

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY: _____
Jacques Dubé, Chief Administrative Officer

DATE: November 20, 2017

SUBJECT: **Administrative Order 50 Disposal of Surplus Property - Community Interest
PID 00076471 1588 Barrington Street, Halifax**

ORIGIN

September 9, 2014 – Regional Council removed 1588 Barrington Street, Halifax, from the list of proposed disposals under Administrative Order 50.

March 22, 2016 – Regional Council declared 1588 Barrington Street, Halifax, surplus to municipal operational requirements and approval disposal through the Community Interest category of Administrative Order 50.

November 19, 2016 – Call for Submissions of Interest was issued for the subject property with a May 29, 2017, submission deadline.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, 2008, S.N.S c.39

Section 63 (1) The Municipality may sell or lease property at a price less than market value to a non-profit organization that Council considers to be carrying on an activity that is beneficial to the Municipality.

(2) A resolution to sell or lease property referred to in subsection (1) at less than market value shall be passed by a two-thirds majority of the Council present and voting.

(3) Where the Council proposes to sell property referred to in subsection (1) valued at more than ten thousand dollars at less than market value, the Council shall first hold a public hearing respecting the sale

(4) The Council shall advertise the public hearing at least twice, in a newspaper circulating in the Municipality, the first notice to appear at least fourteen days before the hearing.

(5) Notice of the public hearing shall include the date, time and place of the hearing, the location of the real property or description of the tangible personal property, the estimated value of the property and the purpose of the sale.

RECOMMENDATION ON NEXT PAGE

Municipal Government Act, 1989, S.N.S c.18

Section 102 (1) A council may determine, by by-law, that a deed transfer tax applies to the municipality and the rate of the deed transfer tax, but the rate of the deed transfer tax shall not exceed one and one half percent of the value of the property transferred.

(2) A deed transfer tax applies to the sale price of every property that is transferred.

Assessment Act, 1989, S.N.S c.23

Section 5 (1) The following property is exempt from taxation under this Act:

(h) the property of every municipality if occupied or used for the purposes of such municipality or unoccupied.

Administrative Order 50, the Disposal of Surplus Real Property Administrative Orders

Section 2(2)(b) Community Interest.

Properties known to have potential for community use, in particular where:

- (i) there has been a prior community or institutional use of the property; or
- (ii) by location or scarcity of available property the consideration would reasonably arise.

HRM By-law H-500 Heritage Conservation District (Barrington Street) By-law.

Administrative Order 2014-015-ADM Respecting Reserve Funding Strategies.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Request that the 1588 Barrington Building Preservation Society ("the Society") provide the following information to the Municipality by October 31, 2018:
 - (a) confirmation that a shared fire evacuation exit is permitted;
 - (b) an updated five-year projected operating and capital budget, including
 - (i) confirmation of any funding from the federal and provincial governments;
 - (ii) the fundraising that has occurred indicating the pledges and any amounts received; and
 - (iii) commitments to lease commercial and subsidized space within 1588 Barrington Street, Halifax, PID 00076471 ("the Property");
 - (c) confirmation of eligibility with respect to any future federal or provincial operating funding not included in the five-year operating and capital budget and applicable timelines;
 - (d) copies of the applications that were filed with the federal and provincial governments for project-specific capital funding, including anticipated notification timelines; and
 - (e) a fundraising plan and progress report; and
2. upon receiving the information in item 1, direct staff to review the information that was received from the Society and prepare a report and recommendation whether to proceed with the sale and a public hearing in respect to a proposed sale and return to Council for its consideration of that report.
3. If the owner's consent is required for the Society to apply or receive approvals to develop the Property, authorize the Chief Administrative Officer, or designate, to provide such consent on behalf of the Municipality.

BACKGROUND

Municipal Policy: Administrative Order 50 is a standardized process for the sale or lease¹ of surplus real property according to the intent of the sale. Section 2(2)(b) defines Community Interest properties as known to have potential for community use, in particular where:

- (i) there has been a prior community or institutional use of the property; or
- (ii) by location or scarcity of available property the consideration would reasonably arise.

Sub-clause 4(1)(l). In the event Council rejects any or all non-profit organizations' submissions to purchase at less than market value, Council may direct staff to proceed to sell the property at market value.

In 2016, the property was declared surplus by Regional Council and assigned to the Community Interest category of Administrative Order 50. An open Call for Submissions was issued November 19, 2016. As of the application deadline of May 29, 2017, one (1) proposal was received. The offer of purchase is from the 1588 Barrington Building Preservation Society ("the Society").

Property Description: The subject property has a land area of approximately 2,890 square feet with a four-storey brick building with a partial basement below grade and three floors above grade representing a combined total of approximately 10,285 square feet. The building has a zero set-back from the sidewalk and no rear public access. The subject property has an easement over a portion of the abutting Parcel A-E 1580 Barrington Street, Halifax (former City Club building) for maintenance and use as a handicapped access ramp and fire escape. Title to the property, including easement/right of way benefits or burdens, remains subject to verification by Legal Services.

Zoning: The property is zoned DH-1 Downtown Halifax Zone. Uses permitted under this zoning include commercial, cultural, institutional, marine-related, residential and transportation.

Registered Heritage Status: The building designed by Henry F. Busch was constructed in 1888 by the Church of England Institute and formally registered as a municipal heritage property in 1981. The Victorian Gothic style structure features an ornate brick and sandstone façade, dormered mansard roof, oriel window and spired turret. During the 1940's space was leased to the Naval Officers Club and in 1962 the Institute sold the property to the Naval Firefighters Association Building Limited. The property was subsequently acquired by private interests until purchased by the former City of Halifax in 1988.

