



**City of Saint John
Common Council Meeting
AGENDA**

Monday, September 9, 2019

6:00 pm

8th Floor Common Council Chamber (Ludlow Room), City Hall

Si vous avez besoin des services en français pour une réunion de Conseil communal, veuillez contacter le bureau du greffier communal au 658-2862.

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17. Committee of the Whole

18. Adjournment



The City of Saint John

MINUTES – REGULAR MEETING
COMMON COUNCIL OF THE CITY OF SAINT JOHN
AUGUST 19, 2019 AT 6:00 PM
IN THE COUNCIL CHAMBER

Present: Mayor Don Darling
Deputy Mayor Shirley McAlary
Councillor-at-Large Gary Sullivan
Councillor Ward 1 Blake Armstrong
Councillor Ward 1 Greg Norton
Councillor Ward 2 Sean Casey
Councillor Ward 2 John MacKenzie
Councillor Ward 3 Donna Reardon
Councillor Ward 3 David Hickey
Councillor Ward 4 David Merrithew
Councillor Ward 4 Ray Strowbridge

Also Present: City Manager J. Collin
Deputy City Manager N. Jacobsen
Solicitor O. Lineros
Fire Chief K. Clifford
Police Chief B. Connell
Deputy Commissioner Growth and Community Development P. Ouellette
Commissioner of Finance and Treasurer K. Fudge
Commissioner of Transportation and Environment M. Hugenholtz
Deputy Commissioner of Saint John Water K. Mason
Common Clerk J. Taylor
Administrative Assistant K. Tibbits

1. Call to Order

2. Approval of Minutes

2.1 Minutes of July 29, 2019

Moved by Deputy Mayor McAlary, seconded by Councillor MacKenzie:

RESOLVED that the minutes of the meeting of Common Council held on July 29, 2019, be approved.

MOTION CARRIED.

3. Approval of Agenda

Moved by Deputy Mayor McAlary, seconded by Councillor Sullivan:

RESOLVED that the agenda of this meeting be approved with the addition of Item 17.1 West Branch Library.

MOTION CARRIED.

Moved by Deputy Mayor McAlary, seconded by Councillor Merrithew:

RESOLVED that Item 12.7 Sustaining Saint John: A Three-Part Plan (Tabled from July 11, 2019) be moved forward on the agenda.

MOTION CARRIED.

4. Disclosures of Conflict of Interest

Mayor Darling declared a conflict of interest with Item 15.1 D. James Letter re: Council Code of Conduct.

5. Consent Agenda

5.1 That the Hon. Jeff Carr Letter re Federal Gas Tax Fund (GTF) – 2019 Allocation be received for information.

5.2 That as recommended by the City Manager in the submitted report *M&C 2019-205: Financial and Compliance Audit Report for the Funding Agreement with the Province*, Common Council approve the Independent Practitioner's Reasonable Assurance Report on Compliance and supplementary reports provided to the City of Saint John by the auditors in relation to Provincial Funding Agreement dated March 15, 2018.

5.3 That as recommended by the City Manager in the submitted report *M&C 2019-177: Tender No. 2019-084101T: Dredging Lancaster Lagoon*, Tender No. 2019-084101T for the establishment of a two year supply agreement for the dredging of the Lancaster Lagoon be awarded to the low tenderer, Entec Waste Management Inc.

5.4 That as recommended by the City Manager in the submitted report *M&C 2019-197: Contract 2019-20 Crack Sealing 2019*, the contract be awarded to the low Tenderer, Road Savers Maritime Limited, at the tendered price of \$122,475.00 (including HST) as calculated based upon estimated quantities; and further that the Mayor and Common Clerk be authorized to execute the necessary contract documents.

5.5 That the submitted report *M&C 2019-198: Public Information Session: Cedarpoint Anchorage Neighbourhood – Plan for Traffic Calming and Asphalt Resurfacing*, be received for information.

5.6 That as recommended by the City Manager in the submitted report *M&C 2019-199: Supply Agreement for Road Salt*, Common Council award the supply contract for road salt to Nutrien for a two year period; and further that the Mayor and Common Clerk be authorized to sign the required documents.

5.7 That as recommended by the City Manager in the submitted report *M&C 2019-201: Contract 2019-18: MRG Sanitary Sewer System – X Station Culvert Renewal*, the contract be awarded to the low Tenderer, Galbraith Construction Ltd., at the tendered price of \$307,510.00 (including HST) as calculated based upon estimated quantities; and further that the Mayor and Common Clerk be authorized to execute the necessary contract documents.

5.8 That as recommended by the City Manager in the submitted report *M&C 2019-202: Road Salt Delivery*, Common Council award the tender for road salt delivery to Kingsco Transport Ltd. for a two year period; and further that the Mayor and Common Clerk be authorized to sign the required documents.

5.9 That as recommended by the City Manager in the submitted report *M&C 2019-196: Initiate Closure of Portion of Mitchell Street*, Common Council adopt the following:

1. That the Public Hearing to consider the passing of a By-law to Close a 1,689.2 square metre portion of a public street known as Mitchell Street, as shown on a Plan of Survey (as submitted), be set for Monday, September 9, 2019 at 6:30 p.m. in the Council Chamber;
2. That Common Council authorize the publishing of a notice of its intention to consider passing of such By-law identified above; and
3. In the event that Common Council gives First and Second Reading to Amending a By-law as stated above, that Council withhold Third Reading pending a further report from City staff regarding the details of the possible sale of the area described in the aforesaid notice.

5.10 That as recommended by the City Manager in the submitted report *M&C 2019-212: Request for Proposal No. 2019-463002P – Packaged Pump Station*, the proposal submitted by Fairville Construction Ltd. for the purchase of the new Packaged Pump Station at a cost of \$466,000.00 plus HST be accepted; and further that the Mayor and Common Clerk be authorized to execute the necessary contract documents.

5.11 That the submitted report *M&C 2019-207: Follow Up to Saint John Citizen's Letter re: GrowSJ*, be received for information.

5.12 That as recommended by the City Manager in the submitted report *M&C 2019-208: Green Energy Municipal Plan and Zoning By-Law Amendments – Referral to Planning Advisory Committee*:

1. Common Council refer the proposed Municipal Plan By-Law Amendments set out in Schedule "A" to M&C No. 2019-208 dated 14th day of August 2019 to the Planning Advisory Committee for consideration at its meeting scheduled for September 17, 2019; and
2. Common Council direct staff to give the required notice of Council's intention to consider the aforesaid Municipal Plan By-Law Amendments at a public hearing to be held at the Council Meeting scheduled for the 7th day of October, 2019.

5.13 That as recommended by the City Manager in the submitted report *M&C 2019-203: 2020 and 2021 General Fund Capital Budget*, Common Council approve the 2020 and 2021 General Fund Capital Budget in the amount of \$50,621,551 (gross) with contributions from other sources of \$29,131,401, yielding a net Capital budget in the amount of \$21,490,150, to be funded by debt issue (net) as set in Exhibit 1.

5.14 That as recommended by the City Manager in the submitted report *M&C 2019-204: 2020 and 2021 Water and Sewerage Utility Fund Capital Budget*, Common Council approve the 2020 and 2021 Water and Sewerage Fund Capital Budget in the amount of \$26,215,000 (gross) with contributions from other sources of \$15,931,550, yielding a net Capital budget in the amount of \$10,283,450, to be funded by pay as you go (net) as set in Exhibit 1.

Moved by Deputy Mayor McAlary, seconded by Councillor Sullivan:

RESOLVED that the recommendation set out in each consent agenda item respectively be adopted.

MOTION CARRIED UNANIMOUSLY.

12.7 Sustaining Saint John: A Three-Part Plan (Tabled from July 11, 2019)

Moved by Deputy Mayor McAlary, seconded by Councillor Sullivan:

RESOLVED that Item 12.7 Sustaining Saint John: A Three-Part Plan, be lifted from the table.

MOTION CARRIED.

Moved by Councillor Sullivan, seconded by Councillor Strowbridge:

RESOLVED that:

- 1) Common Council endorse the report while continuing to voice its reservations over:
 - Failure to solve the financial gap for the years of 2021 and 2022
 - Lengthy timelines and uncertainty for the significant reforms
 - Lack of detailed implementation plans for the significant reforms
- 2) Common Council formally re-consider in March 2020, in Open Session, their endorsement of this Plan based on the progress made. This date would be concurrent with the Provincial commitment to re-assess in Part Three of the Plan, and also be concurrent with the City's commitment to have all implementation plans for financial restructuring approved.
- 3) City Staff, working through Finance Committee, continue with their efforts/plans to address the entirety of the deficit for 2021 and 2022; respecting the motion passed by Common Council on this issue.
- 4) Common Council request to the Province that detailed implementation plans be produced for each of the 20 Action Items.
- 5) That the working committee established to produce this Plan remain extant and assist in the coordination and implementation of the entire Plan.
- 6) City staff provide a report to Council every two months as a minimum (and more often if deemed necessary) on the progress on the 20 Action Items, and on Parts Two and Three of the Plan, through the creation of a Sustaining Saint John Report Card. Furthermore, that this report card be provided to Saint John Common Council, Members of the Legislative Assembly from the Greater Saint John Region, the Premier's Office, and all four political parties currently represented in the Provincial Legislature in order to ensure broad situational awareness.
- 7) Common Council create an ad-hoc three-member Committee of Council to be named at a later date, to continue the communication with appropriate Provincial elected officials regarding potential future amendments to the Plan.

Mr. Collin noted that an amended version of the Plan was received just prior to the meeting, along with a supporting letter from the Premier. The key proposed changes to the Plan are as follows:

- More definitive wording and commitment to changing binding arbitration for police and fire fighters.
- More definitive wording and commitment to enabling Saint John Energy's growth agenda.
- The final report for the Regional Management Task Force was not advanced, but there is now a requirement for an interim report and also recognition of a requirement for outside expertise and advice to the task force.
- The Province has stated that they intend to advance the reassessment of outcomes (Part Three of the Plan), from the May period to the March period of 2020.

The plan still does not address the financial gap of 2021 and 2022. There is tremendous potential in the longer term initiatives. There is some, although limited, short-term financial relief. With an endorsed report there is a commitment from the Province to make certain changes to legislation and processes. It includes financial relief of approximately \$1M and potentially more depending on the success of initiatives.

Councillor MacKenzie expressed concern with the recommendation, adding that by endorsing the report, he is endorsing \$12M in cuts to the City of Saint John, which is likely to occur regardless. Councillor MacKenzie indicated that there was not adequate time given to review the amended Plan due to the late timing of receipt of the material.

Deputy Mayor McAlary expressed concern that the amended Plan is not concrete nor does it address the financial challenges of 2021 and 2022. The Deputy noted that she cannot support the creation of an Ad-hoc committee, noting that the MLAs should work with all of Council, not just a select few.

Councillor Armstrong stated that there is nothing concrete in the Plan. A signed agreement is not necessary in order to continue conversation with the Province.

MOTION CARRIED with Deputy Mayor McAlary and Councillors Armstrong and MacKenzie voting nay.

(Councillors Sullivan and Norton withdrew from the meeting)

6. Members Comments

Council members commented on various community events.

7. Proclamations

7.1 Exhibition Days 2019

The Mayor declared August 27th to 31st 2019 as Exhibition Days in the City of Saint John.

8. Delegations/Presentations

9. Public Hearings 6:30 PM

10. Consideration of By-laws

(Councillor Casey withdrew from the meeting)

10.1 Zoning ByLaw Amendment – 81 Bayside Drive (3rd Reading)

Moved by Deputy Mayor McAlary, seconded by Councillor Reardon:

RESOLVED that the by-law entitled, “By-Law Number C.P. 111-80 A Law to Amend the Zoning ByLaw of The City of Saint John”, amending Schedule A, the Zoning Map of The City of Saint John, by re-zoning a parcel of land having an area of approximately 930 square metres, located at 81 Bayside Drive, also identified as PID No. 00317636 from Neighbourhood Community Facility (CFN) to General Commercial (CG), be read.

MOTION CARRIED.

The by-law entitled, “By-Law Number C.P. 111-80 A Law to Amend the Zoning By-Law of The City of Saint John”, was read in its entirety.

Moved by Deputy Mayor McAlary, seconded by Councillor Reardon:

RESOLVED that the by-law entitled, “By-Law Number C.P. 111-80 A Law to Amend the Zoning ByLaw of The City of Saint John”, amending Schedule A, the Zoning Map of The City of Saint John, by re-zoning a parcel of land having an area of approximately 930 square metres, located at 81 Bayside Drive, also identified as PID No. 00317636 from Neighbourhood Community Facility (CFN) to General Commercial (CG), be read a third time, enacted, and the Corporate Common Seal affixed thereto.

MOTION CARRIED.

Read a third time by title, the by-law entitled, “By-Law Number C.P. 111-80 A Law to Amend the Zoning By-Law of The City of Saint John.”

10.2 Zoning ByLaw Amendment with Section 59 Conditions – 149 Broad Street (3rd Reading)

Moved by Deputy Mayor McAlary, seconded by Councillor Reardon:

RESOLVED that the by-law entitled, “By-Law Number C.P. 111-79, A Law to Amend the Zoning By-Law of The City of Saint John,” amending Schedule “A”, the Zoning Map of The City of Saint John, by re-zoning a parcel of land having an area of approximately 1483 square metres, located at 149 Broad Street, also identified as PID No. 00000604, from Neighbourhood Community Facility (CFN) to Urban Centre Residential (RC), be read.

MOTION CARRIED.

The by-law entitled, “By-Law Number C.P. 111-79 A Law to Amend the Zoning By-Law of The City of Saint John”, was read in its entirety.

Moved by Deputy Mayor McAlary, seconded by Councillor Reardon:

RESOLVED that, pursuant to Section 59 of the Community Planning Act, the development and use of the parcel of land with an area of approximately 1,483 square metres, located at 149 Broad Street also identified as PID Number 00000604, be subject to the following condition:

That any development of the site be in accordance with a detailed site plan to be prepare by the proponent and subject to the approval of the Development Officer, indicating: the location of all buildings and structures, vehicular parking areas & driveways, bicycle parking, loading areas, signage, exterior lighting, outdoor storage areas, landscape and amenity areas, and other site features. The site plan is to be attached to the application for the building permit for the proposed development.

MOTION CARRIED.

Moved by Deputy Mayor McAlary, seconded by Councillor Reardon:

RESOLVED that the by-law entitled, “By-Law Number C.P. 111-79, A Law to Amend the Zoning By-Law of The City of Saint John,” amending Schedule “A”, the Zoning Map of The City of Saint John, by re-zoning a parcel of land having an area of approximately 1483 square metres, located at 149 Broad Street, also identified as PID No. 00000604, from Neighbourhood Community Facility (CFN) to Urban Centre Residential (RC), be read a third time, enacted, and the Corporate Common Seal affixed thereto.

MOTION CARRIED.

Read a third time by title, the by-law entitled, “By-Law Number C.P. 111-79 A Law to Amend the Zoning By-Law of The City of Saint John.”

(Councillor Casey re-entered the meeting)

10.3 Public Presentation – Municipal Plan Amendment re 348 Acamac Backland Road

Deputy Commissioner P. Ouellette gave a public presentation for a proposed amendment to the Municipal Development Plan which would redesignate on Schedule A of the Municipal Development Plan, parcels of land with an area of approximately 6.0 hectares located at 348 Acamac Backland Road, also identified as portions of PID No. 00289595 from Park and Natural Area to Rural Resource Area; and redesignate, on Schedule B of the Plan, the same parcels of land, from Park and Natural Area to Rural Resource to permit the development of a pit and quarry for aggregate and clay extraction on a portion of the property.

11. Submissions by Council Members

12. Business Matters - Municipal Officers

12.1 Continuous Improvement Initiatives Update (Verbal)

Ms. Rackley-Roach stated that as part of on-going efforts to continuously improve service to customers and support growth in Saint John, new technology has recently been made available to the public. The applications allow for easier access to information and promotes some of the City's cultural assets by combining mapping and mobile device technology.

Y. Leger, GIS Manager reviewed a presentation entitled "Performance, Open Data and Apps".

Moved by Deputy Mayor McAlary, seconded by Councillor Reardon:

RESOLVED that the presentation entitled "Performance, Open Data and Apps", be received for information.

MOTION CARRIED.

