



**STAFF REPORT
ACTION REQUIRED**

Governance and Operations of the Pan Am Aquatic Centre & Field House

Date:	October 22, 2012
To:	Executive Committee
From:	Deputy City Manager, Cluster A
Wards:	All
Reference Number:	P:\2012\Cluster A\PFR\EX24-110512-AFS#16577

SUMMARY

This report provides an update on the Pan Am Aquatic Centre and Field House (the “PAAC”), a joint facility being built as part of the 2015 Pan/Parapan American Games (the “2015 Games”), and addresses outstanding PAAC-related Council directives from Council’s deliberation in February 2011.

Through recent mutual conveyances, the City and the University of Toronto Scarborough Campus (the “University”) co-own the land upon which the PAAC will be built and both institutions will co-own the facility, once completed.

In order for the City and the University to jointly operate the facility, it is recommended that the City establish a not-for-profit corporation with the University to be responsible for the management and operations of the PAAC. This report seeks Council endorsement to establish the not-for-profit corporation as well as authority to request that the Province of Ontario make the necessary regulatory amendments to enable the establishment of such a corporation. Should the requested regulatory amendment be made, Council's authority is sought for the General Manager of Parks, Forestry and Recreation to negotiate the establishment of the not-for-profit corporation with the University

Finally, this report updates Council on measures contemplated for the purpose of limiting the operating impact of capital of the PAAC, specifically, the TO2015 Legacy Fund and naming rights and seeks Council's authority for the General Manager of Parks, Forestry and Recreation to pursue naming rights opportunities for the PAAC, in accordance with a reasonable application of the City’s Naming Rights Policy.

RECOMMENDATIONS

The Deputy City Manager, Cluster A, recommends that City Council:

1. Endorse the establishment of a joint not-for-profit corporation, with the Governing Council of the University of Toronto, to be responsible for the management and operations of the PAAC
2. Direct the City Manager to request the Province of Ontario (through the Ministry of Municipal Affairs and Housing) to amend O. Reg. 609/06 under the *City of Toronto Act, 2006* to allow the City to establish a not-for-profit corporation jointly with the University that is responsible for the management and operations of the PAAC.
3. Subject to Ontario granting the requested regulatory amendment, authorize the General Manager of Parks, Forestry and Recreation to negotiate the establishment of a not-for-profit corporation with the University that is responsible for the management and operations of the PAAC, and direct the General Manager to report back on the results of the negotiation to City Council for approval to establish the corporation.
4. Authorize the General Manager of Parks, Forestry and Recreation to pursue, along with the University of Toronto, naming rights opportunities for the PAAC, generally in accordance with the City's Naming Rights Policy, subject to necessary modifications to reflect the joint ownership with the University.
5. Direct the City Manager to report to City Council on appropriate governance structures and procedures, including shareholder direction and contractual requirements, upon conclusion of the processes and negotiations set out in Recommendations 3 and 4.

Financial Impact

Operating Costs

The future year operating impacts for the PF&R's portion of the operating responsibility for the PAAC is estimated to be \$5 million per year. These future year operating costs have been included in the Future Year Outlooks for PF&R's incremental changes showing an increase of \$2 million in 2014 and \$3 million in 2015.

Future year operating impacts for other Pan Am related projects are expected to be less significant and are in the process of being determined. These operating impacts of capital projects will be included for consideration in the future year budget submissions for each respective City Division.

Naming Rights

The MPA permits the use of facility naming rights as a revenue generating opportunity. The revenue from a Naming Rights agreement will provide significant assistance in reducing the PAAC's annual operating costs. Any revenue stemming from the Naming Rights agreement will be incorporated into and submitted for consideration with the future year budget submissions.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

In December 2008, City Council endorsed the City's participation in a bid for the Pan Am Games to be held in Toronto and the Greater Golden Horseshoe.

In February 2009, City Council approved investments totalling \$49.5 million in six City-owned assets to be used as training, competition or festival venues during the Games.

In February 2011, City Council approved additional funding of up to \$47 million and three additional projects, for a total City investment of up to \$96.5 million in a total of nine Pan Am Games capital projects.

In June 2010, Scarborough Community Council approved a preliminary report on the rezoning application for the site of the PAAC. Following community public meetings in July and December of 2010, the planning application went back to the Community Council.

At its May 25, 2011 meeting, the Scarborough Community Council approved the rezoning application. This was adopted by City Council on June 14, 2011.