HRM Regional Municipal Planning Strategy, Downtown Halifax Secondary Municipal Planning Strategy, and Barrington Street Heritage Conservation District Plan: Any development of 1588 Barrington Street is significantly impacted by its location within the Barrington Street Heritage Conservation District and related municipal planning policies currently in effect. The regulations attached to these planning strategies add to the cost and time required of any project involving substantial alterations and have been taken into consideration in the evaluation of potential conveyance of the subject property. Extracts from the relevant policies include:

- *Regional Municipal Planning Strategy, Section 7.1. Objectives*
 - preserve cultural and heritage resources in HRM and develop policies, programs and regulations to protect and enhance them;
 - promote cultural and heritage considerations in HRM's broader planning and municipal decision-making processes;
 - assist communities in identifying and celebrating cultural and heritage assets;
 - increase opportunities for cultural activity and bolster the creative economy and vitality of our region.
- *Downtown Halifax Secondary Municipal Planning Strategy. Policy 33*
 - HRM shall adopt a Barrington Street Heritage Conservation District Revitalization Plan and By-

¹ Within the context of a disposal the term lease infers an option of a lease-to-purchase.

law under the Heritage Property Act. The Plan and By-law shall include provisions respecting strengthening demolition control and financial incentives for heritage conservation, and regulations and design guidelines governing development in the district.

- *Downtown Halifax Secondary Municipal Planning Strategy. Policy 42*
 - HRM shall require any development that is integrated with or abutting a registered municipal heritage property, or that is located in a heritage conservation district to conform to the heritage guidelines set out in the Design Manual and other applicable sections of the Land Use By-law.

- *Barrington Street Heritage Conservation District Plan, Section 1.3. Overall Objectives*
 - To revitalize Barrington Street as a focus of retail, commercial, and cultural activity.
 - To encourage restoration of heritage and storefronts.
 - To attract upmarket specialty retail, cultural and entertainment uses at street level.
 - To fill vacant space on upper floors and encourage conversion to residential use.
 - To improve the pedestrian environment in the public realm.
 - To improve HRM's image and marketing potential.
 - To restore investor confidence and trigger private investment.

Property Valuation and Assessment: In 2016, HRM retained Turner Drake & Partners Limited to provide an appraisal of the subject property. The appraised value is included in a confidential companion In Camera Information Report to Regional Council dated December 5, 2017. The 2016 assessed value was \$1,510,900 and cited in the Call for Submissions. In 2017, the value decreased by \$600 to \$1,510,300: depreciation is attributed to the building.

History of Ownership and Property Use: The subject property and the adjacent Neptune Theatre complex represent an historical relationship between the former City of Halifax, the Province of Nova Scotia, Neptune Theatre Foundation, Khyber Arts Society, Heritage Trust of Nova Scotia, and the Halifax Regional Municipality ("HRM"). This information is provided for context given that public acquisition of the subject property was to protect a registered heritage property from demolition.

Ownership: In 1988, the City of Halifax ("the City") purchased the former Church of England Institute located at 1588 Barrington Street and the former City Club (c.1861) 1580 Barrington Street, Halifax, with partial funding from the Province of Nova Scotia. The purpose of the acquisition was to prevent the demolition of these two registered heritage properties. In combination with the adjacent St. Mary's Young Men's Abstinence & Benevolent Society Hall² (c.1891) these properties create a distinct architectural ambience on Barrington Street. The City's intent was to sell both properties in a manner that protected their heritage status but the disposal process was deferred pending negotiations regarding expansion of the Neptune Theatre.

In 1993, 1588 Barrington Street was closed and offered for sale by tender. The disposal decision was deferred while a right to light easement³ was contested in relation to the prospect of enclosing several windows on the south exterior wall to enable the theatre addition to abut. The City subsequently closed a laneway between the two buildings and included the land in the transfer of 1580 Barrington Street to Neptune Theatre for the sum of \$1.00. The donation was conditional upon the Province agreeing to donate their interest and construction was to be substantially underway⁴. The transaction included extinguishing the right to light easement but retention of an easement over a small portion (388 sf) of the former laneway to enable the owner of 1588 Barrington Street to access:

- the northern boundary for the use and maintenance of the cupola, soffit, gutter, and existing brick detailing located on the south side of the building; and

² Known locally as "the NFB building" that was partially destroyed by fire: only the street façade remains and is the subject of a heritage agreement.

³ Right to light refers to the benefit of light that passes over another person's land; the light may pass through a built structure through an opening such a window or skylight.

⁴ Minutes, City of Halifax Council, November 25, 1993, p.830.

- Parcel A-E for the purpose of and use as a “handicap access ramp” and a fire escape.

Title to the property, including easement/right of way benefits or burdens, remains subject to verification by Legal Services.

In addition to a capital grant towards construction of the theatre itself, the City also cost-shared upgrades to 1588 Barrington Street related to the theatre project that included roof and wall reinforcement to accommodate additional snow load, sound abatement, window enclosure, ventilation, and an accessibility ramp at an estimated cost of \$325,000⁵.

Property Use: Starting in the 1960's private ownership of 1588 Barrington Street resulted in a mix of private and non-profit tenancy that subsequently shaped its broader cultural profile, notably to the region's LGBTQ community and the visual and performing arts sectors. It was during this formative period of the building's emergence as an eclectic cultural venue that the Gay Alliance for Equality⁶ established one of the city's first centres in support of the LGBTQ community including *The Turret* disco/bar (c.1976-1982) and the *Alternate Book Shop*. During the 1980's, the deferral of a disposal decision led to continuation of short-term lease agreements including commercial retail, individuals, and non-profit groups.

In 1993, the prospect of a sale prompted a largely informal artists' collective to request the City's permission to host art exhibitions and dances in exchange for maintaining the property. In 1995, the City entered into a 3-year less than market value lease agreement with a group called the Halifax Arts Centre Project Society (which subsequently evolved into the Khyber Arts Society⁷) whose aim was to establish an artist-run centre. The Heritage Trust of Nova Scotia re-located its' office to 1588 Barrington Street to help sustain operations and maintained a presence in the building until 2014.

