

Item # 1

To: Human Resources and Corporate Governance Committee
From: John A. Macintyre, Senior Vice-President, Corporate Affairs
Derek Ballantyne, Chief Operating Officer
Date: February 17, 2010
Subject: **Build Toronto Conflict of Interest Policy**

Recommendations

It is recommended that the Human Resources and Corporate Governance Committee adopt and recommend approval to the Build Toronto Board of Directors, the Conflict of Interest Policy for Directors and Officers as outlined in Attachment A+.

Background

As part of the workplan to support the Human Resources and Corporate Governance Committee, we have developed the attached Conflict of Interest Policy. This policy will apply to both Directors and Officers of the Corporation.

One of the critical policy initiatives that is required in a start-up situation such as Build Toronto, is to have a comprehensive Conflict of Interest Policy. This is also a requirement of our Shareholder Direction.

Staff have developed the attached policy and it has been reviewed for form and compliance with the City of Toronto Act and the Ontario Business Corporations Act by our Corporate Counsel from BLG Canada. It is comprehensive and addresses the potential conflict situations that may arise as a part of our business.

With the Board composition of the Build Toronto Board, and the nature of our business in the development sector, there will be conflicts arise from time to time and we need to have an effective, diligent policy with clear guidelines for both Directors and Officers of the Corporation. We believe that the attached policy meets these objectives and should be recommended to the Board for adoption.

Build Toronto Protocol for declaration of Conflict of Interest

General

Build Toronto Directors must conform to the *Municipal Conflict of Interest Act*, and any other Applicable Laws (such as the Ontario Business Corporations Act) or City or Board policies. The *Municipal Conflict of Interest Act* (the ~~M~~M~~C~~CIA) is deemed to apply to members of the Board. However, as the obligations regarding conflicts already exist by virtue of the provisions of the *Ontario Business Corporations Act*, this protocol would suffice to deal with obligations under the MCIA.

Section 4.1 of the Shareholder Direction requires that each director and officer of Build Toronto shall inform the Board immediately when he or she has an interest in a matter to be considered by the Board or a committee of the Board, and take appropriate action in accordance with the provisions of the various acts and policies. For Build Toronto, this requirement to declare an interest extends to development proposals and transactions being considered by management and that come to the knowledge of a Director or Officer.

Protocol for Directors/Officers

When a Director/Officer has advance knowledge of an interest in a matter to be considered by the Board or a committee of the Board they will:

- Inform the Chair or Vice-Chair of the Board of their interest in the matter
- Request that their interest be recorded in the minutes of the meeting
- Absent themselves from any discussion and vote on the matter

When a Director/Officer does not have advance knowledge of an interest in a matter to be considered by the Board or a committee of the Board, but learns of this interest during the course of a meeting they will:

- Immediately inform the Chair of the meeting of their interest
- Request that their interest be recorded in the minutes of the meeting
- Absent themselves from any discussion and vote on the matter

It is acknowledged that Directors may have an interest in matters that are being considered by management in their professional or personal capacities.

Where a Director has knowledge of an interest in a matter being considered by management or is involved in a matter in a capacity other than as a Director or Officer of Build, and which may ultimately be considered by the Board or a Committee of the Board they will:

- Inform the CEO and/or the Chair or Vice-Chair of their interest
- Request that their interest be recorded in the minutes of the next Board meeting
- Absent themselves from any discussion and vote of the matter at Board and Committee meetings

In such cases it is acknowledged that the Director may continue to be involved in the matter with management, but should not make decisions on that matter.

Extract from Ontario Business Corporations Act

R.S.O. 1990, CHAPTER B.16

Disclosure: conflict of interest

132. (1) A director or officer of a corporation who,

(a) is a party to a material contract or transaction or proposed material contract or transaction with the corporation; or

(b) is a director or an officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the corporation,

shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his or her interest. R.S.O. 1990, c. B.16, s. 132 (1).

by director

(2) The disclosure required by subsection (1) shall be made, in the case of a director,

(a) at the meeting at which a proposed contract or transaction is first considered;

(b) if the director was not then interested in a proposed contract or transaction, at the first meeting after he or she becomes so interested;

(c) if the director becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or

(d) if a person who is interested in a contract or transaction later becomes a director, at the first meeting after he or she becomes a director. R.S.O. 1990, c. B.16, s. 132 (2).

by officer

(3) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,

(a) forthwith after the officer becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of directors;

(b) if the officer becomes interested after a contract is made or a transaction is entered into, forthwith after he or she becomes so interested; or

(c) if a person who is interested in a contract or transaction later becomes an officer, forthwith after he or she becomes an officer. R.S.O. 1990, c. B.16, s. 132 (3).