Staff reports related to the Pan Am Games are available at:

<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-16632.pdf>

<http://www.toronto.ca/legdocs/mmis/2009/ex/bgrd/backgroundfile-18591.pdf>

<http://www.toronto.ca/legdocs/mmis/2009/cc/bgrd/backgroundfile-19072.pdf>

<http://www.toronto.ca/legdocs/mmis/2010/sc/bgrd/backgroundfile-30951.pdf>

<http://www.toronto.ca/legdocs/mmis/2011/ex/bgrd/backgroundfile-34833.pdf>

ISSUE BACKGROUND

Toronto is the official host city of the 2015 Games, and a signatory to the Pan Am Games Multi-Party Agreement (the "MPA"), which defines the rights and responsibilities of the Toronto Organizing Committee for the 2015 Pan American and Parapan American Games (TO2015); the Canadian Olympic and Paralympic Committees; and the City, Provincial and Federal governments with respect to the governance, financing and delivery of the Games.

The approved projects which the City is contributing to financially in support of the Games include:

- The development of the PAAC
- The refurbishment of tracks in Birchmount and Centennial parks and at the Toronto Track and Field Centre at York University
- Improvements to Nathan Phillips Square
- Resurfacing up to 20 km of streets to support the Games' cycling road race
- The development of a BMX cross facility in Centennial park
- Upgrades to the Etobicoke Olympium

The PAAC is the largest and most complex facility developed for the 2015 Games. It will house two 10-lane, 50m pools; a dedicated dive tank; a multi-court gymnasium; a running track; a climbing wall; and various fitness and training areas have been designed to accommodate the sport, recreation and training needs of Toronto area residents, university students and high performance athletes. It will also house the Canadian Sport Institute Ontario ("CSIO").

Among its key provisions, the MPA requires TO2015 to employ the services of Infrastructure Ontario ("IO") as the project manager for various Pan Am capital projects, including the PAAC project. It also prescribes that the City of Toronto and the University of Toronto shall each contribute 22% of the capital cost of the PAAC and outlines cost sharing on the other City facilities.

In 2011 City Council approved a capital project called PAAC Site Remediation with total project cost of \$52 million and a cashflow of \$46 million in 2011 and \$6 million in 2012. This project provides funding for the remediation of the lands upon which the PAAC will be built and is funded by \$23 million (44%) in reserve fund funding provided by City of Toronto with the remaining funding of \$29 million (56%) provided by the University of Toronto.

The remediated site for the PAAC was handed over to Infrastructure Ontario ("IO") on June 28, 2012.

City Council has also approved a capital project called Pan Am Aquatic Centre/Canadian Sport Institute for Ontario 2011-2014 with a total project cost of \$248.93million of which \$54.765 million represents the City's contribution or 22% of the total capital expenses for the construction of the PAAC. The University of Toronto is also providing 22% of the total capital costs with the remaining 56% covered by TO2015.

After a rigorous evaluation process under the auspices of IO, the contract was awarded to PCL in July 2012.

There are a number of other Pan Am related capital projects which are outlined in the table below. These projects are managed by IO on behalf of TO2015. The City of Toronto's share represents 44% of total funding, with the remaining 56% covered by the Government of Canada (through TO2015).

Capital Project	Description	Total Project Cost	City of Toronto Share (44%)	Status Update
Etobicoke Olympium Retrofit	Retrofit of existing facility	\$20M	\$8.800M	Design and development stage in 2012 with construction to be completed in 2014.
Centennial Track Resurfacing	Track resurfacing and upgrades to meet international specifications at both facilities and development of new throwing and jumping areas at Birchmount.	\$1.658M	\$0.730M	Construction to be completed in 2014.
Birchmount Track Resurfacing		\$1.036M	\$0.456M	Construction to be completed in 2014.
York Track Retrofit	Upgrades to the existing City-operated track at York University	\$3.628M	\$1.596M	Construction to be completed in 2014.
BMX Track	Creation of a new Bicycle Moto Cross (BMX) track in Centennial Park	\$1.547M	\$0.678M	Construction to be completed in 2014.

Two other Pan Am related projects managed by the City are the Nathan Phillips Square and Resurfacing of Cycling Course projects.

