Minutes – Executive Policy Committee – September 21, 2023

REPORTS

Item No. 10 Assiniboine Park Conservancy Amendment to Loan Guarantee

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and recommended to Council:

1. That the City's loan guarantee for Assiniboine Park Conservancy Inc.'s $20.0 million operating loan be extended to expire on December 31, 2028.

2. That authority be delegated to the Chief Financial Officer to negotiate and approve the terms and conditions of the loan guarantee and the ancillary documents, in accordance with this report and such other terms and conditions deemed necessary by the Director of Legal Services and City Solicitor to protect the interests of the City.

3. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

DECISION MAKING HISTORY:

Moved by Councillor Mayes,

That the recommendation of the Winnipeg Public Service be concurred in and forwarded to Council.

Carried

ADMINISTRATIVE REPORT

Title: Assiniboine Park Conservancy Amendment to Loan Guarantee

Critical Path: Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
R. Romaniuk	C. Kloepfer	C. Kloepfer	M. Jack

EXECUTIVE SUMMARY

On July 19, 2017, Council approved a report entitled "Increase in Loan Guarantee on Assiniboine Park Conservancy Line of Credit and Approval of an Amendment to the Assiniboine Park Conservancy Development Plan". The loan guarantee was increased to its previous non-revolving level of $17.0 million and extended from an expiry date of December 31, 2018 to December 31, 2020.

On July 18, 2019, Council approved a report entitled "Assiniboine Park Conservancy Amendment to Loan Guarantee". The guarantee was increased from $17.0 million to $20.0 million on a revolving structure to assist in managing cashflow requirements for construction of the Journey to Churchill and The Leaf – Canada's Diversity Gardens projects and extended the expiry date from December 31, 2020 to December 31, 2023. At the time, it was anticipated that The Leaf – Canada's Diversity Gardens project would reach substantial completion on August 14, 2020. As a result of construction challenges, substantial completion and opening of The Leaf was delayed until December 2022.

Assiniboine Park Conservancy Inc. ("APC") is requesting an extension of the expiry date of this revolving $20.0 million operating line of credit from December 31, 2023 to December 31, 2028. This extension will allow time for total completion of the project as well as the progression of legal claims to recover construction cost escalations.

The estimated cost of The Leaf – Canada's Diversity Gardens increased to $134.8 million from the $97.8 million Class 1 budget in 2019. The increase in cost is primarily attributable to challenges with the design and construction of the roof and associated delays. Although APC has been successful in its fundraising efforts, there is still a forecasted project funding shortfall of $21.9 million which is planned to be financed with the $20.0 million construction financing facility and APC's cash reserves.

APC has initiated litigation proceedings for damages approximating $20.0 million against the design consultant and construction manager. Results of this litigation are unknown. Depending on the outcome of the claims, APC may require long-term financing to fund any resulting project funding shortfall, which may require a further extension of the City's guarantee dependent on the loan amortization period.

RECOMMENDATIONS

1. That the City's loan guarantee for Assiniboine Park Conservancy Inc.'s $20.0 million operating loan be extended to expire on December 31, 2028.

2. That authority be delegated to the Chief Financial Officer to negotiate and approve the terms and conditions of the loan guarantee and the ancillary documents**,** in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

3. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

All loan guarantees and loan guarantee amendments require Council approval in accordance with the Loan Guarantee Policy.

IMPLICATIONS OF THE RECOMMENDATIONS

When the City guarantees a loan, it represents a financial commitment from the City which could result in financial loss in the event of a default. If the Applicant is in default of the loan agreement, the City would be obligated to make payments on the loan, amend the loan terms with the lender, or potentially loan directly to the Applicant to ensure the loan payment obligations are met. The City does not have a separate reserve to protect itself against potential default of loan guarantees.

APC is included in the consolidated Financial Statements of the City. APC also prepares audited financial statements which are published with the City's Detailed Financial Statements. APC has a history of meeting its financial commitments.

HISTORY/DISCUSSION

Financing

2023

Assiniboine Park Conservancy provided the City with regular updates on the status of the project.

- The Leaf – Canada's Diversity Gardens opened to the public on December 3, 2022.
- The Project reached substantial completion on December 19, 2022 and total completion is expected to be achieved by June 30, 2023.
- The delay in substantial completion from August 14, 2020 to December 19, 2022 and the increase in costs from the 2019 budget of $97.8 million to the forecasted total project cost of $134.8 million are primarily attributable to challenges with the design and construction of the roof.

- APC is pursuing legal action against the Design Consultant and Construction Manager to recover costs incurred as a result of the project schedule delays, increased costs, operational losses, and other loss and damage for which they are liable. These costs are currently estimated to be $20.0 million.
- Although APC has been successful in its fundraising efforts, there is still a forecasted project funding shortfall of $21.9 million which is planned to be financed with the $20.0 million construction financing facility and APC's cash reserves.
- APC is currently using $5.3 million of the $20.0 million construction financing facility as of April 20, 2023.
- It is unknown at this time, due to the legal claims in progress, if or when, further amounts related to the project will be paid out.
- APC has requested the City consider extending its loan guarantee relating to its construction facility with Royal Bank of Canada (RBC) on a revolving basis beyond December 31, 2023 to December 31, 2028 to permit additional time for final project completion and progression of legal claims.
- Depending on the outcome of the claims, APC may require long-term financing to fund any resulting project funding shortfall, which would require a loan guarantee from the City covering long-term loan amortization.
- APC will continue to provide regular updates to the City.

