

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: April 28, 2022

SUBJECT: Funding Request – Housing Trust of Nova Scotia

ORIGIN

March 22, 2022 – Moved by Councillor Austin, seconded by Councillor Morse

That Halifax Regional Council direct the Chief Administrative Officer (CAO) to provide a staff report on a one-time grant to the Housing Trust of Nova Scotia to support the purchase of a portfolio of affordable buildings. The intent of the grant would be to offset the deed transfer tax that will be owed as part of the Trust's acquisition.

MOTION PUT AND PASSED

LEGISLATIVE AUTHORITY

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

79A (1) Subject to subsections (2) to (4), the Municipality may only spend money for municipal purposes if
(a) The expenditure is included in the Municipality's operating budget or capital budget or is otherwise authorized by the Municipality;

122 Part V of the Municipal Government Act applies to the Municipality.

Municipal Government Act, S.N.S, 1998, c.18 as amended

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

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

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

RECOMMENDATION ON PAGE 2

(8) Notwithstanding subsection (7), where, within three years after the filing of the affidavit, the property is used by the grantee for a commercial, industrial, rental or other business purpose or is sold or conveyed by the grantee, the treasurer shall compute the deed transfer tax for which the grantee would have been liable if the grantee had not been a registered Canadian charitable organization and the grantee is liable to pay the amount of the tax and interest on it at the rate of ten per cent per annum computed from the date of the deed referred to in subsection (7).

By-law D-200 Respecting Deed Transfer Tax

Administrative Order 2020-008-ADM Respecting Grants for Affordable Housing

2. In this Administrative Order,

(a) “affordable housing” means housing that meets the needs of a variety of households in the low to moderate income range,

...

(f) “deep affordability” means dwelling units rented at a minimum of 40% below the average market rents for a dwelling unit of the same type and within the most specific geographic zone available through the Canada Mortgage and Housing Corporation or Statistics Canada,

...

5. To be eligible for consideration for a grant for affordable housing under this Administrative Order, an applicant must:

- (a) be a non-profit organization that has been incorporated for at least two years, and
- (b) be applying for a grant to
 - (i) rehabilitate existing dwelling units for the purpose of affordable housing,
 - (ii) construct new affordable housing dwelling units,
 - (iii) support building assessments, or
 - (iv) acquire buildings, housing units, or properties for affordable housing.

RECOMMENDATION

It is recommended that Halifax Regional Council;

1. Suspend the rules of procedure under Schedule 2, the Audit & Finance Standing Committee Terms of Reference, of Administrative Order One, the Procedures of the Council Administrative Order, that require the Audit & Finance Committee review and make recommendations on proposals coming to the Council outside of the annual budget or tender process;
2. Approve a one-time grant in the amount of \$261,230 to the Housing Trust of Nova Scotia towards the purchase of 173 units of affordable housing located outside the Regional Centre that would otherwise be ineligible for consideration under the Affordable Housing Grants Program with funding from the fiscal 2021-2022 general rate surplus;
3. Authorize the Chief Administrative Officer or their designate to negotiate and execute a Contribution Agreement with the Housing Trust of Nova Scotia in the amount of \$261,230 including the terms and conditions as set out in the Discussion section of this report; and
4. Refer the Housing Trust of Nova Scotia’s request for funding for those properties located within in the Regional Centre and eligible for funding under the Affordable Housing Grants Program to the program’s 2022 intake process.

EXECUTIVE SUMMARY

Municipalities in Nova Scotia may impose a deed transfer tax in accordance with Section 102 of the Municipal Government Act (“MGA”) and the HRM has adopted a 1.5% deed transfer tax under By-law D-200. Section 109 of the MGA outlines which scenarios are exempt from this tax. A municipality that has adopted a deed transfer tax does not have the authority to deviate from the legislation. The Housing Trust of Nova Scotia (“the Trust”) does not qualify for consideration with respect to exemption from deed transfer tax under Section 109 of the MGA because it is not a registered Canadian charity. However, although HRM cannot waive deed transfer tax it does have the ability to award discretionary grants. Therefore, if Council wishes to provide funds to the Trust towards costs directly associated with the acquisition of property, the means to do so would be through a grant. Typically, grants issued outside a formal municipal grant program are managed through a Contribution Agreement. Further, if Council determines that greater flexibility is warranted to accommodate the timing of market acquisitions, which are understood to be more time-sensitive and/or competitive as compared to construction or rehabilitation projects undertaken on property owned by a non-profit or charity, Administrative Order 2020-008-ADM could be amended.