12.2 Sustainability Update (Verbal)

Mr. Collin stated that Council will be provided with broad aspects of the Sustainability Plan to address the entirety of the deficit for 2021 and 2022 prior to the end of September.

Moved by Deputy Mayor McAlary, seconded by Councillor Reardon:

RESOLVED that the City Manager's verbal *Sustainability Update* be received for information.

MOTION CARRIED.

(Councillor Strowbridge withdrew from the meeting)

12.3 Demolition of Vacant, Dilapidated and Dangerous Building at 361-363 Lancaster Street (PID 00367904)

The Mayor read the cautionary statement as follows:

“The information which has been provided in the Council Kit includes the report of the Building Inspector stating that the building located at 361-363 Lancaster Street (PID 00367904) is a hazard to the safety of the public by virtue of its being, amongst other things, dilapidated or structurally unsound. Is there present an owner, including anyone holding any encumbrance upon this property, who wishes to present evidence to the contrary, i.e. that the building is structurally sound and not dilapidated?”

No one came forward to present evidence.

Moved by Councillor MacKenzie, seconded by Deputy Mayor McAlary:

RESOLVED that as recommended by the City Manager in the submitted report M&C 2019-211: Demolition of Vacant, Dilapidated and Dangerous Building at 361-363 Lancaster Street (PID 00367904), Common Council approve the following:

RESOLVED that the building located at 361-363 Lancaster Street, PID# 00367904, is to be demolished as it has become a hazard to the safety of the public by reason of dilapidation; and

BE IT FURTHER RESOLVED that the building is to be demolished as it has become a hazard to the safety of the public by reason of unsoundness of structural strength; and

BE IT FURTHER RESOLVED that one or more by-law enforcement officers appointed and designated under the Saint John Unsightly Premises and Dangerous Buildings and Structures By-law are hereby authorized to arrange for the demolition, in accordance with the applicable City purchasing policies.

MOTION CARRIED.

(Councillor Strowbridge re-entered the meeting)

12.4 Saint John Economic Development Alignment Exercise

Deputy Commissioner P. Ouellette reviewed the submitted presentation “Saint John Economic Development Alignment Exercise.” An Advisory Council was developed in March 2019 to support the review of economic development with the objective of providing a recommendation to Council in the third quarter of 2019.

Moved by Deputy Mayor McAlary, seconded by Councillor Reardon:

RESOLVED that the presentation entitled, “Saint John Economic Development Alignment Exercise”, be received for information.

MOTION CARRIED.

12.5 Arena Booking Annual Comparison

Commissioner Hugenholtz noted that significant changes were made earlier in the year with respect to the operation of City arenas including the implementation of recreational cards and non-resident user fees. Concerns were expressed from the hockey community that rentals would drop considerably as a result, leading to lower participation from the community and potentially lower revenue to the City. To date, based on the ice time applications received, similar levels of rentals have been received.

Moved by Deputy Mayor McAlary, seconded by Councillor Merrithew:

RESOLVED that the submitted report entitled *M&C 2019-210: Arena Booking Annual Comparison*, be received for information.

MOTION CARRIED.

12.6 Accelerating Implementation of Renewable Energy projects in Saint John

Commissioner Fudge noted that Council earlier approved the “Climate Change Action Plan” which identified a number of measures and strategies to achieve the community green house gas emissions target by 2025. One of these measures is the development and implementation of renewable energy sources in the community. The City has partnered with Quest and is one of five municipalities involved in a two-year project with a purpose of identifying renewable energy opportunities. The project is being funded by the Federation of Canadian Municipalities.

Mr. Eddie Oldfield, Quest, reviewed the submitted presentation entitled, “Mapping Possibilities for Renewable Energy Development in the City of Saint John.”

Moved by Deputy Mayor McAlary, seconded by Councillor Reardon:

RESOLVED that the submitted report entitled *M&C 2019-209: Accelerating Implementation of Renewable Energy Projects in Saint John*, be received for information.

MOTION CARRIED.

13. Committee Reports

14. Consideration of Issues Separated from Consent Agenda

15. General Correspondence

(Mayor Darling withdrew from the meeting; Deputy Mayor McAlary assumed the Chair)

15.1 D. James Letter re Council Code of Conduct – Mayor Darling

Moved by Councillor Reardon, seconded by Councillor Armstrong:

RESOLVED that the D. James Letter regarding Council Code of Conduct (Mayor Darling) be received for information.

MOTION CARRIED.

15.2 D. James Letter re Council Code of Conduct – Councillor Merrithew

Moved by Councillor Reardon, seconded by Councillor Hickey:

RESOLVED that the D. James Letter regarding Council Code of Conduct (Councillor Merrithew) be received for information.

MOTION CARRIED.

16. Supplemental Agenda

17. Committee of the Whole

17.1 West Side Library

Moved by Councillor Armstrong, seconded by Councillor Merrithew:

RESOLVED that as recommended by the Committee of the Whole, having met on August 19, 2019, Common Council recommend to The Commissioners of the Free Public Library of the City of Saint John to execute the Lease Extension and Amending Relocation Agreement with SBLP Lancaster Mall Inc. as submitted with a change in term to 10 years.

MOTION CARRIED.

18. Adjournment

Moved by Councillor Reardon, seconded by Councillor Armstrong:

RESOLVED that the meeting of Common Council held on August 19, 2019, be adjourned.

MOTION CARRIED.

The Mayor declared the meeting adjourned at 8:55 p.m.

COUNCIL REPORT

| | |
|--------------|--|
| M&C No. | 2019-216 |
| Report Date | August 20, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Finance and Administrative Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: Fall 2019 Debenture Application

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|-----------------------------|--|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Craig Lavigne</i> | <i>Cathy Graham/Kevin Fudge</i> | <i>John Collin</i> |

RECOMMENDATION

RESOLVED that occasion having arisen in the public interest for the following Public Civic Works and needed Civic Improvements that the City of Saint John proposes issue of the following debentures to be dated on or after August 28th, 2019:

GENERAL FUND

| | | | |
|-------------------------|----|----------------|--------------------|
| Protective Services | \$ | 3,100,000 | |
| Transportation Services | \$ | 3,500,000 | |
| Economic Development | \$ | 600,000 | |
| Parks and Recreation | \$ | <u>200,000</u> | \$7,400,000 |

REFINANCE DEBENTURES

| | | | |
|--|----|------------------|--------------------|
| Debenture No. BB 13- 2009 (General Fund – 5 years) | \$ | 2,830,000 | |
| Debenture No. BB 14 -2009 (Water & Sewerage – 10 years) | \$ | 2,500,000 | |
| Debenture No. BB 15 -2009 (Transit – 5 years) | \$ | <u>1,670,000</u> | \$7,000,000 |

TOTAL **\$ 14,400,000**

THEREFORE RESOLVED that debentures be issued under provisions of the Acts of Assembly 52, Victoria, Chapter 27, Section 29 and amendments thereto, to the amount of \$ 14,400,000.

EXECUTIVE SUMMARY

Notice of motion was given at the July 29th, 2019 meeting of Common Council regarding the need to borrow and refinance debentures totaling fourteen million and four hundred thousand dollars (\$14,400,000).

The next step in the debenture financing is to submit application to the New Brunswick Municipal Finance Corporation. In order to proceed with the debenture financing this recommendation requires Council's adoption.

PREVIOUS RESOLUTION

M&C – 2019-178 – 2019 Fall Debenture Issue – Notice of Motion

REPORT

The New Brunswick Municipal Finance Corporation is planning a bond issue in the near future and applications are to be submitted by end of September, 2019. While the issue will not be sold until the Corporation feels that rates are reasonable, they have provided ranges within which the issue could be sold. These are as follows:

| | |
|----------------|---|
| Interest Rate: | Not to exceed an average of 4.50% |
| Price, Net: | Not to be less than \$98.00 per \$100.00 of debenture |
| Term: | Serial form to mature in equal annual amounts over a term not to exceed 5 years for the General Fund and Transit and 10 years for the Water & Sewerage Utility for refinanced debentures. Term not to exceed 15 years for new General Fund borrowing. |

The amount to be borrowed is a result of previously approved General Fund Capital Budgets and the refinancing of debentures issued in 2009. Market conditions in 2009 resulted in a fixed period of ten years on the debentures even though the City borrows for 15 years for General Capital and 20 years for Water and Sewerage.

There is interest rate risk for the City when debentures require refinancing due to market conditions. The City has received debentures since 2012 that are for the full term and will not require refinancing, therefore eliminating interest rate risk. The City has also benefited from historically low interest rates when refinancing the balance owed on debentures. The average yield on the November 2009 debentures was 4.25%, where the average yield on debentures

in May 2019 was 2.83%. Market conditions are still favorable and the City will see a reduction in interest costs for these refinanced debentures.

SERVICE AND FINANCIAL OUTCOMES

N/A

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

N/A

ATTACHMENTS

N/A

COUNCIL REPORT

| | |
|--------------|--|
| M&C No. | 2019-219 |
| Report Date | August 27, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Finance and Administrative Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: Banking Resolutions

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|-----------------------------|---------------------------|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Craig Lavigne</i> | <i>Kevin Fudge</i> | <i>John Collin</i> |

RECOMMENDATION

It is recommended that Common Council adopt:

Resolved:

1. That the banking business of the City of Saint John, or any part thereof, may be transacted with the Bank of Nova Scotia.
2. That any two of the:
Commissioner of Finance
Comptroller
Senior Finance Manager

be and are hereby authorized on behalf of the City:

- (a) To borrow money from time to time by way of direct advances by Promissory Notes, Overdraft, or Standby Letters of Credit/Letters of Guarantee;
- (b) To oversee banking business to include, without limitation, the operation of the City's accounts; the making, signing, drawing, accepting, endorsing, negotiating, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the approval of any administrative arrangement relating to any such banking business and defining the rights and power of the parties thereto; and the authorizing of any officer of such

institution to do any act or thing on the City's behalf to facilitate such banking business; and

- (c) To delegate certain transactions which fall under a dollar threshold designated in internal policies, to specific employees of the City as laid out in said internal policies.
3. That any one of the:
- Commissioner of Finance
 - Comptroller
 - Senior Finance Manager

be and are hereby authorized on behalf of the City:

- (a) To negotiate with or transfer to the Bank of Nova Scotia for deposit or discount with or collection by the Bank (but for the credit of the City's accounts only) cheques, promissory notes, bills of exchange, drafts, orders for the payment of money and other instruments, whether negotiable or not, purporting to be signed or endorsed on behalf of the City by any one of them or having the name of the City impressed thereon by rubber stamp or other device without any signature;
 - (b) To arrange, settle, balance and certify all books and accounts between the City of Saint John and the Bank and to receive all paid cheques and other vouchers, unpaid and unaccepted bills of exchange and other negotiable instruments and to sign the Bank's form of settlement of balances and release; and
 - (c) To delegate any authority conferred on such person by sub-paragraphs (a) and (b) of this paragraph by any other employee of the City, by notice in writing filed with the Bank.
4. That all agreements, documents and instruments signed, drawn, accepted, endorsed or executed as aforesaid shall be valid and binding on the City.
5. That this resolution shall, from the time Common Council approves, supersede any previous resolutions and instructions respecting the transaction of banking business between the City and Bank of Nova Scotia.

EXECUTIVE SUMMARY

The Bank of Nova Scotia, which is the City's banker, requires certain resolutions to be passed by Common Council. One of these is the banking resolution that sets out the signing officers of the Corporation. As a result of the recent staffing

changes it is necessary to modify the existing banking resolutions to reflect the actual staffing structure.

PREVIOUS RESOLUTION

M&C – 2018-130 Banking Resolutions

STRATEGIC ALIGNMENT

N/A

REPORT

The City's banking resolutions were last updated in 2018.

The purpose of these resolutions is to update staffing changes to reflect the current structure.

SERVICE AND FINANCIAL OUTCOMES

N/A

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

N/A

ATTACHMENTS

N/A

COUNCIL REPORT

| | |
|--------------|--|
| M&C No. | 2019-218 |
| Report Date | August 28, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Finance and Administrative Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: Acquisition of Civic #2-4 Hillcrest Road

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|-----------------------------|---------------------------------------|--------------------|
| Primary Author / Dept. Head | Deputy Commissioner / Commissioner | City Manager |
| <i>Curtis Langille</i> | <i>Ian Fogan / Kevin Fudge</i> | <i>John Collin</i> |

RECOMMENDATION

That Common Council adopt the following resolution:

1. That The City of Saint John acquire PID No. 426700 from Molly May Holdings Corporation for \$7,000.00 plus normal adjustments and administrative fees associated with the land transfer; and
2. That the Mayor and Common Clerk be authorized to execute any document(s) necessary to finalize this transaction.

EXECUTIVE SUMMARY

The owner of the property at civic #2 to 4 Hillcrest Road, recently approached the City and offered to sell the vacant lot, identified as PID No. 426700 (see attached map). The property is a 1.25 acre +/- parcel of land in east Saint John at the corner of Hillcrest and Golden Grove Roads. A portion of an adjoining public street known as Cathline Drive encroaches upon the parcel in question. Transportation and Environment Services is supportive of the City acquiring the entire property.

PREVIOUS RESOLUTION

N/A

STRATEGIC ALIGNMENT

This report aligns with Council's Priority for Valued Service Delivery, specifically as it relates to meeting the needs of its citizens.

REPORT

The owner of PID No. 426700, Molly May Holdings Corporation has offered its 1.25 acre +/- acre parcel, located at the corner of Hillcrest and Golden Grove Roads to the City for \$7,000.00. A significant portion of the intersection of Hillcrest Road and Cathline Drive encroaches upon the subject property that has existed for a number of years. The owner of the property has listed it for sale but upon the realization that an adjoining street intersection encroaches onto the lot, the City was contacted seeking its interest.

An option would be to have the City acquire only that portion of the lot that is encroached upon by the City street; however, the owner is reluctant to sell only a portion to the City. In addition, the costs associated to survey and proceed with the street vesting process, along with a premium on the sale price that would make it worthwhile to the owner result in a total cost close to the agreed upon price to purchase the entire property. Real Estate Services negotiated a lower purchase price than is listed on MLS. Transportation and Environment Services are in agreement to purchase the property in order to remove the encroachment.

SERVICE AND FINANCIAL OUTCOMES

The City will expend \$7,000.00 to purchase the subject property and property taxes on this lot are currently \$91.00 per annum.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

Transportation and Environment Services would be the steward of the parcel and have expressed interest in acquiring the entire parcel under the circumstances.

ATTACHMENT

Location Map



COUNCIL REPORT

| | |
|--------------|--------------------|
| M&C No. | 2019-217 |
| Report Date | September 04, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Saint John Water |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: Tender No. 2019-086401T: Rental of Vacuum Truck and Jet Rodder

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|--|------------------------------|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Jordan Moran / Kendall Mason</i> | <i>Brent McGovern</i> | <i>John Collin</i> |

RECOMMENDATION

It is recommended that Tender No. 2019-086401T for the establishment of a two year supply agreement, with the option to extend the agreement for an additional twelve months, for the rental of vacuum trucks and jet rodders be awarded to the low tenderer, Fero Waste & Recycling Inc. o/a Ready John.

EXECUTIVE SUMMARY

The purpose of this report is to recommend that Council award Tender No. 2019-086401T: Rental of Vacuum Truck and Jet Rodder to the low tenderer.

A public tender call for vacuum truck and jet rodder services was issued on July 19, 2019, and closed on August 13, 2019. Fero Waste & Recycling Inc. o/a Ready John had the lowest compliant bid.

PREVIOUS RESOLUTION

N/A

STRATEGIC ALIGNMENT

This report aligns with Council's Priority for Valued Service Delivery, specifically as it relates to investing in sustainable City services and municipal infrastructure.

REPORT

BACKGROUND

The City of Saint John operates seventy-one wastewater lift stations and five wastewater treatment facilities. All of these wastewater facilities include infrastructure that is below ground. These structures accumulate debris and/or solids from the wastewater collection system. At minimum, annual maintenance from vacuum trucks and jet rodders is required to remove the debris and/or solids from these structures. The purpose of this report is to inform Council of the results of the tender issued for the procurement of a contractor for vacuum truck and jet rodder services. The work involves the removal and disposal of debris and/or solids from seventy-one lift stations and five wastewater treatment facilities.

Currently the two combination vacuum jetter trucks owned by the City are fully utilized by pipe crews. The City utilizes this internal resource and then employs the services of a contractor when required.

