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Report of the Independent Fairness Commissioner

City of Winnipeg

Report on Compliance – Proposed sale of City-owned land located at the southeast corner of Madsion Street and St. Matthews Avenue

February 22, 2019

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Auditors' Report on Compliance with Framework
City of Winnipeg
Proposed sale of City-owned land located at the southeast corner of Madsion Street and St. Matthews 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 1.02 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 15, 2019.

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 1.02) 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 22, 2019

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 transactions is the disposition of the property located at the corner of St. Matthews Avenue and Madison Street, defined as "Subject City Property" on Msc. Plan No. 11054/4 (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 to be "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 15, 2019. 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
The 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
File documentation incomplete	The file documentation was not in compliance with several aspects of the Compliance Framework, such as (but not limited to): • The Reporting Checklist relating to the Transaction has not been fully completed, as required by Appendix C of the RETMF; • There was no evidence in the transaction documentation that PP&D issued a circulation to the utility and service provider entities; • The proposed Terms and Conditions of the Transaction did not include environmental provisions to clarify environmental liability; and • Evidence of final confirmation and approval of the proposed Terms and Conditions of the transaction by Legal Services was not included in the file. • File documentation does not contain evidence that the conditions outlined within the Offers to purchase City-owned property policy have been met.	1.03, 3.01, 6.03, 7.06, 8.02, 9.01, 12.01, 17.01, 20.01

Appraisal documentation incomplete	The appraisal documentation was not in compliance with aspects of the Compliance Framework, such as (but not limited to): • An appraisal requisition form was not included in file documentation; • Transaction file did not include documentation of the decision as to the form of appraisal, or consideration with respect to the use of an internal or external appraiser, as required by Appendix D of the RETMF; • The file did not contain evidence with respect to who was responsible for selecting the appraiser, or how the appraiser was selected, including whether the appraiser was selected from the pre-approved list of appraisers as required by Appendix D of the RETMF; • Documentation of the consideration with respect to the engagement of Materials Management in the procurement process was not included in the file, as required by Appendix D of the RETMF; • File documentation did not include an engagement letter between the City of Winnipeg and the external appraiser in the most current template maintained by City Legal Services, as required by Appendix D of the RETMF; • Evidence of appraisal review by the designated member of the Appraisal Institute of Canada included in the file documentation was not signed; and • The file documentation did not contain evidence of review by staff of the Real Estate Division or Property Management Branch.	2.01, 2.04, 2.05, 2.06, 2.08, 2.09, 2.11

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 procedures of the RETMF were not achieved in certain circumstances, Management remains mindful of the framework's intent. In general, Management's compliance to the RETMF has been improving. It is noted that due to the claim against the City, certain aspects of the file were handled by Legal Services (e.g. appraisal) instead of the Real Estate Branch.

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 1.02 dated November 2, 2018 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 15, 2019. 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.
A.	**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.
B.	**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
1.03	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: • Confirm property / land surplus to City (partially completed); • Summary of offers; • Deposits; and • Final negotiated position, draft Administrative Report or Briefing Note and supporting data reviewed (partially completed).

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

	Criteria	Exceptions noted
2.01	An appraisal of the subject property has been prepared, and the associated Appraisal Requisition Form has been filled out and included in the file.	An appraisal of the property was prepared by an external appraiser. A completed Appraisal Requisition Form was not included in the file documentation, as required by Appendix D of the RETMF.
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.	Transaction file did not include documentation of the decision as to the form of appraisal, or consideration with respect to the use of an internal or external appraiser, as required by Appendix D of the RETMF.

2.05	Where an external appraiser was deemed to be required, a competitive bid process was undertaken or an appraiser was selected at the discretion of the Appraisal Branch from the pre-approved list of appraisers. If the external appraiser was selected from the pre-approved list of appraisers, the appraiser has been pre-approved for the type of appraisal function required (i.e. expropriation, disposition, acquisition, internal use, etc.).	The file did not contain evidence with respect to who was responsible for selecting the appraiser, or how the appraiser was selected, including whether the appraiser was selected from the pre-approved list of appraisers, as required by Appendix D of the RETMF.
2.06	Consideration with respect to the engagement of Materials Management in the procurement process for an external appraiser was made and documented.	Documentation of the consideration with respect to the engagement of Materials Management in the procurement process was not included in the file, as required by Appendix D of the RETMF.
2.07	If an external appraiser was used, the engagement to prepare an external appraisal report with respect to the property was documented through a signed written engagement letter using the most current template maintained by City Legal Services (as at the date of engagement).	File documentation did not include an engagement letter between the City of Winnipeg and the external appraiser 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 appraisal report was reviewed by a designated member of the Appraisal Institute of Canada. This review however was not signed off on by the Senior Appraiser.
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.

