



STAFF REPORT ACTION REQUIRED

Toronto Pan Am Sports Centre Inc. – Annual General Meeting and 2015 Audited Financial Statements

Date:	May 9, 2016
To:	Executive Committee
From:	City Manager Deputy City Manager & Chief Financial Officer
Wards:	City-Wide
Reference Number:	

SUMMARY

The purpose of this report is to present two shareholder resolutions for approval by City Council, on behalf of the City in its capacity as one of the two Shareholders of Toronto Pan Am Sports Centre Inc. ("TPASC Inc."), and to recommend amendment to the composition of City-appointed Board members and appoint a Chair of the Board.

The first resolution addresses the matters requiring Shareholder approval under the *Business Corporations Act* at the Annual Meeting of the Shareholders of TPASC Inc. These matters include: the confirmation of the corporation's proceedings since the last annual meeting of the shareholders, the receipt of financial statements, and the appointment of the auditor. The second resolution provides the Shareholders' approval of the annual operating and capital budgets required under the unanimous shareholders' agreement between the two Shareholders of TPASC Inc.

Amendment to the composition of City-appointed Board members, and appointment of the Board Chair, is intended to enhance alignment of TPASC Inc. Board decisions with City priorities and operations, protect the City's financial position, help balance City and University administrative leadership on the Board, and protect City stakeholder interests.

RECOMMENDATIONS

The City Manager and the Deputy City Manager & Chief Financial Officer recommend that:

1. City Council, in its capacity as one of the Shareholders of Toronto Pan Am Sports Centre Inc., and for the purposes of satisfying the requirements of the *Business Corporations Act* (Ontario) to conduct the Annual General Meeting of the Shareholders of Toronto Pan Am Sports Centre Inc., and:
 - a. receive the "Communication from the Chair, Board of Directors, Toronto Pan Am Sports Centre Inc. (April 29, 2016), forming Attachment 1 to this Report;
 - b. receive the "Toronto Pan Am Sports Centre Inc. 2015 Annual Report", forming Attachment 2 to this Report;
 - c. receive the "Financial Statements for Toronto Pan Am Sports Centre Inc. for year ended December 31, 2015", forming Attachment 3 to this Report;
 - d. approve the Resolution of Shareholders forming Attachment 4 to this report:
 - i. To receive the "Financial Statements for Toronto Pan Am Sports Centre Inc. for year ended December 31, 2015";
 - ii. To approve the re-appointment of Welch LLP, Chartered Accountants, as the external auditor of Toronto Pan Am Sports Centre Inc. for the year ending December 31, 2016 , and authorize the Board of Directors of Toronto Pan Am Sports Centre Inc. to set the external auditor's remuneration; and
 - iii. To ratify all corporate proceedings since the last annual meeting of the shareholders;
 - e. Approve the Resolution of Shareholders forming Attachment 5 to this report, approving the "Toronto Pan Am Sports Centre Budget for 2016" which forms Schedule "A" to this Resolution (and is Attachment 6 to this Report);
 - f. City Council authorize the City Manager to execute the Resolutions of the Shareholder substantially in the forms of Attachments 4 and 5, effective as of June 15, 2016 in order to give effect thereto;
2. City Council:
 - a. Amend the composition of the City's appointments to the Board of Toronto Pan Am Sports Centre Inc. to remove two appointed Directors (the Director, Accounting Services in the Office of the Treasurer and the Director, Facilities Operations in Facilities Management in Parks, Forestry and Recreation), and appoint two replacement Directors (the General Manager, Parks Forestry and Recreation or their designate and the Deputy

City Manager and Chief Financial Officer or their designate), effective on July 1, 2016, such that the composition of the 5 Directors appointed by the City shall be:

- i. Two public/citizen members;
 - ii. The General Manager of Parks, Forestry and Recreation, or their designate;
 - iii. The Director of Community Recreation in Parks, Forestry and Recreation;
 - iv. The Deputy City Manager and Chief Financial Officer or their designate;
- b. Appoint the General Manager of Parks, Forestry and Recreation or their designate Board member to serve as Chair of the Board, as per the unanimous shareholders' agreement between the two Shareholders of TPASC Inc.;
 - c. Amend the City's Policy on Board Governance Structures to revise the Board composition as set out in Recommendations 2a and 2b; and
 - d. Appoint as Directors of TPASC Inc., the General Manager of Parks, Forestry and Recreation or their designate, the Director of Community Recreation in Parks, Forestry and Recreation and the Deputy City Manager and Chief Financial Officer or their designate for a term of office from July 1, 2016 to July 1, 2018, and until successors are appointed.
3. City Council direct the City Clerk to forward a copy of the "Financial Statements for Toronto Pan Am Sports Centre Inc. for year ended December 31, 2015", forming Attachment 1 to this Report, to the Audit Committee for information.

