



IN CAMERA

ADMINISTRATIVE REPORT

Report Date: July 10, 2019  
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Meeting Date: July 23, 2019

TO: Vancouver City Council

FROM: General Manager of Real Estate and Facilities Management, in consultation with the General Manager of Arts, Culture and Community Services

SUBJECT: Extension and Amendments to Hastings Park Operating Agreement (Hastings Racecourse)

**IN CAMERA RATIONALE**

This report is recommended for consideration by Council on the In Camera agenda as it relates to Section 165.2(1) of the *Vancouver Charter*: (e) the acquisition, disposition or expropriation of land or improvements, if the Council considers that disclosure could reasonably be expected to harm the interests of the city; (k) negotiations and related discussions respecting the proposed provision of an activity, work or facility that are at their preliminary stages and that, in the view of the Council, could reasonably be expected to harm the interests of the city if they were held in public.

**RECOMMENDATION**

- A. THAT Council approve a five (5) year extension to the current term expiring November 9, 2019 (the "Term") of the existing Hastings Park Operating Agreement dated November 1, 2007, as amended by the Amending Agreement dated October 23, 2012, the Amending Agreement dated October 22, 2014, and Amending Agreement dated November 7, 2016 (collectively the "Amended Operating Agreement") amongst the City, Hastings Entertainment Inc. ("HEI") and Great Canadian Gaming Corporation ("GCGC"), on terms and conditions set out in this report and otherwise all to the satisfaction of the City Manager, Director of Legal Services, General Managers of Real Estate and Facilities Management and Arts, Culture and Community Services, and authorize the Director of Legal Services to execute the necessary legal documents on behalf of the City.
- B. THAT no legal rights or obligations shall arise or be created until all legal documentation is fully executed on terms and conditions to the satisfaction of the

City Manager, Director of Legal Services, General Managers of Real Estate and Facilities Management and Community Services.

- C. THAT nothing contained or implied in the legal agreements per Recommendation A will fetter in any way the discretion of the City Council nor be construed as limiting or prejudicing the rights and powers of the City (as Regulatory Authority) in the exercise of its functions pursuant to the Vancouver Charter, or any other right or power under public or private statutes, bylaws, orders or regulations; or fetter in any way any discretion of any City official or employee conferred by statute or delegated by the Regulatory Authority, all of which may be fully exercised or not exercised as if the aforementioned legal agreements had not been entered into.

### **REPORT SUMMARY**

This report seeks Council approval for a five (5) year extension to the Term of the Amended Operating Agreement amongst the City, HEI and GCGC (together HEI and GCGC are defined as the “Operator”) on terms and conditions set out in this report and otherwise all to the satisfaction of the General Managers of Real Estate and Facilities Management and Arts, Culture and Community Services, the City Manager and the Director of Legal Services.

The recommendation to approve a five (5) year extension of the Amended Operating Agreement will provide greater certainty for the racecourse Operator, and the horse racing industry, for the purpose of planning the 2020 to 2024 horse racing seasons. Furthermore, the extension of the Amended Operating Agreement will provide the revenues and public benefits secured through the Amended Operating Agreement will remain in place until the term of November 2024, when the proposed term will expire.

### **COUNCIL AUTHORITY/PREVIOUS DECISIONS**

On July 22, 2004, Council approved an application by HEI for the introduction of slot machines at Hastings Racecourse and directed staff to report back with the terms and conditions of an Operating Agreement.

On May 12, 2005, Council approved the Key Agreement Terms of the Operating Agreement between HEI and the City.

On October 4, 2005, Council approved the 2901 East Hastings (Hastings Racecourse) - public benefits and other matters.

On July 25, 2012, Council approved a two (2) year extension to the then existing term of the Hastings Park Operating Agreement amongst the City, HEI and GCGC.

On October 15, 2014, Council approved a two (2) year further extension to the then existing term of the Hastings Park Operating Agreement amongst the City, HEI and GCGC.

On May 31, 2016, Council approved that staff commence negotiations to amend the Operating Agreement with an extended term of a minimum of a three (3) years, all being subject to Council approval. Council ratified the Guiding Principles and Negotiation Considerations to guide staff in the negotiation of the amended Operating Agreement with an extended term.

On November 1 and 2, 2016, Council approved a three (3) year further extension to the then existing term of the Hastings Park Operating Agreement amongst the City, HEI and GCGC.

### **CITY MANAGER'S/GENERAL MANAGER'S COMMENTS**

The General Manager of Real Estate and Facilities Management and the General Manager of Arts, Culture and Community Services *RECOMMEND* approval of A, B and C.

