

Report to Council



Date: April 17, 2023
To: Council
From: City Manager
Subject: Non-Market Lease of 1360 Bertram Street to Pathways Abilities Society
Department: Real Estate

Recommendation:

THAT Council receives, for information, the report from the Real Estate department dated April 17, 2023, with respect to a 60-year non-market lease agreement between the City of Kelowna and the Pathways Abilities Society;

AND THAT Council approves a 60-year non-market lease of the city-owned property at 1360 Bertram Street to the Pathways Abilities Society, as per the general terms and conditions of the agreement attached as Schedule A to the report from the Real Estate department dated April 17, 2023;

AND FURTHER THAT the Mayor and City Clerk be authorized to execute the Lease Agreement and all documents necessary to complete this transaction.

Purpose:

To obtain Council approval for the 60-year non-market lease agreement (the "Lease") between the City of Kelowna (the "City") and Pathways Abilities Society ("Pathways").

Background:

In its recently released 2023-2026 priorities, Council identified affordable housing as a key focus area, with action items that include increasing the availability of rental units with below market rents and pursuing partnerships with organizations for the creation of low-cost affordable housing projects.

Pathways is a non-profit organization that provides services to adults with developmental disabilities in Kelowna and the surrounding areas. The organization's mission is to empower those with diverse abilities in participating more fully and independently in the community around them through the provision of day services, business services, residential opportunities, and integrated career opportunities. In particular, the residential service provides assistance to individuals to live independently in a manner conducive to their lifestyle choices.

The proposed agreement extends the City and Pathways' long-standing relationship at 1360 Bertram Street, which has been under a non-market lease to the society since 1945. On-site uses since that time have included a training and education facility (the Sunnyvale Workshop) and, more recently, the site of Pathways' employment services.

In 2016 Pathways secured funding from BC Housing to develop the Bertram Street property into an affordable housing apartment building. Since then, the City has been working closely with BC Housing and the Pathways to adapt the project to best meet the evolving needs of the community (including the closure and consolidation of a portion of Fuller Avenue in 2017 to create a larger development site).

The proposed partnership between the City and Pathways, with the support of BC Housing, addresses the affordable housing priority identified by City Council and provides a direct and tangible response to the affordable housing shortage Kelowna is currently facing. The attached Lease Agreement was created to set out the terms of the relationship between the City and Pathways based on shared common principles and establishes a legal framework that details the responsibilities and accountabilities of each party.

Throughout the preparation of the Lease Agreement, the parties have consistently acted in the spirit of collaboration, good faith, and with the shared goal of increasing the availability of affordable housing opportunities to the citizens of Kelowna. Notwithstanding the collegial approach to these negotiations, the Lease Agreement prepared is a comprehensive agreement and has undergone considerable internal and legal review.

Discussion:

The City's historically preferred model to support the delivery of non-market housing is to form a three-way partnership with the City (as landowner), BC Housing (as development funder) and the society (as operator). Under this model, City lands were leased to BC Housing, who then sub-leased them to the operating society.

In 2022 BC Housing notified the City of a policy change which requires the society to enter into the lease agreement directly with the landowner in order to satisfy Canadian Mortgage and Housing Corporation lending requirements (see attached Schedule B). As a result, the proposed Lease Agreement (and future leases for similar purposes) will be directly between the City and the operating society, and not include BC Housing as an interim leasee.

Staff have worked closely with Pathways and BC Housing in developing the Lease Agreement, the key terms of which are as follows:

1. The City provides Pathways with a sixty (60) year lease of 1360 Bertram Street at a cost of ten dollars (\$10.00);
2. Pathways is solely responsible for all expenses relating to the leased property during the term, including, without limitation, realty taxes, utilities, maintenance and repair expenses, and insurance costs;

3. Concurrently with the Lease Agreement, BC Housing and Pathways will enter into an Operating Agreement (Schedule C) for a term of forty (40) years, which establishes resident criteria, maintenance standards, and reporting requirements that will allow Pathways to provide affordable housing units at below market pricing to the residents of Kelowna;
4. The City and Pathways will enter into an Operating Agreement (Schedule A of the attached Schedule A Lease Agreement) for a term of twenty (20) years, commencing upon the expiration of the BC Housing Operating Agreement, which establishes resident criteria, maintenance standards, and reporting requirements that will allow Pathways to provide affordable housing units at below market pricing to the residents of Kelowna;
5. The proposed housing project dedicates fifty-eight (58) units to households with low- to moderate incomes and ten (10) units to Pathways clients;
6. Pathways is solely responsible for the ongoing maintenance and repair of the property;
7. Pathways is solely responsible for all day-to-day operations, management decisions, and staffing of the housing facility;
8. The City remains the legal owner of the property; and
9. Pathways will provide appropriate support and will work in collaboration with many stakeholders operating in the community, to ensure the success of this housing facility.

Although the City has recently adopted a practice of including mandatory contributions to major capital renewal reserve funds and, in the case of longer-term leases, demolition funds within our non-market leases, in this instance the requirement for such contributions by Pathways would result in a direct increase in rents, as these are the society's sole means of cost recovery. It is understood that such a requirement would therefore be contrary to the purpose of providing affordable housing. Pathways has advised that in lieu of a capital reserve fund for major repair items, they would seek funding from BC Housing and/or the Canadian Mortgage and Housing Corporation for initiatives as the need arises.

The City will solely bear the contingent liability for the demolition of the building upon the expiration of the Lease Agreement.

As Kelowna continues to grow, the City and Pathways seek to work collaboratively in being proactive and responsive to the housing needs of our citizens. This Lease Agreement provides an opportunity to expand the availability of affordable housing to low- to moderate-income households, while also supporting the growth and independence of individuals with diverse abilities within our community. Occupancy of the first residents of the new building is anticipated in May.

Existing Policy:

The proposed non-market lease aligns with Council Policy 347 – Non-Market Leasing of Civic Lands and Buildings; for this reason, staff are recommending a non-market lease within these Lease and Operating Agreements.

Notice of the proposed disposition will be publicized in accordance with section 24 of the Community Charter.

Considerations not applicable to this report:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Financial/Budgetary Considerations:

External Agency/Public Comments:

Communications Comments:

Submitted by: J. Säufferer, Department Manager, Real Estate

Approved for inclusion: D. Edstrom, Director, Partnerships and Investments

Attachments: Schedule A – Lease Agreement City and Pathways
Schedule B – BC Housing Change Advice regarding Provincial Subleases
Schedule C – Operating Agreement: BC Housing & Pathways
Schedule D – PowerPoint