



Exhibition Place

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December 1, 2016

To: The Board of Governors of Exhibition Place

ACTION REQUIRED

From: Dianne Young, Chief Executive Officer

Subject: **Hotel Development – Update on Status**

Summary:

This report provides information relating to the actions between the hotel developer, Princes Gates Hotel Limited Partnership (PGH) and the constructor for the Hotel X project, Multiplex Construction Canada Limited (Multiplex); and between the Board / City and PGH under its lease dated November 22, 2010, as amended by an Agreement made April 24, 2012 (collectively, the "Lease").

Recommendations:

It is recommended that the Board:

- 1) Amend the Lease to provide for the following:**
 - a. Substantial Completion Date – April 14, 2017**
 - b. Opening Date – May 14, 2017**
- 2) Direct that the confidential information contained in Attachment 1 to this report involves the security of property belonging to the City of Toronto and one of its local boards and shall not be released publicly in order to protect the competitive position, future economic and legal interests of the Board.**

Financial Implications:

There are no financial implications to this report.

Decision History:

The Exhibition Place 2014 – 2016 Strategic Plan had a Goal to *enhance our public assets through major new builds and /or renovations* and as a Strategy to *work in partnership with the private sector to complete Phase I of the hotel and Stanley Barracks Park*.

At its meeting of October 8, 2009, the Board approved of the development plan for a hotel at Exhibition Place and the terms and conditions of a lease with HKHotels LLC which recommendations were subsequently approved by City Council at its meeting of November 30, December 1, 2 & 3, 2009 (Item EX36.3).

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EX36.3>

At its meeting of December 6, 2011, the Board approved of a revised schedule for the hotel development.

<http://www.explace.on.ca/database/rte/files/Hotel%20Development-Dec.pdf>

At its meeting of December 4, 2015, the Board considered a report to respond to a request for information on the construction schedule for the hotel.

[http://www.explace.on.ca/database/rte/files/Item%2017-Hotel%20Development%20Info%20Report\(1\).pdf](http://www.explace.on.ca/database/rte/files/Item%2017-Hotel%20Development%20Info%20Report(1).pdf)

Issue Background:

On October 20, 2016, Exhibition Place received a copy of a notice by Multiplex to PGH dated October 18, 2016 that Multiplex was suspending work on the Hotel site due to PGH's alleged failure to pay amounts owing under the construction contract. Following receipt, immediate discussions took place between Exhibition Place and PGH and also between the City Legal Department and solicitors for PGH. On October 23, 2016, PGH sent Exhibition Place a copy of a letter from PGH's counsel to Multiplex advising that it was treating Multiplex's suspension of work as a repudiation of the construction contract and declaring that the contract was at an end. PGH also indicated to Exhibition Place that it had entered into negotiations with McKay-Cocker Construction Ltd. (McKay Cocker) to manage the completion of the hotel.

Following several searches of title to the Exhibition Place lands, City Legal advised that a number of construction liens had been registered by Multiplex and by various subcontractors on the Exhibition Place title. City Legal has issued five separate notices to PGH demanding that all liens on title be discharged or vacated within 30 business days of such notice, as required by the Lease. Recent title searches up to December 1, 2016 have indicated that twelve liens have been registered on title of which five liens have been discharged. The value of the liens remaining on title as of December 1st is \$60,756,019 of which \$50,191,999 is related to two liens registered by Multiplex. PGH has scheduled two court dates on December 8, 2016 and December 12, 2016 to address the Multiplex liens and Exhibition Place has asked for and received a commitment from PGH that all liens will be discharged or vacated by December 31, 2016, except those liens for which the 30 business day discharge period does not expire until after December 31, 2016 which would be in accordance with the terms of the Lease.

Exhibition Place has also sent a letter to PGH expressing its concerns that the dispute may further delay the Hotel project and requiring that PGH provide confirmation that a new construction contract has been entered into, a revised construction schedule and evidence that the Hotel will be completed without further protracted delay. PGH has now confirmed that it anticipates executing a construction management agreement with McKay Cocker by December 15, 2016 and has provided the revised Substantial Completion and Opening Dates as noted in the recommendations.

Comments:

Development Background

In 1999, the Board approved of a Development Concept Plan that set as a priority the development of a convention hotel on the grounds. From 1999 to 2009, the Board initiated two procurement processes and entered into negotiations with four separate developers (3 of which were withdrawn by the developers and never concluded) before finally reaching an agreement and receiving approval from the Board and City Council in December 2009 to negotiate a long-term lease with HKHotels LLP, which Lease was executed with PGH (a related entity) in 2010.