At amalgamation, title ceded to the HRM and the following year the Municipality entered into a 5-year renewable lease agreement with the Khyber Arts Society. The agreement permitted sub-leasing that enabled continuation of assorted tenancy, including private interests and non-profit groups. The duration of the lease inferred further postponement of any government use or disposal. However, the lease renewal option was not exercised due to operating viability issues. On an interim basis tenancy was reduced and the head-lease replaced with separate short-term lease agreements between HRM and both the Khyber Arts Society and the Heritage Trust of Nova Scotia. Despite renewed attention as a possible arts venue with adoption of the HRM Cultural Plan (2006), an HRM Cultural Operating Strategy (2008), and a Feasibility Assessment of an Artist-Run Centre and Alternate Options (2009) the property's future has been in flux for an extended period culminating in discontinuation of tenancy in 2015 due to hazardous material (asbestos) and the building's overall physical condition. Further background is included in **Attachment 1** of this report.

DISCUSSION

The Society's submission exceeds 200 pages but is essentially the same proposal, entitled Khyber Building Operating, Renovation and Fundraising Plan November, 2015, posted by the Society online at <http://1588society.ca/wp-content/uploads/2015.11.06Khyber-Building-Operating-Renovations-and-Fundraising-Plan.pdf>. Readers may refer to the online version for a more detailed concept overview: the 2016 version has been updated with the addition of priority outcomes, a consultant's brand/marketing survey, additional letters of support, and updated financial projections. Reference footnotes included in this report cite only the 2016 submission.

Proponent Profile: On September 1, 2015, the 1588 Barrington Building Preservation Society (“the Society”) incorporated as a registered non-profit society for the purpose of operating 1588 Barrington Street

⁵ Renovations to 1588 Barrington Street directly related to its occupancy included washroom upgrades and minor stonework repairs.

⁶ Founded in 1972, the Gay Alliance for Equality advocated for protection from discrimination.

⁷ The Khyber Arts Society incorporated March 10, 1995.

as arts facility in support of emerging artists and arts organizations. The Society's Memorandum of Association requires that should the operations of the society cease, after the satisfaction of all debts and liabilities, any property shall be distributed or disposed of to a non-profit organization in Canada having similar objectives. The Society is in its formative stage. To date, nominal revenues have been primarily modest fundraising and provincial and federal government project grants for preliminary design drawings, cost estimates and project management. As of the date of application, the membership comprises only the Board of Directors assisted by a Project Steering Committee. General membership is due to commence in 2019.

Proponent's Intended Use: The Society wishes to acquire title to the property with a view to renovating and expanding the premises to operate a cultural hub and arts incubator. The term "arts incubator" refers to the provision of space and resources to emerging artists and arts organizations within a collaborative, multi-disciplinary environment.

Proponent's Terms and Conditions of Offer: The Society's offer includes a purchase price of \$1.00 with a requested closing date of January 5, 2018.

- The payment of closing costs was not addressed in the applicant's submission. Upon request, the Society confirmed their offer of compensation towards HRM's closing costs is \$0.
- With respect to a Buy-Back Agreement the Society proposed that "if unable to secure project financing to complete Capital upgrades within 24 months of the date of closing, HRM may repurchase the Building for the price of \$1.00 (one dollar). Full buy-back terms to be negotiated and confirmed between parties prior to Purchase". Without knowing an applicant's proposed terms Council is unable to make an informed decision with respect to the overall terms and conditions of sale and any costs or claims associated therewith. To enable a recommendation the applicant was asked to provide clarification. The Society confirmed their acceptance of a Buy-Back Agreement given the public interest and historic status of the building and requests:

"(1) an agreement to postpone the Buy-Back Agreement for the purpose of Purchaser financing;

(2) a re-purchase price in the event of default under the Buy-Back Agreement to be calculated based on the Society's direct financial investment in improvements to the property's value (based on reasonable rates of amortization), excluding holding costs and the value of publicly funded capital upgrades".

In addition to the donation of the subject property for \$1.00, the Society requests \$345,000 in cash grants and financial concessions plus full tax exemption. Specifically:

- a grant of \$100,000 to hire a fundraiser at an estimated cost of \$65,000 to \$75,000 and \$25,000 for "holding costs" (security, utilities, insurance etc);
- a grant of \$200,000 towards capital improvements to the building to be paid in fiscal year 2018;
- exemption or payment by the Municipality of deed transfer tax and development permits estimated to total \$45,000; and
- full tax exemption for an initial 10-year term.

In response to a request for clarification, the Society has confirmed that their request for additional financial support is meant to be addressed on an item-by-item basis, not as an all-or-nothing conditional offer. However, the Society is firm in their request for capital funding of \$200,000 and waiver of deed transfer tax.

Proponent's Proposed Capital Plan: Using Class C estimates⁸, the projected capital costs total \$3,205,200 including contingencies and fees⁹:

Capital improvements and partial fit-up, including contingencies and fees	\$2,830,000
Design and engineering final project plan	\$ 224,000
Project management	\$ 151,200

The following is an overview of the proposed building renovation:

- Basement: "An emerging retail proprietor" or non-profit organization tenancy, limited storage, and building mechanical systems.
- First Floor: "Prime commercial space for a targeted hospitality provider and a small retail or service outlet". Commercial tenancy is considered "necessary" to sustain operations through stable rental income.
- Second Floor: non-profit anchor tenancy, presentation space, and artist-in-residence studio.
- Third Floor: An 80-seat multi-purpose performance and rehearsal space suitable for assorted small theatrical or dance productions, entry-level musicians, film screenings, lectures/workshops, receptions, and festival-related events.
- Fourth Floor Addition: It is proposed that an additional floor would provide non-profit office and meeting space with an adjacent roof-top balcony cantilevered over the existing roof and facing Barrington Street.

In addition to interior re-configuration, the proposed capital plan introduces new elements to the building's design/functionality that significantly impact the cost of renovations. These features include: (1) a new natural gas heating system, (2) new HVAC system, (3) replacement of the existing fire egress stairway with an elevator, (4) glazed enclosure of the exterior wheelchair ramp with accessibility aids - door opening and first floor interior ramp, and (5) the addition of a fourth floor with cantilevered rooftop patio. An itemized list of projected capital project costs is included in Attachment 2 of this report.

