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Report of the Independent Fairness Commissioner

City of Winnipeg

Report on Compliance – Sale of the property adjacent to 44 Higgins Avenue

February 12, 2018

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Auditors' Report on Compliance with Framework
City of Winnipeg
Sale of the property adjacent to 44 Higgins Avenue

To: City Council

We performed an audit of the proposed real estate transaction described in Section 1 of this report (the "Transaction") to determine whether the Transaction was undertaken by the City of Winnipeg's Planning, Property and Development Department ("PP&D") in compliance with version 1.0 of the framework referenced in Section 1 of this report (hereinafter referred to as the "Compliance Framework"). The Compliance Framework as well as compliance of the Transaction with the Compliance Framework are the responsibility of PP&D. Our responsibility is to express an opinion on the City of Winnipeg's compliance with the Compliance Framework based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether PP&D complied with the applicable criteria of the Compliance Framework described in Section 1. An audit includes examining, on a test basis, evidence supporting compliance with the applicable criteria of the Compliance Framework and included: 1) performing corroborative interviews with City of Winnipeg employees and representatives who were responsible for conducting the Transaction; 2) examining documentation provided by City of Winnipeg employees; and 3) reperforming transaction specific calculations, where applicable. We performed our audit procedures based on discussions with PP&D Management and information available as at February 7, 2018.

In our opinion, except for the compliance exceptions noted in Section 2, PP&D is in compliance, in all material respects, with the individual criteria of the Compliance Framework (version 1.0) for the Transaction noted above.

This report was prepared for City Council for the purpose of City Council's ultimate determinations related to the above noted transaction, and although it may be made publically available, readers are cautioned that this report is not suitable for any other purpose.

Deloitte LLP

Chartered Professional Accountants
Winnipeg, Manitoba
February 12, 2018

Section 1 – Compliance Framework, the Transaction, and Management's responsibility

Compliance Framework
City Council ("Council") created the role of the Independent Fairness Commissioner ("IFC") for the purpose of ensuring that real estate transactions and management services ("Transactions") are performed in a fair, transparent and open manner. Under the direction of Council, the City Auditor has engaged Deloitte LLP ("Deloitte") to provide certain services as part of the IFC role through the performance of compliance audits in accordance with the assurance standards of the Chartered Professional Accountants of Canada ("CPA Canada"). To ensure Council's objectives for the IFC are addressed, a Compliance Framework was developed under the oversight of PP&D (also referred to as "Management") through consideration of applicable City of Winnipeg by-laws, policies and procedures including PP&D's internal Real Estate Transaction Management Framework ("RETMF"). The Compliance Framework is to be used as the basis for the performance of compliance audits of selected Transactions, and can be subject to revision by PP&D based on evolving requirements. Further background information regarding the Compliance Framework is in Appendix 1.

The Transaction
The proposed transaction is the sale of the property adjacent to 44 Higgins Avenue to SMC Holdings Ltd. (the "Transaction"). The scope of the Compliance Audit includes only the compliance aspects of the Transaction outlined in the associated Administrative Report, and excludes any prior or ongoing Transaction related activities, where applicable. Management represents that the complexity of this transaction has been deemed low for the purposes of this compliance audit.

Management responsibility and assertion
Transaction documentation has been prepared by PP&D based on information available at February 7, 2018. The Compliance Framework and applicable criteria is the responsibility of PP&D and has formed the basis of the compliance audit conducted by Deloitte on the Transaction. PP&D is responsible for ensuring the fairness, transparency, and openness of any proposed or completed transactions and the compliance of transactions with the Compliance Framework. Further, as discussed in Appendix 2 of this report, PP&D has made certain representations regarding the information provided to Deloitte to support the performance of the independent compliance audit. Deloitte's responsibility is to express an opinion on PP&D's compliance with the Compliance Framework based on the results of their independent audit procedures performed as outlined in Appendix 1 to the report.