SERVICE AND FINANCIAL OUTCOMES

Based on the past twelve months of operations and the unit price bid, the City will spend approximately \$150,000 annually for vacuum truck and jet rodder services.

This is a planned expenditure and as such funds are provided in the annual Utility Operating Budget to fully cover this expense.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS – MATERIALS MANAGEMENT

A public tender call was issued on July 19, 2019 and closed on August 13, 2019. Two companies responded to the tender call by submitting bids. The results are as follows (excluding HST):

| Item | Desc. | Rate Per Hour | |
|------|-----------------|---|---|
| | | Fero Waste & Recycling Inc. o/a Ready John | Revolution Environmental Solutions LP dba Terrapure Environmental |
| 1 | Vacuum Truck | \$88.50 | \$112.00 |
| 2 | Jet Rodder | \$145.00 | \$157.00 |

Staff of Materials Management have reviewed the tenders and have found them to be complete and formal in every regard. Staff believes that the low tenderer has the necessary resources and expertise to perform the work, and recommend acceptance of their tender.

The above process is in accordance with the City's Procurement Policy and Materials Management support the recommendation being put forth.

ATTACHMENTS

N/A

COUNCIL REPORT

| | |
|--------------|---|
| M&C No. | 2019-220 |
| Report Date | August 27, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Transportation and Environment Services |

His Worship Mayor Don Darling and Members of Common Council

***SUBJECT: Enbridge Gas New Brunswick Inc. - Municipal Operating Agreement
(Revival and Amending Agreement)***

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|---------------------------|----------------------------------|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Holly Young</i> | <i>Michael Hugenholtz</i> | <i>John Collin</i> |

RECOMMENDATION

RESOLVED that Common Council authorizes the Mayor and Common Clerk to execute the revival and amending agreement in the attached form between Enbridge Gas New Brunswick Limited Partnership, as represented by its general partner Enbridge Gas New Brunswick Inc. and the City of Saint John.

EXECUTIVE SUMMARY

Enbridge Gas New Brunswick Limited Partnership, as represented by its general partner Enbridge Gas New Brunswick Inc. has requested to amend their existing Municipal Operating Agreement with the City specifically with respect to the term expiry date.

PREVIOUS RESOLUTION

On August 14, 2000 resolved by Council to approve the Municipal Operating Agreement with Enbridge Gas New Brunswick Inc., and authorize the Mayor and Common Clerk to execute the agreement.

STRATEGIC ALIGNMENT

Sustainable infrastructure investment.

REPORT

In 1999, the City entered into a Municipal Operating Agreement (the “Agreement”) with Enbridge Gas New Brunswick (“EGNB”) which sets the terms for the installation, operation and maintenance obligations respecting their natural gas distribution infrastructure within the bounds of the City. The Agreement’s term came to an end effective August 31st, 2019, and discussions are currently ongoing between EGNB and the City respecting the provisions of a new agreement. To accommodate these ongoing discussions, an interim agreement must be in place. Such interim agreement mirrors the provisions of the Agreement, save and except for an extension of the term from September 1st to December 31st, 2019.

Attached is a copy of such proposed interim agreement for Common Council’s consideration.

As part of the negotiations toward a new agreement, discussions are underway with both Fredericton and Moncton respecting changes that they will be looking to see in their respective agreements based on the experiences of the last 20 years. Before the end of the year, it is anticipated that City staff will be returning to Common Council with a new agreement for its consideration.

SERVICE AND FINANCIAL OUTCOMES

N/A

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

Input was provided by the City Solicitor’s Office and Infrastructure Development.

ATTACHMENTS

Proposed revival and amending Agreement that has been reviewed by the City’s Legal Department.

REVIVAL AND AMENDING AGREEMENT

THIS AGREEMENT is dated the ____ day of September, 2019 and effective as of August 31, 2019.

B E T W E E N:

THE CITY OF SAINT JOHN (the "Municipality")

- and -

ENBRIDGE GAS NEW BRUNSWICK LIMITED PARTNERSHIP, as
represented by its general partner **ENBRIDGE GAS NEW
BRUNSWICK INC.** ("EGNB")

WHEREAS the Municipality and EGNB entered into a Municipal Operating Agreement dated August 14, 2000 and an Amending Agreement dated June 13, 2019 (collectively, the "Municipal Operating Agreement");

AND WHEREAS the parties wish to revive, renew and amend the Municipal Operating Agreement in the manner hereinafter set forth;

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter contained the parties, intending to be legally bound, agree as follows:

1. The Municipal Operating Agreement is hereby revived and is declared to be in full force and effect unamended, except to the extent expressly set forth herein.
2. Effective immediately prior to August 31, 2019, the term of the Municipal Operating Agreement is amended to expire on December 31, 2019.
3. For greater certainty, the parties hereby agree to be bound by the terms of the Municipal Operating Agreement as if never terminated and that except for the amendment made in paragraph 2 hereof, all the other terms and conditions of the Municipal Operating Agreement are hereby confirmed.
4. This Agreement may be executed and delivered in counterparts, each of which, when so executed and delivered, shall be deemed to be an original and such counterparts together shall constitute one and the same agreement.

IN WITNESS WHEREOF each party has executed this Agreement by its duly authorized representative(s):

THE CITY OF SAINT JOHN

Mayor

City Clerk

Resolution Date: _____

**ENBRIDGE GAS NEW BRUNSWICK
LIMITED PARTNERSHIP**, as represented by
its general partner **ENBRIDGE GAS NEW
BRUNSWICK INC.**

COUNTY OF YORK

1. I am the General Manager of Enbridge Gas New Brunswick Inc. (hereinafter called the "Company"), and as such have personal knowledge of all matters sworn to herein.

3. The signature “Dave Lavigne” subscribed to the foregoing instrument is the signature of Dave Lavigne who is the Manager, Corporate Services of the Company and the signature “Gilles Volpé” subscribed thereto is my signature.

4. The General Manager and Manager, Corporate Services are the officers of the Company duly authorized to execute the foregoing instrument.

$$\begin{pmatrix} \cdot \\ \cdot \\ \cdot \\ \cdot \\ \cdot \\ \cdot \\ \cdot \end{pmatrix}$$

GILLES VOLPÉ



August 19, 2019

Mayor Don Darling & Councillors
City of Saint John
15 Market Square
PO Box 1971
Saint John, NB E2L 4L1

Mayor and Councillors:

Thank you for the opportunity to meet with your entire Council along with my legislative colleagues on August 14. I believe the opportunity was a worthwhile exercise that allowed us to better understand some of the concerns of individual councillors, as well as give us an opportunity to explain our perspective on the Actions within the Plan.

We have taken the opportunity to refine the Action Plan based on some of the feedback we heard from Councillors during our session:

1. As we discussed during the session, if Council can provide clear requests regarding the changes they recommend to binding arbitration we will take that feedback into consideration and bring forward legislation at the earliest opportunity. We request that you pass a resolution with clear requests to ensure we understand clearly what is being proposed.
2. We commit to utilizing the valuation of Saint John Energy to determine what legislative change would be appropriate given the New Brunswick context, and to bringing that legislation forward if the due diligence deems legislative change to be appropriate. In addition, we will work with the City if requested to permit Saint John Energy to return surpluses to the City of Saint John.
3. We have already begun the process at the Regional Task Force to bring in expertise, as well as to move to a working committee model that will report back to the Task Force to ensure decision-makers get the data, information and advice they will require to put in place regional initiatives, service sharing and cost sharing. We have also added a requirement to have an interim report due Jan. 31, 2020, that will summarize the work up until that point and the opportunities being focused on going forward. This information will be important as we review Saint John's status in 2020.
4. We also commit to reviewing the progress of the Actions within the Plan, the progress of the Task Force and the City's financial status on an ongoing basis.



Another concern of some on Council was the lack of detailed work plans for the Actions within the Plan; I want to assure Councillors that work is well underway and, in many cases, complete on those workplans as it pertains to the provincial initiatives. In fact, one action has seen legislation passed, enabling local governments to pass a by-law to establish a Tourism Levy.

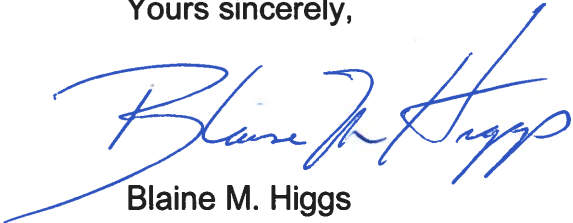
I think with these clarifications, it is time for us all to continue the hard work that was done by the Working Committee and make the changes that are necessary to ensure Saint John, the Greater Saint John Region and the province as a whole, is put on the best platform possible for success.

I said it Wednesday night and I want to reiterate, the City is not in this alone, the region needs to step up and we are stepping up as a province to work with you.

I want to thank you for the opportunity to meet and discuss with some of you individually in the past weeks and months, as well as the opportunity for myself and my colleagues to come to Council and have the open and frank discuss on August 14. The presence of so many Ministers and MLAs is just another example of our commitment to this process.

I look forward to watching Monday night's deliberations and I trust we will continue to work in partnership to make these necessary improvements to the local governance system in our province.

Yours sincerely,



Blaine M. Higgs

Town of Grand Bay-Westfield

Mayor's Office

Mayor Grace Losier

609 River Valley Drive · P.O. Box 3001 · Grand Bay-Westfield, N.B. · E5K 4V3

Tel: (506) 738-6433 · Fax: (506) 738-6424 · mayor@towngbw.ca

August 19, 2019

Mayor and Council:

Your request was dealt with at our August 12, 2019 Council meeting resulting in a motion "Refer to the Mayor for a response to city's request". Your document "Municipal Heavy Industry Property Tax Reform - Phase 1" is indeed a compelling position but our Council was unable to completely endorse the City's position without hearing from all of the parties implicated, ensuring we have all of the information necessary to assume a position. That said it was curious that assessment base growth for heavy industry is down 3+% in Saint John during the years 2013-19 when many of us celebrated a +400million dollar investment at one of the industries mentioned and an equal or greater investment at another during this timeframe (?). Certainly in our communities upgrading of residential properties results in increased assessments.

What we would like to share with you however is the fact that Grand Bay-Westfield believes the City has been disadvantaged and swimming uphill with an anchor around it's neck since the amalgamation of 1967 which did not result in the promised growth required to meet the identified goals. That predicted population growth has still not been recognized in the entire CMA! Grand Bay-Westfield for example is made up of 11 founding communities, the third largest town in NB with a population of under 5000 persons and less than 2000 homes contributing to our property tax revenue, presenting us with our own challenges.

Last week Council met with the Minister of ELG and shared our concerns with the burdens you are facing and how important it is that past actions be corrected and acknowledged. While Grand Bay-Westfield is endorsing tax reform we were not comfortable endorsing that it come from "Heavy Industry" without additional information.

Let me close by saying we support our City and are proud to be it's partner in many efforts but believe your fix must come from a broader audience than your suburban neighbours and should include the beneficiaries of the 25% GDP created within your borders.



Grace Losier
Mayor

<http://www.town.grandbay-westfield.nb.ca>



August 23, 2019

Mayor Don Darling
City of Saint John
P. O. Box 1971
Saint John, NB E2L 4L1

Dear Mayor Darling:

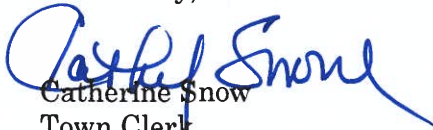
**RE: REQUEST TO PROVINCE FOR HEAVY INDUSTRIAL PROPERTY TAX
REVENUE TO BE TRANSFERRED FROM PROVINCE TO HOST
MUNICIPALITIES**

On behalf of the Quispamsis Town Council, I would like to thank you for your letter of August 1, 2019 addressed to the neighbouring Mayors and Councils concerning the above referenced subject.

Please be informed the Quispamsis Council, at its August 20, 2019 Regular Meeting, expressed its support of municipal tax reform, however, did not endorse the actual wording as proposed in your letter without receiving clarification as to the impacts on the Province and to NB Municipalities if all heavy industrial property tax revenues were transferred from the Province to NB host municipalities.

We look forward to receiving your clarification on the above for Council's further consideration.

Yours truly,



Catherine Snow
Town Clerk



ROTHESAY



26 August 2019



City of Saint John
City Hall, 8th Floor
15 Market Square
P.O. Box 1971
Saint John, NB
E2L 4L1
Attention: Mayor Don Darling

70 Hampton Road
Rothesay, NB
Canada E2E 5L5

T: 506-848-6600
F: 506-848-6677

Rothsay@rothesay.ca
www.rothesay.ca

Dear Mayor Darling:

Re: Request for Support – Industrial Tax Transfer

Rothsay Council believes that a strong Saint John is necessary for a growing, thriving Greater Saint John Region and that municipal tax reform is essential in New Brunswick.

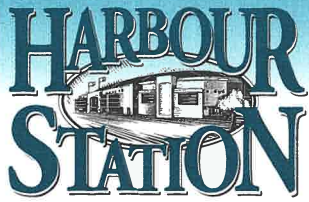
However, your request and the reasoning behind it was developed without input from, or consultation with, the surrounding municipalities. We expect that any such transfer of tax would have to apply to the whole Province, not just Saint John, and would have implications for the Provincial Government deficit. We have no way of knowing how this would affect other municipalities.

It is our belief that the municipal tax reform we are all seeking is a very complex issue, which needs to be looked at as a whole. Further, as principles of reform are developed, there needs to be benefit demonstrated for everyone. A piecemeal approach will never accomplish this, and therefore the Council consensus was that Rothesay cannot support your request at this time.

Thank you for giving Rothesay a chance to comment. We remain ready to work with you on positive property tax reform for New Brunswick.

Yours truly,

Nancy Grant, Mayor



99 Station Street
Saint John
New Brunswick
Canada E2L 4X4

Tel (506) 632-6103

Fax (506) 652-6121

Email mail@harbourstation.nb.ca
www.harbourstation.nb.ca

Wednesday, August 28, 2019

Page 1 of 2

Mayor and Common Council
City of Saint John

Members of Common Council:



Please find an update on Harbour Station for the past 12-months.

Since August 2018, Harbour Station hosted 150 plus event days.

Non-sporting events include:

- ZZ Top
- WWE Live!
- John Mellencamp
- Jerry Seinfeld
- Jury Selection (D. Oland)
- Paw Patrol
- Thank You Canada – Figure Skating
- Dance Quest
- Remembrance Day Ceremony
- Cirque Musica
- John Cleese
- Knight Fight Charity Fundraiser
- Super Circus Spectacular
- Campbell Amusements Midway
- NBCC Graduation
- Cirque du Soleil "Crystal" – (6 Shows)

Trade shows include:

- Rhoda's Christmas Craft Show
- Leisure Time RV Show
- Saint John Home Show
- Pine Acres RV Show
- Touchstone Amazeatorium

Conventions include:

- Canada 55+ Games
- World Under "17" Hockey Challenge
- Charles Gorman Speed Skating Competitions
- Canadian Tire National Skating Championships
- East Coast Spirit Cheerleading
- NBIAA Basketball

The three major conventions (Canada 55+Games, World Under "17" Hockey and Skate Canada) as per the Destination Marketing Organization generated over \$11.5 million dollars economic spin-off for Saint John and the surrounding areas. The Sea Dogs generate \$1.5 million per year.

In addition to the above events we also hosted 36 - hockey games and 21 - basketball games.

.../2

Please note, ice rentals and hockey tournaments are not included in the event days.

The facility also has WWE wrestling, Dean Brody & Dallas Smith, N.B. Growth Summit, Culture Fest, the Canadian Russian Series, Dance Quest, Remembrance Day Ceremony, Rhoda's Christmas Craft Show, Charles Gorman Speed Skating, 18 - Sea Dog's home games and a number of other tentative events yet to be announced for the balance of the year.

Since opening, we have hosted over 11 - million patrons through our doors and have an average deficit of \$450,000. We continue to have a deficit half of what the Moncton Coliseum was or Mile One Stadium in NFLD both with similar seating capacities.

The recent editorial in the Telegraph Journal certainly does not reflect the activity within the building.

Please contact me if you have any questions.

Regards,

A handwritten signature in black ink, appearing to read 'Michael Caddell', with a stylized, cursive script.

