

ELLIOT LAKE COMMISSION OF INQUIRY

CLOSING SUBMISSIONS – PINCHIN ENVIRONMENTAL LTD.

The Scope of Pinchin Environmental Ltd.'s Assignment – The Building condition Assessment

1. On or about May 25, 2009 Pinchin Environmental Ltd. (“Pinchin Environmental”) submitted to Royal Bank of Canada (“RBC”) and Midland Loan Services Inc. (“Midland Loan Services”) (collectively the “Clients”) a proposal (the “Proposal”) to complete a Building Condition Assessment (“BCA”) with respect to the Algo Mall, 151 Ontario Avenue, Elliot Lake, Ontario (the “Property”), which was accepted. [**Exhibit 5307 – RBC-P000002307**]
2. The Clients required the BCA as part of the refinancing efforts of the Algo Mall owners.
3. The Proposal clearly identified to the clients the scope of the BCA as being in “general conformance with the ASTM Designation: E 2018-01 Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process” (the “ASTM Standard”). Jaime Hass (“Hass”) stated numerous times in his testimony that a structural assessment is beyond the defined scope of the ASTM Standard and that Pinchin Environmental was never retained to conduct a structural assessment of the Algo Mall. It was retained to conduct a BCA. As part of the BCA, Pinchin Environmental reviewed only those areas of the structure that were visible as per the ASTM Standard. [**Exhibit 5330 – PEC_E000002296**] [**Exhibit 5338 – PEC_E000008060**] [**Exhibit 5339 –**

PEC_000008061] [Exhibit 5340 – PEC_000008062] [Exhibit 5341 –
PEC_000008063]

4. It is important to understand the purpose and scope of ASTM E 2018-01 in order to provide recommendations for both structural assessments and the quite distinct Building Condition Assessments which follow this standard.
5. A structural engineer on staff was not required to fulfill Pinchin Environmental's mandate and provide a BCA to the ASTM Standard. The objective is set out in section 5.1 of ASTM E 2018-01 as follows:

“Objective - The purpose of the PCA is to observe and report, to the extent feasible pursuant to the processes described herein, on the physical condition of the subject property”.

[Exhibit 5330 – PEC_E000002296 – section 5.1]

6. The scope of the BCA and the work performed by Pinchin is limited to the conclusions that can be drawn following the procedures outlined in the ASTM Standard and method. A BCA is based solely on a walk-through survey which to quote ASTM method E 2018-01 is “literally the field observer’s visual observations while walking through the subject property.” **[Exhibit 5330 – PEC_E000002296 – section 2.3.12, 2.3.16, 2.3.17, 2.3.28, 2.3.40, 2.3.44]**
7. By the definition provided in the ASTM Standard, a visual inspection does not include removing or lifting ceiling tiles, removal of materials or personal property (which would include fireproofing on the structural steel). Section 2.3.44 of ASTM E 2018-01 provides as follows:

“It is to be conducted without the aid of special protective clothing, exploratory probing, removal of materials, testing, or the use of equipment, such as scaffolding, metering/testing equipment or devices of any kind.”

[Exhibit 5330 – PEC_E000002296 – section 2.3.44]

8. Clearly this is not a structural assessment. A structural assessment requires these lifting devices, tools and equipment as used by NORR in assessing the causes of the failure and requires intrusive testing and removal of finishes and materials. Comments related to the structure in an assessment following the procedures clearly laid out by ASTM E 2018-01 are limited to the visual condition of the structure steel which is fully exposed and this is known to both the client and the consultant. This is not a structural assessment of hidden elements such as the connections and this was well known to the Clients.

9. A Structural Engineer was not required on staff at Pinchin Environmental with respect to the work undertaken by Pinchin Environmental. The work undertaken and the report produced followed exactly the scope of the work commissioned by the Clients and was not and should not be understood to be a structural assessment in any way. Section 6.7 of ASTM E 2018-01 addresses this directly as follows:

“6.7 Not a Professional Architecture or Engineering Service- It is not the intent of this guide that by conducting the walk-through survey or reviewing the PCR that the consultant, the field observer, or the PCR reviewer is practicing architecture or engineering. Furthermore, it is not the intent of this guide that either the PCR reviewer or the field observer, if they are an architect or engineer, must either sign or seal the PCR as an instrument of professional service or identify their signature as being that of an architect or engineer.”

[Exhibit 5330 – PEC_E000002296 – section 6.7]

10. The work undertaken on behalf of the Clients included comments on the surface condition of the visually obvious steel but was clearly understood by both the Clients and Pinchin Environmental to be a BCA and in no way a structural assessment requiring a

structural engineer on staff. Pinchin Environmental recommended intrusive investigation that would have required the services of a structural engineer. Pinchin Environmental does not undertake and has never undertaken structural assessments of buildings.

