

HALIFAX

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Item No.14.1.1
Halifax Regional Council
March 27, 2018

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY:

Jacques Dube, Chief Administrative Officer

DATE: January 24, 2018

SUBJECT: **Administrative Order 50: Disposal of Surplus Real Property – Community Interest Category - Proposed Amendments**

ORIGIN

April 5, 2016 – Regional Council request for “a staff report regarding potential changes to Administrative Order 50 to identify when directed sales of surplus municipal property to community groups (current occupants, organizations meeting a municipally mandated need, etc) may be appropriate and what changes to the Administrative Order are required to do so”.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, (“HRM Charter”) S.N.S. 2008, c.39

Subsection 59 (3) “In addition to matters specified in this Act or another Act of the Legislature, the Council may adopt policies on any matter that the Council considers conducive to the effective management of the Municipality.”

HRM Charter

Subsection 61 (3) “The property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise.”

RECOMMENDATIONS ON PAGE 2

HRM Charter

Section 63:

- (1) The Municipality may sell or lease property at a price less than market value to a non-profit organization that the 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 at least 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) The notice of the public hearing shall include the date, time and place of the hearing, the location of the real property or a description of the tangible personal property, the estimated value of the property and the purpose of the sale.

HRM Charter

Section 64 “Where the Municipality holds land that is of insufficient size or dimensions to be capable of any reasonable use, in the opinion of the Council, all or part of the land may be sold to the owner of any lot abutting that land and may be consolidated with the lot and, notwithstanding Section 63, the sale price of the land so sold may be set by the Council at a price that is less than market value at the time of the sale.”

Municipal Government Act, 1989, S.N.S c.18. Part V Deed Transfers

Subsection 109 (7) “Where the grantee is a registered Canadian charitable organization, a deed is exempt from deed transfer tax if the property is not to be used for a commercial, industrial, rental or other business purpose and if an officer of the grantee makes and files an affidavit to that effect.”

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

Section 2. The Municipality will dispose of real property Council determines is no longer required for the purposes of the Municipality. Staff will identify surplus properties by the following categories...

Community Interest,

- 2(b)** 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.

Administrative Order 54 Respecting the Procedures for Developing Administrative Orders.

RECOMMENDATION

It is recommended that Regional Council:

1. Adopt the amendments to *Administrative Order 50, the Disposal of Surplus Real Property Administrative Order*, as set out in Attachment 4 of this report; and
2. If the proposed amendments are adopted, Regional Council direct the Chief Administrative Officer to direct staff to develop a guidebook and new templates for prospective applicants and staff.

BACKGROUND

Section 63 of the *HRM Charter* mandates that any less than market value sale to a non-profit or charity must be approved by a two-thirds majority vote of the Regional Council. Consequently, any amendments to Administrative Order 50 intended to expedite the conveyance of property assigned to the Community Interest category cannot delegate decision-making responsibility to staff.

Further to Council's motion of April 5, 2016, this report examines the implications of including a Direct Sale option to the existing disposal process. Additional amendments are also proposed with the intent of expediting the disposal of properties of modest value or limited marketability.

The current Community Interest category uses an "open" Call for Submissions process. If approved, the Administrative Order would be amended to enable Council to choose a "closed" process referred to as a Direct Sale. Disposals considered under the latter category may be restricted to one party or in the case of multiple long-term tenants of a single property to an identified group of eligible non-profit leaseholders.

Although a closed process could simplify and expedite conveyance of certain properties, there may be reputational risk to the Municipality if the approach is perceived as denying some non-profit organizations equitable access to opportunity. However, less than market value sales are not meant to make non-profit property ownership uniformly "affordable" or available across the region. The Municipality's portfolio is largely determined by the municipal purpose for which the property was acquired or held in trust and not in regard to future use following disposal. For example, residential property may be acquired by the Municipality for a road project but not as a future donation for non-profits.

This review concludes that, notwithstanding that some non-profit organizations are simply better positioned to take advantage of an opportunity when it arises, an existing long-term tenant might reasonably be expected to have an advantage relative to other interests given their familiarity with operating the subject property, any investment of non-municipal funds, and an established presence within the community. Under these circumstances, a Direct Sale may be preferable to any perception of "a foregone conclusion" under the current Call for Submissions process. Consideration might also be extended to a former non-profit owner of the subject property where the land was donated by a non-profit to the Municipality or conveyed without a reversion provision, or to properties purchased and developed through a local area rate. Council also has the authority to decline a Direct Sale request and direct disposal under an open Call for Submissions.

This report also proposes amendments to Administrative Order 50 to address the perception that property disposal commences immediately following assignment to the Community Interest category. In practice, disposals have been delayed due to administrative capacity, a lack of documentation on the property, the need for title clarification, informal occupancy, site-related issues and mandatory appraisals. In combination, these factors have resulted in inefficiency and frustration. Policy alone cannot mitigate all circumstances, some of which are unique to specific properties, but the overall aim of the proposed amendments is to simplify the requirements for the disposal of moderately valued property.

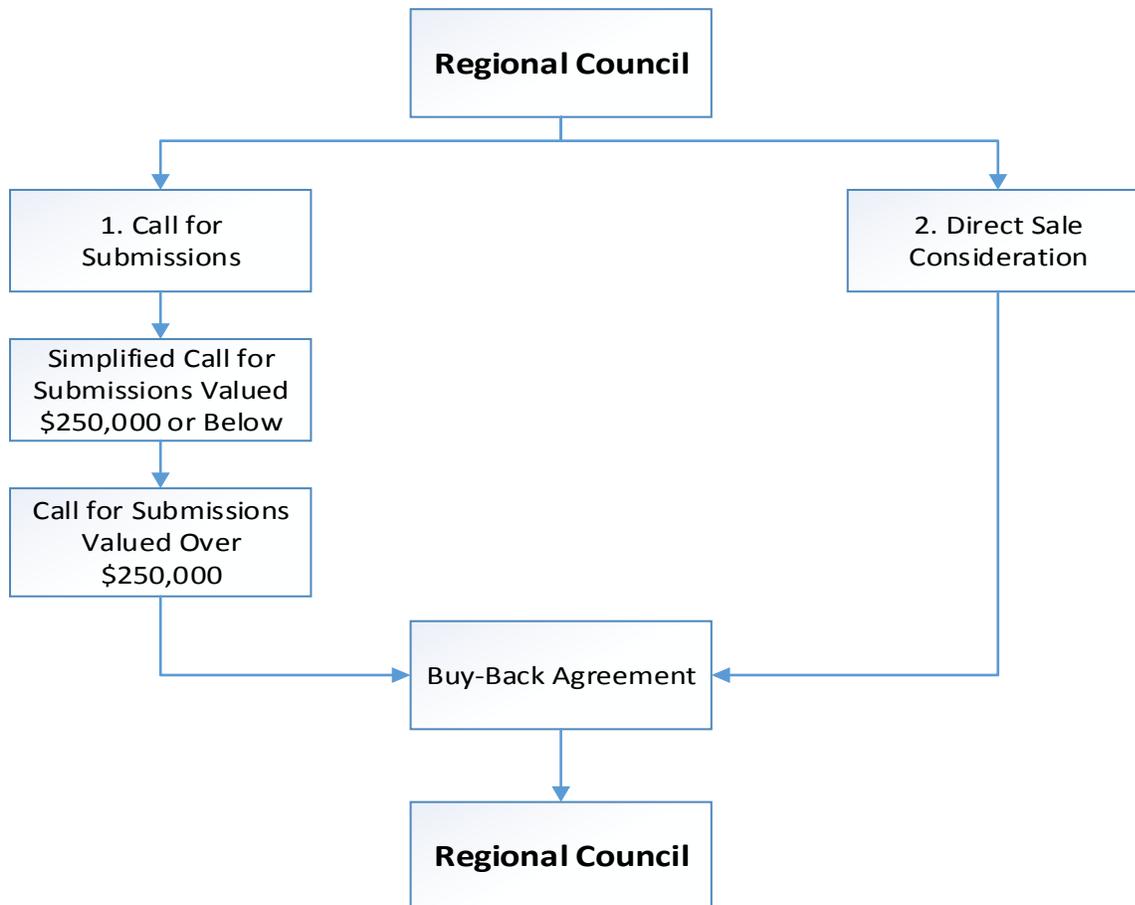
For context, an overview of government practice at the federal, provincial and municipal level is included in **Attachment 1**. A sample Buy-Back Agreement template is included as **Attachment 2**. The current Administrative Order is included as **Attachment 3** of this report with the proposed changes indicated by a **strike-out** and/or highlighted, and the amending Administrative Order is included as **Attachment 4**. The proposed amendments to policy would not be retroactive if the disposal process has commenced i.e. a public meeting has not been advertised.

Although not specific to the Community Interest properties category, additional amendments are proposed to Section 3 of Administrative Order 50 to address recommendations contained in the Auditor General's report, Management of Surplus Buildings and Land, dated November 2017.

DISCUSSION

Rather than adding pages of text to the body of the Administrative Order for Community Interest sales, and for ease of reference, it is recommended that clause 4(1)(e) of Administrative Order 50 be repealed and replaced with a 'new' Schedule 1 and a Schedule 2 which will be attached at the end of the Administrative Order. The flow chart shown below as Diagram 1 provides an at-a-glance summary.