Yours truly,



Planning, Property and Development Department
City of Winnipeg

Section 2 – Exceptions noted and Management's unaudited response

Exceptions noted

Each Criteria within the Compliance Framework was subject to audit procedures performed by Deloitte for the purposes of determining compliance to support our independent auditors' report, as discussed in Appendix 2. Included in the table below is a summary of the exceptions noted in testing the compliance of the Transaction with the Compliance Framework, the associated criteria, and the unaudited responses to these exceptions prepared by Management. The City Auditor has requested responses from PP&D for each exception noted and provided the responses to Deloitte for inclusion in the report. Management's responses are unaudited, and have been included to provide commentary by the City of Winnipeg, to the SPCPDHDD and/or Council.

A complete listing has been included in Appendix 2 of those criteria for which exceptions were noted, criteria that were deemed to not be subject to audit, and criteria deemed by management to not be applicable to the Transaction.

Summary of exceptions noted	Related criteria
Reporting documentation incomplete: Aspects of the Administrative Report were not completed as required by Appendix B of the RETMF, such as (but not limited to) assumptions used in determining the highest and best use for the purpose of the appraisal were not included, and the identity of the reviewer and date of review were not included. Further details regarding the exceptions noted are included in Appendix 2 of this report.	1.01
File documentation incomplete: The file documentation was not in compliance with several aspects of the Compliance Framework, such as (but not limited to): • Evidence of review of the complete reporting checklist by the author of the Administrative Report, as required by Appendix C of the RETMF, was not present in the file; • Documentation of the determination of how the appraiser was selected; the form of appraisal required; or the consideration of the "Reasonable Appraiser" test as defined by CUSPAP, was not included in the file; • Documentation of review by a designated member of the Appraisal Institute of Canada was not present in the file; • Documentation of the review by staff of the Real Estate Division or Property Management Branch, was not included in the file; • Evidence of final confirmation and approval of the proposed transaction documentation by Legal Services, was not present in the file; and • There was no documentation provided to indicate that the Transaction has been included in the Tracking Database.	1.03, 1.04, 2.04, 2.08, 2.09, 9.01, 20.01

Unaudited Management response to exceptions noted

Management does not consider any of the IFC's findings of non-compliance to have materially impacted the transaction. After the IFC review is available, Management takes the necessary steps to correct non-compliant items (where possible), such as adding proper file documentation or completing sections of the checklist

While the criterion of the RETMF was not achieved in certain circumstances, Management remains mindful of the framework's intent. The implementation of the RETMF continues to be a work in progress and Management works closely with the IFC to gain a mutual understanding of the Framework.

Management accepts the findings of the IFC but takes the position that if full compliance were achieved, the final outcome of the transaction would remain unchanged.

Appendix 1 – Scope of services requested

Introduction

As outlined in Section 1 of the report, and to address Council's objectives for the IFC, a Compliance Framework was developed under the oversight of PP&D. The Compliance Framework development process also included assistance from Deloitte and the City Auditor in the form of consultation as to the sufficiency and appropriateness of the Compliance Framework for PP&D's ultimate determinations. The version of the Compliance Framework utilized for the purposes of this compliance audit is Version 1.0 dated November 20, 2017 as made available by Management. The Transaction is to be presented to the Standing Policy Committee on Property and Development, Heritage and Downtown Development ("SPCPDHDD") and/or Council for approval. Council has adopted the Executive Policy Committee's recommendation that the compliance audit of Transactions will occur prior to presentation to SPCPDHHD and/or Council. Accordingly, Deloitte has been engaged to perform the compliance audit of Transactions while in progress, the results of which will be reported directly to SPCPDHHD through the City Auditor and Deloitte.

Scope of services requested of Deloitte by the City of Winnipeg

Deloitte has been engaged to perform an independent audit of the Transaction's compliance with the Compliance Framework noted above as follows:

a. Produce an independent auditor's report on whether the Transaction is in compliance with the relevant criteria outlined within the Compliance Framework;
b. Submit the results of the compliance audit and specific Auditor's Report to the City Auditor.
c. Report specific findings and compliance exceptions within the Auditor's Report based on the Compliance Framework where applicable.
d. Prior to performance of a specific compliance audit of a Transaction,
    i. declare any conflict of interest in connection with the specific Transaction; and
    ii. obtain management's representation of the complexity rating of the Transaction, based on specific guidance retained by the City and in consultation with the Contract Administrator.
e. Attend the SPCPDHDD's regular meeting and/or any agreed upon special meetings in person where the independently prepared auditor's report will be tabled so as to answer questions regarding the report.

