



# Exhibition Place

17

November 10, 2015

**ACTION REQUIRED**

To: The Board of Governors of Exhibition Place

From: Dianne Young, Chief Executive Officer

Subject: **Hotel Development – Request for Information**

## Summary:

This report provides a response to the request for information from the Board.

## Recommendations:

It is recommended that the Board direct that:

- 1) **Exhibition Place staff inform HKHotels LLC of the requirement to inform Exhibition Place immediate of any further delays to the opening date as set out in this report and that Exhibition Place inform the Board of any such delays; and,**
- 2) **The confidential information contained in Attachment 1 to this report 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>

## Issue Background:

The Board raised questions related to the status of the construction; any penalties allowed in the agreement for disruptions on the grounds; timelines for the project; and any remedies for breach of the lease agreement.

## 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Board initiated two procurement processes and entered into negotiations with four separate developers (3 of which were withdrawn by the developers and never concluded) before finally reaching an agreement and receiving approval from the Board and City Council in December 2009 to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. The parties subsequently executed a lease dated November 22, 2010, (the "Lease").

The substantial benefits of a conference centre hotel on site has actually increased from what was initially determined and reported to the Board / Council in 2009. Using the same method of estimation but with the updated hotel information, the following benefits will result:

- The construction cost of the hotel has increased from an estimated \$90.0M investment to \$175.0M hard costs all paid by the hotel developer;
- The increased construction costs means increased job creation from 628 FTE jobs to approximately 1,221 FTE jobs;
- The estimated job creation for the ongoing operations of the hotel has expanded because of its expanded number of rooms (see below) from 186 FT jobs to 220 FT jobs;
- Building finishes and amenities are comparable at a 5-star convention level;
- Unlike many new 4/5 star hotel developments in Toronto (Trump Hotel, Shangri-la Hotel) the hotel at Exhibition Place was not permitted to have any residential, condominium units as part of the development thus making construction financing challenging even though there was an equity contribution by the developer of \$90.0M. The Board had adopted a position that it would not be appropriate to have residential units on the Exhibition Place site.

In addition, through the detailed design and site plan approval process the following changes have taken place:

- The number of rooms have increased from 320 to 406 which is a positive for supporting the convention business;
- Public space has been created (6.0 acre park and restoration of underground archeological site of the Enlisted Men's Barracks) at an estimated cost to the hotel developer of \$2.0M and in addition, the developer has paid \$0.144M contribution to the City Parks Levy;
- The developer is replacing the surface parking spaces from the hotel site with 400 underground parking spaces which spaces will be available to EP event attendees and are in excess of parking spaces needed for the hotel;
- Decrease in height due to airport requirements as discussed below.

### Construction Schedule:

The Lease provides for an approved development schedule for the hotel (as amended by the Board) with the commencement of construction on January 31, 2013, a 28-month construction period, and opening May 31, 2015.

Prior to assumption of the leased lands by the Tenant and commencement of construction, the Tenant had to enter into all necessary planning documents with the City. After presentation of its plans to City Planning in 2010, City Planning issued a Notice of Approval Conditions in January 2011. However, in the Spring of 2011, City Planning informed PGH that it receive information from Transport Canada of height stipulations relating to the Island airport which required PGH to undertake a six month redesign of the hotel tower to lower it by three floors and redesign the entire space in order to maintain the room count.

The second NOAC was issued by and City in November 2011 and PGH then worked with the City to address all conditions set out in the NOAC through a detail design development and following approval by the City of PGH's response to each condition, PGH commenced its detailed working drawings for submission to City Buildings for approval. Foundation permits were issued by the City on June 20, 2013; full commencement of the shoring / foundation work started November 2013 and full Building Permits were issued on September 8, 2014. PGH executed a Site Plan Agreement with the City on July 28, 2014.

While the construction start date of January 31, 2013 was missed due to delays in meeting the City Planning requirements, this had no detrimental effect on Exhibition Place at that time and in fact, the positive outcome of this delay was the ability for Exhibition Place to use the hotel lands for its event / parking purposes during the busy trade and consumer show period in 2013 and also the hotel was not under construction for the 2013 Honda Indy or 2013 CNE.

During this period, Exhibition Place had full knowledge of the ongoing actions and negotiations that were taking place between the Tenant and City Planning to finalize all planning and building permits issues including the payment by PGH of all fees and letters of credit in the amount of approximately \$6.0M. Also during this period, the Tenant had engaged Archeological Services Inc. to complete the Stage IV Archeological Investigation of the Stanley Barracks Enlisted Men's Quarters and to finalize all the full Heritage Preservation / restoration of these Barracks as required by City Planning. Therefore, while the construction start date was missed, the developer was actively engaged, spending money and moving the project forward.

The Tenant has indicated a new partial opening of the hotel on July 1, 2016 with full completion by July 31, 2016. This new schedule has expanded the actual construction period from the original 28 months (January 31, 2013 to May 31, 2015) to 34 months (November 1, 2013 to July 31, 2016). One of the major reasons for this increase in the construction schedule of 3 months is 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 tasks. However, like any major project such as the hotel (750,000 sf) there are also ongoing decisions what have to be worked out by the developer with City Planning and City Buildings.