Diagram 1.



1. GENERAL PROVISIONS

In addition to amendments specific to Section 4(1)(e) Disposal Methods, Community Interest Properties, the following recommendations address other sections of Administrative Order 50 that impact less than market value sales.

In the recommended changes, Section 1A Interpretation is amended to include a definition of registered non-profit organization and registered Canadian charity.

Current policy does not include a definition of eligible non-profit or charitable organization: the proposed addition provides consistency across municipal assistance programs. However, unlike conventional grant programs eligibility does not require a minimum duration of operation.

In the recommended changes, sub-clause 2(2)(e) Extraordinary is amended to remove reference to “historic conditions”.

The term “historic conditions” has created confusion. The Extraordinary category addresses only property with legal restrictions or special processes respecting their sale including those held in trust, or upon condition, with reserving rights or like constraints that may be sold or conveyed on a case-by-case basis¹. For clarity, the evaluation criteria for Community Interest proposals is amended to include any cultural or historical significance attributed to the subject property under “benefit to the community or particular non-profit sector”.

While sub-clause 4(1)(e) is to be repealed and replaced by Schedule 1, it is recommended that the new Schedule 1 use “the department responsible for real estate and/or grants and contribution” rather than the existing language of “Grants Program staff” and “Community Recreation Services”.

De-commissioned properties may attract interest from non-profits other than recreational. Hence, technical assistance is sought on a case-by-case basis from several HRM departments. The replacement of the descriptor “Grants Program staff” with “the department responsible for real estate and/or grants and contributions” places accountability at the departmental level in preference to a divisional unit and provides flexibility should the procedure be fully integrated into standard real estate disposal processes at some future date or departmental reorganization re-assigns roles and responsibilities.

In the recommended changes, Section 3 Property Review and Appraisals is amended to incorporate the HRM Auditor General’s recommendations with respect to (i) the timing of surplus property reviews and reports to Regional Council and (ii) an annual report to the Audit and Finance Standing Committee on the operating costs and status of surplus properties.

This recommendation is based on the HRM Auditor General’s report Management of Surplus Buildings and Land, dated November, 2017.

In the recommended changes, Section 5 Appraisals is amended to remove “Community Interest property”.

Section 63 of the *HRM Charter* permits the sale of property at less than market value: this consideration is predicated on an valuation of “market value” to establish the proposed sale price is in fact “less than market value”. However, current policy states “Appraisals will remain confidential until the sale is completed”. This restriction has resulted in the use of In Camera reports to Regional Council so as to maintain confidentiality. Although applicants have the option to obtain and submit their own appraisal, few elect to do so leading to a reliance on information provided by HRM. To assist applicants and expedite the disposal process, a “short form” appraisal may be used. The report would focus on the valuation method and market value, and reduce or eliminate the inclusion of extraneous information that is readily available to HRM staff. Examples of the latter include photographs, a site map, demographic data, building description and so forth. In obtaining the appraisal, the supplier shall be notified that the report is to be shared publicly. In certain circumstances, for example a highly specialized facility with no comparable sales in the area or a lack of documentation, a comprehensive appraisal may be warranted.

If approved, the following recommendations are additions to current policy and included under the ‘new’ Schedule 1.

¹ Disposals under sub-clause 2(2)(e) may be the subject of different legislation or a contractual agreement that supersedes *Administrative Order 50*.

In the recommended changes, all applicants to the Community Interest category shall submit a copy of their Articles of Incorporation or equivalent such as a Charter or Constitution and By-laws.

Articles of Incorporation provide clarification with respect to the disposition of assets or the disbursement of proceeds from the sale of assets should the non-profit organization cease operations and any equity position (for example shares, dividends) among the membership or any related entity. See: Attachment 1.

In the recommended changes, if the proceeds of sale for a property owned by the Municipality has been

- ***included in the reserve budget,***
- ***specifically tied to a capital project, and,***
- ***is subsequently classified as Community Interest category or a decision is made not to sell the property,***

staff must report to Council any deficiencies in either the reserve budget or the capital budget along with any appropriate recommendations to offset the reduced proceeds.

A scheduled commitment to acquire real property or construct a capital asset using the proceeds from the sale of municipal property may need revision if the property is to be sold at less than market value. Likewise, an analysis of any cost to the Municipality to borrow funds to compensate for revenue loss (interest on a debenture) or the implications of a transfer of funds from a capital reserve should be included in the Financial Implications of the staff report.

2. PROPOSED COMMUNITY INTEREST SUB-CATEGORIES

If approved, the Community Interest category is amended to include two (2) sub-categories:

- I. Call for Submissions; and
- II. Direct Sale consideration.

Call for Submissions (“open”)

Within the Call for Submissions category the option of a “simplified” submission has been added for property valued at \$250,000 or below. A threshold of \$250,000 is based on precedence: buildings sold at less than market value are nearing the end of their useful lifecycle unless re-capitalized but Council could set a different threshold as noted in Alternative #1 of this report.

Under a Simplified Call for Submissions (valued under \$250,000):

- a shorter timeline of “up to 90 days” as compared to higher valued property (valued over \$250,000) to accommodate vacant land or small remote properties of nominal value;
- a short-form appraisal;
- a simplified 5-year capital and operating budget to reflect lower risk in relation to property value; and
- the option of a public meeting at Council’s discretion.

Finally, the staff evaluation criteria set out in sub-clause 4(1)(e) and (f) are amended irrespective of a property’s value to remove “content compliance” and add “benefit to the community”. The latter places greater emphasis on local geographic or sectoral benefits in terms of:

- continuity in the provision of a community-based program, service or amenity; or

- an identified gap in program, service, or amenity within a defined catchment area or non-profit sector, including communities of interest; or
- the subject property’s cultural or historical significance.

The Call for Submissions requirements remain unchanged for properties valued over \$250,000 but the evaluation criteria are weighted to reflect viability, benefit to the Municipality, and compensation to reflect the higher opportunity cost to the Municipality in terms of sales revenue, deed transfer tax, and any recurring tax relief². The distinction between moderate and high value properties is shown below in Table 1 with the main differences shaded.

Table 1. Call for Submissions - Simplified for Property Valued up to \$250,000			
Value Threshold	Submission Requirements	Evaluation	Buy-Back Agreement
<p>\$250,000 or below.</p> <p>Assessed value and appraisal provided in Call for Submissions.</p> <p>Public meeting at Council’s discretion as per A050 amendments</p> <p>Mandatory public hearing if valued over \$10,000 as per HRM Charter</p>	<p>Up to 90 days.</p> <p>Articles of incorporation.</p> <p>Statement of terms of offer. Intended use.</p> <p>Financial statements for prior 3 years or for the period over which the non-profit has existed.</p> <p>Simple 5-year budget (capital and operating) for the subject property.</p>	<p>Viability.</p> <p>Compensation.</p> <p>Benefit to the community or particular non-profit sector: program and services.</p> <p>Benefit to the Municipality.</p>	<p>As per Regional Council’s approval July 22, 2014³.</p> <p>25 years with automatic review by Council to consider continuation, revision, or release.</p> <p>Postponement of up to 65% of market value.</p>
<p>Over \$250,000.</p> <p>Assessed value and appraisal provided in Call for Submissions.</p> <p>Mandatory public meeting required as per A050.</p> <p>Mandatory public hearing as per HRM Charter.</p>	<p>60-120 days.</p> <p>Same as \$250,000 or below except mandatory content in a comprehensive 5-year capital and operating budget.</p>	<p>Viability.</p> <p>Compensation.</p> <p>Benefit to the community or particular non-profit sector: program and services.</p> <p>Benefit to the Municipality.</p>	

Direct Sale (“closed”)

Under the proposed revisions to policy, Regional Council may authorize the Direct Sale of a property *at the time the surplus property is assigned to the Community Interest category*. The timing of this decision reduces risk should the applicant not meet the criteria or an unsolicited request be declined. Council may elect to restrict consideration to one party (for example, the former non-profit owner of the subject property), more than one party individually or in combination (long-term tenants), a specified non-profit sector, or

² The weighting of scores is shared with applicants in a Call for Submissions or Direct Sale and will be included in a guidebook.

³ Report to Regional Council meeting of July 22, 2014, use of Buy-Back Agreements in Property Sales to Non-Profit Organizations, dated June 23, 2014.

based on a rationale of Council's choosing. A Direct Sale could be used, for example, to recognize responsible stewardship of public resources or an "equity" position⁴ and address the concerns of non-profit organizations with a long-standing contractual relationship with HRM. However, Direct Sale consideration does not imply an entitlement: a standard evaluation and public decision-making process remains mandatory.

Because a Direct Sale consideration may be "closed" to other non-profits, a public meeting may be waived at Council's discretion. To uphold the principle of transparency and accountability, Council may elect to notify the public of a Direct Sale consideration in advance of any public report or public hearing. A suggested timeline of three (3) weeks following Council's decision to assign a property to a Direct Sale process is included in the amended policy.

Public hearings shall be advertised in accordance with Section 63 of the *HRM Charter*.

The submission requirements, evaluation criteria, buy-back agreement, and evaluation process for a Direct Sale are the same as a Call for Submissions in accordance with the market value of the property.