Financial Impact

There are no financial implications to the City resulting from the implementation of the recommendations in this report. City costs related to this facility for the City share of the space costs and field of play usage of \$3.664 million are included in the Council Approved 2016 Operating Budget for Parks, Forestry and Recreation and meet the City's contributions as outlined in the Resolution of Shareholders and Attachment 6 to this report.

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

DECISION HISTORY

On October 8, 2013, City Council approved the Toronto Pan Am Centre Governance Structure and authorized the City Manager to establish the Toronto Pan Am Sports Centre Inc. (TPASC Inc.) and execute a unanimous shareholders' agreement with the University of Toronto.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX34.8>

On April 1, 2014, City Council approved an amendment to the composition of the Board of the TPASC Inc. to replace two of the City staff Directors with two public/citizen members.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX39.1>

On July 7, 2015, that portion of the City Council meeting where EX7.14 was approved by Council was considered the previous (and first) Annual Meeting of the Shareholders of TPASC Inc. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX7.14>

ISSUE BACKGROUND

TPASC Inc. was incorporated under the *Ontario Business Corporations Act* (OBCA) on December 18, 2013 and was subsequently operationalized in February 10, 2014 with the inaugural meeting of the Board of Directors. A unanimous shareholders' agreement was executed on December 18, 2013, to govern the relationship of TPASC Inc. with the City of Toronto and the University of Toronto. The University and the City are equal shareholders of TPASC Inc.

Under section 94(1) of OBCA the directors of a corporation are required to call an annual meeting of shareholders not later than eighteen months after the corporation comes into existence and thereafter not later than fifteen months following the last annual general meeting. The business to be transacted at a TPASC Inc. annual shareholders meeting is the election of the directors of whose term of office has expired, the appointment of the auditor, authorization for the directors to fix the auditor's remuneration, receipt of financial statements, approval of operating and capital budgets, receipt of the annual report, and confirmation of corporation proceedings.

Alternatively, the requirements of holding an annual general meeting can be satisfied by both shareholders signing the appropriate resolutions without holding a meeting, addressing the matters that need to be addressed at the annual general meeting, pursuant to section 104 of the Business Corporations Act. The written resolution dealing with all of the matters required by the OBCA to be dealt with at an annual meeting of shareholders, and signed by the duly authorized representatives of all the shareholders entitled to vote at that meeting, satisfies all the requirements of the OBCA relating to the 2016 annual meeting of shareholders. The written resolution approving the annual operating and capital budgets signed by the duly authorized representatives of all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders.

COMMENTS

1. KEY ACHIEVEMENTS IN 2015

The Toronto Pan Am Sports Centre is a legacy of the 2015 Toronto Pan Am and Parapan Am Games. It is operated by TPASC Inc., a corporation co-owned by the City of Toronto and University of Toronto. The TPASC Inc. 2015 Annual Report, forming Attachment 2 to this Report, provides an overview of the corporation and the operation of the Sports Centre in 2015.

2015 was the first complete year of operations following an initial four-month opening in 2014. The 2015 year featured TPASC Inc. as an important competition venue for the 2015 Pan American Games for the following sports: Diving, Fencing, Para Swimming, Sitting Volleyball, Swimming and Synchronized Swimming. The year also featured the beginning of health and wellness programming for a diverse set of users.

As outlined in the 2015 Annual Report, TPASC Inc. had begun to realize its legacy expressed in a comprehensive strategic plan that includes a Vision, Mission, Values, Goals and Direction for the venue. The TPASC Inc. vision is to be recognized for providing world-class experiences in sport and recreation, for all, for life and mission is to deliver an inspirational and responsive experience in recreation and sport to communities through collaboration among the City, the University and high-performance sports.

Operating highlights for 2015 include:

- City usage included 34,500 people attending leisure and lane swims, 7300 people registered for Parks, Forestry & Recreation programs at TPASC Inc. and 10,500 participants in sports drop-in programs.
- University usage included turnstile counts of 117, 500/term, 16 unique UTSC programs with 533 participants in the winter and 20 unique UTSC programs and 604 participants in the Fall.
- 30 sport organizations utilize the site as a daily training environment.
- Hosted 175 different community, corporate and sporting events.
- Hosted competitions such as the Ontario Junior International Swim Meet, Wheelchair Basketball National Championship, and Mountain Equipment Co-op Toronto Indoor Triathlon.
- Hosted events such as the Scarborough General Hospital Volunteer Night, Canadian Paralympic Committee Media Summit and the Water Polo Canada Leadership Summit.

- Held an Inaugural Family Fun Day in February where thousands of City residents visited the facility and were introduced to the sport and recreation activities offered throughout the year.

