancing of Toronto Community Housing Mortgages":

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX29.2>

Pursuant to that financing TCHC granted to Infrastructure Ontario a 5 year leasehold mortgage encumbering the housing project constructed on leased lands owned by the City of Toronto located at 679 Queen's Quay. TCHC covenanted with Infrastructure Ontario to request the City to transfer fee simple title to 679 Queens Quay. Upon completion of the transfer TCHC is obliged to grant a fee simple mortgage to Infrastructure Ontario.

ISSUE BACKGROUND

The location of 679 Queens Quay is illustrated in Appendix "B" attached.

On February 12, 1986 Canada Mortgage and Housing Corporation (‘CMHC’), the Province of Ontario as represented by the Minister of Housing and City of Toronto Non-Profit Housing Corporation ("Cityhome") entered into a 35-year Operating Agreement pursuant to the terms of the *National Housing Act*; under this agreement Cityhome was to rent units to persons of low or modest income at rentals below the prevailing market rate. Some of the housing was to be rented on a rent-to-income scale as provided in the agreement. Under a Social Housing Agreement dated November 15, 1999 CMHC transferred its responsibilities under the federal Operating Agreement to the Province. In 2001 the City acquired the interest of CMHC in the federal Operating Agreement by way of a transfer order from the Province under the *Social Housing Reform Act*. This agreement will terminate January 1st, 2023. The *Housing Services Act, 2011* permits a Service Manager to amend an operating agreement provided that the amendment does not result in a conflict with the *Housing Services Act, 2011* and its regulations, including such criteria and rules as may be prescribed in the Act for the housing program under which the project operates.

On July 1, 1987 the federal government, as represented by the Minister of Public Works ("Canada"), as owner, Harbourfront Corporation ("Harbourfront") and Cityhome as tenant entered into a 60-year ground lease (the "Ground Lease"). The Ground Lease obliged the tenant to use the property for assisted housing. Upon the sale of the property to TCHC the City will no longer have the Ground Lease to enforce against TCHC and will have to rely upon the provisions of the Assisted Housing Agreement, as amended, to ensure that assisted housing continues to be provided at the Property.

On December 1, 1987 Canada, as owner, Harbourfront, Cityhome and the Corporation of the City of Toronto (the "City") entered into an Assisted Housing Agreement. Under the Assisted Housing Agreement Cityhome agreed to operate 679 Queens Quay as 'Assisted Housing' as defined by *The City of Toronto Act, 1975 (No.2)* S.O. 1975, c.117, as amended. That legislation defined an assisted housing program as a program which in the opinion of council is designed to provide housing accommodation by sale or lease at a price or rental below the current market price or rental in the area in which the accommodation is located. Under s. 453.1 of the City of Toronto Act, 2006 (‘COTA’) a reference in a by-law passed by the City before May 24, 1988 to “assisted housing”, “assisted housing program” or an “owner of land who has entered an agreement under section 5 of *The City of Toronto Act, 1975 (No. 2)*” is deemed to be a reference to “social housing”, “social housing program” and an “owner of land and operator of the housing

accommodation if different from the owner”, respectively. A by-law referred to in subsection 5 (2) of *The City of Toronto Act, 1975 (No. 2)*, and any agreement entered into under subsection 5 (3) of that Act before May 24, 1988, continues in force until repealed or revoked by the City.

On March 28, 1995 Canada transferred 679 Queens Quay to the City. At the time of transfer the City consented pursuant to the provisions of *The City of Toronto Act, 1975 (No.2)* on the basis that the property would continue to be operated as Assisted Housing. The City acquired its interest subject to the federal Operating Agreement, Ground Lease and the Assisted Housing Agreement.

Cityhome was amalgamated to eventually form Toronto Housing Company in 1999. Toronto Housing Company transferred its leasehold interest in the Property to TCHC by Transfer on April 19, 2004.

The Property was acquired from the Federal Government in 1995 at nominal consideration subject to two existing leases; one to Cityhome (predecessor owner to TCHC) and the other to Dylex (now Black Saxon Lakeshore Inc. as to 10% interest and 3160343 Canada Inc. for 90% interest). The two leases together cover the whole of the Property. The Property is subject to shared facilities agreements containing mutual grants of easements and cost sharing requirements between the tenants. The City is obligated under such agreements only if the City terminates either of the existing leases.