BACKGROUND

The Municipality is in receipt of a request from the Trust, a registered non-profit society, for a grant to offset the deed transfer tax associated with the acquisition of a portfolio of five properties. The stated aim of this acquisition is to rehabilitate the premises and a continuation of affordable housing. In an email dated March 9, 2022, the Trust states that the combined value of deed transfer tax due to HRM upon closing will be \$445,500. The payment of deed transfer tax is the basis for both the funding request and the dollar value. It is important to note that the Trust’s funding request does not add any additional affordable housing units. Instead, the request is positioned to avert the potential loss of affordability, should the properties be sold on the ‘open’ market. Under these circumstances a grant issued outside of a municipal program is unlikely to be “one-time”. In an email dated May 5, 2022, the Trust has further indicated that if they are able to close the current transaction under negotiation, they expect to begin discussions for the acquisition of another property and indicated the dollar value of deed transfer tax would also be requested as a grant, should that transaction close.

Prior to 2020, the Municipality extended modest funding to the non-profit and charitable affordable housing sector through the Community Grants Program with a maximum funding threshold of \$25,000 per award. This program is funded through the general tax rate. The 2022 program opened in January with an application deadline of March 31, 2022. To date, most awards have been for repairs and upgrades to shelters for the homeless/victims of violence, housing for persons with special needs, transitional and affordable housing.

In 2020, HRM introduced the Affordable Housing Grants Program, which provides funds towards the construction, rehabilitation, or the acquisition of property or housing units located within the Regional Centre. This program is funded through the allocation of cash-in-lieu of increased development rights through the Incentive and Bonus Zoning policies. Current policy does not place any restrictions on what constitutes an eligible acquisition cost and there is no maximum funding threshold. Since the program’s implementation in 2021 there has not been a request related to property acquisition and as such no precedence in terms of a funding benchmark or eligible costs. This year’s program opens for applications in September and the deadline to submit will be December 1, 2022.

DISCUSSION

The Trust incorporated as a society in 2009 for the purpose of developing and managing affordable rental housing for “moderate-income” households. The society acquired two properties in Halifax and demolished any existing buildings, with the aim of constructing rental units with a mix of rental rates at or below market value with some street level commercial occupancy. A mix of rental rates was intended to subsidize below

market rents for about fifty percent of the proposed dwelling units. In the interim, commercial parking has been operated on these lands by a for-profit entity under agreement with the Trust. The Municipality has provided partial tax relief to one of these properties for ten years. As the Housing Trust chose not to proceed with the development of the rental units on the two sites, both properties have been sold. The income generated from the property sales will be used to acquire the five properties that are subject to the grant request. Therefore, the Trust might be considered a start-up operation when compared with established non-profit and charitable affordable housing providers in the region and under these circumstances, financing may be harder to secure without loan guarantees or performance bonds¹. Once the Trust is established and has a portfolio of properties they own and manage, access to either government or market financing may improve.

The Trust has concluded that new construction of a concrete high rise is not cost-effective due to a dramatic increase in construction costs. Instead, they are looking to purchase properties in neighbourhoods under pressure from redevelopment. The opportunity to acquire a portfolio of five properties with a combined total of 295 rental units has arisen. In addition to the purchase price and associated acquisition costs, the buildings located in Halifax have deferred maintenance issues, which in combination with the current regulation of rent increases may reduce their market appeal. The two properties located in Dartmouth are described as “well maintained” but nevertheless are dated and would benefit from energy efficiency and other upgrades. It is important to note that the Trust’s proposal does not increase the number of affordable housing units in the urban core. Rather, the acquisition may reduce the loss of “affordability” and the rehabilitation of some existing housing stock. As stated in an email dated May 1, 2022, the Trust is looking to maintain at least 60% of the units at their current, below market value rents by (i) transitioning some units to market value rents to pay for the cost of renovations as they are vacated, and as new tenants occupy upgraded units and (ii) assessing the annual incomes of residents.

To finance the acquisition of this portfolio, the Trust is seeking assistance through the Housing Nova Scotia Rental Rehabilitation Assistance Program, the Canada Mortgage Housing Corporation’s new MSLI Select Program (“CMHC”), and banking institutions. The CMHC program provides loan insurance that incentivizes new and existing rental stock with a focus on affordability, accessibility, and energy efficiency. This new federal program is for multi-unit apartment buildings and offers lower insurance premiums and longer amortization terms. Financing is to be leveraged through the sale of land located at 2183 Gottingen Street, Halifax, and municipal funding to offset 1.5% of the purchase cost resulting from deed transfer tax. Under the Affordable Housing Grants Program, the Trust is eligible to apply for funding in relation to only two of the five properties representing 122 units of the total 295 units. These two buildings are in Dartmouth and located within the Regional Centre. Additionally, the Trust may apply to have their municipal construction related fees (permit fees) waived and would be eligible to apply for annual tax relief in fiscal 2023.