Michael Caddell
General Manager
HARBOUR STATION

Cc: Ed Keyes, Chairman, Harbour Station Commission



The City of Saint John

SUBMISSION TO COUNCIL FORM

ABOUT PERSON/GROUP PRESENTING

First Name: **Terry** Last Name: **Wagner**

Name of Organization/Group (where applicable): **AREA 506 Music Festival**

Mailing Address: **PO Box 7289 STN A**

City or Town: **Saint John** Province: **NB** Postal Code: **E2L 4S6**

Day Time Phone Number: **506-650-5808** Email: **terry@area506.ca**

☐ If you do **NOT** wish to have your personal information (address, phone number, email) become part of the public record, please check this box.

ABOUT YOUR SUBMISSION

Topic of Submission: **Use of Fundy Quay for AREA 506 for 2020**

Purpose for Submission (what is the ask of Council): To recap the 2019 AREA 506 and ask to use Fundy Quay again for July 31st to Aug 2, 2020.

Executive Summary: AREA 506 is about celebrating and shining a light on our beautiful province.

We provide the stage to showcase New Brunswick products, food and music in a unique shipping container village on Saint John's waterfront. AREA 506 started in 2016 as a way to draw people to Saint John and give everyone a chance to wave the New Brunswick flag for a weekend. It has very quickly become one of the signature events in the Maritimes.

YOUR SIGNATURE

Signature: **TERRY WAGNER**

Date: **2019-08-21**



Saint John
Parking Commission

Commission sur le
stationnement de Saint John

SAINT JOHN TRANSIT



September 4, 2019

Jonathan Taylor
Common Clerk
City of Saint John
8th Floor, City Hall
Saint John, NB

Dear Mr. Taylor,

**RE: Appointment of Greg Fekner, Badge No. 9968
 Canadian Corps of Commissionaires
 as a By-Law Enforcement Officer**

We are requesting that the following resolution be presented to Common Council for approval:

"Resolved that pursuant to Section 14 of the Police Act of the Province of New Brunswick, the Common Council of the City of Saint John does hereby appoint the following member of the Canadian Corps of Commissionaires as By-Law Enforcement Officer with the responsibility and authority to enforce provisions of the Parking Meter By-Law and the provisions of Section 5, Section 5.1, Section 7, Section 8, Section 15 and Section 16 of the Saint John Traffic By-Law, namely: Greg Fekner, Badge No. 9968.

And further that this appointment shall continue until such time as the appointee ceases to be a member of the Canadian Corps of Commissionaires or until the appointment is rescinded by Common Council, whichever comes first."

Yours truly,

Marc Dionne
Director of Operations
Saint John Parking Commission

/KM

COUNCIL REPORT

| | |
|--------------|---------------------|
| M&C No. | 2019-215 |
| Report Date | August 23rd, 2019 |
| Meeting Date | September 9th, 2019 |
| Service Area | Corporate Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: Qualified Security Assessor (QSA) Consulting Services Contract

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|----------------------------|--|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Sarah Ranson</i> | <i>Stephanie-Rackley-Roach</i> <i>Kevin Fudge</i> | <i>John Collin</i> |

RECOMMENDATION

The City Manager recommends that the Council resolution of July 29, 2019 be amended by;

1. replacing the indemnification clause and adding a limitation of liability clause to the formal agreement, and further;
2. that the Mayor and Common Clerk be authorized to execute the necessary documents.

REPORT

Common Council resolved on the 29th day of July, 2019 to enter into an Agreement with Grant Thornton for Qualified Security Assessor Services for a term of two years with a possible extension of two additional years (for a total of four years). Upon award, Materials Management sent the Agreement to Grant Thornton for execution. At this time, Grant Thornton requested the following amendments to the Agreement:

- 1) The replacement of the “Indemnification” clause with a “Release and Indemnification” clause; and
- 2) The addition of a “Limitation of Liability” clause.

It is being recommended that the amended Agreement in the form attached to this Council Report be approved for execution by both parties. The amendments have been highlighted in the attached document.

PREVIOUS RESOLUTION

RESOLVED, that as recommended by the City Manager in the submitted report M&C 2019-184: Qualified Security Assessor (QSA) Consulting Services Contract:

- 1) Mayor and Council enter into an agreement with Grant Thornton for Qualified Security Assessor (QSA) consulting services for a term of two years with possible extension of two additional years (for a total of four years).
- 2) The Mayor and Common Clerk be authorized to execute the necessary contract documents.

STRATEGIC ALIGNMENT

As described in M&C 2019-184.

SERVICE AND FINANCIAL OUTCOMES

As described in M&C 2019-184.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS – MATERIALS MANAGEMENT

The Materials Management Service reviewed this report and agrees with the recommendation being put forth.

The City Solicitor's Office reviewed the proposed amendments to the Agreement.

ATTACHMENTS

Agreement for Qualified Security Assessor Services.

COUNCIL REPORT

| | |
|--------------|--------------------|
| M&C No. | 2019-184 |
| Report Date | July 24, 2019 |
| Meeting Date | July 29, 2019 |
| Service Area | Corporate Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: *Qualified Security Assessor (QSA) Consulting Services Contract*

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| Primary Author | Commissioner/Dept. Head | City Manager |
|----------------------------|--|---------------------------|
| <i>Sarah Ranson</i> | <i>Stephanie Rackley-Roach</i> <i>Kevin Fudge</i> | <i>John Collin</i> |

RECOMMENDATION

The City Manager recommends that:

- 1) Mayor and Council enter into an agreement with Grant Thornton for Qualified Security Assessor (QSA) consulting services for a term of two years with possible extension of two additional years (for a total of four years).
- 2) The Mayor and Common Clerk be authorized to execute the necessary contract documents.

EXECUTIVE SUMMARY

The Information Technology and Finance service areas require Qualified Security Assessor (QSA) consulting services to assist in achieving Payment Card Industry Data Security Standard (PCI DSS) compliance. The City is contractually required to meet this standard as a merchant that accepts credit cards for payment. Additional benefits of PCI DSS compliance are reduced risk of a data breach and avoidance of the potentially significant cost of non-compliance.

PREVIOUS RESOLUTION

N/A

REPORT

The Payment Card Industry (PCI) Security Standards Council is a global forum for the ongoing development, enhancement, storage, dissemination and implementation of security standards for account data protection and continuity of operations. The Payment Card Industry Data Security Standard (PCI DSS) forms part of the operating regulations that are the rules under which merchants are allowed to operate merchant accounts. Security threats are non-stop and evolve every day, which is why PCI DSS compliance efforts must be a continuous process of assessment and remediation to ensure safety of cardholder data.

Given the City accepts credit and debit card payments, the City is contractually obligated to be PCI DSS compliant as a condition of the agreement with Chase Paymentech. The City is working on becoming PCI DSS compliant to ensure the protection of personal data and the City's interests in the delivery of efficient public service.

City staff has taken the initial steps towards compliance. This work included network scans and implementing a PCI DSS compliant third party service provider for online parking ticket payments. Although outsourcing online payment processing simplifies security requirements and can reduce the City's risk exposure, using a third party payment processor does not provide automatic compliance or exclude the City from PCI DSS compliance.

In order to meet PCI DSS compliance, the Finance and Information Technology service teams have completed a procurement process for a Qualified Security Assessor (QSA) to advise and guide the City as we work toward achieving and maintaining a compliant status. This requires understanding and implementing twelve requirements for PCI DSS compliance noted below. Failure to achieve even one of the requirements results in failure to be compliant.

PCI DSS Requirements

1. Install and maintain a firewall configuration to protect cardholder data
2. Do not use vendor-supplied defaults for system passwords and other security parameters
3. Protect stored cardholder data
4. Encrypt transmission of cardholder data across open, public networks
5. Use and regularly update anti-virus software or programs
6. Develop and maintain secure systems and applications
7. Restrict access to cardholder data by business need-to-know
8. Assign a unique ID to each person with computer access
9. Restrict physical access to cardholder data
10. Track and monitor all access to network resources and cardholder data
11. Regularly test security systems and processes

The PCI DSS compliance project will include a review of our current processes, assessment of our security standards, completion of a gap analysis, and implementation of the necessary controls or remediation. The project team will

also determine how to integrate PCI DSS compliance into organizational work planning and budgeting processes. The implementation project ends when our **Attestation of Compliance (AOC)** is accepted by our acquirer, Chase Paymentech, the company that processes our credit and debit card payments with the banks. At this point, PCI DSS compliance becomes part of our business operations. Maintaining PCI DSS compliance is an ongoing process of assessment, remediation and reporting.

The benefit of using a QSA is to have subject-matter expertise for understanding the twelve requirements, completing on-site security assessments required by PCI DSS, and for guidance when implementing compensating controls. Compensating controls may be considered if the City cannot meet a PCI DSS requirement explicitly as stated due to legitimate technical or documented business constraints. In summary, leaning on a QSA's expertise will ultimately lead to a successful AOC submission.

STRATEGIC ALIGNMENT

As outlined in Council Priorities, the City supports valued customer service delivery. PCI DSS compliance contributes to this priority by ensuring citizen's personal and cardholder data is handled properly. There is also a fiscal benefit as the City reduces the risk of data breaches.

SERVICE AND FINANCIAL OUTCOMES

The agreement is for two years, with the possibility of extending for two additional one year periods. The contract is valued at \$41,200.00 each year, although there is no guarantee of volume of work. Funds for this work is allocated in the Information Technology and Finance service area operating budgets. The business risks and ultimate costs of non-compliance, such as fines and legal fees, could exceed the cost of implementing PCI DSS standards.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

Materials Management facilitated the Request for Proposal (RFP) process to solicit proposals for Qualified Security Assessor Services. As such, the RFP closed on June 6, 2019 with the following proponents responding by submitting proposals:

- | | |
|---------------------------|-----------------|
| ➤ Grant Thornton LLP | Halifax, NS |
| ➤ Digital Boundary Group | London, ON |
| ➤ Bell Aliant | Saint John, NB |
| ➤ MNP LLP | Mississauga, ON |
| ➤ Online Business Systems | Winnipeg, MB |

A review committee, consisting of staff from Materials Management, Finance and our IT Department reviewed the submissions for completeness and

compliance with the RFP requirements and selection criteria consisting of the following:

1. Quality and Completeness
2. Demonstrated Understanding of the Project and Deliverables
3. Proposed Approach
4. Specific Experience, Qualifications and Expertise of Key Personnel
5. Cost

Also in accordance with the City's standard procedures, the committee members evaluated and ranked each proposal based on the proposals' technical merits. Following this, the financial proposals were opened and evaluated and corresponding scores were added to the technical scores.

Grant Thornton LLP's proposal was ranked the highest based on an overall rating of the evaluation criteria as well as offering the lowest cost.

The above processes are in accordance with the City's Procurement Policy and Materials Management support the recommendations being put forth.

ATTACHMENTS

The agreement template is attached as information. Pending approval and formal resolution from Council, the Materials Management service will send the agreement package to Grant Thornton and the Common Clerk for signatures.



AGREEMENT

2019-080602P

Qualified Security Assessor Services

Saint John, NB

AGREEMENT

This Agreement made in duplicate copies this ____ day of _____, 2019.

BETWEEN:

THE CITY OF SAINT JOHN, having its City Hall at 15 Market Square, Saint John, New Brunswick, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick, hereinafter called the "City"

OF THE FIRST PART

And

[Name of Organization] a [Type of organization], having offices located at [address], in the City of [City] and the Province of [Province], hereinafter referred to as the "Consultant"

OF THE SECOND PART

WHEREAS the City issued Request for Proposal **[2019-080602P]** for **[Qualified Security Assessor Services]** (the "Request for Proposal"); and

AND WHEREAS the Consultant submitted a technical proposal and a financial proposal, both dated **[Date]** in response to the Request for Proposal (collectively, the "Proposal"); and

AND WHEREAS the Request for Proposal and the Proposal are attached hereto as Schedules "A" and "B" respectively and form part hereof;

AND WHEREAS the Financial Proposal forms part of the Proposal, is attached hereto as Schedule "C"; and

AND WHEREAS the Common Council at its meeting held on **[Date]** resolved that:

"[Resolution]."

NOW THEREFORE THIS AGREEMENT WITNESSETH, that in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in the Request for Proposal and the Proposal, the parties for themselves, their successors and permitted assigns respectively, mutually agree as follows:

1. The Consultant shall perform the services and carry out the terms and conditions set out in the Request for Proposal and the Proposal.

2. The City shall pay the Consultant, in return for the services performed, fees as outlined in the financial proposal part of the Proposal, plus HST.

Term

3. The terms of this Agreement is for a period of two (2) years. The City with the consultant's mutual agreement may choose to extend this contract for two (2) additional one (1) year periods.].

Termination

4. The City may immediately terminate this Agreement upon giving notice to the Consultant where:
 - a. The Consultant makes an assignment for the benefit of its creditors, is declared bankrupt or commits an act of bankruptcy, becomes insolvent, makes a proposal or otherwise takes advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Consultant under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation;
 - b. The Consultant breaches any of the terms or conditions of the within Agreement;
 - c. In the City's reasonable opinion, the Consultant, prior to or after executing this Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the City;
 - d. The Consultant undergoes a change of control which, in the reasonable opinion of the City, adversely affects the Consultant's ability to satisfy some or all of its obligation under the within Agreement;
 - e. The Consultant subcontracts for the provision of part or all of the services without first obtaining the written approval of the City.

The above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

Performance

5. Both parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

Non-Performance

6. The failure on the part of either party to exercise or enforce any right conferred upon it under this Agreement shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

Indemnification

7. The Consultant hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively "Claims"), by whomever made, sustained, brought or prosecuted, for third party bodily injury (including death), personal injury and damage to real or tangible personal property, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Consultant, its subcontractors or their respective directors, officers, agents, employees or independent contractors in the course of performance of the Consultant's obligations under, or otherwise in connection with, this Agreement. The obligations contained in this paragraph shall survive the termination or expiry of this Agreement.

Remedies

8. Upon default by either party under any terms of this Agreement, and at any time after the default, either party shall have all rights and remedies provided by law and by this Agreement.
9. No delay or omission by either party in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy. Furthermore, either party may remedy any default by the other party in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the defaulting party. All rights and remedies of each party granted or recognized in this Agreement are cumulative and may be exercised at any time and from time to time independently or in combination.

Mediation

10. All disputes arising out or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, shall be mediated pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc. Despite this Agreement to mediate, a party may apply to a court of competent jurisdiction or other competent authority for interim measures of protection at any time. The place of mediation shall be the City of Saint John and Province of New Brunswick.

Force Majeure

11. It is agreed between the parties that neither party shall be held responsible for damages caused by delay or failure to perform his undertakings under the terms of the Agreement when the delay or failure is due to fires, strikes, floods, acts of God, lawful acts of public authorities, or delays or defaults caused by common carriers, which cannot be reasonably foreseen or provided against.

No Assignment

12. This Agreement is not assignable. Any attempt to assign any of the rights, duties or obligations of this Agreement is void.

Time

13. This Agreement shall not be enforced, or bind any of the parties, until executed by all the parties named in it.

Notices

14. Any notice under this Agreement shall be sufficiently given by personal delivery or by registered letter, postage prepaid, mailed in a Canadian post office and prepaid courier, addressed, in the case of notice to the City of Saint John, to the Common Clerk, 15 Market Square, P. O. Box 1971, Saint John, New Brunswick, E2L 4L1 and in the case of notice to the Consultant to [Address], or to any other address as may be designated in writing by the parties, and the date of receipt of any notice by mailing shall be deemed conclusively to be 5 days after the mailing.

Amendments

15. No change or modification of this Agreement shall be valid unless it is in writing and signed by each party.

Acknowledgment of Terms and of Entirety

16. It is agreed that this written instrument embodies the entire agreement of the parties with regard to the matters dealt within it, and that no understandings or agreements, verbal or otherwise, exist between the parties except as expressly set out in this instrument.

Further Documents

17. The parties agree that each of them shall, upon reasonable request of the other, do or cause to be done all further lawful acts, deeds and assurances whatever for the better performance of the terms and conditions of this Agreement.

Validity and Interpretation

18. Descriptive headings are inserted solely for convenience of reference, do not form part of this Agreement, and are not to be used as an aid in the interpretation of this Agreement.
19. It is intended that all provisions of this Agreement shall be fully binding and effective between the parties, but in the event that any particular provision or provisions or part of one is found to be void, voidable or unenforceable for any reason whatsoever, then the particular provision or provisions or part of the provision shall be deemed severed from the remainder of this Agreement and all other provisions shall remain in full force.