Council could consider setting a deadline for unsolicited requests to be considered in the following fiscal year or in chronological order (as of date received). This option is included as Alternative #2 of this report.

3. RE-ASSIGNMENT OF DISPOSAL SUB-CATEGORY

If a Direct Sale is not approved, Council may direct disposal through an "open" Call for Submissions in accordance with the property's market value or re-assign to Ordinary, Economic Development, or Intergovernmental Transfer.

If no applications are received in accordance with the stated deadline, or none approved by the Council, the policy has been amended to permit re-classification by the Council from an "open" Call for Submissions to a "closed" Direct Sale or visa versa.

The recommended changes include re-classification of a disposal method by Regional Council. For example, if a Direct Sale does not result in a conveyance, the Council could elect to re-assign to the Call for Submissions process or to another disposal category.

4. FIXED FEE SCHEDULE

The 'cost' of less than market value sales are primarily the revenue forgone through approval of a property donation or at a discounted price and any future annual tax relief. However, current practice also incurs net losses in actual cash expenditures made by the Municipality to enable a sale. Namely, any costs associated with deed clarification and migration, appraisal fees, and any expenditures (including a plan of survey) incurred in the sub-division or consolidation of lands to create a discrete/functional parcel of land to sell. Further, the lack of disclosure for closing costs in the Call for Submission leaves applicants to "guess" at what expenses might reasonably be recovered and provides a tangible disincentive to offer full or partial payment. Some applicants may view this situation as simply an opportunity to avoid payment while others fear that their submission might be compromised by omission. See: Attachment 1.

The recommended changes include payment of partial closing costs applied to all Community Interest sales, including Direct Sales, to recover a specified portion of the Municipality's cash expenditures incurred directly in the disposal of the subject property as set out in a 'new' Schedule 2 of Administrative Order 50. The proposed fees are:

⁴ "Equity" refers to the non-profit organization's capital investment independent of government funding. For example, a land lease upon which the tenant has constructed a building or an area-rated facility.

- ***an amount of up to a maximum of \$2,500 plus HST shall be applied per property transaction for Legal/Deed Migration fees, including title search;***
- ***if an independent realtor's opinion of value or appraisal is required by Regional Council to effect a sale or conveyance, an amount of 50% including HST of the cost shall be applied per property transaction to a maximum of \$2,500;***
- ***the cost of sub-division and/or lot consolidation to create the subject property and enable its disposal shall be recovered at full cost plus HST.***

The predictability afforded by a fee schedule enables applicants to include these costs in their offer of purchase.

5. Buy-Back Agreements

Because a Buy-Back Agreement may be unfamiliar to most prospective purchasers, a sample template would be included in a Community Interest Property Sales Guidebook to assist applicants prepare their terms of offer. Although a Buy-Back Agreement is case-specific, the primary concern of applicants tends to be in regard to compensation should the agreement be invoked by either party. Likewise, the inclusion of a draft Buy-Back Agreement in the staff recommendation report affords an applicant, and Regional Council, the opportunity to review the proposed terms prior to any public hearing as applicable.

A sample template is included as Attachment 2 of this report. Section D of the template addresses the circumstances under which an agreement might be invoked. Section E includes different repurchase scenarios that may be used to determine the repurchase price.

6. MUNICIPAL GRANTS FUNDING

To protect the integrity of the Community Interest disposal process, municipal grant programs should be reviewed and possibly amended to exclude project grants towards feasibility studies, proposal preparation, closing costs, or a Purchaser's due diligence in relation to a municipal property.

It is recommended that a discretionary municipal grant shall not be awarded for any of the following purposes:

- (a) for a feasibility study respecting the potential acquisition of a community interest property;***
- (b) the preparation of a submission for the potential acquisition of a community interest property; or***
- (c) the purchase price, closing costs, or fees associated with a non-profit or charitable organization's due diligence in regards to the acquisition of a community interest property.***

7. ADMINISTRATIVE IMPLICATIONS

If adopted, the proposed amendments to the Community Interest category enable non-profit organizations to petition the Municipality for a Direct Sale and could increase HRM's administrative workload in addressing inquiries and unsolicited requests.

Regional Council could establish an annual application deadline for unsolicited requests to acquire surplus property under a Direct Sale process.

This action would enable municipal staff resources to be assigned in accordance with administrative and technical capacity and demand. Requests may need to be prioritized based on HRM's holding costs and/or risk exposure.

FINANCIAL IMPLICATIONS

The establishment of fixed fees for closing costs charged back to a Purchaser may result in a net loss to the Municipality because they do not reflect HRM's actual cash expenditures but the practice would provide greater certainty to applicants. Further, HRM's costs are expected to be lower through a combination of a decrease in the use of appraisals, fewer public information meetings, any associated overtime payment to unionized staff, and reduced advertising expenditures.

RISK

Low. The principle risk is failure to provide value (not necessarily financial) for the public in accordance with subsection 63(1) of the *HRM Charter*. A Buy-Back Agreement can also be used on a case-by-case basis to secure the public interest in terms of recourse in the event of a substantive change in use, dissolution of the non-profit owner, or an intent to sell or convey the property.

COMMUNITY ENGAGEMENT

Public information meetings remain mandatory for disposals under a Call for Submission for property valued over \$250,000. Retaining this option, regardless of property value, might also be advisable in regard to surplus schools and former community centres where members of the public are accustomed to general access. A public hearing is mandatory for a less than market value sale if the property is valued at \$10,000 or above.

ENVIRONMENTAL IMPLICATIONS

This report addresses only policy. In practice properties are sold "as is" but as recommended in the HRM Auditor General's report *Management of Surplus Buildings and Land* (November 2017) "Finance and Asset Management shall include environment risks in the standard section of reports to review committees and Regional Council. Environmental risks should be evaluated and the Real Estate Division should disclose all such risks it is aware of" (Recommendation 4, p.3). To date, any environmental assessment information on file is shared with prospective applicants through a Call for Submissions⁵ document and may require remediation prior to disposal (for example, water or septic system failure, lead or asbestos remediation, or contamination resulting from a fuel tank failure) or could be included in the terms and conditions of sale, including any discretionary municipal funding under a Contribution Agreement.

ALTERNATIVES

1. Regional Council could establish a maximum "value limit" for property assigned to the Community Interest category thereby moderating the dollar value of an in-kind contribution relative to municipal cash grants towards the purchase of property in the open market.

This action is not recommended: In practice, Regional Council can limit the value of a discounted sale when approving the assignment of a property to a disposal category under Administrative Order 50. Further, sub-clause 4(1)(e)(i) of this policy requires that when considering a less than market value offer Regional

⁵ As available, environmental information will also be shared in relation to a Direct Sale consideration.

Council is to consider the overall context of the disposal, including “the beneficial considerations of any submission against the benefit to the Municipality of selling the property at market value”.

The inclusion of property valued over \$250,000 recognizes both (1) properties in locations with scarce availability where non-profit organizations might seek opportunity⁶ and (2) larger specialized facilities.

2. Regional Council could establish an annual application deadline for unsolicited requests to acquire surplus property under a Direct Sale.

If this alternative is selected, Council could amend section 11 of Schedule 1 of Attachment 3 by:

- (1) Adding the comma and words “provided such request is received by the Municipality during the period starting (month and day) of a given calendar year and, subject to subsection 1A, and ending at 4:15 p.m. on (month and day) of the same calendar year” at the end of subsection 1;
- (2) Adding subsection 1A as follows:
 - (1A) In the event the last day to make a request falls on a holiday, a Saturday or a Sunday, the period of time to make a request shall be extending to 4:15 p.m. of the next business day; and
- (3) By amending subsection 2 by adding the words “within the timelines set out in subsections 1 and 1A” after the word “Municipality” and before the word “and”

So it reads:

11(1) A non-profit or charitable organization may make a request to purchase, by Direct Sale, a community interest property owned by the Municipality, provided such request is received by the Municipality during the period starting (month and day) of a given calendar year and, subject to subsection 1A, ending at 4:15 p.m. on (month and day) of the same calendar year.

(1A) In the event the last day to make a request falls on a holiday, a Saturday or a Sunday, the period to make a request shall be extending to 4:15 p.m. of the next business day.

(2) If a request to purchase a community interest property is received by the Municipality within the timelines set out in subsections 1 and 1A and the subject property has not been declared surplus and classified as a community interest property, the request must be included in the next review provided to Council pursuant to subsection 3(1) of this Administrative Order.

ATTACHMENTS

1. Supplementary Information.
 - Cross-Jurisdictional Policy Scan.
 - Direct Sale.
 - Articles of Incorporation.
 - HRM Cost Recoveries (Closing Costs).
2. Sample Buy-Back Agreement Template.
3. Administrative Order 50 Respecting the Disposal of Surplus Real Property showing proposed changes.
4. Amending Administrative Order.

⁶ Administrative Order 50 sub-clause 2(2)(b)(ii).

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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Supplementary Information

CROSS-JURISDICTIONAL POLICY SCAN

A brief overview of government surplus property policy indicates that the primary goal of disposal is typically to maximize revenue towards reinvestment in public assets, to leverage the re-development of under-utilized land to generate social and economic opportunities and increase revenues, or to advance strategic government objectives. The federal and provincial governments and larger urban cities tend to make an explicit link between land management and financial management (debt reduction and/or revenue generation) with some large-scale or long-term strategic opportunities managed through a government agency.