2. ANNUAL GENERAL MEETING

Under the *Business Corporations Act* the business to be completed at an annual general meeting of shareholders includes the election of the directors of the Corporation whose term of office has expired; the appointment of the auditor; receipt of financial statements; and confirmation of the corporation's proceedings since the last annual meeting of the shareholders. The unanimous shareholders' agreement dated December 18, 2013 also requires that the annual operating and capital budgets be approved by the shareholders at the annual general meeting.

a. Appointment of Auditor

Under the OBCA the auditor must be appointed annually by the Shareholder at the annual general meeting of the corporation. The auditor so appointed holds office until the close of the next annual general meeting of the Shareholder, or until a successor is appointed.

TPASC Inc. undertook a Request for Quotation (RFQ) process in 2014 for an external auditor and engaged Welch LLP, Chartered Accountants, as the external auditor of TPASC Inc. for a five-year period covering fiscal years 2014 to 2018. The initial appointment of Welch LLP, Chartered Accountants as auditor for TPASC Inc. was approved by City Council in 2015.

b. Shareholder Resolutions

This report recommends that City Council, acting as Shareholder, approve the Shareholder Resolution forming Attachment 4 to this Report:

- i. To receive the "Financial Statements for Toronto Pan Am Sports Centre Inc. for year ended December 31, 2015";
- ii. To approve the re-appointment of Welch LLP, Chartered Accountants, as the external auditor of Toronto Pan Am Sports Centre Inc. for 2015, and authorize the Board of Directors of Toronto Pan Am Sports Centre Inc. to set the external auditor's remuneration; and
- iii. To ratify all corporate proceedings since the last annual meeting of the shareholders.

The unanimous shareholders' agreement provides that, in addition those matters required by the *Business Corporations Act*, that the annual operating and capital budget approved by the Board shall be approved at each annual meeting of the Shareholders.

This report also recommends that City Council, acting as Shareholder, approve the Shareholder Resolution forming Attachment 5 to this Report approving the "Toronto Pan Am Sports Centre Budget for 2016".

3. SUMMARY – 2015 AUDITED FINANCIAL STATEMENTS

TPASC Inc. officials have informed the City that the Board, at its meeting on March 30, 2016, approved the "Financial Statements for Toronto Pan Am Sports Centre Inc. for year ended December 31, 2015", forming Attachment 3 to this Report. Under the *Business Corporation Act* (Ontario) and provisions of the unanimous shareholders' agreement, the Shareholders must receive the annual audited financial statements at the Annual Meeting of the Shareholders.

Highlights of 2015 Financial Results

The Financial Statements show an operating deficit of \$1.589 million for 2015, slightly higher than the budgeted operating deficit of \$1.566 million after making the budgeted contribution of \$3.941 million to the designated cash fund for capital maintenance. Revenues and Expenditures were both lower than budget in this year, which included the Pan Am Games use of the facility, but as a result of capital contributions the accumulated surplus has grown to \$6.199 million.

Designated cash, held for major maintenance and capital requirements, increased from \$0.347 million to \$5.927 million primarily as a result of the Legacy Fund contribution of \$1.500 million and the budgeted contribution of \$3.941 million. Capital stock was issued for \$8.153 million to represent the capital contributions of 2 years of Legacy Fund support consisting of a \$1.5 million capital amount and \$2.576 million for high performance space rental each year. The results of the first full year of operation show progress toward the development of a significant accumulated surplus provision for future maintenance of the facility.

4. SUMMARY – 2016 BUDGET

TPASC Inc. officials have informed the City that the Board, at its meeting on September 27, 2015, approved a 2016 combined capital and operating budget for TPASC Inc. The 2016 combined capital and operating budget is forms Attachment 4 to this Report. Under provisions of the Unanimous Shareholders' Agreement, the Shareholders must approve the annual operating and capital budgets of TPASC Inc. at the Annual Meeting of the Shareholders.

Highlights of 2016 Expenditure Budget

The 2016 operating budget generally follows the original owner's budget with planned revenues of \$17.153 million and expenditures at \$13.182 million for a surplus of \$3.971 million, before budgeted reserve contributions of \$3.941 million. The projected annual surplus is \$0.030 million for this first full year of regular operations, post games.

5. BOARD COMPOSITION AND CHAIR – CITY APPOINTMENTS

a. Appointment of Directors

Under paragraph 4.01(a) of the unanimous shareholders agreement' the Board consists of ten (10) members, five (5) of whom are appointed by each Shareholder. Each Director shall serve for a term of two (2) years. Incumbent Directors may be reappointed by the applicable nominating Shareholder.