Where contract or transaction does not require approval

(4) Despite subsections (2) and (3), where subsection (1) applies to a director or officer in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the corporation's business, would not require approval by the directors or shareholders, the director or officer shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his or her interest forthwith after the director or officer becomes aware of the contract or transaction or proposed contract or transaction. R.S.O. 1990, c. B.16, s. 132 (4).

Director not to vote

(5) A director referred to in subsection (1) shall not attend any part of a meeting of directors during which the contract or transaction is discussed and shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is,

(a) one relating primarily to his or her remuneration as a director of the corporation or an affiliate;

(b) one for indemnity or insurance under section 136; or

(c) one with an affiliate. 2006, c. 34, Sched. B, s. 23 (1).

Remaining directors deemed quorum

(5.1) If no quorum exists for the purpose of voting on a resolution to approve a contract or transaction only because a director is not permitted to be present at the meeting by reason of subsection (5), the remaining directors shall be deemed to constitute a quorum for the purposes of voting on the resolution. 2006, c. 34, Sched. B, s. 23 (2).

Shareholder approval

(5.2) Where all of the directors are required to make disclosure under subsection (1), the contract or transaction may be approved only by the shareholders. 2006, c. 34, Sched. B, s. 23 (2).

Continuing disclosure

(6) For the purposes of this section, a general notice to the directors by a director or officer disclosing that he or she is a director or officer of or has a material interest in a person, or that there has been a material change in the director's or officer's interest in the person, and is to be regarded as interested in any contract made or any transaction entered into with that person, is sufficient disclosure of interest in relation to any such contract or transaction. 2006, c. 34, Sched. B, s. 23 (3).

Effect of disclosure

(7) Where a material contract is made or a material transaction is entered into between a corporation and a director or officer of the corporation, or between a corporation and another

person of which a director or officer of the corporation is a director or officer or in which he or she has a material interest,

(a) the director or officer is not accountable to the corporation or its shareholders for any profit or gain realized from the contract or transaction; and

(b) the contract or transaction is neither void nor voidable,

by reason only of that relationship or by reason only that the director is present at or is counted to determine the presence of a quorum at the meeting of directors that authorized the contract or transaction, if the director or officer disclosed his or her interest in accordance with subsection (2), (3), (4) or (6), as the case may be, and the contract or transaction was reasonable and fair to the corporation at the time it was so approved. R.S.O. 1990, c. B.16, s. 132 (7).

Confirmation by shareholders

(8) Despite anything in this section, a director or officer, acting honestly and in good faith, is not accountable to the corporation or to its shareholders for any profit or gain realized from any such contract or transaction by reason only of his or her holding the office of director or officer, and the contract or transaction, if it was reasonable and fair to the corporation at the time it was approved, is not by reason only of the director's or officer's interest therein void or voidable, where,

(a) the contract or transaction is confirmed or approved by special resolution at a meeting of the shareholders duly called for that purpose; and

(b) the nature and extent of the director's or officer's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in the information circular required by section 112. R.S.O. 1990, c. B.16, s. 132 (8).

Court setting aside contract

(9) Subject to subsections (7) and (8), where a director or officer of a corporation fails to disclose his or her interest in a material contract or transaction in accordance with this section or otherwise fails to comply with this section, the corporation or a shareholder of the corporation, or, in the case of an offering corporation, the Commission may apply to the court for an order setting aside the contract or transaction and directing that the director or officer account to the corporation for any profit or gain realized and upon such application the court may so order or make such other order as it thinks fit. R.S.O. 1990, c. B.16, s. 132 (9).