In Nova Scotia, the availability of surplus provincial government assets to non-profit or charitable organizations is administered by a committee of the Department of Internal Services in accordance with the *Surplus Crown Property Disposal Act and Regulations*. The Minister of Internal Services, with the general or particular authorization of the Governor in Council, may sell, lease, rent, exchange or transfer surplus real property between government departments, and to individuals or groups on terms and conditions deemed “advisable”¹. Typically, the disposal of real property is by public tender or some form of public solicitation of bids: “Land will not normally be available to non-profit groups, except in unusual circumstances where there is clear benefit to the local community and the transfer of property can be carried out in accordance with the Surplus Crown Property Disposal Act”. Properties are appraised to determine market value and less than market value sales are essentially at ministerial discretion.

The federal government disposes of surplus real property by sale or transfer in accordance with the Treasury Board’s Policy on Management of Real Property. The process makes a distinction between “routine” and “strategic” holdings: the latter are properties or portfolios with the potential for significantly enhanced value, are highly sensitive or complex that are disposed of through a federal agency, the Canada Lands Company Limited, to optimize financial and development opportunities. Properties are appraised to determine market value and are generally not sold to non-profit organizations at a discounted price.

HRM’s experience with inter-governmental property-related initiatives supporting non-profit tenancy and/or ownership has been primarily in relation to affordable and social housing² either through a long-term municipal land lease or less than market value property sale. These projects were primarily in urban or suburban locations where scarcity of land may constrain development by a non-profit but demand for accommodations serving lower income households or persons with special needs can be demonstrated. Although not a formal partner in national or bi-lateral homelessness or affordable housing strategies, pressure may be exerted on the Municipality by non-profit groups seeking to leverage access to capital funding from designated provincial and federal programs through the purchase or lease of municipal property. The Intergovernmental Category of Administrative Order 50 addresses requests from other levels of government to acquire municipal property.

Municipalities in Nova Scotia follow Section 51 of the *Municipal Government Act* (section 63 of the *HRM Charter*). Discounted sales to non-profit and charitable organizations is not common practice but local municipalities confront similar challenges in terms of title, surplus schools, the recovery of municipal sale-related cash expenditures, recurring property tax concessions, and the risk associated with environmental contamination.

The term “direct sale” is not a common term and may be used to describe different disposal approaches. For example, the City of Ottawa’s real estate policy uses the term to refer to “non-viable” properties that cannot be granted a building permit because the property is landlocked or of insufficient size or shape to permit development unless in conjunction with abutting land. This type of property is addressed under the

¹ Real Property Services – Inventory Control, Department of Internal Services, September 30, 2015.

² Canada Mortgage & Housing Agency and/or Nova Scotia Department of Community Services.

Remnant category of Administrative Order 50 and Section 64 of the *HRM Charter*. If approved, amendments to the Community Interest category of Administrative Order 50 uses the term “direct sale” to distinguish a non-competitive (restricted) process from an open (unrestricted) Call for Submissions to the non-profit and charitable sector.

This review concludes that, in general, surplus municipal properties are sold at market value with discretionary consideration on a case-by-case basis. As such, the assignment of a surplus property to a defined category of Administrative Order 50 aligned with the intent of a disposal is consistent with general government practice.

DIRECT SALE

The organizations listed below would be ineligible to participate in a Direct Sale but are all be eligible to participate in an “open” Call for Submissions under a Tier I or Tier II sub-category.

- A municipal license agreement is excluded from Direct Sale consideration because, unlike a lease agreement, the occupant does not have a legal interest in the land. Further, a license agreement is non-exclusive.
- A facility management agreement is excluded from Direct Sale consideration because the party is an operator under contract to the Municipality and HRM pays all or a majority of capital costs (equity in the asset).
- Organizations occupying a property without a formal lease agreement – they do not have a legal interest in the property.

ARTICLES OF INCORPORATION

The Community Interest category of Administrative Order 50 does not require that upon dissolution a non-profit organization convey real property or the proceeds from the sale of real property to another non-profit of similar aims. In practice a non-profit may, upon resolution of any outstanding liabilities, distribute its remaining assets in accordance with its Articles of Incorporation and applicable legislation. Under such circumstances, a Buy-Back Agreement may be desirable irrespective of the property’s value.

Non-profit organizations have been formed for the purpose of obtaining title to a surplus municipal property and this practice is expected to continue. However, the policy remains unchanged in that there is no minimum registration period. An amendment to policy is proposed to require applicants submit a copy of their Articles of Incorporation or equivalent such as a Charter or Constitution and By-laws.

In practice, an organization formed for the purpose of acquiring surplus municipal property may be at a disadvantage relative to established organizations in terms of multi-year financial statements, ownership and operating experience, or access to financing. Under such circumstances an applicant may rely on the skills of their Board of Directors or sub-committees, rigorous planning, and demand for the program or service they propose.

HRM COST RECOVERIES (CLOSING COSTS)

The current Call for Submissions template places the onus on applicants to “identify any municipal costs associated with the disposal of the subject property they are willing to reimburse in addition to the sale price”. In the absence of an itemized disclosure of actual or projected costs there is limited incentive for an applicant to do little more than “guess” or simply not offer compensation irrespective of their financial ability to do so. As one applicant noted:

“...at what point prior to the submission of the application will the purchaser be provided with this information. This is important because as a non-profit we need to know, within reason, the total expenses we will incur before we commit to the total expenditure. Reviewing the information in Section D [Call for

Submissions document] it appears that the most reasonable costs we would incur would be the deed registration and applicable taxes, notwithstanding those others listed could be quite substantial if applied to our application after submission. If, however, we are required to provide confirmation of what costs we are prepared to include in our submission how do we determine what those costs are prior to submission of the application. If we did not include some costs that HRM expected us to include would that be a detriment to our submission”.

In the alternative, a fixed value for “closing costs” would eliminate guesswork and enable applicants to budget for this expense in preparing their submission. This approach is consistent with the provincial government’s schedule Fees for Activities on Crown Land (April 1, 2015) that include a fixed administration fee for a lease to a non-profit (\$747.83) and assignments (\$373.78), and property sales (\$747.83 administrative fee plus appraisal, survey costs, and land migration costs as applicable). Unlike the provincial government, HRM has not implemented a policy to apply administrative fees to real property transactions to recover a portion of the cost of document preparation and file administration or identified individual fees during the initial review of the application.

SAMPLE Buy-Back Agreement Template

This **Buy-Back Agreement** dated this [number] day of [month] , 2018.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a municipal body corporate
(hereinafter called the “**Municipality**”)

OF THE FIRST PART

-and-

[**Name of Organization**], having a registered office in [Location], Halifax Regional Municipality, Nova Scotia
(hereinafter called the “**Purchaser**”)

OF THE SECOND PART

WHEREAS by an **Agreement of Purchase and Sale** dated the [day] of [month], 2018, the Municipality agreed to sell and the Purchaser agreed to purchase the Property identified as [INSERT ADDRESS] in the Halifax Regional Municipality, Province of Nova Scotia;

AND WHEREAS the above-mentioned **Agreement of Purchase and Sale** contains, inter alia, a **Buy-Back Agreement** in Clause [insert clause], of the said Agreement of Purchase and Sale;

WITNESSETH THAT in consideration of the mutual covenants contained herein and the other consideration of the sum of [Amount] paid by each of the parties thereto the other party, the receipt and adequacy of which is hereby acknowledged, the Municipality and the Purchaser hereby agree as follows:

A. Buy-Back Agreement as First Charge Upon the Property

1. It is agreed between the Municipality and the Purchaser that this **Buy-Back Agreement** will constitute a first charge upon the Property which may be registered as presently constituted or, alternatively, at the sole discretion of the Municipality, a Notice of Agreement will be registered at the Nova Scotia Land Registry against the title to the Property.
2. This **Buy-Back Agreement** shall have an initial term of twenty-five (25) years followed by a review by the Council of the Halifax Regional Municipality to consider continuation, amendment or release of the **Buy-Back Agreement**.

B. Conditions of Sale

3. The Purchaser has acquired title for the less than market value sum of [Amount] for the purpose of [Describe Intended Use].
4. [The Purchaser agrees to uphold the Property’s status as a municipally registered heritage property and to forego any consideration to de-register or demolish the Property].
5. The Purchaser shall maintain its status as a non-profit organization.

6. The Purchaser agrees to notify the Municipality in writing in the event of any mortgage, line of credit or debt instrument, loan guarantee, or other financial instrument or encumbrance secured by the Property.
7. The Purchaser agrees to notify the Municipality in writing of any default resulting in a lien against title such as but not limited to real property tax arrears, contractor's lien, mortgage principle or interest, claims, actions or demands which may be brought against the Purchaser.

C. Postponement for the Purpose of Purchaser Financing

8. In the event that the Purchaser wishes to secure financing secured by the Property application shall be made in writing the Chief Administrative Officer of the Municipality.
9. The value of loan secured by the Property shall not exceed sixty-five percent (65%) of the Property's market value as of the date of the request.
10. Any Purchaser financing agreement shall include a reservation of right in favour of the Municipality to have notice of and the option to cure any default under the Purchaser's financing.