On April 1, 2014, City Council approved an amendment to the composition of the Board of the TPASC Inc. related to City appointments. City Council amended the composition to replace the Director of Management Services in Parks, Forestry and Recreation and the General Manager of Economic Development and Culture or his/her designate with two public/citizen members. The appointment of the two public/citizen members will be before City Council at its meeting on June 7 and 8, 2016.

In conjunction with the appointment of two public/citizen members to the Board, staff are also recommending amending the City staff members appointed to the Board as follows:

Current City Appointees	Recommended City Appointees
<ul style="list-style-type: none"> two public/citizen members 	<ul style="list-style-type: none"> two public/citizen members
<ul style="list-style-type: none"> The Director of Facilities Operations in Facilities Management 	<ul style="list-style-type: none"> The General Manager of the Parks, Forestry and Recreation or their designate (to serve as Chair or Vice Chair)
<ul style="list-style-type: none"> The Director of Community Recreation in Parks, Forestry and Recreation 	<ul style="list-style-type: none"> The Director of Community Recreation in Parks, Forestry and Recreation
<ul style="list-style-type: none"> The Director of Accounting Services in the Office of the Treasurer 	<ul style="list-style-type: none"> The Deputy City Manager & Chief Financial Officer or their designate

The recommended amendments to City staff positions on the TPASC Inc. Board would improve the alignment of Board decisions with other City recreation programs and strategic priorities of the City, enhance City oversight of decisions that could impact the City Operating Budget, and help to balance leadership between City and University administrative leads. Further, the recommended amendments would strengthen protection

of City stakeholder interests such as the local community vis-à-vis other stakeholder interests represented by University-appointed Board members such as University of Toronto Scarborough Campus (UTSC) students and TPASC Inc. tenants.

City recreation programming provided in TPASC Inc. is one of the City's most expensive recreation operations, in a geographical area that is deficient in other recreation facilities. In 2015, the City rented space to deliver programming at a cost of \$3.665 million per year whereas the University contributed only \$1.748 million for students' use of the facility. Any operational losses incurred by TPASC Inc. are shared equally between the two shareholders. Given this arrangement, strong financial management of the TPASC Inc. is a priority in order to minimize any potential losses to the City.

All the Directors appointed by the University of Toronto were staff from University of Toronto's St. George Campus or Scarborough Campus (UTSC) with workplace reporting relationships among them. In March 2016, the University made changes to the composition of University-appointed Board members by replacing two University staff positions with the UTSC President and the President of the Scarborough Athletic Association.

This report recommends the term of City staff appointments to the Board to be July 1, 2016 to July 1, 2018. As per the unanimous shareholder agreement, Board members serve 2 year terms. The July 1, 2016 start of the term will allow for the TPASC Inc. AGM to take place with the current Board members, who are familiar with proceedings of the corporation in 2015 and since its inception. Further, the recommended term for City staff members will align the term for City-appointed public/citizen members.

b. Appointment of Chair/Vice-Chair

Under paragraph 4.04(a) of the unanimous shareholders agreement, the Board Chair is appointed by one or the other of the shareholders, alternating every two years. This report recommends that the General Manager of Parks, Forestry and Recreation or their designate serve as Chair during the period that the City appoints the Chair and alternatively serve as Vice-Chair when the University of Toronto appoints the Chair.

The Chair role is rotated for two year terms and currently rests with the City. The Director, Management Services, Parks, Forestry and Recreation who is the current Chair, will be replaced with one of the public/citizen members once appointed by Council, leaving the Chair vacant. City Council, acting as a shareholder, has the authority to replace the Chair within the two-year period where the City selects the Chair, as per the unanimous shareholder agreement.

To further enhance alignment of Board decisions with City priorities and operations, protect the City's financial position, help balance City and University administrative leadership on the Board, and protect City stakeholder interests, this report recommends the General Manager of Parks, Forestry and Recreation serve as Chair or Vice-Chair when the University appoints the Chair.

CONTACTS

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SIGNATURE

Peter Wallace
City Manager

Roberto Rossini
Deputy City Manager & Chief Financial Officer

ATTACHMENTS

- Attachment 1: Communication from the Chair, Board of Directors, Toronto Pan Am Sports Centre Inc. (April 29 2016), on the 2015 Annual Report and Audited Financial Statements
- Attachment 2: Toronto Pan Am Sports Centre Inc. 2015 Annual Report
- Attachment 3: Financial Statements for Toronto Pan Am Sports Centre Inc. for year ended December 31, 2015
- Attachment 4: Toronto Pan Am Sports Centre Inc. Resolutions of the Shareholder (1)
- Attachment 5: Toronto Pan Am Sports Centre Inc. Resolutions of the Shareholder (2)
- Attachment 6: Schedule "A" - Toronto Pan Am Sports Centre combined capital and operating budget for the year 2016