Proposed Fundraising Campaign: The Society's fundraising goal includes \$1,800,000 in government grants and \$1,700,000 in self-generated fundraising¹⁰ for a combined total of \$3,500,000. It should be noted that this total includes both capital and operating:

Capital (government cash grants and fundraising)	\$3,200,000
Operating (fundraiser, holding costs, sustainability fund)	\$ 300,000

Government funding of \$1,800,000 excludes deed transfer tax and development permit fees which are expected to be provided "in-kind" by HRM:

Federal (Heritage Canada: Cultural Spaces and Build Canada)	\$1,000,000
Provincial (NS Department of Communities, Culture & Heritage)	\$ 500,000
HRM - capital	\$ 200,000
HRM – operating (fundraiser and holding costs)	\$ 100,000

Of the \$1,700,000 raised by the Society's fundraising campaign, \$1,500,000 is towards capital and \$200,000 towards a "sustainability fund" for cost overruns, future re-capitalization or programming. The solicitation of non-government funding primarily targets major gifts and corporate sponsorship as shown below:

⁸ Class C estimates are based on the knowledge and experience of the contractor or consultant and are not quotes. The quantity surveyor's estimates are dated June 17, 2015, and may require further refinement.

⁹ Submission, p.24.

¹⁰ Submission, pp.35 - 37.

Major gifts	\$1,000,000
Corporate sponsorship	\$ 500,000
Foundation grants	\$ 75,000
Special events	\$ 50,000
Individual donations	\$ 75,000*

*Individual donations will be sought using crowd-funding and personal solicitation once the campaign has reached approximately \$75,000.

The capital budget assumes that all goals will be met and that a term loan or interim financing will not be required. Given the Society's lack of liquidity or revenues during the start-up phase, third party financing might not be realistic unless guaranteed by a qualified third party.

Proposed Organizational Model: The Society's operating model includes four categories of voting membership: resident organization (\$200/year in addition to rent), non-resident organization (\$200/year), "affiliate artist" (\$100/year) and general individual memberships (\$35/year). Of the forty-seven (47) letters of support included with the submission, the majority were interested in non-recurring room rentals, rehearsal, performance, exhibit and meeting space: seven (7) organizations expressed interest in future tenancy but the Society's selection criteria and process was not provided.

Administrative Order 50 – Community Interest Category

Consideration under the Community Interest category is a two-step process to determine the feasibility of a proponent's proposal. The first step requires a technical evaluation by a staff team followed by overall consideration by Regional Council using different criteria.

Staff Evaluation Results

An inter-disciplinary team of staff was convened to evaluate submissions. Led by Finance, the team included Finance & Asset Management (Grants & Contributions/Financial Policy & Planning/Real Estate), Planning & Development (Heritage), and Corporate Customer Services (Municipal Facilities Maintenance & Operations). Additional technical information was provided to the team by Planning & Development in relation to development approval requirements and fire safety. In accordance with sub-clause 4(1)(f) of Administrative Order 50, staff evaluates submissions on four (4) criteria:

- Content compliance
- Viability
- Compensation
- Benefit to the Municipality

Key Findings:

1. **Content Compliance** – The application met most of the requirements as set out in Section 4(e) of *Administrative Order 50*: closing costs were omitted and Buy-Back Agreement terms were not fully stated.
2. **Viability** – The Society was formed in 2015 for the purpose of acquiring title to the subject property. In the absence of an established organizational profile, property ownership or management experience, or substantiated revenues, the sustainability of the facility is speculative and in the development stage. A fundraising goal approaching \$2,000,000 also requires more substantive detail to indicate if the target and timeline are reasonable or, in the alternative, how the proposed project could be revised to reduce costs.
3. **Compensation** – The offer of \$1.00 is significantly below both the 2017 assessed and appraised values.

4. **Benefit to the Municipality** – Adaptive re-use of the subject property in a manner that upholds the intent of the initial public purchase to protect the integrity of an iconic registered heritage property is considered a significant benefit to the Municipality. In addition to the property's architectural and historical importance, staff consider the social and cultural legacy of the building to be a character defining element. Although the staff review anticipates that refinements to aspects of the renovation plan may be required the approval process for substantive alterations should help consolidate the final design and associated costs. Further, formal application for substantive alterations to a registered heritage property will be evaluated and considered by HRM Planning & Development staff and the Heritage Advisory Committee for Regional Council's consideration.

The intended use of the property as an arts incubator advances HRM's interest in the creative industries sector and may play a role in alleviating some market pressure in terms of access to affordable office and presentation space for local arts organizations. Although not unique to the arts sector, the proposal responds to the dynamics of market supply and demand wherein land use densification, corporate downsizing or consolidation may encourage efficiencies but exerts pressure on the availability and affordability of property and rental rates. Examples in urban Halifax include closure of the former CBC building on Sackville Street, re-development of the Roy Building on Barrington Street, and the prospect of intensified development on Almon Street and Agricola Street. Likewise, a concentration of non-profit organizations in the urban core heightens demand but may be a necessity for some arts-based disciplines and events in terms of proximity to consumer markets. To a modest degree, the proposed mix of rental rates may aid stability and offset the impact of temporary accommodations, re-location costs and interrupted productivity that detract from a consistent public profile and earned revenues. It is unconfirmed if future tenancy or room rentals will accommodate those displaced from the market or if use will be based on other factors (philosophy, preference, affiliation, networks, synergy etc).

The Society's approach suggests a 'maturity' in its acceptance of economic realities wherein the non-profit sector may need to relinquish the exclusivity, specialization and perceived control afforded property ownership and adapt to co-location, shared amenities, and collaboration to manage both availability and affordability. The proposal recognizes this fiscal environment through a combination of market and below market value rents, recurring and non-recurring room rentals, and flexible dual-purpose space utilization.