D. Repurchase of the Property

11. In the event that the Purchaser:
 - (i) ceases the beneficial activity for which the Council of the Halifax Regional Municipality gave its consideration to a less than market value sale of the Property pursuant to subsection 63(1) of the *Halifax Regional Municipality Charter*;
 - (ii) discontinues the operations of the [Form of Registration];
 - (iii) is in default of any loan or financial instrument secured by title to the Property;
 - (iv) wishes to consider the sale or conveyance of the Property; or
 - (v) is in default of the terms and conditions of this Buy-Back Agreement

the Municipality may, at its sole discretion, have the right to repurchase the Property at a price set out in Section E.

E. Repurchase Price of the Property [Select one or a combination of scenarios example only]

12. In the event that the Purchaser is unable to proceed with re-development of the Property as [Intended Use] within [Timeline or Date] as of the date of Closing the Agreement of Purchase and Sale the Municipality may repurchase the Property for the sum of One Dollar (\$1.00). Any compensation to the Purchaser for capital improvements to the Property shall be verified with original receipts to the satisfaction of the Municipality, less depreciation [State Depreciation Formula] and/or less any cost to the Municipality in restoring the Property to its original condition as of the date of Closing.
13. In the event that the Purchaser undertakes re-development of the Property as [Intended Use], and the Municipality elects to repurchase the Property pursuant to some action necessitated under Section D the repurchase price for the Property shall be the appraised value of the Property as determined by an independent appraiser, less the land value, less any municipal contribution or any payment made by the Municipality to cover default under the Purchaser's financing.

IN WITNESS WHEREOF the Municipality and the Purchase hereto have executed this Agreement on the _____ day of _____, 2018.

SIGNED, SEALED and DELIVERED

[Name of Non-Profit Organization or Charitable Organization]

Witness

Witness

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

**ADMINISTRATIVE ORDER NUMBER 50
RESPECTING THE DISPOSAL OF SURPLUS REAL PROPERTY**

Be it resolved as an Administrative Order of the Council of the Halifax Regional Municipality as follows:

SHORT TITLE

1. The Administrative Order may be cited as Administrative Order Number 50, the Disposal of Surplus Real Property Administrative Order.

INTERPRETATION

1A In this Administrative Order,

(a) “government” means the Government of Canada, Government of the Province of Nova Scotia, a corporation that is an agent of Her Majesty in Right of Canada or the Province, and a municipal unit; ~~and~~

(aa) “HRM Charter” means the *Halifax Regional Municipality Charter, 2008, S.N.S, c. 39* as amended;

(b) “municipal unit” means a regional municipality, town or county or district municipality as set out in the *Municipal Government Act*; and

(c) “non-profit organization” means

(i) a society incorporated pursuant to the *Societies Act, R.S.N.S 1989 c.435*, as amended;

(ii) a non-profit association incorporated pursuant to the *Co-Operative Associations Act, R.S.N.S c.98*, as amended;

(iii) a not-for-profit incorporated pursuant to the *Canada Not-for-profit Corporations Act, S.C 2009, c.23*;

(iv) a non-profit organization otherwise incorporated pursuant to an Act of the Nova Scotia Legislature; or

(v) a registered Canadian charitable organization.

POLICY STATEMENT AND CATEGORIZATION

2. (1) The Municipality can acquire and sell real estate within its legislative provisions. Real estate holdings can be a “corporate” asset necessary for municipal functions and purposes of the business units or may be held for particular use of inhabitants of HRM for example, parks and institutional uses. Corporate assets are subject to corporate review by the Asset Owner Business Unit for continuing requirement. Where the business units of HRM have determined that properties no longer serve an operational requirement of the corporation or otherwise appear to be surplus to the needs of the Municipality, then the policy of disposal to be followed in all cases, excepting municipal property which requires particular process through statute or common law or property available in the Municipal Business Parks, is as directed by this policy of Council.

(2) The Municipality will dispose of real property Council determines is no longer required for the purposes of the Municipality. Staff will identify surplus properties by the following categories:

Economic Development

(a) Strategic properties having Economic Development potential ought be sold to:

- (i) maximize use or value;
- (ii) achieve the attraction of targeted industries and employment or the regeneration of neighborhoods;
- (iii) to advance development opportunities; and
- (iv) to generate financial return to the Municipality.

Community Interest

(b) 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.

Ordinary Sale

(c) Properties of an:

- (i) ordinary or routine nature;
- (ii) which no longer have a municipal purpose.

Remnant

(d) Properties which are remaining or subdivided lands which:

- (i) by nature of their size or dimensions have limited or no reasonable use;
- (ii) but which may have utility for abutting property owners, and can be disposed under s. 64 of the HRM Charter allowing Council to set a price that is less than market value.

Extraordinary

(e) Properties having ~~an historic or~~ a legal distinction which include conditions or extraordinary process with respect to their preservation or disposal including but not limited to:

- (i) the Halifax Commons;
- (ii) the Dartmouth Commons;
- (iii) streets;
- (iv) any municipal properties, including parks, which are held in trust, or upon condition, or with reserving interests, or like constraints;
- (v) and parkland acquired through subdivision process.

Intergovernmental Transfer

(f) Properties requested by another level of government which:

- (i) will be used for a public purpose; and
- (ii) sold for market value.

PROPERTY REVIEW AND DECLARATION OF SURPLUS

3. (1) ~~Real Estate and Land Management staff will facilitate at least one annual review of the Municipality's real property inventory in order to identify potentially surplus properties.~~ Repeal

(2) All Business Units, as part of their business planning, will be solicited to identify any municipal properties that are surplus to operational requirements ~~for those properties identified as potentially surplus.~~

(3) Upon completion of Business Unit reviews and identification of ~~the~~ operationally surplus property the Corporate Real Estate staff shall undertake a review and ~~Land Management Unit~~ will categorize the nature of the inventory of ~~the~~ potentially surplus properties and list them by category.

(3A) Corporate Real Estate will contact Legal and Risk Management Services and request a title report as part of the review for any property categorized as Community Interest Property.

(4) Local Councillor and Community Council will be informed of the inventory of the properties and the proposed categories by staff. Local Councillor will then have the opportunity to contact local community to discuss potential surplus properties to gauge interest in potential disposal methods for the properties with area residents. The result from these potential community consultations will then be included in the surplus property report that comes to Council.

(5) Corporate Real Estate ~~and Land Management~~ staff will prepare a Surplus Property Report ~~at least one a year~~ to Council which will attach lists of properties by category. The report will recommend that all lists of properties should be declared by Council to be surplus property, that each category be approved by Council, and that the disposal method recommended for each list under this policy be approved by Council.

(6) Council may approve the recommendations, may remove any property from any list, and may move any property from one list to another list, and may declare the lists, or any of them, surplus to the Municipality's requirements.

(7) Corporate and Customer Services will report the operating costs and the status of surplus properties through the Audit and Finance Standing Committee twice per year.

DISPOSAL METHODS

4. (1) Following Council approvals under Part 2, staff shall proceed to dispose of the properties as determined by category.

Ordinary Properties

(a) These properties shall be placed on the market by Corporate Real Estate ~~and Land Management~~. The sale of market properties may be achieved through:

- (i) direct marketing by staff;
- (ii) listing contracts with licensed real estate brokers;
- (iii) public tenders; or
- (iv) proposal call methods.

(b) Determination of the achieving market value will be supported by appraisal or through the receipt of sufficient offers over an appropriate exposure period.

(c) Approval of final conveyances shall be under delegated authority or by approval of Council as required.

Economic Development Properties

(d) These properties viewed by Council to be strategic may be disposed through individually recommended processes contained in the Surplus Properties Report, and may include referral to a special committee or task force of HRM created for the purpose of overseeing the strategic use and disposal of a property.

Properties under this category are required by the HRM Charter to be sold at market value and can include partnership models between private developers and non-profits and municipally defined public use or service delivery components.

Community Interest Properties

(e) These properties will shall be considered pursuant to Schedule 1.

~~Properties with this potential will be advertised by staff, led by Grant Program Staff, with support of Community and Recreation Services, after being the subject of a public information meeting in the area of the property. After advertising the opportunity to submit proposals, non-profit organizations will have a minimum of 90 days and a maximum of 120 days to submit a written proposal for the use of the property. Submissions should set out:~~

- ~~(i) the name, composition and legal status of the group, its purpose and management structure, including office-bearers;~~
- ~~(ii) the nature of the activities proposed;~~
- ~~(iii) a financial statement;~~
- ~~(iv) a business plan for the first five years; and~~
- ~~(v) a clear statement of the terms the group is prepared to offer for the purchase or lease of the property. -- Repeal~~

~~(f) All submissions received on or before the last day of submissions will be evaluated by a cross-disciplinary staff committee, including finance and community resources expertise, enlisted by the Grants Program staff for content compliance, viability, compensation, and for benefit to the Municipality. Grants staff will develop criteria that will be publically available for scoring the community interest projects. -- Repeal~~

~~(g) Staff will report to Council on the submissions received and the evaluation by staff, including the advisability of a Buy-Back Agreement and the terms of any suggested Buy-Back Agreement. -- Repeal~~

~~(h) Council may determine to select a submission which would be considered on the basis of s. 63(1), (2), (3), (4), (5) of the Charter, the statutory mandate for Council being whether Council considers the non-profit organization to be carrying on an activity that is beneficial to the Halifax Regional Municipality. -- Repeal~~

- ~~(i) Council will also consider the overall context of the disposal, including:
 - ~~(a) the market value of the property as appraised;~~
 - ~~(b) the Planning Strategies of the area of the property;~~
 - ~~(c) the benefit of any cost saving to the Municipality;~~
 - ~~(d) the consequences, beneficial or otherwise, to the community or the Municipality as a whole;~~
 - ~~(e) the beneficial considerations of any submission against the benefit to the Municipality of selling the property at market value; and~~
 - ~~(f) whether or not a Buy-Back Agreement is a condition of a sale. -- Repeal~~~~

~~(j) If Council decides to consider the disposal at less than market value, if a property is worth more than \$10,000, under s. 63(3), Council must first hold a public hearing respecting the sale and advertise as per s. 63(4), (5):~~

~~63(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) The notice of the public hearing shall include the date, time and place of the hearing, the location of the real property or a description of the tangible personal property, the estimated value of the property and the purpose of the sale. 2008, c. 39, s. 63. -- Repeal~~

(k) ~~The resolution of approval for sale requires passage by at least a two-thirds majority of the Council present and voting.~~ -- Repeal

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

Remnant pProperties

(2) Staff will negotiate the sale of such parcels with any interested abutter of such lands and at such price as supported by appraisal or set by Council directly or through policy adopted by Council.

