

Municipality of Chatham-Kent

CAO's Office

Legal Services

To: Mayor and Members of Council

From: David Taylor, Director, Legal Services

Date: January 5, 2024

Subject: Purchase of Part of the Downtown Chatham Centre Property from 100 King Street Holdings Inc.

Recommendation(s)

It is recommended that:

1. Council authorize the Chief Administrative Officer and Director of Legal Services to execute an agreement to purchase a portion of the Downtown Chatham Centre mall property from 100 King Street CK Holdings Inc. on the following negotiated terms:
 - a. A purchase price of \$2,950,000 for Parts 1 and 2 on the draft plan shown in Appendix "A", funded from the Building Lifecycle Reserve;
 - b. A buy-back provision such that the Municipality can trigger the re-purchase of the property by 100 King Street CK Holdings Inc. at the same purchase price within 18-24 months, should the Municipality decide not to proceed with redevelopment of the property;
 - c. An option to purchase and right of first refusal giving 100 King Street CK Holdings Inc. the ability to repurchase the property should the Municipality not proceed with the redevelopment after 18 months, or if the Municipality receives a third party offer within five years of purchasing the property that it is prepared to accept;
 - d. A parking licence agreement granting 175 parking spaces for municipal use in the parking garage and/or the DCC parking lot, along with access rights through the mall property;
 - e. Easements be granted to ensure each party's access to the loading dock;
 - f. Leasing a portion of the DCC roof to 100 King Street CK Holdings Inc. currently being used for solar panels, along with a right for the Municipality to have 1/3rd of those panels moved as part of the redevelopment.

Background

On June 28, 2021, Council directed Administration “to prepare a report regarding options for relocation or redevelopment of municipal assets including, but not limited to, the Civic Centre as part of the plans to redevelop the Downtown Chatham Centre property”. Shortly afterwards, Administration issued a survey on behalf of 100 King Street CK Holdings Inc. soliciting ideas from the public as to how the DCC site could be redeveloped.

On June 13, 2022, Administration brought a report to Council regarding 100 King Street CK Holdings Inc.’s “Imagine Chatham-Kent” proposal. The Imagine Chatham-Kent proposal has been revised several times based on discussions with 100 King Street CK Holdings Inc. and the Municipality’s investigations into whether purchasing part of the DCC property would be feasible, as described in the August 14, 2023 report to Council.

At the October 30, 2023 Council meeting, Council approved the following recommendations in evaluating the public consultation conducted for the Imagine Chatham-Kent proposal:

“That:

1. Administration not proceed any further with the following options:
 - a. Option 1, Do Nothing/Address Requirements on an As-needed Basis.
 - b. Option 3, Renovate the Existing Civic Centre/Library Expansion/Cultural Centre
 - c. Option 4, Build a New Civic Centre at a New Location
2. Administration report back, as soon as possible, with an action plan and funding source to address the various Life Safety concerns identified in the Building Condition Assessment report for the Civic Centre.
4. Should Council wish to expand the existing level of service by expanding the library and further enhance the Municipality’s cultural assets, then proceed with the further exploration of Option 5, Purchase a Portion of Downtown Chatham Centre & Relocate, subject to the following conditions:
 - a. The terms include a mandatory buy-back provision of the property at the same negotiated sale price by the Investor Group should the Municipality decide not to proceed with a redevelopment for municipal purposes within 18 months from the time of a final transaction; and,
 - b. The Investor group guarantee to provide a set amount of parking spaces required for municipal needs at commercially reasonable rates, satisfactory to the Municipality.
5. That the library be granted 35,000 square feet in the new facility and the Curator and Chief Librarian be included in the planning phase.”

Administration has continued discussions with 100 King Street CK Holdings Inc. and successfully negotiated terms to satisfy the requirements of 4a and 4b above. Administration is now prepared to recommend executing an Agreement of Purchase and Sale with the 100 King Street CK Holdings Inc. to purchase the part of the DCC property shown as Parts 1 and 2 on the attached Appendix "A" for \$2,950,000.

