

Cheshire Homes of Saskatoon

ISSUE

Cheshire Homes is composed of two non-profit corporations established pursuant to *The Non-profit Corporations Act, 1995*. Cheshire Homes of Saskatoon (“Cheshire Society”) is the charitable arm responsible for fundraising and Cheshire Homes Management (“Cheshire Management”) is responsible for the operation of accessible and comfortable homes and support services for adults with disabilities.

Cheshire Homes is not established by the City of Saskatoon. However, the City is a member of the corporation and currently holds a controlling interest. This governance structure is an anomaly when compared to other boards, authorities and committees on which members of City Council or the City Administration sit, or for which the City has some responsibility. By letter dated January 26, 2021, Cheshire Homes has requested that the City consent to amendments to its governing documents that would either eliminate the City’s membership in Cheshire Management or alter the membership structure to permit increased membership by others having a close connection to Cheshire Homes.

Should the governance structure of Cheshire Management be re-evaluated? What role should the City of Saskatoon continue to play in the governance of Cheshire Management?

BACKGROUND

2.1 History

At the [February 16, 2021](#) meeting of the Governance and Priorities Committee (“GPC”), the Committee considered a letter from Tony Heit, Board President of Cheshire Homes dated January 26, 2021 and resolved that the Administration enter into discussions with Cheshire Homes and bring back a report to the April GPC meeting regarding their request.

2.2 Current Status

Cheshire Management was established in the 1970’s; its mandate to operate accessible and comfortable homes and support services for adults with physical disabilities. The Corporate Bylaws of Cheshire Management provide that:

- The City of Saskatoon is a member;
- The number of membership interests retained by the City is equal to the ratio of 43467:3;
- There is one class of membership, with each membership interest entitling the holder to one vote;
- All membership interests are for an indefinite term unless revoked or the member dies; and

- Not less than five and not more than 25 directors shall constitute the board of directors.

We understand that the other three membership interests were granted to the Cheshire Society and two individuals who have since passed away. Therefore, under the current structure, there are only two members of Cheshire Management, Cheshire Society and the City, with the City holding the controlling interest. The Board of Directors of Cheshire Management and Cheshire Society are identical.

A review of the City's files indicates that the membership interests were transferred to the City in lieu of an exchange of money for the transfer of property and various service costs. The transfers occurred on three occasions:

- 35,093 shares were transferred on July 7, 1973 representing the estimated value of property and services (\$35,092.75) transferred by the City to Cheshire Management.
- 1,600 shares were transferred on February 3, 1977 representing payment in shares to the City for electrical servicing and street lighting costs (\$592.75) and estimated future electrical servicing costs (\$1,000.00).
- 6,774 shares were transferred on February 8, 1979 representing the estimated value of property and services (\$6,774.00) transferred by the City to Cheshire Management.

Cheshire Management currently owns four properties on Louise Street: 2901, 2903, 2905 and 2907. To preserve the original purpose for the property, the City has registered caveats against the lands requiring the corporation to offer care homes for people with physical disabilities.

Recent ISC searches indicate that three caveats in favour of the City are registered against each of the titles:

- A 1973 Reversion Agreement between the City and Cheshire Homes was registered on October 19, 1973. The City initially transferred property to Cheshire for the sum of \$35,092.75 payable in shares of Cheshire Management. In return, Cheshire contracted that, should the land not be used for the care of young, physically handicapped persons on a non-profit basis, the land would be reconveyed to the City.
- A Planned Unit Development Agreement (PUD) between the City and Cheshire Homes was registered on September 30, 1980, followed by an amendment to that PUD Agreement on February 16, 1983. These Agreements call for the establishment of four buildings that will offer care for the physically handicapped. The Agreement provides the land shall only be used for this purpose and no other construction or use can be undertaken on the land except where it complies with this use.

In the past, the City has consented to the postponement of these caveats to mortgages and for refinancing purposes.

2.3 Public Engagement

This report has been shared with Cheshire Homes for review and comment. Cheshire Homes supports the Administration's recommendation.

2.4 City of Saskatoon's Current Approach

The membership interests currently held by the City results in the City maintaining a controlling interest in Cheshire Management. Given the distribution of membership interests, the City is, practically speaking, the sole member. As such, the City effectively makes the policy decisions affecting management of the homes and the provision of support services.