Extraordinary pProperties

(3) This category of properties will be dealt with as required by legislation, common law, or contract that governs any disposal by the Municipality, and may be omitted from this policy.

Intergovernmental Transfer

(4) This category of properties will be dealt with as directed by Council.

APPRAISALS

5. At least one appraisal of the current market value of any Ordinary property, ~~Community Interest property~~, Economic Development property, or Intergovernmental Transfer property will be obtained as part of the disposal process. Appraisals will remain confidential until the sale is completed.

IMPLEMENTATION

6. This policy shall apply as of the date of approval of Council, excepting properties which are:

(ia) already approved by Council as surplus;

(iib) under agreement of purchase and sale through delegated approval as of the date of Council approval of this policy;

(iiic) going to Council for approval by individual report up to and including March 31, 2013.

Done and passed in Council this 9th day of April, 2013.

Mayor

Municipal Clerk

**SCHEDULE 1
DISPOSAL OF COMMUNITY INTEREST PROPERTIES**

1. A property classified as a Community Interest property will be considered for disposal in accordance with this Schedule.

Interpretation

2. In this Schedule,

(a) “Administrative Order One” means the *Procedures of the Council Administrative Order* adopted by Council on November 10, 2015, and all amendments thereto;

(b) “high value community interest property” means a community interest property with a valuation of over two hundred and fifty thousand dollars (\$250,000);

(c) “moderately valued community interest property” means a community interest property with a valuation of two hundred and fifty thousand dollars (\$250,000) or less;

(d) “realtor valuation” means the market value of the property as determined by an independent, accredited real estate broker real estate company or agent thereof; and

(e) “valuation” means the market value of a community interest property.

Disposal Category

3. A community interest property shall be disposed of by either:

(i) a Call for Submissions; or

(ii) a Direct Sale.

Market Value

4. The market value of a community interest property may be determined by a realtor valuation or an independent appraisal.

Disposal

5. A moderately valued or high value community interest property may only be disposed of by a Call for Submissions or a Direct Sale.

6. A Direct Sale may only be considered in accordance with sections 11, 12, 13, and 14 of this Schedule.

Eligible Organization

7. (1) To be eligible for consideration to purchase a community interest property, all the parties on the application must be non-profit organizations.

(2) For greater certainty, an application for the purchase of a community interest property that is a joint application with:

(a) a person other than a non-profit organization; or

(b) the Government of Canada, the Province of Nova Scotia or an agent of them;

is ineligible to purchase a community interest property.

Required Information

8. An application by a non-profit organization to purchase a community interest property must include the following information:

- (a) proof of registered status as non-profit organization;
- (b) a description of the non-profit organization and its programs or services;
- (c) a statement of the non-profit organization's intended use for the subject property;
- (d) complete financial statements for:
 - (i) the prior three (3) fiscal years, or
 - (ii) if the non-profit organization has not been incorporated for the prior three fiscal years, the number of fiscal years the organization has been incorporated,

and the financial statements must include all itemized revenues, expenses, assets and liabilities;

(e) for a moderately valued community interest property, a simplified five year operating and capital budget in the form to be provided by the Municipality;

(f) for a high valued community interest property, a comprehensive five year operating and capital budget in the form to be provided by the Municipality;

(g) a complete copy of the non-profit organization's Articles of Incorporation, Charter, or Constitution and By-laws; and

(h) the terms and conditions of the offer for the purchase, including the purchase price, requested closing date, and any terms and conditions specific to the subject property.

Purchase Price

9. The amount of the purchase price for any community interest property must include the following costs:

- (a) the deed transfer tax, in accordance with Section 109 of the *Municipal Government Act*, if applicable; and
- (b) the transaction fees incurred by the Municipality, as set out in Schedule 2.

Call for Submission

10. (1) This section applies to a community-interest property that will be disposed of by a Call for Submission.

(2) A public meeting is required

(a) for a moderately valued community interest property unless Council decides otherwise, and such decision must be made concurrent with Council's classification of the property as a community interest property; and

(b) for a high value community interest property and such meeting must be convened in the area where the subject property is located prior to the Call for Submissions being advertised.

(3) A Call for Submissions must be advertised in a newspaper circulating throughout the Municipality and the advertisement must indicate the deadline for a non-profit organization to submit a response to the Call for Submissions.

- (4) A Call for Submission
 - (a) for a moderately valued community interest property, must provide a deadline of no more than (90) days for a non-profit organization to file a response to the Call for Submissions; and
 - (b) for a high value community interest property, must provide a minimum of sixty (60) and no more than one hundred and twenty (120) days to file a response to the Call for Submissions.
- (5) The valuation and the assessed value of the subject property shall be shared with prospective non-profit organizations.
- (6) A non-profit organization is ineligible to purchase a community interest property by a Call for Submission if sections 8, 9 and 10 of this Schedule are not satisfied.

DIRECT SALE CONSIDERATION

Direct Sale - Request

11. (1) A non-profit organization may make a request to purchase, by Direct Sale, a community interest property owned by the Municipality.
 - (2) If a request to purchase a community interest property by Direct Sale is received by the Municipality and the subject property has not been declared surplus and classified as a community interest property, the request must:
 - (a) be included in the next review provided to Council pursuant to subsection 3(1) of this Administrative Order; or
 - (b) be forwarded to Council with a report and recommendation respecting the property.
 - (3) No action may be undertaken by the Municipality in respect of the request to purchase except those actions required to satisfy subsection 2 of this section.
 - (4) For greater certainty, the property may only be sold by Direct Sale if the property is declared surplus by Council, is categorized as community interest property by Council in accordance with this Administrative Order, and sections 7, 8, 9, 11,12,13, and 14 are satisfied.
 - (5) If Council decides to proceed by Direct Sale, such decision must be made at the same meeting where the property is categorized as community interest property.
 - (6) An applicant will have up to 90 days to submit to the Municipality the information that would otherwise be require in section 8.

Direct Sale – General Procedure

12. A Direct Sale shall be allowed as determined by Regional Council.
13. Unless Council directs otherwise, a Direct Sale may be considered without
 - (a) a public advertising; and
 - (b) a public meeting.
14. (1) If Council directs that a public advertisement be made, such advertisement must be placed in a newspaper circulating throughout the Municipality and must be placed before the required public hearing

to consider a less than market value sale, or if a public hearing is not required by the HRM Charter, before the Council meeting where Council will consider whether to proceed with a Direct Sale.

- (2) The advertisement in accordance with subsection 1 must include:
 - (a) the date the community interest property was declared surplus;
 - (b) the location of the property;
 - (c) the name of all the non-profit organizations that made the request for a Direct Sale;
and
 - (d) the valuation and assessed value of the community interest property.

GENERAL

Evaluation Procedures

15. (1) An inter-departmental staff team shall be established coordinated by staff of the business unit responsible for real property disposals or grants and contributions to evaluate potential sales of community interest properties.

(2) The team must review a response to a Call for Submission or a request for a Direct Sale to assist Council in determining if the non-profit organization is carrying on an activity that is beneficial to the Municipality.

(3) In determining if the non-profit organization is carrying on an activity that is beneficial to the Municipality, the team must consider the following:

- (a) the alignment of the non-profit organization's intended use and programming with the Municipality's mandate or priority interests;
- (b) the non-profit organization's operational viability;
- (c) the completeness of the application;
- (d) the amount of compensation arising from the property, including:
 - (i) the dollar value of any municipal financial discount applied to the purchase price,
 - (ii) any reduction in the amount of deed transfer tax resulting from a less than market value sale,
 - (iii) the value of any closing costs not fully recovered by the Municipality, and
 - (iv) any ancillary agreements associated directly with the conveyance of the subject property, such as an easement for which financial compensation is not received; and
- (e) any direct or indirect impact on municipal finances or services including impacts on operating budgets or whether the proceeds for a market value sale of the subject property is included in the capital budget and, if it is so included, any reduction in projected revenue from a less than market value sale;
- (f) the benefit to the community of conveying the property to the non-profit organization, including:

- (i) the benefit in continuing the provision of any community-based program, service or amenity offered by the non-profit organization, or
- (ii) whether the non-profit organization provides a program, service, or amenity that is not offered by the Municipality or another non-profit organization within the local area; or
- (iii) the cultural or historical significance of the property.