Comments

The Agreement of Purchase and Sale negotiated with 100 King Street CK Holdings Inc. includes the following terms:

1. The former Sears portion of the DCC mall property and the loading dock area will be transferred to the Municipality for \$2,950,000. The Municipality's intention would be to relocate part of its municipal services to this location once refurbishment of the building is completed for this purpose by the Municipality. The Municipality will be retaining appropriate consultants and contractors for this work, and future reports to Council will address the design, construction, and project management aspects of the redevelopment.
2. The closing (purchase) of the property to occur on January 31, 2024.
3. Due to a report received by GM BluePlan Engineering Limited on upgrades required to the parking garage structure, Administration has determined that the Municipality should not obtain ownership of the parking garage as originally intended. 100 King Street CK Holdings Inc. has instead agreed to terms in a parking licence agreement as part of this transaction. The Municipality would be given guaranteed use of 175 parking spaces, which can be solely in the parking garage at the Municipality's discretion, or partly in the uncovered parking lot. The parking licence agreement will be for five ten-year terms (up to 50 years at the Municipality's discretion) and the parking spaces will be subject to a per spot fee based on the average outdoor or indoor parking price in Chatham accordingly. 100 King Street CK Holdings Inc. will be required to maintain the parking lot, provide security, and provide and install signage for the Municipality's designated parking spots. The Municipality will also be provided with access rights from the parking, through the mall. If 100 King Street CK Holdings Inc. begins charging for the public use of the parking areas in the future, the Municipality will also have a right to secure an additional 25 spaces for use by the general public attending at the civic centre, library and museum. The parking licence agreement includes a process for reviewing and revising the number of spaces needed and the price of parking, at regular intervals. The agreement also provides for rights regarding the future installation of electric vehicle charging stations.
4. A buy-back/sell back agreement which provides:
 - a. Should the Municipality decide not to proceed with the redevelopment of the purchased property, the Municipality can trigger the re-purchase of the property by 100 King Street CK Holdings Inc. at the same purchase price between a time period of 18 to 24 months from the purchase of the

property. This time period will allow the Municipality to perform further design and purchasing work, and for Council to make a final decision on proceeding with the redevelopment with more firm information about costs, or other information Council may require;





- b. Should the Municipality not proceed with the redevelopment within 18 months, 100 King Street CK Holdings Inc. will have an option to repurchase the property at the same purchase price plus the Municipality's direct costs for improvements to the property since it had been purchased;
 - c. Should 100 King Street CK Holdings Inc. choose not to exercise its option to repurchase the property noted in b. above, it will still get a notice from the Municipality if the Municipality receives a third-party offer to purchase the property that the Municipality wishes to accept, for a five-year period. 100 King Street CK Holdings Inc. can then exercise a right of first refusal to repurchase the property on the same terms as the third-party offer.
5. An easement will be granted to 100 King Street CK Holdings Inc. to ensure that the company has access to the mall loading dock, which will only be accessible through part of property to be transferred to the Municipality as part of the purchase.
6. A portion of the DCC roof will be leased to 100 King Street CK Holdings Inc. currently being used for solar panels. 100 King Street CK Holdings Inc. has a solar rooftop lease with SPN LP2, and it is not tenable to remove the solar panels at this time. The Municipality will lease the portion of the roof housing the solar panels to 100 King Street CK Holdings Inc, whereby 100 King Street CK Holdings Inc. will be able to access the rooftop to maintain and repair the panels. This will ensure that the Municipality does not take on obligations in relation to the solar panels. Additionally, 100 King Street CK Holdings Inc. will be obligated to arrange for a removal/relocation of up to 1/3rd of the solar panels to allow for redevelopment of the Sears portion of the DCC. This will allow for anticipated changes to the building that are likely necessary for the Municipality's intended use, including installation of a skylight.

