



IN CAMERA

CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Report Date: May 11, 2007
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RTS No.: 06754
VanRIMS No.: 08-2000-21
Meeting Date: May 17, 2007

TO: Vancouver City Council

FROM: The City Manager, in consultation with the Director of Finance, and the Project Manager for Southeast False Creek & Area 2A.

SUBJECT: Interim Financing Agreement for the Development of Area 2A

IN CAMERA RATIONALE

This report is recommended for consideration by Council in the In Camera agenda as it relates to Section 165.2(1) of the *Vancouver Charter*:

(k) negotiations and related discussions respecting the proposed provision of an activity, work or facility that are at their preliminary stages and that, in the view of the Council, could reasonably be expected to harm the interests of the city if they were held in public.

RECOMMENDATION

- A. THAT, the City Manager be authorized to enter into a legal agreement with Millennium Southeast False Creek Properties Ltd. ("Millennium") and Quest Capital Corp. ("Quest") to facilitate interim financing for up to \$100 Million for the development of Millennium's buildings within Southeast False Creek ("SEFC") Area 2A, by guaranteeing to take over Millennium's obligations under the Loan in the event of an unresolved material default by Millennium;
- B. THAT the Director of Legal Services be authorized to execute and deliver on behalf of the City all legal documents required to implement Recommendation A; and
- C. THAT no legal rights or obligations will be created or arise by Council's adoption of Recommendations A, and B above unless and until such legal documents are executed and delivered by the Director of Legal Services.

CITY MANAGER'S COMMENTS

The City Manager notes that this is a somewhat unique financing situation in Area 2A. As a result of the terms of the Lease and the Property Lender Protection Agreement (PLPA), Millennium is unable to secure the necessary interim financing to bridge the period until its major construction financing can be put in place, and has asked the City for assistance.

The central issue is the reluctance of the proposed lender - Quest - to agree with the terms of the PLPA because the risk allocation is not as balanced as it would be in a conventional lending scenario where there is freehold interest in the land which can be pledged as security. In addition, under the terms of the PLPA, Quest would only get 90% of the financing it advances to the project at some point after the Exclusive Use Period.

Based on this lack of certainty that the financing can be recovered in full and in a timely manner, Quest, is not prepared to accept the PLPA terms, denying Millennium access to the interim financing it requires. The proposal presented here is to agree to changes outside the PLPA in an effort to keep the PLPA in place for the construction financing stage. The changes ensure Quest is repaid in full for the funds invested in the project (up to the \$100 million dollars) within 30 days after construction financing is in place. The City Manager believes that PLPA changes may also be necessary at the point of construction financing and another recommendation is suggested to deal with that eventuality.

The City is required to complete the Olympic Village on time for the 2010 Games and has accepted all the construction, market and financial risks in achieving that mandate under the Venue Agreement.

Millennium has agreed to pay the City a substantial price for the land including financing and developing the housing required during and after the Games and staff believe they have the capacity to complete the project on time. The City does not have that capacity nor expertise and would be at a significant disadvantage if Millennium were forced into a material default. The risks to the City of acting on the recommendation in this report are insignificant compared to the responsibility the City would assume if it had to step in and complete the project.

Entering into this agreement will also have a side benefit for the City. If a material default occurs, the City is still required to complete the Athletes Village for the Olympics and therefore, the City would also need this short term financing until construction financing could be put in place. The agreement with Millennium and Quest will secure that lender, ensuring that financing is in place while the City pursues construction financing on its own. This mitigates risk to the City.

The City Manager believes that changes may well need to be made to the PLPA as part of construction financing in order to keep the project on schedule. Therefore, the City Manager suggests an additional Recommendation D, as follows:

- D. THAT the City Manager in consultation with the Director of Finance be given authority to negotiate any changes necessary to the PLPA AND THAT the Director of Legal Services be authorized to document such changes and to execute and deliver on behalf of the City all legal documents required to implement.

COUNCIL POLICY

There is no applicable Council Policy.

PURPOSE

The purpose of this report is to give the City Manager the authority to enter into a legal agreement with Millennium and Quest to assist Millennium in securing necessary short term interim financing for up to \$100 Million for the development of Millennium's buildings within SEFC Area 2A.

BACKGROUND

In 2005, the City issued the Request for Proposals ("RFP") for the selection of a developer of the City's property within SEFC Area 2A (the "Lands") to construct the developer's buildings (i.e. the Market Housing, Modest Market Housing and Commercial Space) and the City's buildings (i.e. the Affordable Housing, Community Centre and Childcare Facility) (collectively, the "Project") in time for their use as the "Olympic Village" between November 1, 2009 and April 7, 2010 (the "Exclusive Use Period") by VANOC for the Olympics. The RFP required the selected respondent (the "developer") to enter into a Lease with the City for the Lands so that in the event the developer could not complete the Project prior to the Exclusive Use Period, the City would have the ability to terminate the Lease and takeover and complete the Project. The developer was also required to provide the City with a deposit (the "Deposit") as security for its obligations to achieve the requirements of the Lease and the deadlines for the Project. After the Exclusive Use Period, the Lease allows the developer to purchase the portions of the Lands upon which its buildings are located at the purchase price included in its proposal in response to the RFP, adjusted by the remaining amount of the Deposit.

As the developer is required to complete the Project under the Lease, the City included a "project lender protection agreement" ("PLPA"), as a schedule to the Lease. The purpose of the PLPA, amongst other objectives was to allocate risk appropriately between the developer, City and project lender, and thereby assist in the securing of project financing. It also establishes priorities and timing for repayment of such funds. Basically, in the event of a material default by the developer, the City would recognize all the benefits to the City's Lands, subject to real estate market risks. The lender would then have to wait until after the Exclusive Use Period to recover its funds. The PLPA is not a conventional instrument in the common practice of construction financing.