(4) The staff evaluation team shall prepare a report for Council on the sale of a community interest property, including:

- (a) a recommendation with respect to a Buy-Back Agreement;
- (b) whether the Buy-Back agreement will enable the Municipality to repurchase the subject property if the non-profit organization changes its use of that property; and
- (c) whether the proceeds for a market value sale of the subject property is included in the capital budget and, if it is so included, any reduction in projected revenue from a less than market value sale.

Municipal Grants Funding Eligibility

16. Notwithstanding any other Administrative Order, policy or grants program of the Municipality, a discretionary municipal grant or contribution shall not be awarded for any of the following purposes:

- (a) for a feasibility study respecting the potential acquisition of a community interest property;
 - (b) the preparation of a submission for the potential acquisition of a community interest property;
- or
- (c) the purchase price, closing costs, or fees associated with a non-profit organization's due diligence respecting the acquisition of a community interest property.

Approval by Regional Council

17. Upon receiving a recommendation from the team established pursuant to section 20, Council may consider the overall context of the property disposal, including:

- (a) the recommendation from the staff team;
- (b) the market value of the property;
- (c) the planning documents for the area of the property, including the Municipal Planning Strategy and Land Use By-law;
- (d) the benefit of any cost savings to the Municipality;
- (e) the consequences or benefit to the community or the Municipality as a whole; and
- (f) the beneficial considerations of a less than market value sale against the benefit to the Municipality of selling the property at market value.

18. If Council decides to consider the disposal of the property to a non-profit organization at less than market value, the sale shall be in accordance with section 63 of the HRM Charter, including that:

- (a) the non-profit organization shall be carrying on an activity that Council considers is beneficial to the Municipality;

(b) if the property is worth more than ten thousand dollars (\$10,000), a public hearing shall be advertised and held; and

(c) the resolution approving the sale shall be passed by at least a two-thirds majority of the Council present and voting.

Alternative Method of Disposition by Council

19. (1) Upon receiving a recommendation, Council may consider any alternative method of disposing of community interest property if:

(a) there are no applications by eligible non-profit organizations received within the applicable period of time for the disposal method initially selected; or

(b) Council rejects all the complete applications the Municipality received from eligible non-profit organizations.

(2) If subsection 1 applies, notwithstanding Administrative Order One respecting rescission, Council may by majority vote:

(a) direct another method of disposal;

(b) reclassify the property in accordance with this Administrative Order and dispose of the property in accordance with that reclassification; or

(c) subject to subsection 3, take such other action as Council considers appropriate.

(3) A motion to rescind the resolution declaring the property surplus shall be in accordance with Administrative Order One.

Budget Implications

20. If the proceeds of sale for a property owned by the Municipality has been

(a) included in the reserve budget,

(b) specifically tied to a capital project, and,

(c) is subsequently classified as Community Interest category or a decision is made not to sell the property,

staff must report to Council any deficiencies in either the reserve budget or the capital budget along with any appropriate recommendations to offset the reduced proceeds.

**ADMINISTRATIVE ORDER NUMBER 50
RESPECTING THE DISPOSAL OF SURPLUS REAL PROPERTY**

BE IT RESOLVED by the Council of the Halifax Regional Municipality that Administrative Order 50, the Disposal of Surplus Real Property, is amended as follows:

1. Section 1A is amended by:
 - (a) striking out the word “and” at the end of clause a;
 - (b) adding clause aa after clause a and before clause b as follows:
 - (aa) “HRM Charter” means the *Halifax Regional Municipality Charter*, 2008, S.N.S, c. 39 as amended;
 - (c) striking out the period at the end of clause b;
 - (d) adding a semi-colon and word “and” at the end of clause b;
 - (e) adding clause c after clause b as follows:
 - (c) “non-profit organization” means
 - (i) a society incorporated pursuant to the *Societies Act*, R.S.N.S 1989 c.435, as amended;
 - (ii) a non-profit association incorporated pursuant to the *Co-Operative Associations Act*, R.S.N.S c.98, as amended;
 - (iii) a not-for-profit incorporated pursuant to the *Canada Not-for-profit Corporations Act*, S.C 2009, c.23;
 - (iv) a non-profit organization otherwise incorporated pursuant to an Act of the Nova Scotia Legislature; or
 - (v) a registered Canadian charitable organization.
2. Clause 2(2)(d) is amended by adding the abbreviation “HRM” before the word “Charter” and after the words “of the”.
3. Clause 2(2)(e) is amended by:
 - (a) striking out the words “an historic or” after the word “having” and before the word “legal”; and
 - (b) adding the word “a” after the struck word “or” and before the word “legal”.
4. Section 3 is amended by:
 - (a) repealing subsection 1;
 - (b) amending subsection 2 by:

(i) adding the commas and words “, as part of their business planning,” after the word “Units” and before the word “will”,

(ii) striking out the words “be solicited to” after the word “will” and before the word “identify”,

(iii) adding the words “properties that are surplus to operational requirements” after the word “municipal” and before the word “for”, and

(iv) striking out the words “for those properties identified as potentially surplus” after the newly added word “requirements” and before the period;

(c) amending subsection 3 by:

(i) striking out the word “the” after the word “of” and before the word “operationally”,

(ii) adding the word “Corporate” after the word “the” and before the word “Real”,

(iii) adding the words “staff shall undertake a review” after the word “Estate” and before the word “and”,

(iv) striking out the words “Land Management Unit” after the newly added word “review” and before the word “will”,

(v) striking out the word “the” after the word “of” and before the word “properties”, and

(vi) adding the words “potentially surplus” after the struck word “the” and before the word “properties”;

(d) adding subsection 3A after subsection 3 and before subsection 4 as follows:

(3A) Corporate Real Estate will contact Legal and Risk Management Services and request a title report as part of the review for any property categorized as Community Interest Property.

(e) amending subsection 5 by:

(i) striking out the words “and Land Management” after the word “Estate” and before the word “staff”,

(ii) adding the word “Corporate” at the beginning of the subsection, and

(iii) striking out the words “at least one a year” after the word “Report” and before the word “to”;

(f) subsection 7 is added after subsection 6 as follows:

(7) Corporate and Customer Services will report the operating costs and the status of surplus properties through the Audit and Finance Standing Committee twice per year.

5. Clause 4(1)(a) is amended by:

(a) adding the word “Corporate” after the word “by” and before the word “Real”; and

(b) striking out the words “and Land Management” after the word “Estate” and before the period.

6. Clause 4(1)(d) is amended by adding the abbreviation “HRM” before the word “Charter” and after the words “by the” in the second paragraph.
7. Clause 4(1) (e) is amended by:
 - (a) striking out the entire clause after the header “Community Interest Property” and the letter “e”; and
 - (b) adding the words and period “These properties will be considered pursuant to Schedule 1.” after the header “Community Interest Property” and the letter “e” and before clause 4(1)(f).
8. Clauses 4(1)(f), (g), (h), (i), (j), (k), and (l) are repealed.
9. Subsection 4(2) is amended by capitalizing the word “Properties” in the header.
10. Subsection 4(3) is amended by capitalizing the word “Properties” in the header.
11. Section 5 is amended by striking out the comma and words “Community Interest property,” after the word a comma “property,” and before the word “Economic”.
12. Section 6 is amended by re-lettering sub-clauses (i), (ii), and (iii) as clauses (a) (b) and (c).
13. Schedules 1 and 2 are added at the end of the Administrative Order as follows:

SCHEDULE 1 DISPOSAL OF COMMUNITY INTEREST PROPERTIES

1. A property classified as a Community Interest property will be considered for disposal in accordance with this Schedule.

Interpretation

2. In this Schedule,
 - (a) “Administrative Order One” means the *Procedures of the Council Administrative Order* adopted by Council on November 10, 2015, and all amendments thereto;
 - (b) “high value community interest property” means a community interest property with a valuation of over two hundred and fifty thousand dollars (\$250,000);
 - (c) “moderately valued community interest property” means a community interest property with a valuation of two hundred and fifty thousand dollars (\$250,000) or less;
 - (d) “realtor valuation” means the market value of the property as determined by an independent, accredited real estate broker real estate company or agent thereof; and
 - (e) “valuation” means the market value of a community interest property.

Disposal Category

3. A community interest property shall be disposed of by either:
 - (i) a Call for Submissions; or
 - (ii) a Direct Sale.

Market Value

4. The market value of a community interest property may be determined by a realtor valuation or an independent appraisal.

Disposal

5. A moderately valued or high value community interest property may only be disposed of by a Call for Submissions or a Direct Sale.

6. A Direct Sale may only be considered in accordance with sections 11, 12, 13, and 14 of this Schedule.

Eligible Organization

7. (1) To be eligible for consideration to purchase a community interest property, all the parties on the application must be non-profit organizations.

(2) For greater certainty, an application for the purchase of a community interest property that is a joint application with:

- (a) a person other than a non-profit organization; or
- (b) the Government of Canada, the Province of Nova Scotia or an agent of them;

is ineligible to purchase a community interest property.