Capital Project	Description	Total Project Cost	City of Toronto Share	Status Update
Nathan Phillips Square as Festival Site	Improvements at Nathan Phillips Square to prepare it as a festival site	\$9.537M	\$4.197M	The majority of work eligible under the Pan Am/TO2015 agreement has been completed.
Resurfacing of Cycling Course	Resurfacing of 20 km of municipal roads on proposed route for cycling	\$4.146M	\$1.825M	The route for the cycling course has not yet been finalized by TO2015 and the utilities need to be in place before work at the site can proceed.

The MPA also requires the establishment of the Toronto 2015 Legacy Fund, capitalized by Ontario and Canada, which will contribute to the operation and maintenance costs of designated Legacy Facilities, including the PAAC. The MPA permits the use of facility naming rights as a revenue generating opportunity, and clarifies that the City of Toronto will assume no responsibility for any deficit of TO2015.

Through recent mutual conveyances, the City and the University are joint owners of the land upon which the PAAC will be built, and both institutions will jointly own the facility once it is completed. While this joint ownership is a mutually beneficial partnership opportunity, it also has the potential to lead to complications. Accordingly, both the City and University have been required to consider the available options that would be enable the most efficient and cost-effective operation of the PAAC.

COMMENTS

1. PAAC Governance

In preparation for the 2015 Games, the City has partnered with the University and other partners to build the PAAC. The City and University will co-own the facility and they already co-own the land upon which the facility will sit.

On December 1, 2010, the City and the University signed a Master Agreement setting out the legal relationship between the parties as it relates to the PAAC. The Master Agreement, among other things, addresses “Post Games Operations & Legacy”, directs the parties to develop a Shared Ownership and Facilities Management Agreement “as soon as possible” and spells out some of the substance of that future agreement.

Certain negotiations, as well as the design of the PAAC, have progressed significantly in recent months. However, the question of facility governance/management has been left unanswered, and a number of decisions have been held in abeyance awaiting this decision. The City and University have determined that until they have agreed how the PAAC will be governed and managed, they will be unable to negotiate a Shared Ownership and Facilities Management Agreement. Therefore, it is critical that a decision regarding the operation and governance of the PAAC be made as soon as is practicable.

A number of options have been identified for the operation and management of the PAAC. The four key options identified are as follows:

1. The City and University create a jointly owned not-for-profit corporation responsible for the management and operations of the PAAC;
2. The City and University run their own operations, respectively, within the facility;
3. Either the City or the University operates the facility on behalf of both institutions;
4. The City and University develop a Request for Proposals (“RFP”) and put it out to the marketplace to find a third party to operate the PAAC;

These options have been examined to identify a preferred option, based on criteria that included efficiency of the operating model and avoiding duplication; ability to establish consistent and clear service levels; level of public and financial accountability; and ability to serve both students and the public well. Based on these criteria, option one was selected as the one that created the best operating efficiencies, provided the most opportunity for revenue generation, and that offered the best service to students and the public.

The recommended option: the owners create a not-for-profit corporation responsible for the management and operations of the PAAC

Both the City and the University prefer this option as it will result in the most streamlined and cost effective operation as well as a high level of service for all users. This option also allows for streamlined programming and access, shared resources and joint accountability for outcomes. The new corporation would explore various operating models for the facility to ensure a high quality user experience.

Other options that were considered

The other options were carefully examined, but they are not as successful in meeting the required criteria, and are therefore not recommended approaches.

Option #2 – The Owners operate independently within the facility.

This option risks developing disjointed and inefficient operational results as well as significantly compromised service levels. Operating separately would result in a duplication of services, which would be a waste of both human and financial resources for the two institutions. Each institution has its own policies and procedures in areas such as staffing, building accessibility, and building maintenance, which would make it difficult to maintain consistently applied standards and operations throughout the facility. This would also create confusion for users to navigate between two parties operating in the building without one central conduit.

Option #3 – Either the City or the University operates the facility on behalf of both institutions.

A significant concern with this option relates to the ability of the parties to ensure that their interests are met and that the non-operating party has adequate say and protection on cost of service. Neither the City nor the University believes it is prudent to undertake the role of sole operator.

Option #4 – The Owners contract with an existing third party to operate the facility.

While this option should be explored, the City and the University still require a structure to support their joint ownership of the facility. The recommended 'new entity' that will operate the facility may consider components of third party operations in the facility after more comprehensive operational structures and plans are negotiated and agreed to by the City and the University.

2. Regulatory change required to establish a joint corporation

Regulation 609/06 under the City of Toronto Act, 2006 (the "Regulation") sets out certain conditions and restrictions that apply to the establishment of a corporation by the City. The Regulation permits the City to form a corporation with a "public sector entity". As currently defined, the term "public sector entity" does not include universities. Accordingly, the Regulation must be amended in order for the City to form a corporation with the University.