The staff review also placed high value on the recognition afforded the significance of 1588 Barrington Street to the LGBTQ community's evolution. An active participatory role in the project design, future tenancy, administration and programming advances the Municipality's support of inclusion and diversity. In addition to the LGBTQ community, the consultant's report noted a desire among some members of "the creative sector" for acceptance of unconventional practice and marginalized communities of interest within a "safe space"¹¹. Although the Society's proposed tenancy model places priority on the arts there appears to be support for re-establishing an LGBTQ presence at this location. If successful, the collaborative model may further the LGBTQ community's interest in development of its own multi-disciplinary "Rainbow Centre"; a concept examined in a feasibility study funded by the HRM Community Grants Program in 2010¹².

In summary, the submission scored 47/100 based on the information provided by the applicant. The review concluded that the proposed renovation of the building was sensitive to its heritage and architectural significance. The projected capital and operating plans contain ambitious assumptions that warrant further verification as well as the chance to revise and strengthen those plans. A further analysis of the submission is included within the context of the following recommendations section of this report.

Recommendations

¹¹ Consultant's Report, p.21.

¹² Towards a Home for the LGBT Community in Nova Scotia: The Rainbow Community Centre Project. Nova Scotia Rainbow Action Project, March, 2010. HRM Community Grants Program project grant of \$5,000.

Additional disposal options are included in the Alternatives section of this report.

A recommendation to approve in principle the conveyance subject to receipt of supplemental information, approval of a Supplemental Recommendation Report and outcome of the public hearing, is intended to give the Society an opportunity to confirm funding through other levels of government and fundraising, pursue tenants, revise and potentially strengthen their capital and operating financial plans, and finalize a timeline for construction and occupancy.

The Society's submission acknowledges that "firm" renovation costs are likely to take six months to complete. The intent in recommending a deferral of title conveyance for up to twelve (12) months is to allow the Society time to refine their proposal in consultation with HRM Planning & Development and other levels of government. During this period HRM would continue to pay holding costs for the premises. The latter is deemed advisable given that the Society has no revenue source and a nominal cash balance. The overall approach aims to minimize the risk of delay or default due to assumptions embedded within the proposal and allows the Society time to develop a robust capital budget/schedule and corresponding fundraising plan.

Capital Budget Plan: The staff review noted that several elements could significantly impact the final design and renovation budget, and ultimately recurring operating costs.

A shared fire escape stairway within the Neptune Theatre complex and unconfirmed occupancy loads requires confirmation by an accredited fire protection engineer to assess the impact on the safe evacuation of both buildings at the same time. If the design is not feasible or cost-prohibitive the interior re-configuration of the building would be significantly impacted (elevator location and secondary egress). Or, acceptance may require modifications to emergency exit capacity for both buildings. The fire resistance ratings of certain structural elements and re-configured interior exit/doorway clearances also require verification during the permit approval process.

The proposed glass enclosure of the wheelchair ramp and fire exit (Parcel AE-1580 Barrington Street), additional floor with rooftop patio, and window enclosures are substantive alterations to a heritage property which require Regional Council's approval.

The assumption that an abutting owner is willing and/or able to pay an unspecified share of the cost of addressing roof "snow shadowing" and increased snow loads resulting from the height of an abutting building needs confirmation. A contingency was not itemized in the Society's submission.

Staff of Planning & Development Services (Heritage Division) will work with the applicant on the proposed design and any necessary modifications and prepare a report for the Heritage Advisory Committee and Regional Council's consideration.

Implications of a Buy-Back Agreement: As stated in the Society's submission, if unable to secure project financing to complete the capital upgrades within 24 months as of the date of closing the applicant anticipated HRM would have the option to repurchase the property for the sale price, with compensation for the Society's direct financial investment in capital improvements, excluding depreciation, holding costs, and the value of publicly funded capital upgrades and any related operating grants.

Given the scale of potential public investment from other levels of government (\$1,500,000), it would be prudent for HRM to confer with these agencies to determine what, if any, portion of a federal or provincial grant might be refundable if the project does not proceed or the Society relinquish ownership within a specified timeframe. Or, in the alternative, under what circumstances might re-payment be waived.

Deferral of a final decision regarding conveyance enables HRM staff to engage other levels of government in an examination of the implications of a standard 25-year Buy-Back Agreement should the Society dissolve, apply for a postponement of the Buy-Back Agreement to secure financing, or seek to sell or convey the property to another party. This cautionary approach presumes that the duration of a Buy-Back

Agreement and/or reimbursement for capital improvements would not diminish funding consideration but will provide clarification with respect to any associated contractual obligations. Without such clarification, it is unknown if the property would have to be sold at market value or with a minimum bid threshold to recover all or some defined portion of public investment, or the circumstances under which other levels of government might forgo compensation.

Municipal Capital Grant Request: Although Administrative Order 50 addresses only the disposal of surplus municipal property, if financial assistance over-and-above the equivalent market value for a property donation or discounted sale price is to be considered a capital grant could be awarded by resolution of Regional Council.

A capital grant may be deemed appropriate given that (a) the property has no immediate utility and cannot be occupied until environmental contamination has been remediated, and (b) with removal of 1588 Barrington Street, Halifax, from the disposal list in 2014 the opportunity to make application to the Barrington Street Heritage Conservation District Financial Incentives Program¹³ was lost. This designated program was expressly designed to encourage the restoration and renovation of buildings located within the heritage conservation district through a combination of cash grants (including permit fees) and tax credits. The program closed in 2016 and, notwithstanding there were insufficient funds remaining to issue awards to the level requested, the 1588 Barrington Building Preservation Society's proposal would have met the program's funding criteria.

Once a final capital budget and construction schedule is confirmed a capital grant could be considered and, subject to Council's approval, targeted to leverage a specific outcome. For example,

- funding towards asbestos abatement and thereby facilitate building occupancy;
- an incentive to leverage participation in the Society's public fundraising campaign; or
- as part of a coordinated inter-governmental approach to cultural infrastructure development.