Required Information

8. An application by a non-profit organization to purchase a community interest property must include the following information:

- (a) proof of registered status as non-profit organization;
- (b) a description of the non-profit organization and its programs or services;
- (c) a statement of the non-profit organization's intended use for the subject property;
- (d) complete financial statements for:
 - (i) the prior three (3) fiscal years, or
 - (ii) if the non-profit organization has not been incorporated for the prior three fiscal years, the number of fiscal years the organization has been incorporated,

and the financial statements must include all itemized revenues, expenses, assets and liabilities;

(e) for a moderately valued community interest property, a simplified five year operating and capital budget in the form to be provided by the Municipality;

(f) for a high valued community interest property, a comprehensive five year operating and capital budget in the form to be provided by the Municipality;

(g) a complete copy of the non-profit organization's Articles of Incorporation, Charter, or Constitution and By-laws; and

(h) the terms and conditions of the offer for the purchase, including the purchase price, requested closing date, and any terms and conditions specific to the subject property.

Purchase Price

9. The amount of the purchase price for any community interest property must include the following costs:

- (a) the deed transfer tax, in accordance with Section 109 of the *Municipal Government Act*, if applicable; and
- (b) the transaction fees incurred by the Municipality, as set out in Schedule 2.

Call for Submission

10. (1) This section applies to a community-interest property that will be disposed of by a Call for Submission.

(2) A public meeting is required

(a) for a moderately valued community interest property unless Council decides otherwise, and such decision must be made concurrent with Council's classification of the property as a community interest property; and

(b) for a high value community interest property and such meeting must be convened in the area where the subject property is located prior to the Call for Submissions being advertised.

(3) A Call for Submissions must be advertised in a newspaper circulating throughout the Municipality and the advertisement must indicate the deadline for a non-profit organization to submit a response to the Call for Submissions.

(4) A Call for Submission

(a) for a moderately valued community interest property, must provide a deadline of no more than (90) days for a non-profit organization to file a response to the Call for Submissions; and

(b) for a high value community interest property, must provide a minimum of sixty (60) and no more than one hundred and twenty (120) days to file a response to the Call for Submissions.

(5) The valuation and the assessed value of the subject property shall be shared with prospective non-profit organizations.

(6) A non-profit organization is ineligible to purchase a community interest property by a Call for Submission if sections 8, 9 and 10 of this Schedule are not satisfied.

DIRECT SALE CONSIDERATION

Direct Sale - Request

11. (1) A non-profit organization may make a request to purchase, by Direct Sale, a community interest property owned by the Municipality.

(2) If a request to purchase a community interest property by Direct Sale is received by the Municipality and the subject property has not been declared surplus and classified as a community interest property, the request must:

(a) be included in the next review provided to Council pursuant to subsection 3(1) of this Administrative Order; or

(b) be forwarded to Council with a report and recommendation respecting the property.

(3) No action may be undertaken by the Municipality in respect of the request to purchase except those actions required to satisfy subsection 2 of this section.

(4) For greater certainty, the property may only be sold by Direct Sale if the property is declared surplus by Council, is categorized as community interest property by Council in accordance with this Administrative Order, and sections 7, 8, 9, 11, 12, 13, and 14 are satisfied.

(5) If Council decides to proceed by Direct Sale, such decision must be made at the same meeting where the property is categorized as community interest property.

(6) An applicant will have up to 90 days to submit to the Municipality the information that would otherwise be required in section 8.

Direct Sale – General Procedure

12. A Direct Sale shall be allowed as determined by Regional Council.

13. Unless Council directs otherwise, a Direct Sale may be considered without

(a) a public advertising; and

(b) a public meeting.

14. (1) If Council directs that a public advertisement be made, such advertisement must be placed in a newspaper circulating throughout the Municipality and must be placed before the required public hearing to consider a less than market value sale, or if a public hearing is not required by the HRM Charter, before the Council meeting where Council will consider whether to proceed with a Direct Sale.

(2) The advertisement in accordance with subsection 1 must include:

(a) the date the community interest property was declared surplus;

(b) the location of the property;

(c) the name of all the non-profit organizations that made the request for a Direct Sale;
and

(d) the valuation and assessed value of the community interest property.

GENERAL

Evaluation Procedures

15. (1) An inter-departmental staff team shall be established coordinated by staff of the business unit responsible for real property disposals or grants and contributions to evaluate potential sales of community interest properties.

(2) The team must review a response to a Call for Submission or a request for a Direct Sale to assist Council in determining if the non-profit organization is carrying on an activity that is beneficial to the Municipality.

(3) In determining if the non-profit organization is carrying on an activity that is beneficial to the Municipality, the team must consider the following:

(a) the alignment of the non-profit organization's intended use and programming with the Municipality's mandate or priority interests;

- (b) the organization's operational viability;
- (c) the completeness of the organization's application;
- (d) the amount of compensation arising from the property, including:
 - (i) the dollar value of any municipal financial discount applied to the purchase price,
 - (ii) any reduction in the amount of deed transfer tax resulting from a less than market value sale,
 - (iii) the value of any closing costs not fully recovered by the Municipality, and
 - (iv) any ancillary agreements associated directly with the conveyance of the subject property, such as an easement for which financial compensation is not received; and
- (e) any direct or indirect impact on municipal finances or services including impacts on operating budgets or whether the proceeds for a market value sale of the subject property is included in the capital budget and, if it is so included, any reduction in projected revenue from a less than market value sale;
- (f) the benefit to the community of conveying the property to the non-profit organization, including:
 - (i) the benefit in continuing the provision of any community-based program, service or amenity offered by the non-profit organization, or
 - (ii) whether the organization provides a program, service, or amenity that is not offered by the Municipality or another non-profit organization within the local area; or
 - (iii) the cultural or historical significance of the property.

(4) The staff evaluation team shall prepare a report for Council on the sale of a community interest property, including:

- (a) a recommendation with respect to a Buy-Back Agreement;
- (b) whether the Buy-Back agreement will enable the Municipality to repurchase the subject property if the non-profit organization changes its use of that property; and
- (c) whether the proceeds for a market value sale of the subject property is included in the capital budget and, if it is so included, any reduction in projected revenue from a less than market value sale.

Municipal Grants Funding Eligibility

16. Notwithstanding any other Administrative Order, policy or grants program of the Municipality, a discretionary municipal grant or contribution shall not be awarded for any of the following purposes:

- (a) for a feasibility study respecting the potential acquisition of a community interest property;
- (b) the preparation of a submission for the potential acquisition of a community interest property; or
- (c) the purchase price, closing costs, or fees associated with a non-profit organization's due diligence in regards to the acquisition of a community interest property.

Approval by Regional Council

17. Upon receiving a recommendation from the team established pursuant to section 20, Council may consider the overall context of the property disposal, including:

- (a) the recommendation from the staff team;
- (b) the market value of the property;
- (c) the planning documents for the area of the property, including the Municipal Planning Strategy and Land Use By-law;
- (d) the benefit of any cost savings to the Municipality;
- (e) the consequences or benefit to the community or the Municipality as a whole; and
- (f) the beneficial considerations of a less than market value sale against the benefit to the Municipality of selling the property at market value.

18. If Council decides to consider the disposal of the property to a non-profit organization at less than market value, the sale shall be in accordance with section 63 of the HRM Charter, including that:

- (a) the non-profit organization shall be carrying on an activity that Council considers is beneficial to the Municipality;
- (b) if the property is worth more than ten thousand dollars (\$10,000), a public hearing shall be advertised and held; and
- (c) the resolution approving the sale shall be passed by at least a two-thirds majority of the Council present and voting.

Alternative Method of Disposition by Council

19. (1) Upon receiving a recommendation, Council may consider any alternative method of disposing of community interest property if:

- (a) there are no applications by eligible non-profit organizations received within the applicable period of time for the disposal method initially selected; or
- (b) Council rejects all the complete applications the Municipality received from eligible non-profit organizations.

(2) If subsection 1 applies, notwithstanding Administrative Order One respecting rescission, Council may by majority vote:

- (a) direct another method of disposal;
- (b) reclassify the property in accordance with this Administrative Order and dispose of the property in accordance with that reclassification; or
- (c) subject to subsection 3, take such other action as Council considers appropriate.

(3) A motion to rescind the resolution declaring the property surplus shall be in accordance with Administrative Order One.

Budget Implications

20. If the proceeds of sale for a property owned by the Municipality has been

- (a) included in the reserve budget,
- (b) specifically tied to a capital project, and,
- (c) is subsequently classified as Community Interest category or a decision is made not to sell the property,

staff must report to Council any deficiencies in either the reserve budget or the capital budget along with any appropriate recommendations to offset the reduced proceeds.

SCHEDULE 2

**SCHEDULE OF TRANSACTION FEES:
COMMUNITY INTEREST REAL PROPERTY DISPOSAL**

Migration and Deed Fees for the Property:	maximum \$2,500 per property transaction, plus HST
Appraisal/Comparative Market Analysis:	lesser of 50% of the cost of the appraisal or \$2,500 per property transaction, plus HST
Plan of Survey for the Subdivision of Land, including Lot Consolidation, legal description and deed:	full cost recovery

Done and passed in Council this day of A.D. 2018.

Mayor

Municipal Clerk