Both leases have nominal rental rates and both are for a term of 60 years commencing on Dec. 1, 1987 and expiring November 30, 2047. The lease to TCHC was improved with a public housing project for the purpose of providing accommodation in accordance with the Assisted Housing Agreement which also expires November 30, 2047. The lease to Dylex was for the operation of a 53 space parking garage in relation to the tenant's building located west of Stadium Road. The Shared Facilities Agreement governs the operation of the parking garages in 679 Queens Quay and the adjoining parking garage leased under the Dylex lease and regarding other facilities shared by or benefitting both of the tenants under the lease of 679 Queens Quay and the Dylex Lease. The Bathurst Quay Sub-Area Plan stipulates that the parking garage must be available to the general public during public access hours. All parking revenues derived from the parking are the tenant's revenues.

Since its construction back in 1987, TCHC (or its predecessors) have been performing ongoing maintenance, operation, payment of property taxes (until the property was declared a municipal capital facility) and utility accounts of the building. TCHC also pays its proportionate share of costs under the Shared Facilities Agreement with the leasehold owner of the Dylex lease. The recent refinancing of part of TCHC's portfolio including that part of the Property leased to TCHC was approved by City Council on April 3, 2013 under Item EX29.2. TCHC is obligated to its lender to seek a fee simple interest transfer of the Property upon which it has a leasehold interest from the City. Accordingly, TCHC has requested the transfer of title ownership from the City at nominal consideration.

A circulation to the City's ABCDs was undertaken to ascertain whether or not there is any municipal interest in retaining the Property. No municipal interest was expressed.

Real Estate staff, together with staff from Legal Services, Planning and Social Housing, have carefully considered the merits in retaining title of the whole or part of the Property that was leased to Dylex under City ownership. Staff concluded that it is more cost effective for the City to transfer title of the whole Property to TCHC; given the City receives no rents from these leases which are complicated by the shared facilities agreements and various mutual easements for the parking facilities.

The Property Management Committee ("PMC") has reviewed this matter and concurs in the transfer of the Property to TCHC at nominal consideration under certain terms and conditions as detailed later in this report.

The Council of the City of Toronto, by its adoption of Item No. GM 6.18 at its meeting of July 16, 17, 18 and 19, 2007 entitled "Policy with Respect to the Sale/Disposition of Land", delegated to the Chief Corporate Officer authority to declare land surplus. The Chief Corporate Officer has exercised that delegated authority to declare the Property surplus as evidenced by Delegated Approval Form (Tracking No. 2014-258). All steps necessary to comply with the City's real estate disposal process as set out in chapter 213 of the City of Toronto Municipal Code have been complied with.

COMMENTS

The City has adopted a policy of leasing its lands under a long term lease to facilitate the creation of low rental housing projects. By terminating this lease and providing TCHC with ownership of the lands, this control is relinquished. The Operating Agreement and Assisted Housing Agreement will require that the social housing use be retained until 2047. Upon the expiry of these Agreements, the obligation to retain social housing use also expires. However, unlike other non-profit and co-operative housing corporations, TCHC is wholly owned by the City and is subject to council's directions as shareholder regarding operation or disposition of its housing assets.

Council has approved Official Plan policies requiring the protection or replacement of social housing units. Any conversion or redevelopment proposal for 679 Queen's Quay will be reviewed for compliance with these policies, with opportunities for public input where the proposed use of the property may be changed in the future. However, these Official Plan policies are subject to change at the direction of Council.

An internal appraisal of the Property indicates that the present value of the Property, subject to the existing leases and the various mutual easements and facilities agreements among the stakeholders in the Property, is estimated at about \$1.9 million dollars.

A portion of the 2013 Infrastructure Ontario loan in the amount of \$15,500,000 can be advanced for the purpose of redeveloping certain specified TCHC properties, including 679 Queens Quay. Given the need to perform extensive capital repairs or to redevelop the site, it would appear to be advantageous to transfer ownership to TCHC.

This report recommends the transfer of the Property to TCHC for nominal consideration in accordance with Section 83 (2) (b) of the City of Toronto Act, 2006, subject to the terms and conditions outlined in Appendix "A".