A contribution agreement wherein the purpose, specific expenditure(s), and terms and conditions of funding are specified may be considered in the 2018 operating budget or a reserve identified.

Operating Budget Projections: The projected annual operating budget is predicated on self-generated revenues from a mixture of commercial and non-profit rental income, room rentals, membership fees, and fundraising¹⁴. Once fully operational in 2020, the stated goal is to be self-sustaining independent of any government operating grant¹⁵. The latter excludes any recurring municipal partial tax relief.

The proposal's Facility Lease Revenue Model¹⁶ is based on 7,358 square feet of 'rentable' space that includes both leases (4,761 sf), room rentals (2,032 sf), and 565 sf allocated with no anticipated revenue for tenant storage and a building coordinator's office. The staff review noted that projected commercial revenues may be overly optimistic. In addition to the high rental price per square foot, the analysis has assumed that the building is fully occupied on an ongoing basis.

Leasing revenues are derived from a combination of commercial (1,532 sf) and non-profit (3,229 sf) tenancy. However, approximately 50% of projected lease revenue is assigned to two (2) commercial leases which equates to approximately \$40.00 per square foot. This rate may be ambitious in relation to Class A office buildings in the area. From the information provided the leases appear to be gross so any increase in operating costs, including the property's assessed value following re-capitalization, would be borne by the landlord unless exceeded by room rental revenues, fundraising, grants, a contingency fund, or some combination thereof. The type of proposed commercial occupancy could also impact operating

¹³ Report to Regional Council dated June 27, 2016, Case H00433: Barrington Street District Heritage Incentives Program: 2016-17, approved July 26, 2016. The balance remaining in the program budget was \$210,353 and was fully expended on awards to four (4) applicants.

¹⁴ Submission, p.7.

¹⁵ Submission, p.28.

¹⁶ Submission, p.31.

costs/viability in relation to utilities consumption (water, electricity), insurance for alcohol consumption, solid waste storage and disposal, or pest control measures in relation food and beverage sales. Proposed rental rates for non-profit tenancy range from \$13.50 to \$23.00 per square foot; this variance could generate administrative pressures, especially if rates vary among non-profit tenants for comparable space and some are to receive priority access and discounted rates for rehearsal, performance or presentation space thereby reducing earned revenues from non-recurring room rentals.

Overall, the Society's 5-year pro-forma income statement may be overly optimistic in assuming operating costs will remain constant and 100% occupancy will be sustained uninterrupted. The budget makes no provision for bad debt and hours of operation are not stated. If approved, deferral of title conveyance would enable the Society to confirm their future eligibility for operating assistance under a federal or provincial arts funding program or an alternate funding source, for example a foundation or corporate sponsorship.

Fundraising Plan: In 2016, the Society retained The Well Creative Consultants Incorporated to assess the "brand perception of the Khyber building" to inform the development of a business model and fundraising strategy. The report, entitled Digital 360⁰ Insight, August, 2016, uses data constructed from key words and phrases from a 10-year sample of online social and media networks to identify recurring issues and any change in perceptions over time¹⁷. HRM's review identified methodological issues with the study including unidentified sample sources and variance in the sample size and timeline by subject matter ("issue"). Overall, the sample appears to be primarily urban, 30 to 50 years of age with a post-secondary education. Notwithstanding these limitations, the findings suggest that conveyance of the property might garner public support if sustainability can be demonstrated.

The report suggests that initially the "Khyber" was perceived to be a "party house" associated with groups unable to garner confidence in their ability to sustain the building's operations (Consultant's Report, p.18). This characterization could have been influenced by the Khyber Arts Society's request to HRM for assistance in resolving debt, the demographic served by programming or events at this location, the building's general condition and upkeep, bar operations, or a combination thereof. However, it appears that growing recognition of a 'gap' in cultural infrastructure might influence government and public support for the building's future role as an "arts centre" if the owner/operator(s) can establish public confidence in the facility's on-going viability. This finding suggests that raising capital funds may be less of a challenge as compared to securing investor confidence in the facility's sustainability. The latter places equal or greater emphasis on establishing a realistic operating budget and stable earned revenues.

The staff review considers the scale of capital improvements to be ambitious given that the Society itself is newly formed with no established management, programming or financial record and very limited cash and working capital. Further, the fundraising plan relies heavily on \$1,000,000 from non-government sources which might prove challenging in the absence of registered charity status. However, it is anticipated that the renovation project could be down-sized to meet financial capacity and that elements of the project could be phased and undertaken as funds permit. Essentially, the Society's 2-year timeframe is self-imposed and not a requirement of the Community Interest decision-making or evaluation process.

Operating Grant Request: Municipal funding to hire a fundraiser is not recommended. There is no formal program, process or criteria to grant public funds towards fundraising fees. In general, non-profit organizations undertaking a major capital campaign have executed a self-directed or professional plan using volunteers or a combination of volunteers, staff, or the services of a professional fundraising business. If the Municipality were to provide funding for this purpose it would be in the form of a cash grant outside a formal grant program and would be precedence-setting: requests from other non-profit organizations for such consideration might be anticipated.

The Society's request for a \$100,000 operating grant includes \$25,000 for holding costs such as security, utilities and insurance. In the absence of further detail, the review assumed that:

¹⁷ The total sample of postings is stated as 4,500 but it is unclear if these are discrete individuals or contains recurring online comments posted by a smaller sample.

- this is a one-time request; and
- any grant would commence as of the requested closing date of January 5, 2018, to July 1, 2019, the proposed date of occupancy.

Based on HRM's current actual costs of \$22,000 per annum plus building insurance, an amount of \$25,000 is considered insufficient to cover an 18-month holding period¹⁸ and exceeds the Society's current cash position. It should be noted that this cost is based on a *vacant* building. If, as stated in the Society's submission, they are unable to achieve a reasonable probability of securing capital financing and operating sustainability, both HRM and the Society save time and money by averting a reversal of conveyance.