Legislation does not provide for the discretionary waiver or a reduction of deed transfer tax. Therefore, if Regional Council wishes to support the Trust’s acquisition of affordable housing units through a discretionary grant it is recommended that consideration be based on the following:

- (a) The number of properties **ineligible** for funding consideration under the designated Affordable Housing Grants Program. This number is three (3) properties located in Halifax and outside the Regional Centre with 173 units; and
- (b) An amount proportional to the value of grant requested by the Trust which is \$445,500 for 295 units which equates to \$1,510 per dwelling unit.

Funding Formula: \$1,510 multiplied by 173 ineligible units

¹ A performance bond is a financial instrument issued by an insurance company or bank to guarantee the satisfactory completion of a project.

The rationale supporting this recommendation is precedence established through a grant to Affirmative Ventures whereby a grant in the amount of \$162,636 was awarded towards the construction of a 45-unit mixed use building located in Dartmouth, outside the Regional Centre, and thus ineligible for consideration under the Affordable Housing Grants Program². This grant represented \$3,614 per new dwelling unit and was funded from a year-end surplus in the Planning & Development department's operating budget. However, it is important to note that although the recommendation advanced in this report is consistent in terms of (i) ineligibility and (ii) funding from a year-end surplus, the decision-making process is inconsistent insofar as consideration of this request has not followed the Affordable Housing Grants Program review process and criteria.

Should Council select this option risk would be managed through a Contribution Agreement. The following terms and conditions are proposed to reflect general practice but with the addition of a repayment clause to protect the public interest should a property be sold, leased for a commercial use, or not used for affordable housing. These terms are considered prudent given that the grant is unsecured and details with respect to project financing are unconfirmed at this time.

- The grant is a one-time award. HRM shall not be obligated to provide any additional, supplemental, or incremental funding to the Trust.
- The Trust shall provide proof acceptable to the Municipality that funds were spent in accordance with the terms and conditions of funding. The Municipality will have the ability to request any documentation it requires to confirm the Trust is using the funds to fulfill the stated purpose.
- To minimize duplication or overlap in funding, and in consideration of the combined total of municipal funding to any given project, to the extent possible the value of the grant shall be taken into considered in the evaluation of any subsequent funding application to the Affordable Housing Grants Program and/or the Community Grants Program.
- If, within three years after the date of purchase, a property is not used for affordable housing, or is used by the Trust for a commercial, industrial, or other business purpose, or is sold or conveyed by the Trust, the society agrees to refund the Contribution Amount on a pro-rated basis, per property, as applicable.
- HRM is not a guarantor or partner of the Trust or the properties owned by the Trust and in no event, will HRM be liable for any direct, indirect, consequential, exemplary, or punitive damages in relation to the society's ownership, use occupancy and operation of the properties regardless of the form of action, whether in contract, tort or otherwise.

The value of an award could be further modified to reflect that portion of the units to be rented at below market value which, as stated in the request, is projected to be 60%. This reduction is not recommended because the number of units cannot be reasonably quantified given that some below market value units will be transitioned to higher rental rates as upgrades are completed.

² Report to Regional Council meeting of March 1, 2022, "HRM Affordable Housing Grant Program Update and Additional Funding Request for Compass NS", dated February 22, 2022, Attachment A. The grant was towards new construction (the creation of new dwelling units) to house mental health consumers and other persons with a disability. The per unit grant was \$3,614.13 per unit of which 25 (55.5%) are to be "deeply affordable" which is defined in subsection 2(a) of Administrative Order 2020-008-ADM as "housing that meets the needs of households in the low to moderate income range".

Summary: Legislation provides deed transfer tax relief to only registered charities. Canada Revenue Agency (“CRA”) has strict guidelines governing charity activities, which provides a level of assurance that a charity is operating according to its mandate. A grant to offset acquisition costs to an organization that does not meet the criteria set out in subsection 109 (7) of the Municipal Government Act may elicit further requests from:

- housing organizations that are not a registered Canadian charity;
- charitable organizations that anticipate leasing all or a defined portion of the property they acquire for a residential purpose; and/or
- nonprofit societies, cooperatives, not-for-profit corporations that own property used for a non-residential purpose.

Other options for Council’s consideration are included in the Alternatives section of this report.

FINANCIAL IMPLICATIONS

If Council approves the recommendation funding in the amount of \$261,230 would be paid from the fiscal 2021-2022 general rate surplus.