Deloitte's audit procedures to determine compliance with the stated criteria within the Compliance Framework included testing on a sample basis of the evidence supporting compliance with the applicable criteria of the Compliance Framework and included: 1) examining documentation provided by City of Winnipeg employees; 2) reperforming transaction specific calculations, where applicable; and 3) performing corroborative interviews with City of Winnipeg employees and representatives who were responsible for carrying out the Transaction.

For criteria identified to not be in compliance and related exceptions noted, the report provides these findings and, where applicable, management comments related to the compliance exceptions. Any identified instances of non-compliance in relation to the Transaction are detailed in Appendix 2 of this report. Management's unaudited responses to the compliance exceptions, if any, are included in Section 2 of the report. Responses regarding the cause of non-compliance, where provided, are prepared by PP&D. Observations regarding the impact on the fairness, transparency, and openness of the Transaction, where provided, would be prepared by PP&D and/or the City Auditor.

Appendix 2 – Findings and compliance exceptions noted

Background information provided by the Independent Auditor

The Compliance Framework referenced in Appendix 1 above forms the basis of the criteria for Deloitte's independent audit of the Transaction. The Compliance Framework is presented in two components as follows:

Objectives	Summarized objectives of the IFC and RETMF as considered and defined in the applicable by-laws, policies, procedures, and the RETMF.
Criteria	Specific requirements that a real estate transaction is expected to comply with in order to be considered fair, transparent and open. Criteria were developed in consideration of specific statements or requirements within by-laws, policies, procedures, and the RETMF. Management's ultimate determination of applicable criteria is based on the nature of the transaction, property type, and transacting party.

Our audit procedures to determine compliance with the stated Criteria within the Compliance Framework included testing on a sample basis of the evidence supporting compliance with the applicable Criteria of the Compliance Framework and included: 1) examining documentation provided by City of Winnipeg employees; 2) reperforming transaction specific calculations, where applicable; and 3) performing corroborative interviews with City of Winnipeg employees and representatives who were responsible for carrying out the Transaction. We performed our procedures based on discussions with Management and information available as at February 7, 2018. Any compliance exceptions pertaining to individual Criteria noted by Deloitte during the performance of our audit procedures are identified below.

Management's representations provided to the Independent Auditor

As discussed in Section 1 of this report, Management has represented that to the best of their knowledge and belief, the following:

- All information presented to Deloitte has been presented fairly and accurately, and in a manner that would not create judgements requiring interpretation that could result in a change in conclusion as to the compliance of the Transaction with the Compliance Framework;
- All documents prepared and provided to Deloitte for review were prepared in the course of conducting the Transaction;
- Deloitte has been provided access to all relevant documents, information, and City employees or representatives who possess information related to the Transaction, and within the stated period to meet the City's requirements to determine compliance;
- Criteria deemed as not applicable to the Transaction are identified in sub-section C of this appendix; and
- The complexity rating of the transaction based on the review completed by PP&D is low.

Findings and compliance exceptions noted

The findings and compliance exceptions noted through the performance of Deloitte's audit procedures have been presented in the following categories:

A. Exceptions noted	The table outlines only those Criteria defined in the Compliance Framework that are applicable to the Transaction and for which we have noted exceptions in compliance. The exceptions have been organized in the table by the Objective reference number, and included in the second column those Criteria where instances of non-compliance have been identified. The third column contains a description of the exception noted.
B. Criteria not subjected to audit	The table outlines those Criteria that could not be subjected to audit on the basis of Management's representation that the related activities have not been performed based on the rationale provided.
C. Criteria not applicable to the Transaction	During the course of our test procedures performed, Management has represented and confirmed that the Criteria referenced in this table are not applicable to the Transaction, and have therefore not been included in the scope of our audit.

It should be noted that Criteria for which no compliance exceptions were noted are not included in the tables below. The Compliance Framework should be referenced for a complete listing and description of all applicable Criteria included within the Compliance Framework as at the date specified above.