It is anticipated that if Council approves the recommendations, that members of the staff review team would provide constructive feedback to the Society and continuity in reviewing the supplementary information that will inform a recommendation with respect to the timing and terms of conveyance, capital funding including waiver or payment by the Municipality of development fees¹⁹, and a Buy-Back Agreement.

Council's Consideration

Upon review of staff's evaluation, Council must review the submissions based on criteria set out in Section 4(1)(i) of the policy, namely:

- (i) the market value of the property as appraised;
- (ii) the Planning Strategies of the area;
- (iii) the benefit of any cost saving to the Municipality;
- (iv) The consequences, beneficial or otherwise, to the community or to the Municipality as a whole;
- (v) the beneficial considerations of any submission against the benefit to the Municipality of selling the property at market value; and
- (vi) whether or not a Buy-Back is a condition of a sale.

The following information is provided for Council's consideration:

- the assessed value of the property is \$1,510,900;
- the appraised market value is included in a separate In Camera Information Report²⁰;
- the proponent's intended use complies with current zoning.

An approval in principle to convey the subject to the 1588 Barrington Building Preservation Society at less than market value does not oblige or infer any commitment on the part of Regional Council to provide further financial or in-kind consideration as requested by the applicant.

FINANCIAL IMPLICATIONS

In fiscal year 2018 the holding costs for a *vacant building* are estimated to be \$22,000 from Operating Accounts WT-200 and WT-213. These costs typically include security, snow and ice removal, liability insurance, heating (minimal to avert freezing), and minor repairs.

RISK CONSIDERATION

Low. Although a recommendation to defer conveyance of title may represent reputational risk to HRM in terms of a delay in decision-making the approach reduces the financial risk on the part of the applicant.

¹⁸ January 5, 2018, to July 1, 2019.

¹⁹ Deed transfer tax of 1.5% is applied to the purchase price. Based on acceptance of a purchase price of \$1.00, deed transfer tax is essentially waived. Using the 2017 assessed value of \$1,510,300 the deed transfer tax would be \$22,654.50. When the value of deed transfer tax is deducted from the \$45,000 requested, a balance of \$22,654.50 represents the contribution towards development fees.

²⁰ Section 5 of Administrative Order 50 requires appraisals remain confidential until the sale is completed.

Retention of a vacant building is not in the mutual interest of either party. Hence, a timeline has been included in the recommendation to provide a practical incentive for the applicant to strengthen their proposal.

COMMUNITY ENGAGEMENT

A mandatory public information meeting was held on November 26, 2016, at the Halifax Public Library, 5440 Spring Garden Road, Halifax. The meeting was publicized in a newspaper advertisement Saturday, November 19, 2016. The purpose of the meeting was to inform members of the public on the legislated process to purchase municipal property and specific details about 1588 Barrington Street, Halifax.

A Call for Submissions was issued Saturday, December 1, 2016, with an application deadline of Thursday, May 29, 2017. The notice included a site visit January 19, 2017 (attendance 0).

ENVIRONMENTAL IMPLICATIONS

In 2010, HRM commissioned a Hazardous Building Materials Assessment by SLR Consulting (Canada) Limited. The report identified asbestos, lead-based paint, fixtures possibly containing PBC or mercury, and the presence of mold. In 2012, All-Tech Environmental Services Limited conducted a Limited Hazardous Materials Assessment primarily for detection of asbestos levels and lead paint. A re-assessment was conducted in 2016 by All-Tech Environmental Services Limited to update the condition of any materials identified as containing asbestos. The asbestos is located primarily within plaster features throughout the building and may be located beneath drywall; abatement precautions will be required if these materials are disturbed.

ALTERNATIVES

1. Regional Council could decline the current offer of the Society to purchase the Property for \$1.00 and direct staff to pursue a market value sale.

This action is not recommended as there were no submissions received under the open Call for Submissions and Regional Council, at its meeting of April 14, 2015, has considered the potential use of the Property for an arts-related purpose.

2. If Regional Council desire to consider the sale for \$1.00, direct staff to prepare a supplementary report respecting:
 - (a) the financial implications of the sale, including the requested grants, and
 - (b) proposed terms and conditions for the sale of the Property to the Society, and

to return to Council for a determination whether to proceed with the sale of the Property.

ATTACHMENTS

1. Supplementary Information: History of Property Use.
2. Projected Capital Budget.
3. Site Map and Photograph.

Supplementary Information: History of Property Use

2002-2007. Operating viability issues led to a decrease in sub-leasing and a succession of short-term lease agreements pending the development of a facility management strategy. In 2007, Council approved HRM's continued ownership with operations managed by the Khyber Arts Society pending the completion of a feasibility study and business plan.

2009-2010. In 2009, HRM retained TCE Management Consultants to complete a Feasibility Assessment of an Artist-Run Centre and Alternate Options (March, 2010). The project was to assist HRM in selecting among various ownership/operating models to preserve the value of an historic building and optimize its future use to the community. The report considered four scenarios which varied in terms of: (1) the proportional allocation of space for commercial and non-profit use, and public access, (2) office space versus presentation or production space, and (3) the corresponding level of anticipated public subsidy, including any municipal tax relief. The consultant's report recommended HRM adopt an "evolutionary path" for operation of the building whereby the Khyber Arts Society and "cultural organizations" were assisted in building their capacity to effectively manage, operate and utilize the building leading to the selection of a longer-term operating model.

In 2010, Council approved partial tenancy by the Khyber Arts Society under a 3-year less than market value "operating strategy" within which funds were provided for organizational capacity building, limited on-site programming, and deferred maintenance. The aim was to transition to an operating budget aligned with a new management model. The staff report noted that, "Regardless of the occupants or the operating model, 1588 Barrington Street will not generate sufficient funds to pay for itself as a cultural incubator. Support for this type of facility requires acceptance as an investment in creative capital, and its benefits extend beyond financial self-sufficiency"¹. The approach faltered, due in part to inaccurate revenue projections, the lack of a re-capitalization plan, and capacity issues.

