Minute No. 198
Report – Executive Policy Committee – February 16, 2005

Item No. 2 **Heritage Conservation Tax Credit – Transfer to the Amalgamated Corporation owning 331 Smith Street**
File G-3.1.5

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the transfer of heritage conservation tax credits to the newly amalgamated corporation, Marlborough Hotel Corporation, the owners of the Marlborough Hotel, 331 Smith Street, be approved.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

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DECISION MAKING HISTORY:

Moved by His Worship Mayor Katz,
That the recommendation of the Executive Policy Committee be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 16, 2005, the Executive Policy Committee concurred in the administrative recommendation and submitted the matter to Council.

Re: APPROVAL TO TRANSFER HERITAGE CONSERVATION TAX CREDIT TO THE AMALGAMATED CORPORATION OWNING 331 SMITH STREET

For submission to: **Executive Policy Committee**

Original report signed by: **Director of Planning, Property and Development**

Report date: January 21, 2005

Recommendation(s):

- That City Council approve the transfer of heritage conservation tax credits to the newly amalgamated corporation, Marlborough Hotel Corporation, the owners of the Marlborough Hotel, 331 Smith Street.
- That the Proper Officers of the City be authorized to do all things necessary to effect the intent of the foregoing.

REPORT SUMMARY

Key Issues:

- Winnipeg City Council approved a Heritage Conservation Tax Credit of $405,300 to the Marlborough Hotel Corporation. On August 31st 2004, the Marlborough Hotel Corporation amalgamated with 3601901 Manitoba Inc. to become the Marlborough Hotel Corporation.
- Winnipeg City Council must approve the transfer of the tax credit to the new consolidated or amalgamated corporation.
- The new corporation agrees to sign a legal agreement assuming all obligations of the previous corporation.

Implications of the Recommendation(s):

General implications:

X	**None**
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment(s):

Policy implications:

X	**No**
	Yes

Comment(s):

Environmental implications:

X	**No**
	Yes

Comment(s):

-

Human resources implications:

X	**No**
	Yes

Comment(s):

-

Financial implications:

X	**Within approved current and/or capital budget**
	Current and/or capital budget adjustment required

Comment(s):

- There are no additional financial implications resulting from the report other than costs associated with commitments made to the previous property owner. The report is recommending the transfer of amounts already considered as being committed by the City.

REASON FOR THE REPORT:

Under the terms of the Heritage Conservation Tax Credit By-law No. 7155/98 (as amended), Council must approve the transfer of the tax credit to the new consolidated corporation.

HISTORY:

On May 19, 2004 under the terms of the Heritage Conservation Tax Credit By-law No. 7155/98 (as amended), Council approved a tax incentive of up to $405,300 to the Marlborough Hotel Corporation. On August 31, 2004 the Marlborough Hotel Corporation and 3601901 Manitoba Inc. amalgamated to form the Marlborough Hotel Corporation

On November 16, 2004, the owner provided the City a copy of the Articles of Amalgamation and advised that they have agreed to sign a legal agreement to assume all the obligations of the original applicants.

DISCUSSION:

The owners of the Ramada Marlborough Hotel, 331 Smith Street, have amalgamated with 3601901 Manitoba Inc., the owners of the former Garrick Theatre located at 330 Garry Street and have registered the new corporation as the Marlborough Hotel Corporation. They are also revising their agreement to meet all the obligations of the Heritage Conservation Tax Credit By-law No. 7155/98 (as amended) and are requesting Executive Policy Committee's approval for the transfer of the tax credits.

An amalgamated corporation possesses all of the rights of each of its amalgamating corporations, as well as being subject to all of the liabilities of each of its amalgamating corporations.

However, paragraph 25 of the signed Heritage Agreement provides as follows:

> **"This agreement may not be assigned or transferred by the Applicant without the prior consent of the City in accordance with the provisions of The Heritage Conservation Tax Credit By-law. This restriction on assignments or transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger or consolidation. Any attempted assignment or transfer in derogation of this prohibition is void. …"**

Therefore, according to paragraph 25 of the Heritage Agreement, the consent of the City is required to a merger or consolidation, that is, an amalgamation.

The provisions of The Heritage Conservation Tax Credit By-law referred to in paragraph 25 of the Heritage Agreement are sections 13(1) and 13(2), which require the approval of Council and the agreement of the new owner to assume all obligations of the applicant in order to transfer the tax credit to the new owner.

The Heritage Conservation Tax Credit By-law No. 7155/98 (as amended) states:

13(1) Subject to subsection (2), if an applicant wishes to sell or transfer title or the long-term lease in the designated structure, any approved tax credit or portion thereof which has not been released to the applicant is not transferable and will be cancelled.

13(2) If Council so approves and if the new owner or long-term tenant of the designated structure agrees to assume all obligations of the applicant as hereinbefore set out, the approved tax credit or portion thereof may be transferred to the new owner or long-term tenant.

Therefore, to ensure that the previously approved tax credit is validly transferred to the amalgamated corporation, it is necessary to obtain Council approval to the transfer to the amalgamated corporation of the previously-approved tax credit, even though the amalgamated corporation has the same name as one of the amalgamating corporations.

FINANCIAL IMPLICATIONS:

This is a standard request and if approved will provide for the ongoing upkeep and maintenance of the building for the duration of the terms of the tax credit. There are no additional costs to the City beyond what was originally approved.

Financial Impact Statement Date: January 20, 2005

COMMENTS:

There are no financial implications associated with the recommendations in this report. The heritage tax credits of up to $405,300 were approved by Council on May 19, 2004. This report recommends transferring these credits to a new Marlborough Hotel entity arising from an amalgamation.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

Legal Services

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Planning and Land Use
Prepared by: Giles Bugailiskis
PPD File #: HTC 09-2001

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