Field Observations Pursuant to the ASTM Standard

11. Pinchin Environmental's surveyor, Majid Milani-Nia ("Milani-Nia"), attended at the Algo Mall on June 3, 2009. Milani-Nia carefully observed the visible structural steel above the two levels of the pedestrian walkway and photographed the general area of the walkway, the deck and the steel supporting the deck. All the photographs taken of the Algo Mall and hotel on the day that Milani-Nia was on site were submitted to the Commission. Thirteen (13) photographs specifically highlight the structural steel visible above the walk ways. These photographs clearly show that these visible structural elements were in good condition at the time of Pinchin Environmental's survey and did not show signs of corrosion or deterioration (other than the most minor superficial corrosion which did not warrant comment). **[Exhibit 5342 - OPP_E000225607] [Exhibit 5343 - OPP_E000225608] [Exhibit 5345 - OPP_E000225610]**
12. The photographs illustrate as visible from the walkway, the beams are all painted gray, in good condition and would be classified (using the NORR criteria given in their forensic report) as either in condition (a) no rust condition or (b) light condition (surface rust).
13. The only other exposed steel seen by Milani-Nia was above several missing ceiling tiles in one retail store (Zellers). The visible beam in this area showed no significant corrosion. Hence no comment or recommendation was needed to identify corrosion or deterioration of steel in the mall. The connections that ultimately failed and where

corrosion and deterioration was present were covered with fireproofing and hidden behind the suspended ceiling so Milani-Nia could make no comment on the condition of these structural elements while performing the BCA.

14. As stated in the preceding paragraph, Milani-Nia did not note any rust or corrosion which warranted advice to the Clients that a structural engineer should be retained to further investigate the degree of rust or corrosion and to determine if the structural integrity of the building had been compromised.
15. Pinchin Environmental did recommend a significant testing and repair program for the parking deck in the June 19, 2009 Preliminary Building Condition Assessment (the "Pinchin Report") due to the water leakage issue alone but without any evidence of steel corrosion. [Exhibit 101 – RBC_P000002402]

The Pinchin Environmental Recommendations

16. Pinchin Environmental was aware of the infiltration of water through the deck from an article obtained from the local newspaper although it was not provided with prior reports commissioned by the mall owner. The Proposal specifically mentions the historical moisture infiltration and deficiencies associated with the podium parking deck and roof systems. The Pinchin Report mentions the absence of a waterproof membrane as being the cause of the leakage and recommended several options to prevent future leakage. Pinchin Environmental could not draw any conclusions on the impact of this leakage on the structural steel by a visual inspection. In Pinchin Environmental's visual inspection the extent of corrosion of fireproofed steel was impossible to determine and in the one large area of visible steel (the pedestrian walkway) the infiltration had not caused any

significant corrosion at the time of Pinchin Environmental's inspection. There was no reason to suspect the condition was different in other areas.

17. Nonetheless, the Pinchin Report recommendations related to the parking deck (see the Pinchin Report Executive summary and Table 1 – Summary of Anticipated Expenditures) included recommendations made specifically due to the ongoing water infiltration. Pinchin Environmental recommended to the Clients:

- a) A more detailed investigation of the condition of the parking deck precast concrete slab panels (including destructive testing);
- b) Repairs to the concrete deck over approximately 25% of the area of the precast concrete slab panels; and
- c) An allowance of over \$2,600,000 for Parking Deck investigations and waterproofing in the years 2009 to 2012.

18. Investigation and repair work of this magnitude and nature would have required a structural engineer, significant intrusive investigation and removal of at least some of the concrete slab panels (hence exposing the steel and the steel corrosion and deterioration for repair or replacement). Although Pinchin Environmental did not suspect or mention that the infiltration may have caused the steel to corrode or deteriorate and focused on the deterioration of the structural slabs, this recommendation, if followed, would have exposed the extent of the problem of the structural steel at the time when the underside of the precast slabs were investigated.

19. Pinchin Environmental's recommendation, based solely on information regarding prior leakage and its visual walk-through survey was appropriate based on the ASTM Standard.
20. This recommendation was apparently not followed.
21. Prior to performing the BCA, Milani-Nia and Hass did not review the files and mould reports previously performed by Pinchin Environmental at the Algo Mall. The prior work had been performed for a tenant of the mall, not the current or prior owners. The work had been performed by a separate operating group (Mould and Indoor Air Quality group) from a different office (Mississauga instead of Ottawa). Pinchin Environmental's work is performed under agreements that limit Pinchin's right to utilize information prepared for that specific client and Pinchin did not have permission to share reports performed on behalf of the client of these prior projects with the client in this case (RBC and Midland).
22. Most importantly, even if the existence of these prior mould reports was known to Hass and Milani-Nia, it would not have changed Pinchin Environmental's recommendations which even without this information included the recommendations for significant intrusive investigations and for major expenditures to stop the roof leaks.