Governing Law

20. This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick.

Successors, Assigns

21. This Agreement shall enure to the benefit of and be binding on the respective successors and permitted assigns of each of the parties.

Independent Legal Advice

22. The parties each acknowledge having obtained their own independent legal advice with respect to the terms of this Agreement prior to its execution.

Acknowledgment of Receipt of Copy

23. Each party acknowledges receipt of a true copy of this Agreement.

Defined Terms

24. When used in this Agreement, the following word or expression has the following meaning:

“Indemnified Parties” means the City, its officers, directors, employees, agents or independent contractors.

IN WITNESS WHEREOF the parties have affixed their respective corporate seals, attested by the hands of their respective officers duly authorized in that behalf on the day aforementioned.

SIGNED, SEALED & DELIVERED

In the presence of:

THE CITY OF SAINT JOHN

per

Mayor

Assistant Common Clerk

Common Council Resolution:

[Organization]

Per:

[Title]



AGREEMENT

2019-080602P

Qualified Security Assessor Services

Saint John, NB

AGREEMENT

This Agreement made in duplicate copies this ____ day of _____, 2019.

BETWEEN:

THE CITY OF SAINT JOHN, having its City Hall at 15 Market Square, Saint John, New Brunswick, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick, hereinafter referred to as the “City”

OF THE FIRST PART

And

[Name of Organization] a [Type of organization], having offices located at [address], in the City of [City] and the Province of [Province], hereinafter referred to as the “Consultant”

OF THE SECOND PART

WHEREAS the City issued Request for Proposal **[2019-080602P]** for **[Qualified Security Assessor Services]** (the “Request for Proposal”); and

AND WHEREAS the Consultant submitted a technical proposal and a financial proposal, both dated **[Date]** in response to the Request for Proposal (collectively, the “Proposal”); and

AND WHEREAS the Request for Proposal and the Proposal are attached hereto as Schedules “A” and “B” respectively and form part hereof;

AND WHEREAS the Financial Proposal forms part of the Proposal, is attached hereto as Schedule “C”; and

AND WHEREAS the Common Council at its meeting held on [Date] resolved that:

“[Resolution].”

NOW THEREFORE THIS AGREEMENT WITNESSETH, that in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in the Request for Proposal and the Proposal, the parties for themselves, their successors and permitted assigns respectively, mutually agree as follows:

1. The Consultant shall perform the services and carry out the terms and conditions set out in the Request for Proposal and the Proposal.

2. The City shall pay the Consultant, in return for the services performed, fees as outlined in the financial proposal part of the Proposal, plus HST.

Term

3. The terms of this Agreement is for a period of two (2) years. The City with the consultant's mutual agreement may choose to extend this contract for two (2) additional one (1) year periods.].

Termination

4. The City may immediately terminate this Agreement upon giving notice to the Consultant where:
 - a. The Consultant makes an assignment for the benefit of its creditors, is declared bankrupt or commits an act of bankruptcy, becomes insolvent, makes a proposal or otherwise takes advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Consultant under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation;
 - b. The Consultant breaches any of the terms or conditions of the within Agreement;
 - c. In the City's reasonable opinion, the Consultant, prior to or after executing this Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the City;
 - d. The Consultant undergoes a change of control which, in the reasonable opinion of the City, adversely affects the Consultant's ability to satisfy some or all of its obligation under the within Agreement;
 - e. The Consultant subcontracts for the provision of part or all of the services without first obtaining the written approval of the City.

The above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

Performance

5. Both parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

Non-Performance

6. The failure on the part of either party to exercise or enforce any right conferred upon it under this Agreement shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

Release and Indemnification

7. The ~~Cityompany~~ agrees to release, indemnify and hold harmless ~~the ConsultantGrant Thornton~~, its affiliates and their respective directors, officers, partners, principals, employees, consultants and contractors from any and all claims, liabilities, costs and expenses (including any and all legal expenses incurred by ~~the ConsultantGrant Thornton~~) arising out of or based upon: (a) any misstatement or omission in any material information or representation supplied or approved by the client; or (b) any other matter related to or arising out of this Engagement, except to the extent finally determined to have resulted from the negligence, wilful misconduct or fraudulent behaviour of ~~the ConsultantGrant Thornton~~.

Limitation of liability

8. In any action, claim, loss or damage arising out of the Engagement, the ~~Cityompany~~ agrees that ~~the ConsultantGrant Thornton~~'s liability will be several, and not joint and several, and the ~~Cityompany~~ may only claim payment from ~~the ConsultantGrant Thornton~~ of ~~the ConsultantGrant Thornton~~'s proportionate share of the total liability based on degree of fault as finally determined. -Any action against ~~us~~~~the Consultant~~ must be commenced on or before the date which is the earlier of i) two years (24 months) from the completion of the Services; or ii) the date by which an action must be commenced under any applicable legislation other than limitation legislation.
9. The total liability assumed by ~~the ConsultantGrant Thornton~~ for any claim, loss or damage arising out of or in connection with the Engagement, regardless of the form of action, claim, loss or damage be it tort, contract or otherwise, shall in no event exceed the aggregate of three times the professional fees paid to ~~the ConsultantGrant Thornton~~ for that portion of the Services that has given rise to the claim.

Remedies

10. Upon default by either party under any terms of this Agreement, and at any time after the default, either party shall have all rights and remedies provided by law and by this Agreement.
11. No delay or omission by either party in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy. Furthermore, either party may remedy any default by the other party in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the defaulting party. All rights and remedies of each party granted or recognized in this Agreement are cumulative and may be exercised at any time and from time to time independently or in combination.

Mediation

12. All disputes arising out or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, shall be mediated pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc. Despite this

Agreement to mediate, a party may apply to a court of competent jurisdiction or other competent authority for interim measures of protection at any time. The place of mediation shall be the City of Saint John and Province of New Brunswick.

Force Majeure

13. It is agreed between the parties that neither party shall be held responsible for damages caused by delay or failure to perform his undertakings under the terms of the Agreement when the delay or failure is due to fires, strikes, floods, acts of God, lawful acts of public authorities, or delays or defaults caused by common carriers, which cannot be reasonably foreseen or provided against.

No Assignment

14. This Agreement is not assignable. Any attempt to assign any of the rights, duties or obligations of this Agreement is void.

Time

15. This Agreement shall not be enforced, or bind any of the parties, until executed by all the parties named in it.

Notices

16. Any notice under this Agreement shall be sufficiently given by personal delivery or by registered letter, postage prepaid, mailed in a Canadian post office and prepaid courier, addressed, in the case of notice to the City of Saint John, to the Common Clerk, 15 Market Square, P. O. Box 1971, Saint John, New Brunswick, E2L 4L1 and in the case of notice to the Consultant to [Address], or to any other address as may be designated in writing by the parties, and the date of receipt of any notice by mailing shall be deemed conclusively to be 5 days after the mailing.

Amendments

17. No change or modification of this Agreement shall be valid unless it is in writing and signed by each party.

Acknowledgment of Terms and of Entirety

18. It is agreed that this written instrument embodies the entire agreement of the parties with regard to the matters dealt within it, and that no understandings or agreements, verbal or otherwise, exist between the parties except as expressly set out in this instrument.

Further Documents

19. The parties agree that each of them shall, upon reasonable request of the other, do or cause to be done all further lawful acts, deeds and assurances whatever for the better performance of the terms and conditions of this Agreement.

Validity and Interpretation

20. Descriptive headings are inserted solely for convenience of reference, do not form part of this Agreement, and are not to be used as an aid in the interpretation of this Agreement.

)
)
)
)
)

[Organization]

Per:

[Title]

COUNCIL REPORT

| | |
|--------------|-------------------------------------|
| M&C No. | 2019-226 |
| Report Date | September 03, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Finance and Administrative Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: Licence Agreement for New Brunswick Youth Orchestra Inc. on former Coast Guard Property

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|-------------------------------|-------------------------------------|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Curtis Langille</i> | <i>Kevin Fudge/Ian Fogan</i> | <i>John Collin</i> |

RECOMMENDATION

1. That the City enters into the Licence agreement with New Brunswick Youth Orchestra Inc., as attached to M&C 2019 - 226, and further
2. That the Mayor and Common Clerk be authorized to execute the said Licence Agreement.

EXECUTIVE SUMMARY

The organizing group, IG Wealth Management together with Royal Caribbean Cruise Lines is requesting from the City to grant access to and use a portion of the former Coast Guard property for its welcoming and gathering area for approximately 300 guests prior to boarding a Royal Cruise line vessel. This is a fundraising event in support of Sistema, N.B. Saint John. The Event would occur on October 29th with the organizers requiring access and use of the site a couple days prior to the Event for setup.

The attached Licence agreement will provide New Brunswick Youth Orchestra Inc. and their agents the access they requested and also protect the City against any unforeseen circumstances. The terms and conditions contained in this agreement are similar to that used for Area 506 Festival, where applicable.

PREVIOUS RESOLUTION

N/A

STRATEGIC ALIGNMENT

Providing for entrepreneur opportunities and special events in the City's Uptown Core aid in creating a livable community that is vibrant and diverse, while providing an integrated approach to economic development.

REPORT

Further to the comments contained in the Executive Summary.

The Making Waves Event is an inaugural event for Royal Caribbean Cruise lines where it has partnered to support a fundraising event at one of its ports of call. The event organizer is requesting to use a portion of the former Coast Guard site (see attached map) to provide the necessary space for parking, welcoming and gathering approximately 300 guests prior to boarding a Royal Caribbean Cruise ship. Setup will include a large tent along with other fundraising functions. This particular day, the City will have three cruise ships in port and the Saint John Port Authority is unable to provide sufficient space to host the gathering area for this event.

The portion of the former Coast Guard property to be utilized for this event is essentially where the most recent building was demolished. Saint John Parking Commission is agreeable to provide this area for the event with parking to be available on the remaining portion of the parking lot.

The terms and conditions as set out in the attached Licence agreement will facilitate the event and protect the interests of the City of Saint John.

SERVICE AND FINANCIAL OUTCOMES

The City Departments involved with this proposal are supportive of this project and will coordinate their respective responsibilities for the use of this site to ensure this event is a success.

There are no financial costs to the City associated with this project other than providing the site, while the City's support to this fundraising event is invaluable.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

Facility Management, Risk Management and Saint John Parking Commission were all advised of this proposal and their input has been provided into this report where applicable.

ATTACHMENT

Site Map

THIS AGREEMENT made this ____ day of September, 2019.

BETWEEN:

THE CITY OF SAINT JOHN, having its City Hall at 15 Market Square, Saint John, New Brunswick, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick (hereinafter called the "**City**")

- and -

New Brunswick Youth Orchestra Inc., a body corporate having its office in Saint John, New Brunswick (hereinafter called the "**Event Organizer**")

WHEREAS the City is the owner of lands identified by PID No. 55235113 (hereinafter the "**Site**"), shown hatched on the plan attached hereto and forming a part hereof as Schedule "A"; and

WHEREAS the Event Organizer of the event known as Making Waves (the "**Event**") has requested the City to make the Site available as the location for the Event; and

WHEREAS the City is pleased to support the Event as a contributing component of a vibrant and welcoming community;

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of these presents and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the City and the Event Organizer agree as follows:

1. The City hereby grants to the Event Organizer by its servants, agents, employees, contractors and invitees, together with machinery, equipment and facilities reasonably necessary, an exclusive licence (the "**Licence**") to enter upon, use and exit from the Site for the purposes of gathering and organizing guests for a cruise ship event.
2. Subject to the Event Organizer's first having satisfied the requirements of paragraph 3(e) and (g) hereof, this Agreement shall commence at 12:01 a.m. (local time) on October 27, 2019 and expire at 11:59 p.m. (local time) on October 29, 2019.

Event Organizer's Covenants

3. a. Event Organizer shall promptly repair at its sole cost any damage caused to the Site during the term of this Agreement, unless such damage is

caused by the negligence of the City, its officers, employees, agents or contractors.

- b. No mechanics' lien or related notice of action shall be registered against title to the Site as a result of any activity being undertaken by or on behalf of the Event Organizer or by those in law for whom the Event Organizer is responsible; and if so registered, shall upon the Event Organizer's becoming aware of same, be forthwith vacated, discharged and released from title at the sole cost and expense of the Event Organizer.
- c. Upon expiration of this Agreement, the Event Organizer shall return the Site to the City in as good a condition as existed at the time of the commencement of this Agreement and, without limiting the generality of the foregoing, shall remove any and all chattels situate upon the Site and leave the Site in a good and tidy state to the City's satisfaction.

Security

- d. The Event Organizer shall provide at its sole cost security services sufficient to assure at all times the safety of Event attendees and the general public invited to the Site, and to secure the Site from unauthorized use and occupation.

Insurance

- e. (i) The Event Organizer shall at its sole cost obtain and maintain in full force and effect an insurance policy, including public liability insurance coverage in an amount of not less than \$2,000,000.00 inclusive per occurrence for bodily injury and property damage, which policy shall name the City as an additional insured and contain a cross liability clause.
- (ii) The Event Organizer shall deliver to the City not later than 4:00 p.m. on October 24, 2019 a Certificate of Insurance evidencing the coverage identified in paragraph (i).

Indemnification

- f. The Event Organizer hereby agrees to indemnify and hold harmless the City and its officers, employees and agents (the "Indemnified Parties") from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings (collectively, a "Claim") by whomsoever made, sustained, incurred, brought or prosecuted in any way arising out of or in connection with:

- (i) Any breach, violation or non-performance of the terms, covenants or obligations on the part of the Event Organizer set out in this Agreement; or
- (ii) The Event Organizer's use of the Site pursuant to this Agreement.

Scope of Use

- g. The Event Organizer shall use the Site solely for the purposes of the Event as described herein, together with any other activity reasonably or necessarily incidental thereto.

Applicable Laws

- h. The Event Organizer agrees that all activity occurring upon the Site during the term of this Agreement shall comply with all federal, provincial and municipal laws, statutes, regulations, orders, ordinances, by-laws, rules, plans, policies and decrees (the "**Applicable Laws**"). Without limiting the generality of the foregoing, the Event Organizer at its sole cost and expense shall obtain and maintain any and all permits that are required by Applicable Laws at any time with respect to any such activity; and provide copies of any such permits to the City upon request.

Breach

4. The City may, in the event of breach or non-compliance by the Event Organizer with any provision hereof, terminate this Agreement upon twenty-four (24) hours' written notice being given to the Event Organizer.

Warranty

5. The City makes no warranty or representation that the Site is suitable for the Event Organizer's purposes and that the Event Organizer acknowledges and agrees that it has satisfied itself in all respects in that regard.

Relationship

6. The City and the Event Organizer acknowledge and agree that the relationship between them is solely that of independent contractors, and nothing herein should be construed to constitute the parties as employer/employee, partners, joint venturers, or otherwise as participants in a joint or common undertaking. The Event Organizer agrees to indemnify and save harmless the City from a determination by any third party to the contrary. Neither the City nor the Event Organizer nor their respective employees, agents or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other.

Site "As-Is"

7. The Event Organizer accepts the Site on an as-is basis at the time of commencement of this Agreement.

Registration

8. The Event Organizer agrees that it shall not register this Agreement or any notice or reference in respect of this Agreement against the title to the Site.

Governing Law

9. This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable and shall be treated in all respects as a contract.

Severability

10. Any provision of this Agreement which is prohibited or unenforceable shall to the extent of such prohibition or unenforceability be severed from the balance of this Agreement all without effecting the remaining provisions.

11. This Agreement and everything contained herein shall enure to the benefit of and be binding upon each of the parties hereto and their respective successors and permitted assigns.

Notices

12. Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by pre-paid courier service or mail, or (iii) sent by fax or other similar means of electronic communication, and each case, to the applicable address set out below:

- a. In the case of the City, to:

The Common Clerk
The City of Saint John
8th Floor, City Hall
15 Market Square
P.O. Box 1971
Saint John, NB E2L 4L1
Fax: 506-674-4214

- b. In the case of the Event Organizer, to:

Mr. Ken MacLeod
c/o New Brunswick Youth Orchestra
P.O. Box/C.P. 1617
Moncton, NB
E1C 9X4

Assignment

13. The Event Organizer agrees that it shall not assign this Agreement, in full or in part, or sub-licence or otherwise transfer or assign any of its rights hereunder without the prior written consent of the City, which consent may not be unreasonably or arbitrarily withheld.

