

STAFF REPORT

TO: G.D. BERRY, CITY MANAGER

FROM: A.C. KENNING, DEPUTY CITY MANAGER

RE: PARTNERING AGREEMENT (AS AMENDED)

STAFF RECOMMENDATION:

It is recommended that Council agree to the 30 day “standstill” period proposed by the Millennium/Suro Joint Venture in exchange for the return of the hotel lands to the City.

BACKGROUND:

On 2008-DEC-17 Nanaimo City Council resolved that it considered Millennium Nanaimo Properties Ltd. and Suro Development Company in default of the Amended Partnering Agreement.

Council also resolved to consider the default at a Council meeting following the required 30 day “cure” period.

This 30 day cure period has now passed and the default has not been cured, therefore under the terms of the Amended Partnering Agreement Council can now consider termination.

DISCUSSION:

In response to being informed that Nanaimo City Council will consider termination of the Amended Partnering Agreement, and following lengthy discussions with City representatives, the Joint Venture has proposed the following:

1. 30 day “standstill”;
2. negotiations with the Joint Venture during the 30 day “standstill” period regarding the Joint Venture’s continued involvement in the project;
3. hotel lands returned to the City.

Correspondence received from the solicitor for the Joint Venture describing this proposal is attached.

Staff believe there is value to the City in having the hotel lands returned to the City at this time.

The City already holds a registered option on the hotel lands granting it the right to re-acquire the hotel lands for \$1.00 should the Joint Venture fail to proceed with construction of the hotel. The City solicitor advises, however, that re-acquiring the land at this time without the need to exercise the option does remove considerable uncertainty. It eliminates any potential for the land to be liened by Millennium or its creditors or for the land to get caught up in any subsequent dispute.

The hotel lands were transferred to the Joint Venture in accordance with the terms of the Amended Partnering Agreement once Millennium satisfied the "subject to financing" condition precedent in the Agreement. The Joint Venture required the land in order to proceed with the hotel (and secure the related financing).

The "foundry lands" are not part of this proposal because the "foundry lands" remain in City ownership.

The 30 day "standstill" will allow more time for discussions and negotiations with the Joint Venture regarding their future involvement in the hotel project. Unfortunately, it was not possible to resolve this matter during the 30 day "cure" period recently completed.

Respectfully submitted,

ACK/jdk
Council: 2009-JAN-26