### **REPORT**

#### **Background/Context**

HEI is a wholly-owned subsidiary of GCGC, which is based in Richmond, BC, and has horse racing and gaming operations across Canada. GCGC operates the two (2) major horse racing venues in BC, namely Hastings Racecourse in Vancouver and Fraser Downs Racetrack in Surrey. In 2004, GCGC acquired the HEI business, including the Hastings Racecourse operating licence, for s.17(1)

The horse racing industry has been in decline for many years in British Columbia and the introduction of slot machines was seen as a means to revitalize the horse racing business at Hastings Racecourse. In July 2004, Council approved an application by HEI for the introduction of slot machines at Hastings Racecourse and directed staff to report back with the terms and conditions of an Operating Agreement.

In May 2005, Council approved the Key Agreement Terms of the Operating Agreement between HEI and the City, and in October 2005, Council approved the Hastings Racecourse public benefits offering from HEI.

On November 1, 2007, the City, HEI and GCGC entered into the Hastings Park Operating Agreement (the "Initial Operating Agreement"). The Operating Agreement was initially for a five (5) year term expiring November 2012 (the "Initial Term"), with the conditional right to enter into a fifteen (15) year renewal term subject to the Operator satisfying certain renewal term conditions to the satisfaction of the City Manager.

These renewal term conditions provided for in the Initial Operating Agreement required the Operator to make or incur a number of capital expenditure obligations during the renewal term, including: (1) construction of a 500 stall underground parkade in the first year of the renewal term; (2) relocating the horse barns; and (3) performing infrastructure upgrades. In November 2011, the Operator advised the City that given the continuing decline in revenues and losses on operations, they would not be prepared to exercise the option to renew due to the significant future capital expenditure obligations

that would be required during the renewal term. Therefore, the Operator's legal obligation to construct the underground parkade and make the other capital expenditures to the racetrack and surrounding site are no longer in effect, and any such obligations would need to be the subject of a new agreement agreed to by the parties at some time in the future.

Instead of renewing the Initial Operating Agreement, the Operator proposed extending the term of the Initial Operating Agreement for two (2) years to allow for a strategic review by the British Columbia Horse Racing Industry Management Committee (BCHRIMC). On July 25, 2012, Council approved a two (2) year extension to the initial term of the Hastings Park Operating Agreement, which expired in November 2014.

A draft report, "Revitalizing Horse Racing in British Columbia," was published and circulated to the industry as a consultation tool in April 2013, with the intention of a final report later in 2013. However, no final report has been published to date. In February 2014, a multi-year funding deal was announced by the BCHRIMC amongst horse racing industry participants. This deal is a revenue sharing model, approved by the Province, between the racecourse Operator and the Thoroughbred Horse Racing Industry, which distributes all Provincial revenue generated by wagering (i.e. horse racing) and a 25% portion of the annual slot revenues generated at racetracks in B. C. back to the horse racing industry.

On October 15, 2014, Council approved a further two (2) year extension to the term of the Hastings Park Operating Agreement between the City and the Operator which will expire in November 2016.

On November 1 and 2, 2016, Council approved a further three (3) year extension to the term of the Hastings Park Operating Agreement between the City and the Operator which will expire in November 2019.

### ***Hastings Park Operating Agreement, Capital Expenditure Obligations, and Public Benefits***

The current Amended Operating Agreement provides for the following annual fees, capital expenditure obligations and public benefits for the City:

#### **(a) Annual Operating Fees and Host Local Government revenues**

Total City revenues/funding sources from Hastings Racecourse are approximately s.17(1) s.17(1) per year (2017/2018). The various revenue/funding sources are described below:

(1) Revenue as Host Municipality under the Gaming Control Act of British Columbia

City receives as the host municipality a 10% share of net gaming revenues under the *Gaming Control Act*, which was approximately s.17(1) in 2017/2018; and

(2) Revenue pursuant to the Operating Agreement

Total annual fees received by the City pursuant to the Amended Operating Agreement were approximately s.17(1) per year, subject to an applicable annual CPI adjustment as indicated below:

- Minimum Operating Fee of approximately s.17(1) per year (subject to annual CPI adjustment);
- Community Legacy Fund Fee of approximately s.17(1) per year (subject to annual CPI adjustment); and
- Hastings Park Greening Fee of s.17(1) per year.

Council directed that all revenue, except the Community Legacy Fund Fee, generated from the Amended Operating Agreement be allocated to the Hastings Park Reserve. This fund forms part of the capital funding for the Hastings Park/PNE Master Plan. The s.17(1) Community Legacy Fund Fee is payable into a separate Hastings Social Responsibility Reserve [see Section (c) below].