Entire Agreement

14. These presents constitute the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions whether oral or written. There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise), except as specifically set out in this Agreement.

THE CITY OF SAINT JOHN

Per: _____
Common Clerk

New Brunswick Youth Orchestra

Per: _____

PROVINCE OF NEW BRUNSWICK

COUNTY OF SAINT JOHN

I, Jonathan Taylor, of the Town of Quispamsis, in the County of Kings and Province of New Brunswick, MAKE OATH AND SAY:

1. THAT I am the Common Clerk of The City of Saint John and have custody of the Common Seal hereof.
2. THAT the seal to the foregoing instrument affixed is the Common Seal of The City of Saint John and that it was so affixed by Order of the Common Council of the said City.
3. THAT the signature "Don Darling" to the said instrument is the signature of W. Donald Darling, Mayor of the said City, and the signature "Jonathan Taylor" thereto is my own signature.
4. THAT we are the proper officers to sign the foregoing instrument on behalf of The City of Saint John.

SWORN TO BEFORE ME)
 at the City of Saint John, in the)
 County of Saint John and)
 Province of New Brunswick)
 this ____ day of _____, 2019)

 Jonathan Taylor

 Commissioner of Oaths)
 Being a Solicitor)
)

PROVINCE OF NEW BRUNSWICK
COUNTY OF SAINT JOHN

I, Ken MacLeod, Deponent, of _____, in the County of _____ and Province of New Brunswick, MAKE OATH AND SAY:

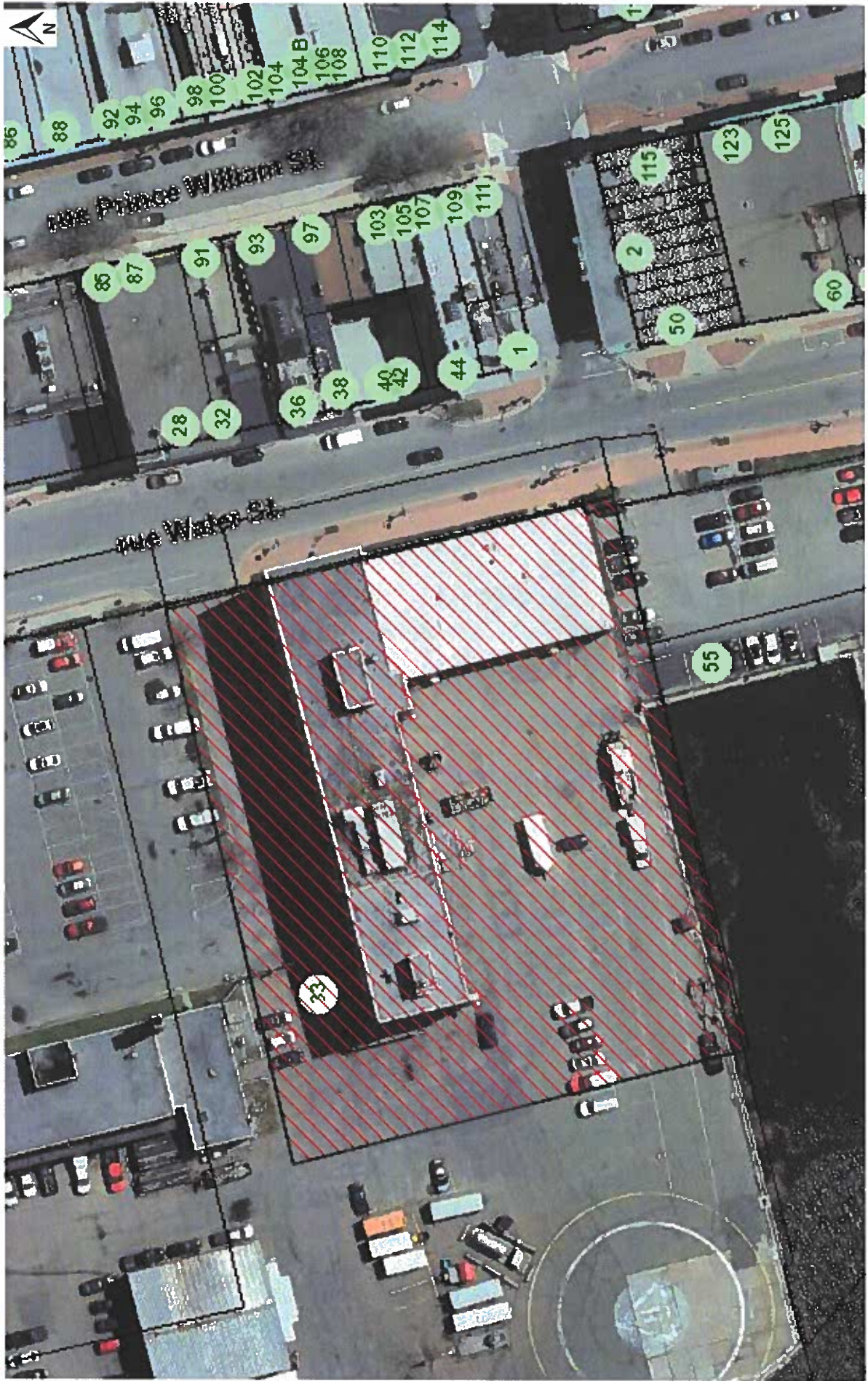
1. That I am the _____ of **New Brunswick Youth Orchestra** (the "**Corporation**"), the Licensee named in the foregoing instrument and am duly authorized to make this affidavit;
2. THAT the Corporation does not have a corporate seal;
3. THAT the name "Ken MacLeod" subscribed to in the within instrument is the signature of me, the said _____, and was thereto subscribed by order of the Board of Directors of the Corporation to and for the uses and purposes therein expressed and contained;
4. THAT the _____ is the duly authorized officer of the Corporation to execute the within instrument.

SWORN TO before me at _____)
 _____, in the County of _____)
 _____ and Province of _____)
 New Brunswick, this _____ day of _____)
 _____, 2019)
 _____)
 _____)
 _____)
 _____)
 Commissioner of Oaths)
 Being a Solicitor)
 _____)

Ken MacLeod



Making Waves Event: Portion of former Coast Guard Site



COUNCIL REPORT

| | |
|--------------|---|
| M&C No. | M&C 2019-231 |
| Report Date | September 04, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Transportation and Environment Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: King's Square Bandstand – Events Support

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|---|----------------------------------|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Marc Doucet/ Tim O'Reilly</i> | <i>Michael Hugenholtz</i> | <i>John Collin</i> |

RECOMMENDATION

Your City Manager recommends Common Council support City staff exploring sponsorship opportunities to fund a more permanent, safe, secure, and functional solution to access the upper level of the King Square Bandstand while continuing to support booking of ground space around the Bandstand for community events in the interim.

EXECUTIVE SUMMARY

In 2013 the City of Saint John received a gift from Mr. Irving and Dr. Richard J Currie in the form of refurbishment of the King's Square Bandstand. This gift included the refinishing of the steel ornamental structure, including the domed roof, and a set of mobile pre-fabricated stairs to allow access to the upper level for special events.

During the seasons immediately following the refurbishment there was strong demand for use of the facility, particularly to offer free musical entertainment for the public. Labour costs to transport and place the pre-fabricated mobile stairs were significant.

However, after the first two seasons immediately following the refurbishment the demand for use of this facility has reduced significantly and the access stairs are in need of repair or replacement.

STRATEGIC ALIGNMENT

Having the King's Square Bandstand available for public programming supports Common Council's priorities to support opportunities for growth and prosperity and to foster a vibrant city through investment in arts, culture, and recreation experiences that create a sense of community pride. However, with demand for the facility reducing annually, and alternatives for use of ground space around the bandstand for musical entertainment, return on an investment to provide safe and secure access to the upper floor into the future is diminishing.

REPORT

Demand

In the couple of years following recent refurbishment, demand for the upper level of the King Square Bandstand was significant. Demand has subsequently reduced. The annual number of requests for events booking at this facility have been as follows:

2015 - 26
2016 - 42
2017 - 7
2018 - 2
2019 - 1

It is worthwhile to note that many of the artists who were booked to play in the bandstand chose to play from the ground once they arrived on site as the sightlines to the upper level of the Bandstand do not allow for easy viewing.

Some recent community interest in the upper floor of the bandstand has initiated the need for staff to re-evaluate challenges and opportunities with the venue.

At this point City staff has no reason to forecast any increase in usage of the Bandstand over current levels.

Challenges with the Mobile Stairs

The stairs that were gifted to the City as part of the refurbishment are not designed to secure safely to the bandstand without having staff present to physically support them.

The stairs are also not designed to be easily transported and require a minimum of three City staff to transport, erect, and remove these stairs for every usage. The cost for each event that the City supports in the Bandstand is in the \$500-1000 range depending on the length of the event. This cost can double if the event takes place outside of normal working hours and requires an overtime call in. When occurring during normal working hours, these events use Parks Maintenance staff time that must be re-allocated from other services such as grounds maintenance, thereby reducing service levels in other areas.

Potential Solutions

The majority of the cost to the City for supporting events in the Bandstand comes from transporting, erecting, and removing the stairs. Therefore City staff did explore two potential options to mitigate these costs in 2015 when demand was greater:

- The fabrication and installation of a custom and permanent set of stairs in the Bandstand that could be easily raised and lowered. The cost for these stairs would be approximately \$15,000 and could nearly eliminate the per event support cost.
- With the help of Uptown Saint John, sourcing a nearby secured storage location for the portable set of stairs to reduce transportation time. City staff was unable to source a location, and this solution was not ideal as there would still be significant staff resources required to erect, support and remove the stairs.

SERVICE AND FINANCIAL OUTCOMES

Although use of the upper level of the Bandstand would add to the vibrancy of King Square, demand for this venue has been low in recent years. Low demand coupled with the cost to install a more permanent solution to access the upper floor and the available alternatives causes staff to question a recommendation that would lead to taxpayer Capital investment in the facility. Staff is therefore seeking Council support to identify if a sponsorship opportunity is available to fund this initiative while continuing to support use of groundspace around the bandstand in the interim.

City staff also intend to continue to explore, and subsequently present to Council for approval, opportunities to fairly recover operational costs to support recreational events at City facilities such as King Square through the City's Sustainability Plan. As has been recently completed for arena facilities, the level of public good received and financial health of the City needs to be considered along with benefits received by the users of the facility.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

Uptown Saint John has confirmed they do not foresee demand for the upper floor of the bandstand increasing. Limited musical programming that does occur at this venue makes use of the ground around the bandstand.

The Growth & Community Services Department, specifically their Arts & Culture Coordinator, has also provided valuable input. Promotion of events and programming that do not require use of the upper floor of the bandstand is the preferred approach. The upper floor is not conducive for most artists given the obscured sightlines to the audience and challenges transporting instruments up and down stairs. The amplification benefits provided to bands on the upper floor in the early 20th century when the bandstand was gifted to the City is not as critical today given available modern amplification equipment.

COUNCIL REPORT

| | |
|--------------|--|
| M&C No. | 2019-230 |
| Report Date | September 04, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Finance and Administrative Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: City Hall – Landlord Award of HVAC and Electrical Services

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|---------------------------------------|---------------------------|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Stephanie Rackley-Roach</i> | <i>Kevin Fudge</i> | <i>John Collin</i> |

RECOMMENDATION

It is recommended that the City of Saint John reimburses the Landlord, 703732 N.B. Ltd., for fit-up work for the new City Hall space; specifically, HVAC, electrical, plumbing and structural reinforcement work in the total amount up to \$725,308.33 including HST.

EXECUTIVE SUMMARY

Schedule D of the Lease Amendment Agreement for the City's occupancy of space at 15 Market Square for City Hall outlines the Landlord's base building work and the Tenant's fit-up work. In order to expedite construction in terms of a logical sequence of construction activities that limits damage (or rework) after the base building is handed over to the City for fit-up; the Landlord and the City's project management team have agreed that certain work be carried out by the Landlord on behalf of the City, and vice versa, subject to the corresponding reimbursement of costs. This report outlines the agreed scope of work to be carried out by the Landlord on the City's behalf and the process used to validate the quality and experience of the vendors selected by the Landlord and the costs submitted for the HVAC, electrical, plumbing and structural reinforcing work.

REPORT

The City's project management team for the relocation of City Hall within 15 Market Square meets on average every two weeks with the Landlord to coordinate design and construction. Both parties have a mutual interest in completing the Landlord's base building work and the Tenant's fit-up work in the most efficient manner possible.

Outlined in Schedule D of the Lease Amendment Agreement is the Landlord's base building work and the Tenant's fit-up work. The Landlord is responsible for the installation of a new ceiling system, LED lighting system, finished demising walls, main HVAC duct work, washroom facilities and fire suppression, and electrical work as specified in Schedule D among other specific items related to City Hall. The City is responsible for interior partitions, HVAC distribution, specialty lighting and ceiling treatments, and plumbing and electrical related to the interior design of City Hall.

After the handover of the base building as per the requirements set out in Schedule D, there is a risk of damage to the work already carried out by the Landlord as the City moves in to complete the fit-up work. The risk areas are the ceiling and demising walls as the City's contractor would have to install HVAC distribution, electrical, and plumbing requirements in and around these finished areas. Phasing the work of the Landlord and Tenant as a solution may add to the project schedule. Therefore, in order to minimize this risk and ensure a more efficient completion of construction activities, the Landlord and the City's project management team have agreed to complete certain work on behalf of the other party subject to the corresponding reimbursement of costs. The Landlord has agreed to install all HVAC components and some electrical, plumbing, and structural requirements. The City will complete all ceiling and lighting.

In order to ensure that the City was receiving the best value in terms of quality, contractor experience and costs, TOSS Solutions Inc. which has been engaged by the City to complete the design work and project management, further completed a thorough evaluation of the Vendors selected by the Landlord and the costs related to complete specific HVAC, electrical, plumbing and structural work. The Landlord received multiple bids for each component.

As part of the evaluation, TOSS Solutions Inc. validated the City requirements and the total cost of work in the amount of \$725,308.33 including HST. Of that total, \$716,704.33 including HST is related to HVAC with the remaining amount related to plumbing, electrical and structural work combined.

The following list outlines the Vendors selected by the Landlord and the discipline of work to be completed.

| Discipline | Vendor |
|-------------------|----------------------------|
| Ventilation | MC Ventilation Ltd. |
| Heating/Cooling | Select Mechanical Inc. |
| Plumbing | Select Mechanical Inc. |
| Controls | PMC Energy |
| Electrical | Total Electrical Solutions |
| Structural | Ocean Steel |

STRATEGIC ALIGNMENT

Efficient coordination of construction activities aligns with Council's Priority of Fiscal Responsibility, ensuring the best quality and value for the fit-up of City Hall space.

SERVICE AND FINANCIAL OUTCOMES

TOSS Solutions Inc. completed a Class A cost estimate for City Hall fit-up. The estimate for only the City's HVAC requirements was \$720,000.00 plus HST. The cost provided by the Vendors selected by the landlord for HVAC of \$716,704.33 including HST falls within the City's estimate. Other City Hall cost estimates are not broken out to the level of detail provided by the Vendor's bids (i.e., electrical, plumbing and structural work) for comparison. However, TOSS Solutions Inc. has validated that these costs are within budget.

The Landlord will invoice the City for work completed by their selected vendors based on construction progress. The City's project management team will inspect work for quality and completeness prior to recommending payment of any invoice. Reimbursement to the Landlord will be up to \$725,308.33 including HST.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

The City Solicitor's Office has reviewed this Report.

Materials Management has been involved and consulted on this process.

ATTACHMENTS

None

COUNCIL REPORT

| | |
|--------------|--|
| M&C No. | 2019 - 25 |
| Report Date | August 29, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Finance and Administrative Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: City Market Lease Renewal with Shawarma Hut Ltd.

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|---------------------------------|-------------------------------------|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>David Kirkpatrick</i> | <i>Ian Fogan/Kevin Fudge</i> | <i>John Collin</i> |

RECOMMENDATION

1. That the City renew the Lease of Stall “No. 4” in the City Market with Shawarma Hut Ltd., under the terms and conditions as set out in the Lease submitted with M&C 2019 – 25.
2. That the Mayor and Common Clerk be authorized to execute any necessary documents.