All of these concepts were thoroughly negotiated to ensure the land being purchased can be successfully redeveloped as the location for the anticipated municipal purposes. The transaction also ensures that if the Municipality decides within the 18 to 24 month time period not to proceed with this development for any reason, 100 King Street CK Holdings Inc. will re-purchase the property for the same purchase price.

Should the recommendation herein be approved, further reports to Council addressing the next steps for redevelopment of the property and approving necessary procurement processes will be brought forward by Administration at appropriate times.

Council Term Priorities

This report supports the following Council Term Priorities:

			
Deliver Excellent Service	Promote Safety & Well-Being	Grow Our Community	Ensure Environmental Sustainability
1a; 2d; 5a	2a	3a; 5a	1a; 1b

Consultation

Various members of Administration have had significant involvement in the negotiation of the Agreement of Purchase and Sale for the potential purchase of part of the DCC Property.

As noted in the October 30, 2023 Imagine Chatham-Kent Update Report to Council, a significant amount of public consultation has been conducted and Administration has reviewed and considered the public feedback on this topic.

Communication

Should the recommendation herein be approved, Legal Services will be in communication with 100 King Street CK Holdings Inc.'s lawyer to proceed diligently with closing the transaction.

Diversity, Equity, Inclusion and Justice (DEIJ)

Should the recommendation herein be approved, the acquisition of part of the DCC property will allow for construction of a new Civic Centre, library and cultural assets. Administration has concerns about the accessibility of these municipal facilities, and so in constructing this new municipal building, a key goal will be to strive to improve equitable access to municipal services. As with all major renovation projects, accessibility will be an important factor in design and construction, and the design.

Financial Implications

An appraisal produced by Robson Associates Inc. for the lands, building, and parking garage at the DCC property provided an appraised value of \$2,208,000 to \$2,434,000. This appraisal was conducted before Administration determined it would not be beneficial to obtain ownership of the parking garage. This appraisal amount was based on a per-acre cost, plus a value attributable to the parking garage. With a reduction of the total amount of land being purchased by the Municipality, and the removal of the

parking garage, the application of Robson's approach to valuation of the property being purchased would result in a value of \$630,000.

Administration has obtained an assessment from a third-party consultant, estimating the costs that can be avoided in construction by using the existing building structure of the Sears portion of the DCC. That review estimates potential savings of \$11,738,340.

Administration has negotiated with 100 King Street CK Holdings Inc. and they are willing to sell the property for no less than \$2,950,000. The majority of the value of the purchase price is for the existing building and building systems, but it also accounts for the land itself and the value of plans and drawings obtained by 100 King Street CK Holdings Inc. in preparation for this transaction. The cost of the existing drawings is \$143,400.

While the value of the land alone would not support the purchase price sought by the current owners, with the significant cost savings to construction based on the value of the existing building structure, the value of owning existing plans and drawings prepared to date, and the unique terms of this transaction including the assumption of solar lease responsibilities and long term parking rights, Administration believes that the purchase price of \$2,950,000 can be supported for this transaction. Additionally, as discussed above, if Council decides to not proceed with the project, the Municipality does have a right to require a repurchase of the property by 100 King Street CK Holdings Inc. at this same price. This right provides additional value in locking up the ownership of the building while procurement and design work occurs, allowing Council a final future decision point with a better understanding of the cost of the project.

The past Council decisions to not do major lifecycle updates to the Civic Centre since 2017 has resulted in an accumulation of \$6M in the Building Lifecycle Reserve. It is recommended that the funding for the DCC Sears purchase be funded from this reserve. This \$6M contribution from the Building Lifecycle Reserve is included in Appendix B - Preliminary Financial Plan in the Chatham-Kent Community Hub Report on tonight's agenda. Ultimately it will be a future decision of Council on whether the new project moves forward. If under the terms of the agreement the DCC Sears building is returned to the seller, the funds will be returned and replenish the reserve.

Prepared by: David Taylor, Director, Legal Services

Reviewed by: Michael Duben, Chief Administrative Officer

Attachments:

Appendix "A" – Depiction of DCC property to be purchased