A. Exceptions noted

1. Information reported to Council or delegate with respect to the transaction was complete

	Criteria	Exceptions noted
1.01	Reporting to Council has been prepared in the form of an Administrative Report that includes a recommendation(s); reason for the Administrative Report; implications of the recommendations; history of the Administrative Report; financial impact of the transaction; summary of consultations; and identification of the preparer, reviewer, and review date, in accordance with Appendix B of the RETMF.	The following aspects of the Administrative Report were not included as outlined in Appendix B of the RETMF: • The assumptions used in determining the highest and best use for the purpose of the appraisal were not identified in the report; • The identity of the reviewer (Supervisor/Superintendent/Manager of PP&D) was not included.

1.03	The complete reporting checklist (as outlined in Appendix C of the RETMF) which corresponds to the transaction type has been fully completed, including all attachments noted to be evidenced in file. Rationale for the notation of any particular item within the checklist as "N/A" has been included.	The following sections of the Sales / Disposals Checklist per Appendix C of the RETMF were not documented at the date of Transaction review: • Checklist did not indicate whether COMSTRAT was included or not; • No rationale was documented as to why the Property Maintenance section was not applicable; • No rationale was documented as to why a VFA/Engineering report was not included in the file; • Summary of offers was not completed; • Accepted Terms did not include a response as to whether there was a negotiated counter offer, purchaser conditions, a closing date, or whether the Real Estate Officer/Negotiator recommends best offer to Supervisor; • Reporting section was not completed; and • Final negotiated position, draft Administrative Report or Briefing Note and supporting data reviewed was not completed.
1.04	The complete reporting checklist relating to the transaction has been reviewed by the author of the associated Administrative Report or Briefing Note, as evidenced by date and sign-off on the checklist.	Evidence of review of the complete reporting checklist by the author of the Administrative Report, as required by Appendix C of the RETMF, was not present in the file.

2. An appraisal of the property has been performed by a qualified individual, in an acceptable format, as needed.

	Criteria	**Exceptions noted**
2.04	The decision as to the form of appraisal and the use of an internal or external appraiser was made by the Senior Appraiser, Superintendent of Property Management, Supervisor of Sales & Acquisition or Manager of Real Estate in accordance with the guidance and matrix in Appendix D of the RETMF, and documented by the Appraisal Branch. Documentation outlines the preparer's consideration of the "Reasonable Appraiser" test as defined by Canadian Uniform Standards of Professional Appraisal Practice.	The form of the appraisal used, and the use of an external appraisal is consistent with the recommendation of Appendix D of the RETMF; however the decision regarding the form of appraisal, the use of an internal or external appraiser was not documented in the file, as required by Appendix D of the RETMF.
2.08	Prior to finalizing the appraisal report and within six weeks of the delivery of the appraisal report, the draft appraisal (both internally and externally prepared) has been reviewed by a designated member of the Appraisal Institute of Canada. This review has been documented by either a narrative review or review memo signed off by the Senior Appraiser.	The file documentation did not include evidence of review by a designated member of the Appraisal Institute of Canada.
2.09	The appraisal has been reviewed by staff of the Real Estate Division or Property Management Branch, as applicable based on the type of transaction.	The file documentation did not contain evidence of review by staff of the Real Estate Division or Property Management Branch.

8. A competitive procurement process was conducted when prescribed by the RETMF

	Criteria	Exceptions noted
8.01	A Risk & Complexity Tool in the format outlined in Appendix F of the RETMF was completed as prescribed by the criteria outlined in Appendix E of the RETMF. If required, the Risk & Complexity Tool was completed by the Real Estate Division / Property Management Branch staff responsible for the transaction and reviewed by their respective Supervisor/Superintendent/Manager. If not completed, the rationale for not utilizing the tool has been documented by the RED/PMB staff member and approved by their respective Supervisor/Superintendent/Manager.	No evidence of review of the Risk & Complexity Tool by the respective Supervisor/Superintendent/Manager was included in the file documentation.