EXECUTIVE SUMMARY

City staff and the owner’s/operators of Shawarma Hut Ltd. have reached an agreement that will have the business re-new lease space within Stall’s “No. 4” of the City Market. The term will be for five (5) years, commencing October 1, 2019 with an option to renew for an additional five (5) years. Rents will be at market value.

The focus of the business will be selling Middle Eastern food and shawarma wraps.

The lease document as attached is standard and consistent with the leases granted to other tenants in the City Market.

PREVIOUS RESOLUTION

N/A

STRATEGIC ALIGNMENT

Providing for entrepreneur opportunities in the City's Uptown Core which aid in creating a livable community that is vibrant and diverse, while providing an integrated approach to economic development. The City Market is one of the more ethnically diverse food market in Atlantic Canada and Shawarma Hut contributes to this diversity through their ethnic food selection.

REPORT

City staff has an agreement with Shawarma Hut to continue to operate in Stall No. 4 that would commence effective October 1, 2019. Their revenue would be derived from selling middle eastern food and shawarma wraps. The initial term is for 5 years with an option to renew for an additional 5 years. The lease document is standard and consistent with the leases granted to other tenants in the City Market.

SERVICE AND FINANCIAL OUTCOMES

The operation and presence of Shawarma Hut within the City Market will add to the product offerings in the City Market. Shawarma Hut provides another source of ethnic food offerings in the Uptown core of the City.

This Lease will generate revenue of approximately \$14,000.00 per annum.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

Staff of the City Market and Facility Management has provided input into the preparation of this report.

ATTACHMENT

1. Lease Agreement with Shawarma Hut Ltd.

Form A19
LEASE

Standard Forms of Conveyances Act, S.N.B. 1980, c. S-12, s.2

The parties to this lease are:

The City of Saint John, having its City Hall at 15 Market Square, Saint John, New Brunswick, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick, the "Lessor"

- and -

CHS Food Ltd., a corporation, registered under the laws of the Province of New Brunswick, having its registered office at 16 Cove Crescent, Rothesay, N.B., E2E 4Y5, this is Chenghao Shen doing business under the name and style "**Shawarma Hut**", the "Lessee".

The "Rules and Regulations" attached hereto as Schedule "D" and the Form attached hereto as Schedule "D-1" form part of this Lease.

The Lessor leases to the Lessee the premises described in Schedule "A" attached hereto on the following conditions:

| | |
|-----------------------|---|
| Duration: | 5 years and 0 months |
| Date of Commencement: | ,2019 |
| Date of Termination: | , 2024 |
| Payment Dates: | First day of each and every month during the term hereof commencing April 1, 2019 |
| Place of Payment: | Cashier's Office City Hall Saint John, NB |

This lease contains the covenants and conditions which are attached and set out in Schedule "C".

DATED _____, 2019

| | | |
|----------------------------|---|----------------------------|
| SIGNED, SEALED & DELIVERED |) | THE CITY OF SAINT JOHN |
| in the presence of: |) | |
| |) | |
| |) | |
| |) | |
| |) | _____ |
| |) | Mayor |
| |) | |
| |) | |
| |) | _____ |
| |) | Common Clerk |
| |) | |
| |) | Common Council Resolution: |
| |) | _____, 2019 |
| |) | |
| |) | |
| |) | CHS Food Ltd., |
| |) | |
| |) | Per: |
| |) | _____ |
| |) | |
| |) | |
| |) | |

SCHEDULE “D”

RULES AND REGULATIONS

1. All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances, designated for such purposes by the Landlord.
2. The delivery or shipping of merchandise, supplies and fixtures to and from the Leased Premises shall be subject to such controls as in the judgment of the Landlord are necessary for the proper operation of the Leased Premises and/or the City Market.
3. All garbage and refuse shall be kept in the kind of containers specified by the Landlord and shall not be burned in or about the Leased Premises.
4. No radio, television, telegraphic or telephone or similar device and no water pipe, gas pipe or electric wire shall be installed or connected without obtaining in each instance the written consent of the Landlord. All such connections shall be installed in accordance with the Landlord's direction and without such direction no boring or cutting for wires or pipes shall be permitted.
5. The Tenant will be required to remain open for business as follows:
 - a. Stalls shall be open for business at all times while the market is open to the public.
 - b. Year round stands shall be open for business at all times while the market is open to the public.
6. The plumbing facilities shall not be used for any other purpose than that for which they are intended, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by the Tenant.
7. The Tenant shall use at the cost of the Tenant a nationally recognized pest extermination contractor.
8. The Tenant, its employees or agents, shall not mark, paint, drill or in any way deface any walls, ceilings, partitions, floors, wood, stone or iron without the written consent of the Landlord.
9. Except as permitted in the lease to which these rules and regulations are annexed, the Tenant shall not permit any cooking in the Leased Premises without the written consent of the Landlord.
10. No aisle, sidewalk, entry, passageway, elevator or staircase shall be obstructed or used by the Tenant, its officers, agents, servants, employees, contractors, customers, invitees or licensees for any purpose other than ingress to and egress from the Leased Premises.
11. The Tenant, its officers, agents, servants, employees, contractors, customers, invitees or licensees shall not bring in or take out, position, construct, install or move any safe or other heavy equipment or furniture without first obtaining the consent in writing of the Landlord. In giving such consent, the Landlord shall have the right in its sole discretion, to prescribe the weight permitted and the position thereof, and the use and design of planks, skids or platforms to distribute the weight thereof. All damage done to the City Market by moving or using any such safe, heavy equipment or furniture shall be repaired at the expense of the Tenant. The moving of all equipment and the furniture shall occur only during those hours when the City Market shall not be open for business or any other time consented to by the landlord.
12. All persons entering and leaving the building in which the Leased Premises are situated must do so during hours the City Market is staffed by City Market employees. The Landlord at its sole discretion may determine the hours the City Market is staffed. Tenants shall register in books if so required by the Landlord when accessing the Market “after Market hours”. The Landlord is under no responsibility for failure to enforce this rule.
13. The Tenant shall not place or cause to be placed any additional locks upon any doors of the Leased Premises without the approval of the Landlord and subject to any conditions imposed by the Landlord.
14. No one shall use the Leased Premises for sleeping apartments or residential purposes, or for the storage of personal effects or articles other than those required for the purposes permitted by the lease to which these rules and regulations are annexed.

SCHEDULE “D”

RULES AND REGULATIONS

Page 2

15. Subject to the Landlord’s providing such service, the Tenant shall permit window cleaners to clean the windows of the Leased Premises from time to time and at reasonable times.
16. Any hand trucks, carryalls or similar appliances used in any building in the Shopping Centre shall be equipped with rubber tires, side guards and such other safeguards as the Landlord shall require.
17. No animals or birds shall be brought into the Leased Premises except as permitted by the lease to which these rules and regulations are annexed.
18. Except as permitted in the lease to which these rules and regulations are annexed, the Tenant shall not permit the delivery of any food or beverage to the Leased Premises without the approval of the Landlord.
19. The Tenant shall not solicit business in the common areas or distribute any handbills or other advertising matter in the common areas or in automobiles parked in the parking areas.
20. The Tenant may only sell merchandise that is approved by the Landlord through their lease or otherwise.
21. The Tenant shall not keep or display any merchandise on or otherwise obstruct the common areas adjacent to the Leased Premises.
22. The Tenant shall not use or permit any of the Leased Premises to be used in such a manner as to cause annoying noises or vibrations or offensive odours.
23. The Tenant is responsible to remove garbage from their premises and deliver to the compactor designated by the Landlord and to place the garbage in the compactor.
24. A set of plans must be presented and the approval must be given by the landlord for any improvements or painting, etc. to the stands (including signs).
25. Merchandise, displays, shelves, etc., are not to exceed the height of the bottom meat hook bars on each stand.
26. No solid dividers are to be placed between the top and bottom meat hook bars.
27. Displays underneath the stands must be set up 6” off the floor on legs or wheels so the floor can be swept and washed down properly.
28. Covers are not to be placed over merchandise on stands without the prior approval of the Landlord.
29. Signage is to be in keeping with the historic character of the City Market and must meet the following criteria:

Materials: Wood and metal are considered to be appropriate materials. Plastic may be used provided that it looks like one of the acceptable materials. Internally-illuminated plastic faced box signs will not be acceptable;

Number of Signs: Each tenancy will be permitted one bench-top sign on each bench (7’-0” length), or one projecting sign on each aisle-side that identifies the business by name and type;

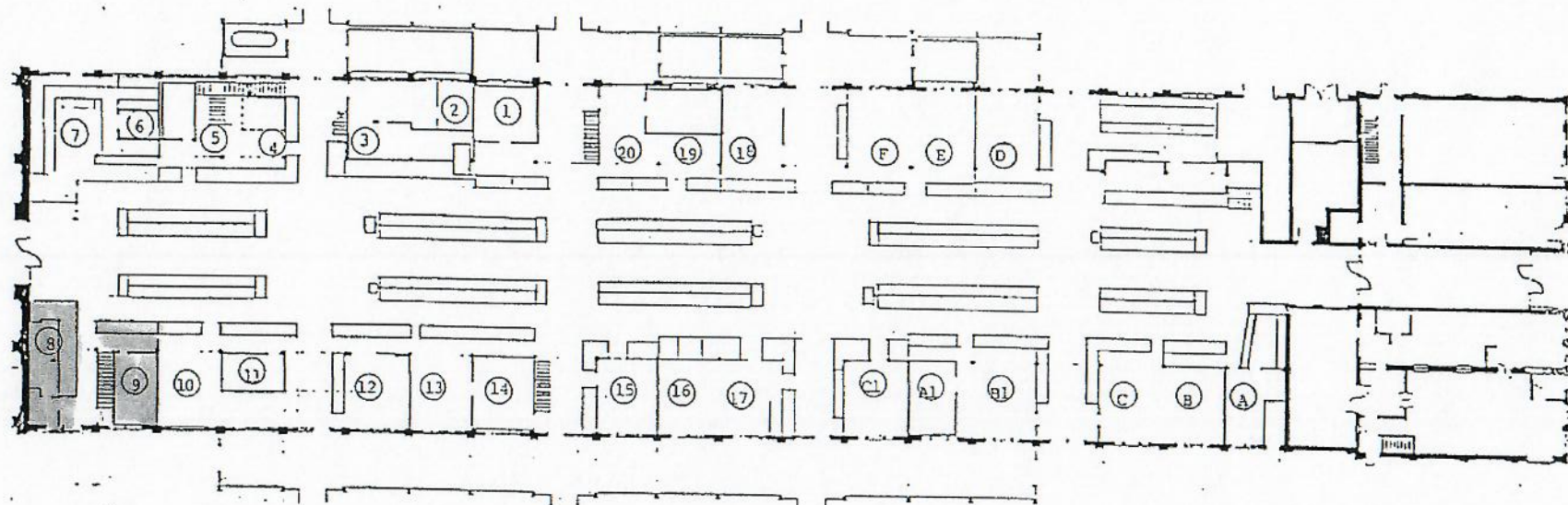
Bench-top Signs: These signs are the preferred primary form of signage. They must be located 1 to 2 inches above the top rail of the bench, and should display the business name. They will consist of a 8” high by 6’-0” long narrow band of material with the lettering printed, painted, composed of individual raised letters, or lettering cut into the material and painted a contrasting colour. The rear may not be used for signage over another tenancy;

Projecting Signs: Projecting signs may be used and shall be constructed as two-sided signs. They may only be located at a bench post, and must be rigidly fastened in place. They shall be vertical in proportion. The maximum size for projecting signs shall be 18” high x 12” wide. Only one per tenancy per aisle side shall be permitted as Business identifications;

Lighted Signs: Not permitted;

Temporary Signs: Any number of signs advertising goods for sale, specials, etc. shall be permitted. They may not exceed 8.5” x 11” in size, and must not excessively obscure the view through the bench between the first and last rail above the bench.

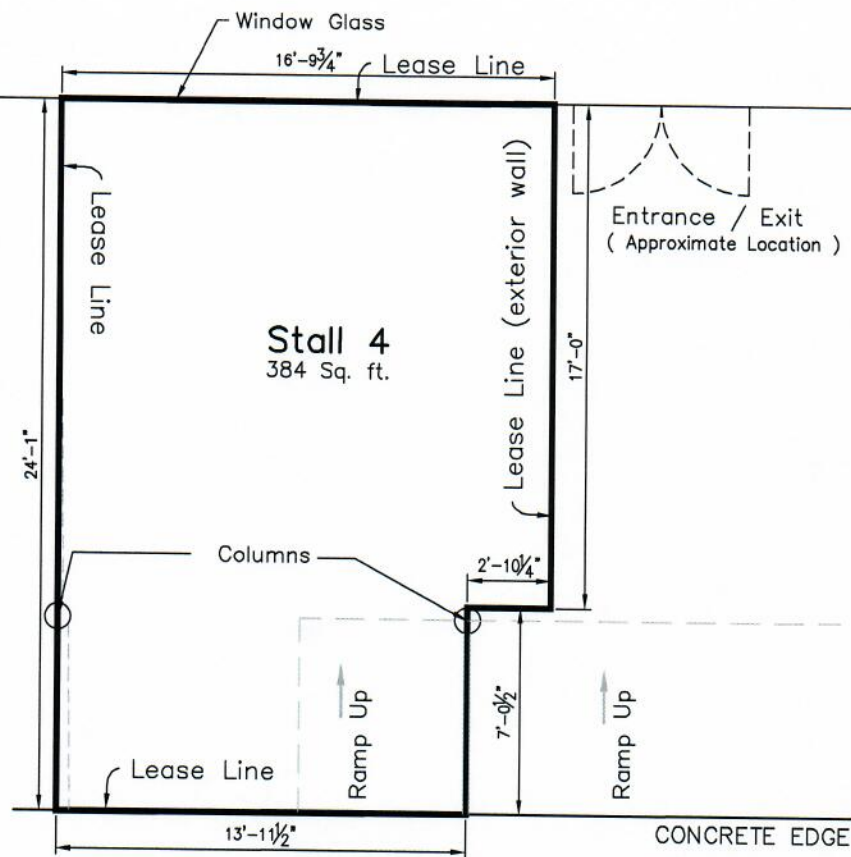
GERMAIN STREET



GROUND FLOOR

THE CITY MARKET

Saint John, N.B.



Name and Address of Space:

City Market, Shawarma Hut Inc.
Saint John, N.B.

I hereby certify that the rentable area as shown above is

384

Square Feet

Date: March 7, 2013

Scale: 1"=5'

HUGHES SURVEYS & CONSULTANTS INC.
Saint John, N.B.

