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Report of the Independent Fairness Commissioner

City of Winnipeg
Report on Compliance – Proposed Expropriation
Settlement for 1077 St. James Street

September 21, 2019

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INDEPENDENT ASSURANCE REPORT ON COMPLIANCE WITH FRAMEWORK
City of Winnipeg
Proposed Expropriation Settlement for 1077 St. James Street

To: City Council

Scope

We have undertaken a reasonable assurance engagement 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 1.04 of the framework referenced in Section 1 of this report (hereinafter referred to as the "Compliance Framework").

Management's responsibility

The Compliance Framework as well as compliance of the Transaction with the Compliance Framework are the responsibility of PP&D's Management. Management is also responsible for such internal controls as it determines necessary to enable City of Winnipeg's compliance with the specified requirements.

Our responsibility

Our responsibility is to express a reasonable assurance opinion on the City of Winnipeg's compliance based on the evidence we have obtained. We conducted our reasonable assurance engagement in accordance with Canadian Standard on Assurance Engagements 3531, Direct Engagements to Report on Compliance. This standard requires that we plan and perform this engagement to obtain reasonable assurance about whether the entity complied with the specified requirements, in all significant respects.

Reasonable assurance is a high level of assurance, but is not a guarantee that an engagement conducted in accordance with this standard will always detect a significant instance of non-compliance with specified requirements when it exists. Instances of non-compliance can arise from fraud or error and are considered significant if, individually or in the aggregate, they could reasonably be expected to influence the decisions of users of our report. A reasonable assurance compliance reporting engagement involves performing procedures to obtain evidence about the entity's compliance with the specified requirements. The nature, timing and extent of procedures selected depends on our professional judgment, including an assessment of the risks of significant non-compliance, whether due to fraud or error.

Our reasonable assurance engagement included 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 September 20, 2019. We believe the evidence we obtained is sufficient and appropriate to provide a basis for our opinion.

Our independence and quality control

We have complied with the relevant rules of professional conduct/code of ethics applicable to the practice of public accounting and related to assurance engagements, issued by various professional accounting bodies, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. The firm applies Canadian Standard on Quality Control 1, Quality Control for Firms that Perform Audits and Reviews of Financial Statements, and Other Assurance Engagements and, accordingly, maintains a comprehensive system of quality control, including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

Opinion

In our opinion, except for the compliance exceptions noted in Section 2, PP&D is in compliance, with the individual criteria of the Compliance Framework (version 1.04) for the Transaction noted above in all significant respects. We do not provide a legal opinion on City of Winnipeg's compliance with the specified requirements.

Restriction on use

This report was prepared for the City of Winnipeg and 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
September 21, 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 transaction is an expropriation settlement to the owner of 1077 St. James Street, as identified in Misc. Plan No. 15072/1, in connection with the Regional Steet Renewal Program. 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 September 20, 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 Standing Policy Committee on Property and Development, Heritage and Downtown Development ("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
Appraisal documentation incomplete	The file documentation with respect to the appraisal was not in compliance with several aspects of the Compliance Framework, including (but not limited to): • A completed Appraisal Requisition Form required by Appendix D of the RETMF, was not included in the file documentation. • The 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, required by Appendix D of the RETMF. • File documentation did not include an engagement letter between the City of Winnipeg and the external appraiser,required by Appendix D of the RETMF. • The transaction file did not include evidence of review of the appraisal report by a designated member of the Appraisal Institute of Canada. • The file documentation did not contain evidence of review by staff of the Real Estate Division or Property Management Branch.	2.01, 2.04, 2.07, 2.08, 2.09, 2.12

Unaudited Management response to exceptions noted
Management accepts the findings of the IFC. The items of non-compliance were a result of the timing of the transaction. The appraisal was conducted prior to the implementation of the RETMF. The external appraisal completed for this transaction complies with professional standards and was reviewed by a member of the Real Estate Branch, but not in a form consistent with the RETMF.

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 1.04 dated August 28, 2019 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 SPCPDHDD 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 SPCPDHDD 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 September 20, 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 are 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

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 external appraisal of the property was prepared and included in the file. A completed Appraisal Requisition Form, as required by Appendix D of the RETMF, was not included in the file documentation.
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 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, 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, 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 transaction file did not include evidence of review of the appraisal report 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.
2.12	In cases where the most recent appraisal with respect to the property was completed more than 24 months from the expected date of the transaction, an Update Appraisal was completed.	Although the appraisal was not dated within 24 months of the expected date of the Transaction (as defiined in Section 1 of this report), the appraisal was dated within 24 months of the date of expropriation.