3. Consultation and communication with internal City stakeholders such as City departments, the Ward Councilor, and utility agencies has been solicited prior to the execution of the transaction

	Criteria	**Exceptions noted**
3.01	Prior to undertaking a sale, lease, or declaration of surplus, PP&D issued a circulation to applicable City departments, the Ward Councilor, and utility agencies for a sale or declaration of surplus to identify any requirement(s) for the real property with a minimum 14 day deadline for response in accordance with the requirements stipulated in Appendix H of the RETMF. All correspondence has been retained within the transaction file. Departments that are required to be contacted include: Assessment and Taxation, Community Services, Fire Paramedic Service, Local improvements, Planning, Property and Development Department, Public Works Department, Transit Department, Water and Waste department. Winnipeg Parking Authority, and Winnipeg Police Service. Utility and service provider entities that are required to be contacted include: BellMTS, Manitoba Hydro, and Shaw.	There was no evidence in the transaction documentation that PP&D issued a circulation to the applicable City departments, utility agencies or Ward Councilor.

6. Property, Planning, and Development has been authorized to commence negotiations for the acquisition or disposal of land, and completed site inspections as appropriate

	Criteria	**Exceptions noted**
6.03	Prior to entering into negotiations to sell or otherwise dispose of the property, PP&D visually inspected the site to ensure that new encroachments over the City owned property have not occurred during the holding period, and has ensured that all legal	Documentation of a visual inspection was not included in the transaction file

	encroachments over the lands or contiguous with the City's ownership are protected on sale.	

7. An Environmental Site Assessment ("ESA") was completed as required

	Criteria	Exceptions noted
7.06	Under a disposition of land and property, the transaction documentation stipulates that the potential buyer of the land will hold the environmental due diligence responsibility.	While the proposed Terms and Conditions of the sale agreement stated the prospective purchaser may complete an ESA, it did not include environmental provisions to clarify environmental liability.

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

	Criteria	Exceptions noted
8.02	Engagement of Materials Management and the utilization of a Competitive Bid Process was undertaken in accordance with the directives in Appendix E of the RETMF. In cases where Materials Management or a Competitive Bid Process was not undertaken as required or suggested within the appendix, the supporting rationale have been documented and agreed between PP&D and Materials Management.	The file documentation did not include evidence of the engagement of Materials Management and the utilization of a Competitive Bid Process as prescribed by Appendix E of the RETMF.

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 final confirmation and approval of the proposed terms and conditions of the transaction with the third party by Legal Services was not included in the file.

12. Unsolicited offers for the purchase of City owned property have been pursued only when the conditions established by Council have been met

	Criteria	Representations or rationale provided
12.01	Any unsolicited offer for the purchase of City-owned property is pursued only when one or more of the four conditions outlined by Council (as defined in the Council minutes of December 6, 2006 - *Offers to purchase City-owned property policy*) have been met.	File documentation does not contain evidence that the conditions outlined within the Offers to purchase City-owned property policy have been met. The authors of the Administrative Report have recommended that the requirements this criteria and related policy are waived in the instance of this Transaction (Recommendation 2 of the Administrative Report).

17. Other policies related to the general process for the sale of land have been adhered to

	Criteria	Exception noted
17.01	Within 30 days of being declared surplus by Council, the property has been posted on the City of Winnipeg website.	There was no evidence included in the file documentation with respect to the property being posted on the City of Winnipeg website with 30 days of being declared surplus.

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

3. Consultation and communication with internal City stakeholders such as City departments, the Ward Councilor, and utility agencies has been solicited prior to the execution of the transaction

	Criteria	Representations or rationale provided
3.02	No requirements were identified by a City department to retain the subject property in response to the circulation to City departments outlined in criteria 3.01.	As noted under Criteria 3.01 in Section A above, there was no evidence in the transaction documentation that PP&D issued a circulation to the applicable City departments, utility agencies or Ward Councilor. As a result of this exception, Criteria 3.02 was not subject 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

	Criteria	Representations or rationale provided
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.

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, 2.12
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, 8.05
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
14. Acquisitions of privately owned property containing dilapidated structures are accompanied by a program of rehabilitation, redevelopment, or improvement.	14.01, 14.02
15. Specific policies relating to transactions involving property under the purview of the Parks & Recreation division have been observed.	15.01, 15.02
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.	16.01
17. Other policies related to the general process for the sale of land have been adhered to.	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, 18.06, 18.07, 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