Another issue that arose once construction commenced was related to the contaminated soils on the lands. While many boreholes were done in advance of the start of construction to determine levels of contamination, when the actual construction started, soil was tested as it was removed for the foundations and determined to require disposal as contaminated (not hazardous) soils under the Provincial *Environmental Act* and regulations. The general cause of this contamination was that fact that the south part of the site was a 100 year old landfill area for lake fill; the entire site was used as a parking lot for over 50 years with leakage of various contaminates; and the area around Stanley Barracks was an active army location for over 150 years. However, because the Board was responsible as the landowner for disposal of contaminated soil, Exhibition Place slowed the construction to seek direction from the Board and City Council on this matter and also insisted on monitoring soil removal and levels of contamination to verify the same throughout the construction time. The cost of this disposal to the Board is estimated to be \$7.5M to the end of the project.

Impact on Events on the Grounds during the Actual Hotel Construction Period:

Generally, while the Opening Date in the Lease for Hotel X was missed, the actual planned period of construction activities impacting the other events on the grounds has only increased from the estimated 28 months to 34 months.

Even after construction of the hotel foundations commenced in October 2013, the Tenant worked cooperatively with Exhibition Place to allow Exhibition Place to continue, at no cost to the Board, to use at least one-third of the leased lands for parking from October to September 15, 2014 which was a financial benefit to the Board and a benefit to all events on the grounds.

The Tenant under the Lease had no obligation to allow for use of these lands by the Board for these purposes.

With the new Opening Date noted above, hotel construction will have happened for three Honda Indy events (2013, 2014 and 2015). However, in every year the hotel took steps to accommodate the Honda Indy by relocating its construction fence line so that the Honda Indy could use some of the leased lands for its stands and pit lanes and delayed the hotel landscape construction in front of Stanley Barracks in 2015 to again accommodate the Honda Indy pit lanes.

The annual CNE will have happened through two years of hotel construction (2014 and 2015) as originally planned and estimated. Furthermore, in 2014 the hotel also moved back the construction fence line (similar to the Honda Indy) for use of these lands by the CNEA.

Neither the CNEA nor the Honda Indy have expressed any major concerns with the progress of the construction. The CNEA and Honda Indy agreements include provisions to protect the Board against any claims brought by these organizations because of the hotel construction.

As noted above, the delayed construction start of the hotel had a positive impact for the trade and consumer shows as it allowed the 2013 season to be completed without any construction. Also from the perspective of the shows, the construction period of 28 months with a start date in January was going to be in effect for three trade show seasons and this continues to be the case. We are trying to work with the hotel now to allow for an early opening of the hotel's underground garage in March 2016 (which opening would be dependent on sign off from the City of Toronto, Toronto Fire Services and Ministry of Labour) in order for show attendees to use the 400 parking spaces in the garage during the 2016 Home Show / Canada Blooms show.

Pan Am Games:

TO2015 indicated and recognized that the Hotel may not be opened for its event and generally, had no major concerns about this and only asked that the construction activity not interfere with or disrupt the Games. Accordingly, Exhibition Place staff worked with the hotel Tenant and TO2015 to co-ordinate deliveries and access to the hotel site after Game hours so as to not impact the Games.

Indeed, as the Games site plans were developed for CIBC Pan Am Park, the direction that worked for the Games was to have Newfoundland Drive and the Princes' Boulevard in front of the hotel construction site as a protected zone with no access for the general public or attendees and only access for Games vehicles. Therefore, any construction vehicle access to the hotel site had no impact on Games movement in this protected zone. The other direction taken by TO2015 was to have all public areas in a zone which ran from the GO Station south to the Ontario Place bridge which met the needs of TO2015 to have one pedestrian / attendee screening area near the major public transit hub.

Exhibition Place did not receive any complaints about the hotel construction from any Pan Am visitors or officials. Extra efforts were made throughout the Games period to clean any construction materials or dirt from surrounding areas or the streets.

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 that the Hotel opening has been pushed back, rent started as of December 2014 and has been paid monthly.

## Remedies for Breach:

Information was requested concerning remedies available to the City for breach of the Lease and for release to the Board of any confidential materials related to the Hotel. As the Lease has not been made a public document, the pertinent sections related to the information requested, construction timeframes and breached are attached with this report as a confidential attachment. However, the Lease is based on a Letter of Intent that was approved by the Board and City Council and is a public document. The Letter of Intent recognized that the proposed target dates for construction and opening of the Hotel could be missed and addressed the rights of the parties in such circumstances. That approach was carried forward into the Lease.

Presently, the Tenant is actively proceeding with construction; completion is likely to occur without further protracted delay. The Tenant has submitted a revised construction schedule with updated information. 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, 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 cannot comment on remedies in this report.

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Submitted by:



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