B. Criteria not subjected to audit

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

	Criteria	Representations or rationale provided
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 RETMF does not provide a set of criteria specific to Proposed Expropriation Settlements and as such, Appendix C of the RETMF does not include a checklist for proposed expropriation settlements.
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.	

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.

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

	Criteria	Representations or rationale provided
7.01	A determination was made and documented by a qualified environmental professional (as defined within Appendix M of the RETMF) as to whether an ESA was required.	The act of expropriating the property (1077 St. James Street), which gave rise to the conditions deemed to warrant this offer of compensation, was performed under a prior administrative report, and as such these criterion were not subject to audit.
7.02	If determined to be required pursuant to criterion 7.01, a Phase I ESA was conducted by a qualified environmental professional (as defined within Appendix M of the RETMF), in accordance with CSA standard Z768-01 Phase I Environmental Site Assessment (as evidenced by a representation to this effect).	
7.03	If recommended in the Phase I ESA, a Phase II ESA has been conducted by a qualified environmental professional (as defined within Appendix M of the RETMF) according to CSA standard Z769-00 Phase II Environmental Site Assessment (as evidenced by a representation to this effect).	
7.04	All ESAs have been reviewed by a qualified individual with experience in interpreting results and recommendations in the ESA, or has otherwise been reviewed or consulted with either a member of Public Works or a member of the Water and Waste Department's environmental protection program. Documentation evidencing this review has been retained within the file.	

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.	The proposed terms and conditions of the Transaction have not been formally drafted for review by the City Legal Department.

10. Alternative properties and procurement methods were considered in selecting the property

	Criteria	Representations or rationale provided
10.01	A search was undertaken to identify alternative property locations and purchase/lease opportunities available. In cases where multiple opportunities were identified by this search, a comparative analysis was undertaken to evaluate the most economical option. This analysis was reviewed and communicated with the requesting department.	The act of expropriating the property (1077 St. James Street), which gave rise to the conditions deemed to warrant this offer of compensation, was performed under a prior administrative report, and as such this criterion was not subject to audit.

11. Where land is to be expropriated, compliance with the Expropriation Act has been considered and verified by City Legal Services

	Criteria	Representations or rationale provided
11.01	City Legal Services has represented that they have confirmed compliance of the transaction with the terms of the Expropriation Act in its approval of the transaction.	The act of expropriating the property (1077 St. James Street), which gave rise to the conditions deemed to warrant this offer of compensation, was performed under a prior administrative report, and as such these criterion were not subject to audit.
11.02	Prior to undertaking an expropriation of a property not specifically required by a project plan, a search was undertaken for alternative acquisition opportunities that would avoid expropriation.	
11.03	In the case of an expropriation, Council has issued a Declaration of Expropriation which defines the property to be expropriated and states that the process shall be undertaken in accordance with the Expropriation Act. In addition, notice of the intended expropriation was provided to the Land Titles office no more than six months prior to the transaction.	
11.04	Notice of the Declaration of Expropriation has been distributed to the current land owner(s) within 60 days of the declaration.	
11.05	Within a 120 day period of the issuance of the Declaration of Expropriation and before serving a notice for possession of the land, an offer of compensation which includes all provisions identified in paragraph 16(1) of the expropriation act has been provided directly to the land owners.	
11.06	If objection to the expropriation was made within 30 days of the later of the declaration or the notification of the declaration, an inquiry officer was appointed and a report was drafted by said officer and provided to Council within the 120 day period.	
11.07	Within 120 days of the last Declaration of Expropriation being submitted (excluding an amendment for a correction being submitted on an existing Declaration), the Declaration of Expropriation has been confirmed by Council.	
11.08	The offers, approvals and declarations issued throughout the expropriation process have been made in accordance with the Delegation of Authority.	

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
5. All land has either been declared surplus or is planned to be declared surplus concurrently with the approval of sale by the Chief Administrative Officer and/or Council, based on the applicable Delegation of Authority.	5.01
6. PP&D has been authorized to commence negotiations for the acquisition or disposal of land, and completed site inspections as appropriate.	6.03
7. An Environmental Site Assessment ("ESA") was completed as required.	7.05, 7.06
8. A competitive procurement process was conducted when prescribed by the RETMF.	8.02, 8.03, 8.04, 8.05
12. Unsolicited offers for the purchase of City owned property have been pursued only when the conditions established by Council have been met.	12.01
13. Any offer for the purchase of City-owned property was only acted on by PP&D if it was provided in the form of a formal written offer.	13.01
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.	17.01, 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, 18.06, 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