### **(b) Capital Expenditures**

The total capital expenditure investment by the Operator during the Initial Term was approximately s.17(1), including significant upgrades to the grandstand building, construction and operation of a 44 space childcare facility, and site infrastructure upgrades.

### **(c) Public Benefits**

Public Benefits obtained through the Amended Operating Agreement are as follows:

- the completed construction and the current operation of a 44 space childcare with operating funding payable by the Operator (currently in the range of s.17(1) to s.17(1) per year);
- a groom school (two-week training program for entry level 'groom' positions);
- funding for a learning centre (learning centre run in partnership with Horsemen's Benevolent and Protective Association of BC and Capilano College);
- local hiring (local residents recruited for new positions via newspaper ads and online platform);
- access to grass infield (for walks and picnics on weekdays from 1:30pm-5:30pm);
- annual community consultation (newsletters, email updates, blog about events, annual open house); and
- community days at the racecourse (supports local community groups to fundraise plus provides direct donation of s.17(1) per year).

To ensure that the amenities and public benefits are delivered, the Operator is required to submit annual reports on the various amenities and public benefits. The Operator provides annual reports for the childcare, local hiring, the learning centre, the groom school, community days, access to infield, and the annual community consultation. Staff review the annual reports to ensure that they are satisfactory.

### ***Jobs related to Hastings Racecourse***

The Operator directly employs approximately 262 full-time and part-time employees at Hastings Racecourse. The Operator has advised that during the racing season, approximately 300 additional people are employed by the Horse Racing Industry at Hastings Racecourse.

### ***The Introduction of Slots and Hastings Racecourse Financial Performance***

Slots operations commenced in 2007. Slot machine revenues have been significantly below what was originally anticipated by the Operator, and revenues per slot machine per day (the “Net Win”) have generally been in the s.17(1) range in recent years. By way of comparison, the casino at Fraser Downs racetrack generated s.17(1) Net Win and the Parq Casino in Downtown Vancouver generated a s.17(1) Net Win from slot machines in 2017/2018.

Hastings Racecourse has also experienced declining horse racing revenues since 2007 despite the introduction of slot machines. As a result of this revenue performance, the Operator reports that it has generally suffered annual net losses on Hastings Racecourse operations (including slots operations) since the commencement of slots in 2007.

### ***Live Race Days***

Under the terms of the Amended Operating Agreement, there is a requirement for a minimum of 71 race days (the “Minimum Live Racing Days”) in each racing season.

In 2012, the Operator requested that the Minimum Live Racing Days in each racing season be amended to reflect the recommendations of the BCHRIMC. The Operator advised that there were insufficient number of race horses available to run the number of races during the season required by the Initial Operating Agreement. This resulted in the average number of horses running in each race to fall below historical norms. In the past, there have been over 800 horses available, but that has fallen into the 600 to 700 horse range in recent years. This had a negative effect on the amount of bets on the races and accordingly, the revenue earned by the Operator. This also had an impact on the prize money paid to the owners of the winning horses, which impacts the quality of horses that owners will bring to the racecourse to compete.

Currently, the Amended Operating Agreement permits the City Manager, at his discretion, to amend the number of race days, taking into consideration the recommendations of the BCHRIMC and Gaming Policy and Enforcement Branch (GPEB). The BCHRIMC has subsequently recommended reducing the number of race days. Since 2012, the number of race days are as follows:

2012 – 67 Race days  
2013 – 63 Race days  
2014 – 55 Race days  
2015 – 53 Race days  
2016 – 52 Race days  
2017 – 51 Race days  
2018 – 51 Race days  
2019 – 52 Race days\*

\* Note: this is the projected total as the current racing season is not scheduled to end until mid-October.

### ***Hastings Racecourse Reserve Fund***

On November 1 and 2, 2016, Council approved a three (3) year further extension of the Term of the Hastings Park Operating Agreement. Council also approved that for the term of this agreement annual Host Local Government revenues from Hastings Racecourse, not to exceed the amount in 2016, be allocated to a Hastings Racecourse Reserve Fund, for the purposes outlined in the Administrative Report dated September 28, 2016, all to the satisfaction of the General Manager of Real Estate and Facilities Management. The purposes are outlined below:

- demolition and removal of buildings structures and improvements to portions of the Backstretch or other portions of the Site taken back by the City on a permanent basis;
- capital improvements and upgrades as necessary, related to Hastings Racecourse Site;
- infrastructure and life safety enhancements related to Hastings Racecourse Site including the Backstretch;
- beautification works on the Site boundary to improve the appearance of the facility (particularly McGill Street frontage);
- costs associated with a future public engagement/consultation process to provide visioning for the future operation and use of the racecourse; and
- other related capital improvements and upgrades in Hastings Park.