Details of the Property:

Subject Property:	679 Queen's Quay West
Legal Description:	the whole of PIN 21418-0008(LT); Parcel Block 6-5, Sec AD1429; Parts 1, 2, 6 and 7 on Plan 66R-14209; Parts 9, 18, 22, 26, 27, 28 and 29 on Plan 66R-15185 except Parts 18, 19 & 24 on Plan 66R-14491; and together with rights of way as in C439834
Assessment Roll Number:	1904-04-1-012-00200
Approximate Dimensions:	70.62 m (231.69 ft) x 71.63 m (235 ft)
Approximate Site Area:	4,943 m ² ± (53,207 ft ² ±)
Improvements:	3 Multi-Storey Buildings and a Parking Garage; comprising 106 residential units including bachelor, 1, 2, & 3-bedroom units.
Zoning:	The Harbourfront Zoning By-Law 289-93 – CR (Residential Uses, recreational parking)
Official Plan:	Apartment Neighbourhoods

CONCLUSION

Considering that the sale transaction would result in the public benefits of TCHC providing housing accommodation primarily for persons of low to moderate incomes until at least 2047, staff recommend that ownership title be transferred to TCHC at nominal consideration. Staff also recommend the proposed transfer of the Property for better efficiency in portfolio management, from both the City and TCHC's perspective.

CONTACT

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SIGNATURE

Josie Scioli
Chief Corporate Officer

Phillip Abrahams
General Manager, Shelter, Support &
Housing Administration

ATTACHMENTS

Appendix "A" Basic Terms of Sale Transaction
Appendix "B" Location Map

Appendix "A"

Property	PIN 21418-0008(LT) PCL BLOCK 6-5 SEC AD1429; PT BLK 6 PL D1429 TORONTO PT 1, 2, 6, 7, 66R-14209, PT 9, 18, 22, 26, 27, 28, 29, 66R-15185 EXCEPT PT 18, 19, 24, 66R-14491; T/W ROWS AS IN C439834; TORONTO, CITY OF TORONTO
Purchaser	Toronto Community Housing Corporation
Consideration	\$10.00 plus HST
Irrevocable Date	30 days after approval of the sale by City Council
Purchaser's Due Diligence Period	45 days after offer acceptance
Closing Date	60 days after offer acceptance or by mutual agreement.
"As Is, Where Is"	The Property will be sold "as is, where is"
Representations or Warranties	The Property will be sold without any representations or warranties by the Vendor.
Permitted Encumbrances	Purchaser to take title of the Property subject to all instruments registered on title to the Property at the time of making the offer. Purchaser to take title to the Property subject to all encroachments, defects, or irregularities in title which are of a minor nature and do not materially adversely affect the use or value of the Property or impair the use of the Property for the purpose for which it is used.
Release of Existing TCHC Lease	On Closing, Purchaser (as tenant) to release Vendor (as landlord) from all obligations and claims whatsoever under the TCHC Lease, in form and content satisfactory to the City Solicitor.
Dylex Lease	On Closing, Vendor to assign and Purchaser to assume the existing Dylex Lease together with associated mutual easements and shared facilities agreements of which City is a party. There will be no indemnification from the Vendor for any pre-closing matters. If requested by the Purchaser prior to Closing, the Vendor will seek a Certificate from the tenant under the Dylex Lease as to the status of the Dylex Lease and provide same to the Purchaser.

Appendix “A”

<p>Toronto Hydro Infrastructure and Easement</p>	<p>Purchaser acknowledges there is an existing underground hydro cable and equipment on the Property and agrees to communicate with Toronto Hydro to determine whether Toronto Hydro requires an easement prior to Closing and provide evidence satisfactory to the City of same. If an easement is required by Toronto Hydro prior to Closing, it will be granted by the Vendor, on terms and conditions satisfactory to the Vendor, including the determination of the fair market consideration, which shall be retained by the Vendor. The Vendor will not incur any costs associated with the grant of easement, including the reference plan and registration costs.</p>
<p>Adjustments</p>	<p>There will be no adjustments on Closing for matters that are payable by the respective tenants of the Property, including realty taxes and utilities. There will be no adjustment for basic rent, which is nominal under both the TCHC Lease and Dylex Lease. There will be no amounts payable by the Vendor to the Purchaser on Closing.</p>
<p>Amended Assisted Housing Agreement</p>	<p>On Closing, TCHC and the City will enter into an amended Assisted Housing Agreement in accordance with the Council approval.</p>
<p>Amended Operating Agreement</p>	<p>On Closing, TCHC and the City will enter into an amended Operating Agreement in accordance with the Council approval.</p>

APPENDIX "B" – LOCATION MAP