Amending the Regulation can be done through the Lieutenant Governor in Council rather than through Provincial Parliament, as a statutory amendment would require. Preliminary inquiries with the Province by the City's Legal Division have confirmed that, in order for the Province to consider an amendment, City Council must first pass a resolution seeking such an amendment.

3. Limiting the operating impacts of capital

Operating impacts of the Pan Am Games projects will be included in the 2014 PF&R Operating Submission and future year outlooks. Although the final figure is uncertain at this time, the February 2011 staff report regarding the 2015 Games projects estimates the annual operating impact of the PAAC to be \$3 - \$6 million. In addition to the energy saving measures referred to later in this report, two other measures are also aimed specifically at limiting operational costs: securing revenue from the TO2015 Legacy Fund and the sale of naming rights for the facility.

(a) TO2015 Legacy Fund

As noted above, the MPA provides for the establishment of the TO2015 Legacy Fund. The Legacy Fund will be capitalized with an initial investment by Ontario and Canada totalling \$70 million. The purpose of the Legacy Fund is, among other things, to contribute to the ongoing operation and maintenance of the Legacy Facilities. Three of the Games' capital projects have been designated as Legacy Facilities: the Velodrome (Milton), the Athletics Stadium (York University) and the PAAC.

Although the percentage of available funds allocated to the PAAC and the exact mechanism for distributing the funds have not been finalized, the MPA specifies some of the factors that will be considered when determining each facility's portion. These factors include the size and mandate of the facility, the volume of amateur and high performance athletes accessing the facility, community access, and annualized operating need. On the basis of this list of factors, it is expected that the PAAC should receive a significant portion of the available funds.

(b) Naming Rights

Revenue from a Naming Rights agreement should provide significant assistance in reducing the PAAC's annual operating costs. The facility is potentially attractive to naming rights partners because it is a new multi-purpose sports and recreational venue serving a large client base composed of local residents, University students and the greater Toronto community. Due to the number of programs and events and the variety of groups that will use it, the PAAC will provide tremendous exposure to a naming rights partner.

It is recommended that a Naming Rights agreement be pursued in early 2013 to take advantage of the prestige attached to the creation of a new, exciting multi-purpose sports and recreational facility. The City of Toronto and its partner, the University, will determine the most appropriate and effective means of selling naming rights. If the naming rights sales campaign is to be undertaken by an external firm, it would be chosen through an RFP.

The process of awarding naming rights is governed by the City's Naming Rights Policy adopted by Council in 2011. The Policy will apply with necessary modifications to reflect the joint ownership of PAAC.

For example, the requirement that the City retain ownership and control over the facility, that the City have the unilateral right to terminate naming rights prior to scheduled termination if it feels it is being brought into disrepute, and the requirement that the solicitation, negotiation and administration of naming rights shall be conducted only by City staff, are aspects of the Policy that should not apply to the PAAC.

As well, the MPA requires that the City consult with TO2015 before naming the facility, and not select a name that is unacceptable to TO2015. TO2015 cannot consent to the name without approval from the provincial and federal governments as funding partners of the PAAC.

City of Toronto Individual and Corporate Naming Rights Policy:
<http://www.toronto.ca/top/pdf/naming-policy.pdf>

4. Role of Infrastructure Ontario – Design of the PAAC

During its previous consideration of the Games, City Council directed :

City Manager to conduct a timely investigation into the benefits of involving third party entities thru their investment in renewable and/or clean energy infrastructure at the facility: and

City Manager to report to Executive on (i) any estimated capital cost avoidance that would occur from third party entities thru their investment in renewable and/or clean energy infrastructure at the facility; (ii) any estimated operating cost savings that would occur over the life of the facility from third party entities thru their investment in renewable and/or clean energy at the facility; and (iii) any estimated environmental benefits that would occur over the life of the facility from third parties thru their investment in renewable and/or clean energy at the facility.

As noted previously, the 2015 Games' capital projects are subject to the MPA and all 2015 Games capital projects are to be project managed by IO. In light of IO's leadership role and the multiple parties involved in the project, the City and University worked together to ensure that energy-saving features, such as geothermal heating and cooling, were included in the final project specific output specifications. These measures will limit operating expenses and will reduce the impact of the building on the environment.

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SIGNATURE

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