The Intended Recipients/Audience for the Pinchin Report

23. The Pinchin Report was only provided to the Clients. Pinchin Environmental did not provide the owner of the mall with a copy of the Pinchin Report as Pinchin Environmental was retained by the Clients. Pinchin Environmental was not aware at the

time it delivered the Pinchin Report if the Clients provided the Pinchin Report to the mall owner. Pinchin Environmental had no contact with the owner of the mall and would not have been at liberty to go directly to the owner unless an imminent hazard was noted. Which it was not.

24. The Pinchin Report was produced for the exclusive use of the Clients and not for the general public, users or occupants of the mall and/or the owner of the mall. The Clients had previously commissioned many similar BCAs from Pinchin Environmental and many other consultants. The Clients were well aware that the ASTM Standard was limited to a visual walk-through inspection and did not include any removal of finishes or ceiling tiles. Reports of this nature do not reproduce the full ASTM method or limitations in the report. This was not necessary since the report was produced for a client well aware of the method and limitations and who used the BCA as part of their due diligence for the limited purpose of deciding whether to refinance the Property.
25. The Proposal included an Authorization to Proceed (which was accepted and signed back by the Clients) which specifically included the following two limitations:
 - i) PINCHIN's quotation was prepared for the consideration of the CLIENT only. Its contents may not be used or disclosed to any party without prior written consent from Pinchin Environmental; and
 - ii) The CLIENT acknowledges that subsurface and concealed conditions may vary from those encountered or inspected. Pinchin Environmental can only comment on the environmental and building conditions observed on the date(s) the assessment is performed.

[Exhibit 5307 – RBC-P000002307][RBC-P000002374]

26. The fact that the Pinchin Report does not identify the limitations of ASTM E 2018-01 or the protocols of a BCA is not a deficiency in a report prepared specifically for a sophisticated client who was fully aware of the limitations, accepted these limitations and used this BCA routinely in their investment decisions.

Efforts to Obtain Previous Reports from the Mall Owner

27. Pinchin Environmental's client was ultimately the RBC, however the work was arranged by Midland Loan Services Inc. (Midland). Pinchin did not have direct relations or contacts for this work with the owner of the mall other than the maintenance worker who accompanied Milani-Nia on site. Pinchin Environmental did request prior reports both verbally and by email to the Clients. An email from Mr. Backman of Pinchin Environmental's Ottawa office to Mr. Harding of Midland dated May 26, 2009 included a copy of an article from the Elliott Lake Standard of May 26, 2009 entitled "Mall roof leaks now stopped says owner". The email states:

"Hey Pal interesting article that you should be aware of
When we were researching this project we came across this article on the mall in Elliott Lake. Based on this information there should be extensive investigation reports and information on the repairs that have been completed. In addition the report provided by RBC identified that "All expansion decks were replaced in 2008, suffered damage due to snow plowing and need repair and/or replacement. There should be extensive information available on work that has been completed; and John that would help us."

[Exhibit 5307 – PEC_E000002295]

28. The Clients did not provide any further reports (Pinchin Environmental does not know if they actually had these earlier reports or not). It is not unusual in this type of project, where the work is being arranged by a third party, to not receive prior reports and Pinchin Environmental proceeded with the work.

Recommendation regarding the use and scope of BCA's.

29. Building Condition Assessments have become very routine in advance of many property transactions including sales and mortgaging of properties. These BCAs are widely relied upon to indicate the allowance for repairs and replacement over the life of the ownership or mortgage. These comply with a specific industry prepared and accepted procedure (ASTM E 2018-01) and their use and limitations are well known to the persons who commission and perform this work.
30. It is well known to all that this is a visual review of issues around the building with a focus on mechanical equipment (which may need replacing), roofing repair or replacement, paving or parking repair or replacement and in some cases electrical or other factors. Although comments are made on elements such as the structure and the elevators, the comments are limited to visual observations made without lifting devices or intrusive testing. This is not a structural assessment since it is impossible to provide a structural assessment without performing extensive review of the original design, investigation of the steel on a foot by foot and connection by connection basis, etc., nor an assessment of (for example) the condition of the elevator cables.

31. Although Pinchin Environmental are not structural engineers and do not perform structural assessments, it appears from the testimony at the Inquiry that a similar industry prepared standard for the structural assessment of buildings does not exist. Pinchin Environmental recommends that the Commissioner consider identifying the specific requirements or scope for a Structural Investigation of a building which must be performed by a structural engineer for due diligence purposes or possibly as a result of a recommendation from a BCA. The different purposes and scope of a BCA versus a structural assessment of a building should be clarified by the Inquiry as it does not appear that the different purposes are widely known, even by NORR who provided the forensic investigation. There is no question that there is a difference.

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