The initial funding secured by Millennium has now been committed. The construction financing is approximately four to five months away because pre-sales are an important factor in arranging the construction financing, and the sales marketing for Millennium's buildings will not start until the fall of this year.

In order to continue the Project until Millennium can secure its major construction financing, Millennium notes that it requires approximately \$100 Million interim financing for a period of 4 to 5 months. A lender, Quest, has agreed to make these funds available to Millennium; however, due to the fact that the Lands are in leasehold, the PLPA does not guarantee the full return of the funds, and that the repayment would be delayed until after the Exclusive Use Period, Quest, as a short term lender, is not prepared to advance the funds without significant changes to the PLPA.

Although Quest's Loan is only required for the short term by Millennium, as it is to be paid back as a first priority by Millennium once the construction financing is secured, staff are reluctant to substantively change the PLPA at this time due to the protracted negotiations that would be necessary.

Millennium has approached the City with this financing issue, to avoid any impact on the project or the timing of the delivery of the Olympic Village. It should be noted that at this time the project is proceeding in accordance with the agreed to schedule. All milestone dates have been met. The zoning is enacted and Development Permits have been approved on most of the parcels. The building permits are well underway and partial permits for construction below grade are being issued. The overall excavation is going well and it is expected that the pouring of the foundations will start in May 2007.

DISCUSSION

In response to Millennium's request, a strategy has been put together to facilitate Millennium's interim financing, without changing the PLPA. As the City has already accepted the responsibility of delivering the Olympic Village, the most significant risk at this time is any threat to the project and its timing and delivery. With this in mind, it is recommended that in the unlikely event of a material default by Millennium, the City would guarantee the repayment of 100% of the interim financing, within 30 days of securing construction financing, providing that:

- It can be documented to the satisfaction of the City Manager that all funds are spent adding value to the project; and
- That Quest is prepared to transfer the interim financing to the City, in the event of a material default by Millennium.

This strategy provides an added benefit to the City, as if there was a material default, the City would have to complete the project, and like Millennium, would need the same interim financing, until construction financing could be put in place. This financing would be secured by the recommended agreement. While there is some risk with this approach, it is no more risk than the City has already accepted, it is short term (4 to 5 months) and it is insignificant compared to the risk which would be encountered if our development partner were put in a position of material default, and the City had to become the developer.

ALTERNATIVES/OPTIONS

As an alternative to the option recommended above, the City could refuse to agree to this interim financing proposal, and enforce the current requirements of the PLPA. This is not recommended as it would in staffs' opinion magnify the overall risk to the City, by threatening the delivery of the Olympic Village.

FINANCIAL IMPLICATIONS

Providing the Guarantee to Quest for the Loan will have no financial impact on the City, unless there is a material default by Millennium and termination of the Lease by the City. The Lease anticipates that in circumstances where Millennium is in material default, the City will step in and assume responsibility for completing the Project, including the responsibility for project financing and all other associated risks.

The Guarantee will be for the short term, with the direct exposure of the City lasting only until construction financing can be arranged by Millennium. As the agreement would tie any payments to Quest to securing construction financing, it should not require the City providing any funding from its existing resources.

An unresolved material default by Millennium under the Lease would have more significant financial implications for the City than the agreement (Guarantee) in Recommendation A in that the City would have to step in and complete the Project. If this circumstance arises, the City would have to arrange interim financing to complete the Project. While staff consider this situation to be extremely remote, if it were to arise, the Director of Finance would immediately ask for Council's authority to arrange short and/or longer term financing to ensure the Project is completed on time.

CONCLUSION

Short term interim financing needs to be put in place by Millennium for the construction cost of its buildings. Staff have looked at this issue, and on balance, believe that the strategy put forward is the appropriate course of action. The most significant risk to the City, at this time, is any complication which would impact Millennium's ability to complete this project.

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1. Interim Financing Agreement for Development of Area 2A

Brent MacGregor, Deputy City Manager; Jody Andrews, Deputy City Manager/Project Manager Southeast False Creek, Ken Bayne, Director of Financial and Treasury Services, and Ian Smith, Manager of Development of Southeast False Creek, reviewed a proposal to give the City Manager the authority to enter into a legal agreement with Millennium and Quest to assist Millennium in securing necessary short-term interim financing for up to \$100 Million for the development of Millennium's buildings within SEFC Area 2A.

MOVED by Councillor Louie

- A. THAT, the City Manager be authorized to enter into a legal agreement with Millennium Southeast False Creek Properties Ltd. ("Millennium") and Quest Capital Corp. ("Quest") to facilitate interim financing for up to \$100 Million for the development of Millennium's buildings within Southeast False Creek ("SEFC") Area 2A, by guaranteeing to take over Millennium's obligations under the Loan in the event of an unresolved material default by Millennium;
- B. THAT the Director of Legal Services be authorized to execute and deliver on behalf of the City all legal documents required to implement Recommendation A; and
- C. THAT no legal rights or obligations will be created or arise by Council's adoption of Recommendations A, and B above unless and until such legal documents are executed and delivered by the Director of Legal Services.
- D. THAT the City Manager in consultation with the Director of Finance be given authority to negotiate any changes necessary to the Property Lender Protection Agreement (PLPA) such that the maximum exposure of the City is limited to the City's assets in sub area 2A and that the Director of Legal Services be authorized to document such changes and to execute and deliver on behalf of the City all legal documents required to implement this agreement.

CARRIED UNANIMOUSLY