2019

On July 18, 2019, Council approved a report entitled "Assiniboine Park Conservancy Amendment to Loan Guarantee."

Recommendations for the loan guarantee were as follows:

1. That the City's loan guarantee relating to APC's operating loan be:
   a. Increased from $17 million to $20 million;
   b. Extended to expire on December 31, 2023;
   c. Amended from a portion that was non-revolving to revolving for the full value of the loan thereby permitting advances and repayments to assist in managing cash flow.

The City met with representatives of APC and was advised the budget for The Leaf – Canada's Diversity Gardens had increased from $75.0 million to $97.8 million. A summary of discussions is provided below:

- The Class A estimate (equivalent to a Class 1 estimate applied by the City) currently places total cost of the project at $97.8 million. APC indicated several factors forced the project's price to escalate, including a one-year construction delay with respect to awaiting government funding confirmations, an increase in the price of steel and an underground stream that created a need for more expensive foundations. The complex design for Canada's Diversity Gardens, an indoor structure that will offer precise light, temperature and humidity levels for a variety of plants, also played a role in the increase.
- It was anticipated that the project would reach substantial completion by August 14, 2020.
- APC requested the City consider extending its loan guarantee from $17 million to $20 million relating to its operating facility with RBC on a revolving basis beyond December 31, 2020 to December 31, 2023 to permit additional time for private fund raising.

- APC attended a Council Seminar on February 14, 2019 to provide an update of APC's progress to date with respect to the Canada Diversity Gardens project.
- Although APC was successful in fundraising, the extent of the new cost estimates represents a significant change. The revised estimate of $97.8 million represents a 30.4% increase over the previous estimate of $75.0 million. The City highlighted potential interim measures in terms of reducing the scope of the project and delaying the award of future contracts such as landscaping until private fund raising is confirmed.
- As at March 31, 2019, APC had received private donor pledges relating to the Canada's Diversity Gardens project of $23.1 million to be collected by the end of 2024. By the end of 2023, APC expects to fundraise $11.8M million of additional pledges to repay the operating facility.
- APC is aware that interest carrying costs form part of the project funding.

2017

On July 19, 2017, Council approved a report entitled "Increase in Loan Guarantee on Assiniboine Park Conservancy Line of Credit and Approval of an Amendment to the Assiniboine Park Conservancy Development Plan".

Recommendation 1 of the report "That APC's Development Plan be approved as supplemented by the concept plan for Canada's Diversity Gardens"

Recommendation 2 of the report included the following:

That subject to approval of Recommendation 1 and confirmation of incremental funding from the federal and provincial governments in a form satisfactory to the Chief Financial Officer, the following be approved:

A. Funding of $10 million be added to the Assiniboine Park Conservancy Capital Development Plan in the 2018 Capital Budget and refer consideration of funding sources to the 2018 capital budget process in respect of Canada's Diversity Gardens.
B. Additional capital of $4.7 million be referred to the 2018 Capital Budget process to provide temporary funding in 2019 for Canada's Diversity Garden and phase 2 of the Kids Discovery Zone thereby completing the City's obligation to fund $50 million of Capital Development improvements at Assiniboine Park.
C. A loan guarantee of Assiniboine Park Conservancy's non-revolving term loan facility ($6 million outstanding at March 31, 2017), which expires on December 31, 2018 be extended to December 31, 2020 and increased to its previous level of $17 million to facilitate: construction, the ongoing collection of charitable donation pledges and federal and provincial government grants which are the source of repayment for the loan facility.

2016

The 2016 Adopted Operating Budget approved a loan guarantee for Assiniboine Park Conservancy for operational cash flow management purposes in an amount not to exceed $500,000. This loan guarantee remains in place. In addition, the recommendations remove the provision relating to the remaining non-revolving loans previously associated with the Journey to Churchill of approximately $3.5 million which will now form part of the $20.0 million revolving loan extension to the end of 2023.

FINANCIAL IMPACT

Financial Impact Statement Date: May 11, 2023

Project Name:

Assiniboine Park Conservancy Amendment to Loan Guarantee

COMMENTS:

There are no immediate financial implications from the recommendations in this report. If Assiniboine Park Conservancy defaults on its loan, the City would be obligated to make payments on the loan, amend the loan terms with the lender or potentially loan directly to the Applicant to ensure the loan payment obligations are met. Any financial implication of the default will be assessed when and if Assiniboine Park Conservancy defaults on the loan obligation, as this cannot be predicted at this time.

Lioubov Gavrilova-Crozier, May 11, 2023

Lioubov Gavrilova-Crozier, CPA, CA
Manager of Finance & Administration (Campus)

CONSULTATION

This Report has been prepared in consultation with:

- Legal Services
- Community Services

OURWINNIPEG POLICY ALIGNMENT

Living in a Sustainable City in *OurWinnipeg 2045* identifies the following characteristic of leadership and good governance in the municipal context: Acting in the intergenerational, and city-wide public interest, for broad community benefit.

The Loan Guarantee Policy aligns with economic sustainability goals to ensure the long-term economic well-being of the City.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Consideration was given as to whether this report connects to the Winnipeg Climate Action Plan (CAP), and it was determined that the CAP is not applicable to this specific report.

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

Consideration was given as to whether this report connects to the Winnipeg Poverty Reduction Strategy (PRS) and its Goals and Objectives, and it was determined that the PRS is not applicable to this specific report.

SUBMITTED BY

Department: Corporate Finance
Division: Treasury
Prepared by: Rick Romaniuk, Treasury Analyst
Date: May 11, 2023
File No: N/A