It should be noted that this allocation measure to the Hastings Racecourse Reserve Fund is intended to end at the expiry of the current Term (November 9<sup>th</sup>, 2019) of the Operating Agreement. After that, the Host Local Government revenues will revert back to being allocated to the Hastings Park Reserve Fund.

### ***Current Status of Hastings Park Operating Agreement***

The Amended Operating Agreement expires on November 9, 2019. Discussions have been ongoing with the Operator regarding the terms and conditions of a further five (5) year extension, and are the subject of this report.

### ***Strategic Analysis***

The Operator, horse owners and horse breeders require some certainty for the immediate future before making business decisions for the 2020 to 2024 seasons.

Staff have negotiated the principal terms of a further extension of the Amended Operating Agreement, subject to Council approval, summarized as follows:

The Operator will continue operating the Hastings Racecourse generally on the same terms and conditions of the Amended Operating Agreement during the proposed five (5) year extension term with the following principal amendments referenced below:

- **Term Extension** - A five (5) year extension to the Amended Operating Agreement to expire November 9<sup>th</sup>, 2024;
- **Renewal Term** - A further five (5) year option to renew on mutual consent;

- **Phased Backstretch Improvement Plan - s.17(1)** (over 5 years) capital investment by Operator, subject to the approval of the General Manager of Real Estate and Facilities Management;
- **Minimum Operating Fees (Rent) CPI increases** – Any CPI increases to Minimum Operating Fees payable during the term to be allocated to the Hastings Racecourse Reserve Fund; and
- **Take Back Area** – Under the terms of the Amended Operating Agreement, the City has the right to take back certain lands for the City’s use (the “Take Back Area”). If there is any reduction in the Minimum Operating Fees resulting from the City taking back the Take Back Area, the Operator will make an additional capital investment equivalent to the reduction in Fees payable. This capital investment to be supplemental to the Phased Backstretch Improvement Plan.
- **Special Events/Shared Uses** - Operator is willing to work collaboratively with the City, to support special events and other potential shared uses on the understanding that there should be no negative impacts to the racecourse both financially or operationally. Such special events/uses to be mutually agreed to between the City and the Operator acting reasonably.
- Any required amendments to the existing parking management plan that occur, will be incorporated into the new Operating Agreement as required.

If approved by Council, the new Amended Operating Agreement will include these amended terms.

Entering into a further extension of the Amended Operating Agreement, for a further five (5) years expiring November 2024, will provide greater certainty for the Operator and the Horse Racing Industry, whilst allowing the City to continue to receive the operating fees paid by the Operator to the City pursuant to the Amended Operating Agreement. These monies will continue to be allocated to the Hastings Park Reserve, Hastings Racecourse Reserve Fund and the Hastings Social Responsibility Reserve, and the Operator will continue to provide the operating funding for the childcare facility operated by Kiwassa Neighbourhood House and other public benefits.

Furthermore, the City will continue to receive its 10% share of the host municipality net gaming revenues under the *Gaming Control Act*, which was approximately s.17(1) in 2017/2018.

The Phased Backstretch Improvement Plan by the Operator will provide significant investment in the Backstretch which has suffered from a lack of investment over the years. Furthermore, any reduction in the Minimum Operating Fees resulting from the City taking back the Take Back Area will require the Operator to make an additional capital investment equivalent to the reduction in Fees payable. This capital investment will be supplemental to the Phased Backstretch Improvement Plan.

Any CPI increases to Minimum Operating Fees will be allocated to the Hastings Racecourse Reserve Fund for the purposes outlined in this report.



***Implications/Related Issues/Risk (if applicable)***

***Financial***

All annual fees payable by the Operator during any extension of the Amended Operating Agreement will continue at the same rate as currently payable, subject to any applicable annual CPI adjustment and the City taking back any portion of the Site for civic purposes as noted in this report.

Annual fees payable to the City under the terms of the Amended Operating Agreement include an annual Operating Fee of s.17(1) (subject to annual CPI adjustment), a Community Legacy Fund Fee of s.17(1) (subject to annual CPI adjustment) and an annual Hastings Park Greening Fee of s.17(1). Total annual fees from the Amended Operating Agreement are approximately s.17(1), subject to an applicable annual CPI adjustment.

HEI's obligation to fund and operate the 44 space childcare facility will continue during any extension of the Amended Operating Agreement.

***CONCLUSION***

The recommendation to approve a five (5) year extension of the Amended Operating Agreement will provide greater certainty for the racecourse Operator and the Horse Racing Industry around the planning for the 2020 to 2024 racing seasons. In addition, the proposed extension will ensure that the revenues and public benefits secured through the Amended Operating Agreement will remain in place until November 2024.

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*Subject Property*