The detailed design and site plan approval process for the hotel development was completed in 2014 and the following obligations were committed to by PGH:

- The number of rooms increased from 320 to 404
- Public space was created (6.0 acre park and restoration of underground archeological site of the Enlisted Men's Barracks) at cost of \$2.0M
- Developer contribution to the City Parks Levy of \$0.144M
- Replacement of surface parking spaces with creation of 400 underground public parking spaces
- Decrease in height due to airport requirements which notice was not received from Transport Canada until 2011 causing a redesign and reissuance of site plan approvals in November 2011

- Building finishes and amenities at a 5-star convention level
- The construction cost of the hotel has increased from an estimated \$90.0M investment to \$175.0M hard costs all paid by PGH
- Foundation permits issued by the City on June 20, 2013
- Full Building Permits were issued on September 8, 2014
- Execution of Site Plan Agreement with the City on July 28, 2014

Construction Schedule:

The Lease provides for an approved development schedule for the hotel (as amended by a 2012 Amending Agreement) with the commencement of construction on January 31, 2013 and opening May 31, 2015. A new schedule proposed in 2015 was for a partial opening on July 1, 2016 with full completion by July 31, 2016. One of the major reasons for the delay of 3 months was the very harsh winters experienced in 2014 and 2015 which significantly impacted the pouring of the concrete for the tower for a period of 90 days and the delay of other essential but sequential tasks.

The new schedule being proposed by PGH is for Substantial Completion on April 14, 2017 and an Opening Date on May 14, 2017. This new schedule has expanded the actual construction period from the original 28 months to 43.5 months.

Impact on Events on the Grounds during the Hotel Construction:

Generally, the PGH construction activities have not negatively impacted other events held on the grounds. The construction has been very contained within the lease site and has not even caused any road closures. In addition, PGH has taken many steps to accommodate Exhibition Place and its major shows since construction has commenced:

- Allowed Exhibition Place to use part of the leased lands for parking from October 2013 to September 2014 at no cost to the Board
- Relocated the construction fence line for the Honda Indy Pit Lane and for the CNE Concession lines in 2013, 2014 and 2015
- Worked with CIBC PanAm Park to accommodate move-in and traffic patterns designed for the Games
- Maintained the construction site and roadways around the site clean and in good order

The two negative impacts of the delayed opening has been related to available parking spaces at Exhibition Place for its event clients and the inability to commence marketing the Allstream Centre as a “self-contained” conference centre.

Without completion of the Hotel project, the 400 space underground garage has not been available for use by event clients. Except for the second year of the BMO Field expansion in 2015 (which was not planned or contemplated when the Hotel Lease was executed) the loss of these 400 spaces only affected one major show, the National Home Show held in March. Exhibition Place has requested again a possible early opening of the Hotel underground garage for the National Home Show in March 2017 so as to accommodate the 2017 National Home Show.

Because of the delays to the Hotel opening, from a marketing and reputational view, Exhibition Place has delayed the roll-out of its marketing plan to sell Allstream Centre as a “self-contained” conference centre that has ballroom, meeting facilities and hotel rooms until 2018. Rather, Exhibition Place has continued to market Allstream Centre by forming partnerships with downtown hotels and providing shuttle services as required for conference attendees.

Rent / Additional Rent:

The Lease required the Tenant to commence rent payments on the Opening Date or 24 months after the Lease Commencement Date, whichever is the earlier. Therefore, regardless of the delayed Hotel opening, rent started as of December 2014 and has been paid monthly. In addition, Exhibition Place through its District Energy System is providing all heating and cooling to the Hotel and again, pursuant to the terms of that Agreement and the Lease, HKH is paying Exhibition Place both the Capacity Charge and the monthly use charges.

Remedies for Breach

Construction Delays

With respect to remedies available to the City under the Lease, the Lease recognizes that the proposed target dates for construction and opening of the Hotel could be missed and addresses the rights of the parties in such circumstances.

In this instance, PGH has missed the target Opening Date of July 31, 2016. However, PGH is in the process of entering into an agreement with a new construction manager, McKay Cocker, which establishes a revised Substantial Completion of the project by April 14, 2017, with a revised Opening Date of May 14, 2017. PGH has advised that McKay Cocker and most of the former subtrades are now at work on the Hotel project and the project appears to be proceeding in an active and diligent manner. Accordingly, staff is recommending that the Lease be further amended to reflect the revised Substantial Completion Date and Opening Date proposed by PGH.

Under the circumstances, staff in consultation with City Legal are of the view that there is currently no breach of the Lease due to construction delays. The Lease does provide for remedies in the event of a breach that is not cured within the period set out in the Lease, as would be typical in most commercial ground leases. The nature of the remedies available would depend on the nature of the breach, but since there is no breach on which to base a discussion, City Legal has advised that it has not commented on remedies in this report.

Construction Liens

As noted above, as a result of the dispute between PGH and Multiplex, Multiplex and several of its subcontractors have registered construction liens against the Exhibition Place lands. However, PGH has already discharged five of the subcontractor's liens and is in the process of discharging the remainder of the subcontractors' liens from title. With respect to the large construction liens registered by Multiplex, PGH has advised it intends to bond off these liens, pending resolution of its dispute with Multiplex. In order to do so, it has reserved court time on December 8 and December 12, 2016.

Under the circumstances, staff in consultation with City Legal are of the view that it is reasonable to allow PGH until December 31, 2016 to vacate or discharge the remainder of the construction liens, except where the required discharge period under the Lease does not expire until after December 31, 2016 in accordance with the Lease terms. At this point, staff in consultation with City Legal are of the view that there is no breach of the Lease due to construction liens. Staff and City Legal will continue to closely monitor PGH's progress in discharging or vacating all outstanding liens and report to the Board if the liens have not been cleared to the satisfaction of staff and City Legal by December 31, 2016, or where applicable such later date as required under the Lease.

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