A member of City Council is not required to sit, nor has a member of City Council traditionally been appointed to the Cheshire Management Board. Historically, City Council has appointed one member of the City Administration to sit on the Board. The current composition of the Board includes one member of the City Administration.

2.5 Approaches in Other Jurisdictions

Within the City's own governance structure, the Cheshire Management situation is an anomaly. Other jurisdictions have not been considered for the purposes of this report.

OPTIONS

Option 1: Removal of the City of Saskatoon as a member of Cheshire Management

In accordance with the request of Cheshire Homes, Council could consent to the removal of the City as a member of Cheshire Management. This would require the preparation of amendments to Cheshire Management's corporate documents, including the Articles of Incorporation and Corporate Bylaws and possibly an application to the court. However, that work would be the responsibility of Cheshire Management, upon confirmation of the City's consent. From the City's perspective there are no financial or implementation challenges associated with this option.

Advantages

- Removes the City of Saskatoon from the business of operating care homes for adults with disabilities while still maintaining the City's interest in its investment through registered caveats.
- Provides control for management of the facilities to stakeholders with a close connection to Cheshire Homes.
- Extinguishes the unique governance structure of this agency.

Disadvantages

- Alters the original arrangement upon which services and/or land were provided.

Option 2: Maintain the Status Quo: The City of Saskatoon to maintain a controlling interest in Cheshire Management

The City could withhold its consent to the requested change in governance structure and maintain a controlling interest in Cheshire Management. From the City's perspective, there are no implications financially or legally and this option does not present any implementation challenges.

Advantages

- Maintains the original arrangement upon which services and/or land were provided.

Disadvantages

- The City of Saskatoon remains in the business of operating care homes for adults with disabilities.
- Continued responsibility to attend annual general and special meetings as necessary.
- Continued need to appoint someone to the Cheshire Management Board.

Option 3: Maintain membership in Cheshire Management but agree to alter the membership structure to permit the involvement of stakeholders

Rather than remove itself as a member completely or maintain a controlling interest, Council could consent to alteration of the membership structure to permit other stakeholders having a close connection to Cheshire Homes to become members. Similar to option 1, this would require the engagement of a lawyer to prepare appropriate amendments to Cheshire Management's corporate governance documents. From the City's perspective there are no financial or implementation challenges associated with this option.

Advantages

- Provides increased control for management of the facilities to stakeholders with a close connection to Cheshire Homes.

Disadvantages

- Keeps the City in the business of operating care homes for adults with disabilities.
- Maintains the unique governance structure of this agency.
- Maintains the need to appoint someone to the Cheshire Management Board.

RECOMMENDATION:

That the Governance and Priorities Committee recommend to City Council that option 1 be approved and the City of Saskatoon be removed as a member of Cheshire Homes (Management).

RATIONALE

The purposes of a City are to provide good governance, to provide services, facilities and other things that, in the opinion of Council, are necessary and desirable for all or a part of the City, to develop and maintain a safe and viable community, to foster economic, social and environmental well-being and to provide wise stewardship of public assets. The unique governance structure and involvement of the City in this particular agency does not reflect the broad objectives of a City. The City has no expertise in the operation and management of a home for adults with disabilities. Further, the City's investment in the property by initially providing the land continues to be protected by operation of the caveats registered against title to the Louise Street properties. For these reasons, the Administration is recommending option 1.

ADDITIONAL IMPLICATIONS/CONSIDERATIONS

Pursuing option 1 is in accordance with the request of Cheshire Homes. While the City's contributions are recognized by Cheshire Homes, the current governance structure is odd in that those stakeholders most affected by the work and operation of Cheshire Homes have no voice in membership or the decisions made affecting the corporation.

Even if the City decides not to maintain a membership interest, Cheshire Homes has expressed a desire to continue to invite City employees to participate on the Board. Nothing would prevent a City employee from sitting on the Board in their personal capacity as a member at large. The employee would not be representing any City interest.

COMMUNICATION ACTIVITIES

The recommendation of GPC and City Council's decision will be communicated to Cheshire Homes.

PUBLIC NOTICE

Public Notice pursuant to Section 3 of Policy No. C01-021, Public Notice Policy, is not required.

Report Approval

Written by: Christine G. Bogad, Director of Legal Services
Reviewed by: Jeff Jorgenson, City Manager
Approved by: Cindy Yelland, City Solicitor