

Hotel Renovations: What could possibly go wrong?

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A dream renovation could turn to disaster very easily for any Developer or Contractor. Careful thought and drafting is needed to avoid being caught by common pitfalls.

Scenario 1

A luxury hotel wants to have the foyer and restaurant areas refurbished during its off season. These areas include a shopping arcade which is part of the complex but adjacent to the actual hotel. Work is delayed and falls well behind the programme. The Developer is faced with the prospect of the work having to be done over the peak tourist season which may affect hotel bookings and shop turnover. The Contractor is engaged under a construct only FIDIC Red Book 1999.

If work is delayed from the off season to the peak season the hotel operator will claim against the Developer as will the lessees of the shops, which could be very expensive. If the construction contract is based on FIDIC and is not amended the Developer could not accelerate the Contractor's work to avoid work in peak season or manage this issue by suspending certain work at certain times (noisy or dusty work).

The construction contract should also ensure that any protocol for work to be carried out which has been agreed with the operator is imposed on the contractor and that the Contractor does not cause the Developer to breach any lease. It may also be the case that agreements for cooling or other services will be impacted and need to be managed under the construction contract. Importantly the agreed damages for late completion should reflect the potential claims or exclude from the rate claims from tenants and the operator.

Scenario 2

A Contractor is working on a hotel redevelopment. The hotel is operating and there are separate specialised contractors who are doing the entry areas. The foyer art work will be completed earlier than the entire project as the hotel is to partly open. The foyer art is fragile and may be damaged by too much vibration. During construction the specialised contractors cause delays due to unloading materials and taking longer than scheduled to complete their work. The contract as in scenario 1 is engaged under a construct only FIDIC Red Book 1999.

The Contractor should look to have amendments to the contract to ensure that it is not responsible for the other contractors working on a shared site and that if the other contractors cause delay then it is not the Contractor's responsibility. The Contractor should also ensure that it is clear that it will get additional costs it incurs should this happen. It is preferable if there is an agreed protocol for who controls the loading docks and what access and egress is given as well as clarifying who is responsible for safety on shared areas. The limitation of liability clause will need careful review and the Contractor should make sure that any particular conditions do not delete the 'no liability for consequential loss' provision, which may expose the Contractor to significant loss should the Contractor disrupt the hotel's business.

As a Developer you would want to ensure that the Contractor is liable for, and is to coordinate work so as

to not cause, damage the artwork. The contract will need to manage the early completion of part of the work and the monitoring of vibrations while work continues. Maybe there should be clear rules to protect hotel guests and to not disturb functions, venues and guests sleeping.

While these scenarios are brief, these types of scenarios are almost always encountered in any hotel renovation project. The scenarios highlight dangers for both the Developer and the Contractor.

Developers should:

- Ensure the contract makes provision for the interaction between the ongoing hotel and retail operations and the works, particularly where there is work which will cause noise or dust;
- Select a Contractor who is familiar with operating in a Brownfield (as against a Greenfield) environment, and preferably with experience with hotels and their requirements;
- Check the program to have a sequence that minimises the impact on the hotel operational areas;
- Allow for the ability to have no work times, either due to peak seasons or to times of day, and agree the effects that may have on the contract price, if any;
- Make sure that the terms of the hotel management agreement are not broken or that any redevelopment agreement reached with the hotel operator is reflected in the risks passed through to the Contractor;
- Have measurable means to assess if noise or vibration is excessive through the installation of meters or requiring the Contractor to install and monitor such meters;
- Manage the protection of existing structures and infrastructure and ensure that any agreed work methods are included or observed, particularly where there are any sensitive areas.

Contractors should:

- Ensure that they have an agreed means of access and egress as well as places for the storage of materials;
- Become familiar with the hotel management team to work out when work can be done and when it cannot be done;
- Set out in the contract the agreed terms for when the Contractor is entitled to claim for additional costs due to disruption or delay to accommodate the hotel operations;
- Ensure their insurance cover is adequate for the risks of working in this operating environment;
- Limit their liability generally and seek to remove liability for consequential loss as claims by third parties (such as the hotel operator or tenants) may be significant

All hotel renovation or addition projects will contain unique risks. These risks should be considered and the agreement on how they are to be managed should be properly documented in the construction contract. It is simply too risky to your business as a Developer or a Contractor to use a standard form and ignore these risks.