9. All land transactions and the negotiated terms have undergone a legal review prior to being presented to the CAO or Council, as appropriate, for approval

	Criteria	Exceptions noted
9.01	Prior to being presented to the CAO or Council (as appropriate) for approval, the City Legal Department has completed a formal review of all agreements, contracts, and proposed modifications to legal documentation pertaining to the transaction and provided final confirmation and approval. This review has included ensuring compliance of the agreements with the applicable by-laws and Policies.	Evidence of review, confirmation and approval by the City Legal Department was included in the file; however no evidence was included in the file ensuring compliance of the agreements with the applicable by-laws and policies.

20. The transaction has been included in the Tracking Database

	Criteria	Exception noted
20.01	The transaction has been included in the Tracking Database in accordance with Appendix L of the RETMF.	There was no documentation provided to indicate that the Transaction has been included in the Tracking Database, as required by Appendix L of the RETMF.

B. Criteria not subjected to audit

4. Transaction approval has been granted by an appropriate individual based on the delegations of authority outlined in the Delegation of Authority - January 28, 2009 Council minutes

	City policy, directive, or by-law	Representations and rationale
4.01	Transaction approval has been granted by an appropriate individual based on the delegations of authority outlined in Delegation of Authority - January 28, 2009 Council minutes.	The Transaction has not yet been provided to Council for approval.

8. A competitive procurement process was conducted when prescribed by the RETMF

	Criteria	Exceptions noted
8.05	Any land being considered for disposal that was previously acquired through expropriation has been offered back to its original owner at the terms of the best offer received, prior to commencing a sale process to any other party.	Management was unable to confirm the method by which the lands were originally acquired.

16. Where land declared surplus had previously been transferred by a Developer to the City, that land has first been offered back to that Developer

	Criteria	Exception noted
16.01	Where (1) a Community Committee has taken transfer of lands instead of cash payment pursuant to the 10% dedication requirement in the subdivision of lands, (2) the Community Committee may subsequently declare said lands surplus for the purpose of sale, and (3) the developer has expressed an interest in the purchase of said lands, then the property has been first offered to the developer at a price determined by the Committee on Finance in accordance with Committee on Finance policy, August 13, 1979.	Management was unable to confirm the method by which the lands were originally acquired.

18. The policies pertaining to acquisitions and dispositions of specific types of property have been adhered to

	City policy, directive, or by-law	Representations and rationale
18.06	Sales of property designed or acquired for park or cemetery purposes have received approval of at least two-thirds of the members of Council pursuant to Section 156(2) of The City of Winnipeg Act (S.M. 1989-90, C.10).	Transaction has not yet been provided to Council for approval.

C. Criteria not applicable to the Transaction

Objective	Criteria not applicable
1. Information reported to Council or delegate with respect to the transaction was complete.	1.02
2. An appraisal of the property has been performed by a qualified individual, in an acceptable format, as needed.	2.02, 2.03, 2.05, 2.06, 2.07, 2.12
6. PP&D has been authorized to commence negotiations for the acquisition or disposal of land, and completed site inspections as appropriate.	6.01, 6.02
7. An Environmental Site Assessment ("ESA") was completed as required.	7.01, 7.02, 7.03, 7.04, 7.05
8. A competitive procurement process was conducted when prescribed by the RETMF.	8.03, 8.04
10. Alternative properties and procurement methods were considered in selecting the property.	10.01
11. Where land is to be expropriated, compliance with the Expropriation Act has been considered and verified by City Legal Services.	11.01, 11.02, 11.03, 11.04, 11.05, 11.06, 11.07, 11.08
13. Acquisitions of privately owned property containing dilapidated structures are accompanied by a program of rehabilitation, redevelopment, or improvement.	14.01, 14.02
14. Specific policies relating to transactions involving property under the purview of the Parks & Recreation division have been observed.	15.01, 15.02
17. Other policies related to the general process for the sale of land have been adhered to.	17.01, 17.02
18. The policies pertaining to acquisitions and dispositions of specific types of property have been adhered to.	18.01, 18.02, 18.03, 18.04, 18.05, 18.07, 18.08, 18.09, 18.10
19. The policies pertaining to specific types of transaction have been adhered to.	19.01, 19.02, 19.03, 19.04