If the Trust acquire all or some of the properties identified in their request, application to the Tax Relief for Non-Profit Organizations Program for fiscal 2023-24 is anticipated. Pending confirmation of eligibility, these properties would be considered affordable rental accommodations under Schedule 30 with a tax grant of 50% at the Residential tax rate.

RISK CONSIDERATION

Moderate: Notwithstanding Council’s commitment to assist in addressing the region’s housing availability and affordability issues, awards issued outside a formal process could position the Municipality as a fallback for proposals with insufficient funding and exert pressure for with respect to on-demand financing. The number, timing, and value of such requests cannot be predicted. Consequently, the annual financial impact on the Municipality’s budget and/or general tax rate cannot be determined.

A grant in response to this request to offset deed transfer tax would establish precedence. It is important to manage expectations in that deed transfer tax exemptions are governed by provincial legislation and Council does not have the authority to provide exemptions beyond the provisions of legislation, which restrict consideration to registered Canadian charities. Registration as a charity provides a level of rigor exercised by CRA, including mandatory disbursement quotas, and auditing with respect to an organization’s mandate, management, financial reporting, and activities commensurate with concessions afforded exclusively to charities. Setting a precedent to provide a grant outside a formal grant program may result in requests from other nonprofit organizations.

Unlike deed transfer tax or real property taxes, a grant is not a lien and is unsecured. Risk could be reduced through the execution of a Contribution Agreement to ensure oversight and transparency.

Note on Feasibility of Investment: Finance staff note that while grants or waiver of municipal fees are beneficial to the project developer, project financing typically accounts for all public sector fees and costs before moving forward on a project. The prospect that a grant to offset deed transfer tax is needed for a project to go forward is not consistent with real estate development finance whereby these costs are integrated into the financial analysis and financing (capital, credit etc.) is in place while assuming all relevant compliance and legislated costs remain constant.

COMMUNITY ENGAGEMENT

Not applicable. This report is in response to a funding request outside an established municipal grant program.

ENVIRONMENTAL IMPLICATIONS

Not applicable. The Purchaser is responsible for the applicable due diligence with respect to their acquisition of property.

ALTERNATIVES

1. Council could overturn the staff recommendation and refer the funding request from the Housing Trust of Nova Scotia to the 2022 Affordable Housing Grants Program.

Recommended Alternative: Referral of the Trust's request to the 2022 Affordable Housing Grants Program upholds an open and transparent decision-making process and discourages requests for preferential consideration given that the timing of property acquisitions will vary throughout the year. The use of a stated and publicized call for applications also helps manage administrative workload and provides access to grant funding in a fair and equitable manner.

2. Council could overturn the staff recommendation and award a grant based only on those properties located within the Regional Centre and thereby eligible for funding under the Affordable Housing Grants Program.

If Council selects this alternative the awards would be based on the following:

- the two (2) of properties located in Dartmouth and located within the Regional Centre eligible for consideration under the Affordable Housing Grants Program with 122 units;

AND

- an amount proportional to the value of grant requested by the Trust which is \$445,500 for 295 units which equates to \$1,510 per dwelling unit.

Using the formula referenced above the value of the grant would be \$184,220 based on 122 eligible units multiplied by \$1,510/unit.

The amended motion would read:

1. Suspend the rules of procedure under Schedule 2, the Audit & Finance Standing Committee Terms of Reference, of Administrative Order One, the Procedures of the Council Administrative Order, that require the Audit & Finance Committee review on proposals coming to the Council outside of the annual budget or tender process;
2. Approve a one-time grant in the amount of \$184,220 to the Housing Trust of Nova Scotia towards the purchase of 122 units of affordable housing located within the Regional Centre that would otherwise be **eligible** for consideration under the Affordable Housing Grants Program with funding from the fiscal 2021-2022 general rate surplus; and
3. Authorize the Chief Administrative Officer or their designate to negotiate and execute a Contribution Agreement with the Housing Trust of Nova Scotia in the amount of \$184,220 including the terms and conditions as set out in the Discussion section of this report.

This Alternative is not recommended: Other eligible organizations may have been denied consideration of a late or incomplete application under either the Affordable Housing Grants Program or are awaiting the formal call for applications.

3. Council could overturn the staff recommendation and approve a grant in an amount determined by the Council and authorize the Chief Administrative Officer to negotiate and execute a Contribution Agreement with the Housing Trust of Nova Scotia funded through the fiscal 2021-2022 general rate surplus. The Council could also amend any terms and conditions attached to funding.

ATTACHMENTS

No attachments.

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

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