2013. HRM retained Capital Management Engineering Limited to prepare a Capital Plan, Building Condition and Energy Assessment (January, 2013). The report addressed deferred maintenance, lifecycle re-capitalization, energy efficiency, and water conservation. Basic renovations costs were estimated to be \$2,040,427 as shown below in Table A.

Table A. Projected Building Renovation Costs		
Compilation: Capital Plan, Building Condition and Energy Assessment, January, 2013		
Asset Class	Items	Estimate
Structural	Assessment and repairs to exterior masonry, assessment and repairs to foundation	\$438,441
Roof	Roof repairs	\$42,000
Interior	Interior architecture including interior walls, interior doors, flooring and ceilings	\$1,183,713
Exterior	Replacement windows and exterior doors,	\$110,450
Electrical	Replacement of exterior and interior lighting	\$44,502
Mechanical	Replacement boiler and oil tanks, plumbing	\$165,625
Life Safety Systems	Fire alarm system, emergency exit lighting, fixed sprinkler system, fire extinguishers	\$55,496
Total		\$2,040,427

A renovation cost of approximately \$2,000,000 was considered conservative based on the exclusion of energy and water conservation, accessibility upgrades, asbestos and lead paint abatement. Hence, the overall renovation cost was estimated to be approximately \$3,000,000.

¹ Recommendation Report to Regional Council, 1588 Barrington Street as an Arts & Culture Incubator, August 10, 2010, p.5.

2014-2015. Based on environmental assessments, HRM terminated month-to-month leases with both the Khyber Arts Society and Heritage Trust of Nova Scotia. The building was vacated and a real property review conducted under Administrative Order 50 to determine the property's surplus status and potential disposal.

In response to a request from the Khyber Arts Society, Friends of the Khyber and local arts organizations Council deferred a disposal decision pending an update on the building's condition, projected renovation costs, and in relation to a proposed arts incubator. The property was removed from Administrative Order 50 and staff directed to provide the proponents with technical materials and feedback in the development of a renovation plan and operating strategy. The proponents submitted their proposal in November, 2015, but conveyance of the subject property at less than market value could not be considered outside existing policy.

2016. Regional Council directed disposal of 1588 Barrington Street under the Community Interest category of Administrative Order 50².

² Supplementary Recommendation Report to Regional Council, 1588 Barrington Street, March 22, 2016.

Projected Capital Budget

Estimates – Proposed Addition and Renovation Costs		
<u>Five-Year Business Plan</u> : Estimate Summary and Itemized Projected Costs (Submission, pp. 73 to 102).		
Category	Elements	Cost
Substructure	Foundations: footings for elevator	\$904
Basement Excavation and Elevator Slab	Excavation and disposal	\$13,000 \$1,800
Upper Floor Construction	New floor (4 th floor level), stairway and handrails	\$92,507.23
Roof Construction	New roof (4 th floor level)	\$66,438.90
Exterior Walls and Windows	New walls (4 th floor level), walls above grade, new windows to basement rental space	\$229,222
Entrances	Entrance to patio (4 th floor level), access doors to Neptune Theatre on two floors (2 nd and 3 rd floor level), repair entrance doors and upgrade basement fire exit door	\$20,000
Roof Coverings	New addition (4 th floor) and patio	\$57,405.78
Exterior Enclosure	Parapet to 4 th floor addition, repairs to Neptune Theatre canopy at basement entrance to 1588 Barrington, new walkway/canopy to Neptune Theatre from 2 nd floor emergency exit	\$81,095
Partitions and Doors	Elevator shaft (masonry), partitions and repairs to existing partitions	\$169,010
Interior Doors	Basement and 4 floors above grade	\$73,100
Interior Floor Finishes	Floor finishes throughout building	\$86,021
Ceiling Finishes	Ceiling finishes throughout	\$59,553
Interior Wall Finishes	Wall finishes throughout	\$110,310.75
Fittings and Equipment	Main stair balustrade, elevated stage, stage curtains and backdrop panels, bathroom fixtures throughout	\$87,185
	Bar counter, barrier-free ramp in basement	\$9,794
	Bar cooler for beverages	\$6,500
	New elevator (single door opening; 5 stops) Barrier-free list at exit to Neptune Theatre and exterior (2 nd floor)	\$180,000
Mechanical	Plumbing	\$49,627.50
	Fire protection	\$23,159.50
	HVAC	\$165,425
	Controls	\$33,085
Electrical	Service and distribution	\$86,021
	Lighting and heating controls	\$172,042
	System and ancillaries	\$66,170
Site Work	Repairs entrance to entrance to 1588 Barrington Street (easement area Neptune Theatre property)	\$5,000
	Mechanical site service tie into municipal services	\$10,000
	Electrical site services tie into municipal services	\$10,000
Demolition	Allowance for selective demolition	\$125,723
	Allowance for hazardous materials mitigation	\$59,553
Total		\$2,149,652.66*

Notes to Table 1.

In addition to \$2,149,652 for re-capitalization and improvements, the capital budget includes \$677,480.40 for general requirements/fees (\$285,903.81) and allowances³ (\$391,576.59) was also included in the projected renovation costs for a combined total of \$2,827,133.06 (Submission, p.73). A total of \$2,827,133 does not conform to the "capital program" costs included on page 24 of the submission which estimated total costs to be \$3,205,200:

Renovation costs	\$2,830,000
Design and engineering of final project plan	\$ 224,000
Project management	\$ 151,200
Total	\$3,205,200

A difference of \$375,200⁴ might be a function of duplication if some of the fees have been double-counted.

³ The term "allowances" includes design and pricing(10%) escalation (0.5%), and construction (0.5%).

⁴ \$3,205,200 minus \$2,830,000 = \$375,200