Job Number: Y12-227

CAD Drawing: Stall4-Imperil-SHAWARMA

82

2012JOBS

Drawn By: MJC/jmd

Area: G/05-T2C,SE(1)

**LEASE FOR STALL SPACE
CITY MARKET
CHS Food Ltd.
doing business under the name and style
Shawarma Hut**

SCHEDULE “C”

ARTICLE I

DEFINITIONS

1.01 Definitions

In this lease:

- a) “Additional Rent” means all and any monies required to be paid by the Lessee to the Lessor under or pursuant to the terms of this Lease, save only for Gross Rent;
- b) “Architect” shall mean the architect from time to time named by the Lessor or at the option of the Lessor, the Lessor’s general contractor. Any certificate provided by the Architect and called for by the terms of this Lease shall be final and binding on the parties hereto;
- c) “Commencement Date” means a date determined in accordance with the provisions of Section 2.03;
- d) “Common Areas” means those areas, facilities, utilities, improvements, equipment and installations in the City Market which from time to time are not designated or intended by the Lessor to be leased to tenants of the City Market, and those areas, facilities, utilities, improvements, equipment and installations which serve or are for the benefit of the City Market whether or not located in, adjacent to or near the City Market and which are designated from time to time by the Lessor as part of the Common Areas. Without limiting the generality of the foregoing, Common Areas includes all parking areas, all entrances and exits thereto and all structural elements thereof, access roads, truck courts, driveways, truckways, delivery passages, the roof, exterior weather walls, exterior and interior structural elements and bearing walls in the building and improvements comprising the City Market, package pick-up stations, loading and related areas, pedestrian stairways, ramps, electrical, telephone, meter, valve, mechanical, mail storage service and janitor rooms and galleries, fire preventions, security and communication systems, columns, pipes, electrical, plumbing, drainage, any central system for the provision of heating, ventilating or air conditioning to leaseable premises or any enclosed Common Areas and all other installations, equipment or services located therein or related thereto as well as the structures housing installations, including but not limited to all open and enclosed malls, courts and arcades, public seating and service areas, corridors, furniture, first aid and/or information stations, auditoria, conference rooms, nurseries, childcare play areas and related kitchen and storage facilities, escalators, elevators, public washrooms, music systems and any atrium seating/food court;
- e) “C.P.I.” means the Consumer Price Index (All Items) for Canada (or any index published in substitution for the Consumer Price Index or any other replacement index reasonably designated by the Lessor, if it is no longer published) published by Statistics Canada (or by any successor thereof or any other governmental agency, including a provincial agency);
- f) “Atrium Seating/Food Court” means those portions of the Common Areas designated by the Lessor from time to time for use in support of the operations of any group of premises providing quick food service to customers of the City Market and includes, without limiting the generality of the foregoing, public table and seating areas, waste collection facilities and other areas, facilities and equipment intended for such use;
- g) “HST” means harmonized sales taxes, value-added taxes, multi-stage taxes, business transfer taxes or other similar taxes however they are characterized and any taxes in lieu thereof;
- h) “Hazardous Substances” means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, PCB’s or any other substances or materials that are declared or defined to be

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hazardous, toxic, contaminants or pollutants in or pursuant to any applicable federal, provincial or municipal statute, by-law or regulation;

- i) “Lessor” includes the Lessor and its successors and assigns;
- j) “Lease” means this indenture of lease and includes any riders and schedules hereto and shall also include any agreements entered into which have the effect of amending this indenture from time to time;
- k) “Leased Premises” means the premises leased to the Lessee as referred to and described in Section 2.01 hereof. Save as mentioned below, the boundaries of the Leased Premises shall extend from the top surface of the structural subfloor to the bottom surface of the structural ceiling. If the Leased Premises have no ceiling abutting the demising walls, but rather are open to the ceiling of the City Market building, the boundaries of the Leased Premises extend from the top surface of the structural subfloor to the height of the demising walls;
- l) “Lease Year” shall mean a period of time commencing on and ending on of the following year;
- m) “Gross Rent” means the annual Gross Rent payable by the Lessee pursuant to Section 3.01;
- n) “Operating Costs” means the total cost and expense incurred in owning, operating, maintaining, managing and administering the City Market and the Common Areas, specifically including without limiting the generality of the foregoing, any capital or place of ownership taxes levied against the Lessor or any owners of the City Market on account of their interest in the City Market, in an amount equitably allocated to the City Market by the Lessor; gardening and landscaping charges; the cost and expenses of taking out the insurance described in Section 9.03; cleaning, snow removal, garbage and waste collection and disposal; lighting, electricity, public utilities, loud speakers, public address and musical broadcasting systems and any telephone answering service used in or serving the City Market, and the cost of electricity and maintenance for any signs designated by the Lessor as part of the Common Areas; policing, security, supervision and traffic control; salaries and benefits of all supervisory and other personnel employed in connection with the City Market and management office rent imputed to the City Market by the Lessor, acting reasonably; Management Fee, the cost of providing additional parking or other Common Areas for the benefit of the City Market, whether such costs be Taxes or other type of costs; the costs and expenses of environmental site reviews and investigations, removal and/or clean-up of Hazardous Substances from the Common Areas; the cost of the rental of any equipment and signs and the costs of supplies used in the maintenance and operation of the City Market and the Common Areas; accounting and audit fees incurred in the preparation of the statements required to be prepared and supplied by the Lessor under the terms of this Lease; heating, ventilating and air conditioning of the Common Areas; all repairs and replacements to and maintenance and operation of the City Market and the Common Areas; depreciation or amortization of the costs, including repair and replacement, of all maintenance and cleaning equipment, master utility meters, and all other fixtures, equipment, and facilities serving or comprising the City Market or the Common Areas; which are not charged fully in the Lease Year in which they are incurred, from the earlier of the date when the cost was incurred or the Commencement Date, at rates on the various items determined from time to time by the Lessor in accordance with sound accounting principles;
- o) “Proportionate Share” means a fraction, the numerator of which is the Rentable Area of the Leased Premises and the denominator of which is the Rentable Area of the City Market;
- p) “Rent” means all Gross Rent and Additional Rent payable pursuant to the terms of this Lease;
- q) “Rentable Area of the Leased Premises” means the area expressed in square feet of all floors of the Leased Premises measured from:
 - i. the exterior face of all exterior walls, doors and windows;
 - ii. the exterior face of all interior walls, doors and windows separating the Leased Premises from Common Areas; if any; and
 - iii. the centre line of all interior walls separating the Leased Premises from adjoining leasable premises.

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The Rentable Area of the Leased Premises includes all interior space whether or not occupied by projections, structures or columns, structural or non-structural, and if the store front is recessed from the lease line, the area of such recess for all purposes lies within the Rentable Area of the Leased Premises.

- r) “Rentable Area of the City Market” means the area in square feet of all rentable premises in the City Market set aside for leasing by the Lessor from time to time, except for any occupancy as designated by the Lessor for which there is no Gross Rent payable. Provided however that the Lessor shall credit to Operating Costs any contributions received in respect of such Operating Costs from the occupants of any of the areas excluded from the Rentable Area of the City Market in accordance with this definition. Provided further that in determining the fraction that is the Lessee’s Proportionate Share, if the Leased Premises consists of any of the foregoing excluded categories, the Rentable Area of that category will be included in the Rentable Area of the City Market;
- s) “Rules and Regulations” means the rules and regulations adopted and promulgated by the Lessor from time to time acting reasonably, including those listed on Schedule “D”;
- t) “City Market” means the lands and premises known by the civic address 47 Charlotte Street, Saint John, New Brunswick, as such lands and premises may be altered, expanded or reduced from time to time and the buildings, improvements, equipment and facilities erected thereon or situate from time to time therein;
- u) “Taxes” means all duties, real property taxes, charges, assessments and payments, from time to time levied, assessed or imposed upon the City Market or any part thereof or upon the Lessor by reason of its ownership of the City Market, by any taxing authority. Taxes shall also include any penalties, late payment or interest charges imposed by any municipality or other taxing authority as a result of the Lessee’s late payments of any taxes or instalments thereof. For greater certainty “Taxes” shall exclude any penalties or interest incurred by the Lessor as a result of its failure to pay Taxes in a timely manner, except Taxes shall include any interest in respect of a deferral of payment in accordance with sound accounting practices if permitted by statute or pursuant to an agreement with the taxing authority; and (ii) income, profit or excess profits taxes of the Lessor;
- v) “Lessee” means the party named as Lessee in this Lease; and
- w) “Term” means the period referred to in Section 2.03.

ARTICLE II

GRANT, TERM AND INTENT

2.01 Leased Premises

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Lessor demises and leases to the Lessee and the Lessee leases from the Lessor, the Leased Premises. The Leased Premises are presently designated as **Stall No. “4” (384 ft²)** as shown on Schedule “A”.

2.02 Use of Common Areas

The use and occupation by the Lessee of the Leased Premises shall entitle the Lessee to the use in common with all others entitled thereto of the Common Areas, subject however, to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by the Landlord.

2.03 Term of Lease

TO HAVE AND TO HOLD the Leased Premises for and during the term of five **(5) years** to be computed from **October 1, 2019** and fully to be completed and ended on **September 30, 2024** save as hereinafter provided for earlier termination.

2.04 Option to Renew

The Lessee shall have the option to renew this Lease for a further one (1) term of five (5) years at the then prevailing market rate by providing written notice of its intention to renew to the Lessor no later than six (6) months prior to the expiration of the Initial Term. In the event that the Lessor and the Lessee do not agree on the then prevailing market rate, such rate may be determined by a single arbitrator appointed by the agreement between the Lessor and the lessee or pursuant to the *Arbitration Act*.

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PROVIDED THAT if there is any Lessor’s Work or Lessee’s Work to be performed prior to the Lessee opening for business in the Leased Premises or the Leased Premises are occupied by a third party as of the date of this Lease, the Commencement Date shall be the earlier of:

- a) **sixty (60)** days after the Lessor has delivered vacant possession of the Leased Premises to the Lessee notwithstanding that the Lessor may still, during such **sixty (60)** day period, be completing its work; or
- b) the opening by the Lessee to the public of its business in the Leased Premises.

Notwithstanding any change in the Commencement Date calculated in accordance with the preceding provisions hereof, the Terms shall expire on the date set for such expiry in the first paragraph of this Section 2.03, subject always to earlier termination as provided for in this Lease.

PROVIDED THAT upon the Lessor or its Architect giving notice to the Lessee that the Leased Premises are available for the commencement of the Lessee’s Work, the Lessee shall immediately take possession of the Leased Premises and shall occupy same for the purpose of fixturing and installing its inventory, at its own risk, for a period of **zero (0)** days after receipt of such notice or until the Lessee opens for business to the public in the Leased Premises, free of the payment of Gross Rent, and Additional Rent save for the obligation of the Lessee to pay for all utility charges used by the Lessee or consumed in the Leased Premises during the period of such fixturing, and shall during the period from the giving of such notice until the Commencement Date be a tenant in the Leased Premises subject to the same covenants and agreements as are contained in this Lease, mutatis mutandis.

FURTHER PROVIDED THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY, if the Lessor is unable to deliver vacant possession of the Leased Premises to the Lessee for any reason, including but not limited to the holding over or retention of possession of any other lessee or occupant, or the lack of completion of any repairs, improvements or alterations required to be completed before the Lessee’s occupancy of the Leased Premises, then the time for commencement of the Term shall be extended to correspond with the period of delay and the Lessee shall not be entitled to any abatement or diminution of Rent (except that Rent shall not commence to be payable until possession of the Leased Premises is given by the Lessor to the Lessee) nor shall the validity of this Lease or the parties’ respective obligations hereunder be affected. However, if the Lessor does not give vacant possession of the Leased Premises to the Lessee within six (6) months of the date of this Lease, then the Lessor may, at is option, terminate this Lease by written notice to the Lessee and in such event this Lease shall be null and void and of no effect whatsoever. Any deposit paid by the Lessee to the Lessor shall be returned without interest or deduction, and neither party shall have any further liability to the other.

Forthwith, upon the Commencement Date being determined in accordance with the foregoing, the Lessee shall execute an acknowledgement of same on Lessor’s usual form.

The Lessee shall pay all Gross Rent and Additional Rent calculated on a per diem basis, from when the Commencement Date occurs and thereafter all payments of Rent shall be made on the first day of each month throughout the Term unless otherwise specified herein.

ARTICLE III

RENT AND DEPOSIT

3.01 Gross Rent

The Lessee shall pay annual Gross Rent to the average amount of **Thirty-Four Dollars (\$34.00)** per square foot of leaseable retail area of the Leased Premises. The Gross Rent shall be paid in equal monthly instalments, monthly in advance. According to the following schedule:

| | | | |
|--------------|-------------|---------|-----------------|
| | | | |
| Yrs 1-5 | Square feet | Rate | Total |
| Retail | 384 | \$34.00 | \$13,056.00 |
| Promotion | 0.06 | | \$783.36 |
| Total Annual | | | \$13,839.36 |
| Monthly | | | \$1,153.28 +HST |

There shall be no Additional Rent payable under this Agreement, save and except monies to be paid under Article VI of this Lease.

3.02 Rent Past Due

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If the Lessee fails to pay, when the same is due and payable, any Gross Rent, Additional Rent or other amount payable by the Lessee under this Lease, such unpaid amounts shall bear interest from the due date thereof to the date of payment, compounded monthly at the rate equal to four (4) percentage points in excess of the Prime Rate.

3.03 Deposit

The Lessor acknowledges receipt of **Zero Dollars (\$00.00)** which it will apply towards the payment of Gross Rent for the first and last months of the Term except that the Lessor may apply all or part of the amount retained for application towards the last month’s Gross Rent as compensation for any loss or damage arising from the breach by the Lessee of any provisions of this Lease. This right will not be construed to limit the Lessor’s other rights under this Lease or at law or to limit the amount recoverable by the Lessor for damages in respect of breaches by the Lessee of this Lease. If the Lessor uses all or part of the deposit for the last month’s Gross Rent as provided above, the Lessee will, upon notification by the Lessor, pay to the Lessor the amount required to reimburse it for the amounts so applied. The Lessor will not be required to pay interest to the Lessee on any of the amounts paid to the Lessor or retained by it under this section. The Lessor may deliver the aforesaid deposit to any purchaser of the Lessor’s interest in the City Market or any part thereof, whereupon the Lessor will immediately be discharged from any further liability with respect to the deposit. The Lessee will not assign or encumber its interest in the deposit except in connection with a permitted Transfer, in which case the Lessee’s interest in the deposit will be deemed to have been assigned to the permitted Transferee as of the date of the Transfer.

3.04 Pre-Authorized Payments

The Lessee shall participate in a pre-authorized payment plan whereby the Lessor will be authorized to debit the Lessee’s bank account each month from time to time during each Lease Year in an amount equal to the Gross Rent and Additional Rent payable on a monthly basis, and, if applicable, generally any amount payable provisionally pursuant to the provisions of this Lease on an estimated basis. The Lessor shall sign a form of application which is the same or similar to Schedule “D-1”, or as may be required by the Lessee’s bank, credit union or other financial institution.

ARTICLE IV

TAXES

4.01 Taxes Payable by the Lessor

The Lessor shall pay all Taxes which are levied, rated, charged or assessed against the City Market or any part thereof subject always to the provisions of this Lease regarding payment of Taxes by the Lessee. However, the Lessor may defer payment of any such Taxes or defer compliance with any statute, law, by-law, regulation or ordinance in connection with the levying of any such Taxes in each case to the fullest extent permitted by law, so long as it diligently prosecutes any contest or appeal of any such Taxes.

4.02 Taxes Payable by Lessee

- a) The Lessee shall during the Term pay, without any deduction, abatement or set-off whatsoever, all Taxes levied, laid or assessed on or against the Leased Premises;
- b) In the case of assessments for local improvements or betterments which are assessed or imposed during the term and which may by law be payable in instalments, the Lessee shall only be obligated to pay such instalments as same fall due during the Term, together with interest on deferred payments;
- c) In any suit or proceeding of any kind or nature arising or growing out of the failure of the Lessee to keep any covenant contained in this Article, the certificate or receipt of the department, officer or bureau charged with collection of the Taxes, showing that the tax, assessment or other charge affecting the Leased Premises is due and payable or has been paid, shall be prima facie evidence that such tax, assessment or other charge was due and payable as a lien or charge against the Leased Premises or that it has been paid as such by the Lessor;
- d) The Lessee, if allowed by the taxing authority, shall have the right to contest or review by legal proceedings or in such manner as the Lessee in its opinion shall deem advisable (which proceedings or other steps taken by the Lessee shall be conducted diligently at its own expense and free of expense to the Lessor) any and all Taxes levied, assessed or imposed upon or against the Leased Premises or Taxes in lieu thereof required to be paid by the Lessee hereunder. No such contest shall defer or suspend the Lessee’s obligations to pay the Taxes as herein provided pending the contest, but if by law it is necessary that

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such payment be suspended to preserve or perfect the Lessee’s contest, then the contest shall not be undertaken without there being first deposited with the Lessor a sum of money equal to twice the amount of the Taxes that are the subject of the contest, to be held by the Lessor as an indemnity to pay such Taxes upon conclusion of the contest and all costs thereof that may be imposed upon the Lessor or the Leased Premises. Any costs associated with an appeal undertaken by the Lessor, the Lessee shall pay their proportionate share of such costs;

- e) The Lessee upon request of the Lessor will promptly exhibit to the Lessor all paid bills for Taxes which bills after inspection by the Lessor shall be returned to the Lessee.

4.03 HST Payable by Lessee

The Lessee shall pay to the Lessor all HST on Rent and any other HST imposed by the applicable legislation on the Lessor or Lessee with respect to this Lease, in the manner and at the times required by the applicable legislation. Such amounts are not consideration for the rental of space or the provision by the Lessor of any service under this Lease, but shall be deemed to be Rent and the Lessor shall have all of the same remedies for and rights of recovery of such amounts as it has for recovery of Rent under this Lease. If a deposit is forfeited to the Lessor, or an amount becomes payable to the Lessor due to a default or as consideration for a modification of this Lease, and the applicable legislation deems a part of the deposit or amount to include HST, the deposit or amount will be increased and the increase paid by the Lessee so that the Lessor will receive the full amount of the forfeited deposit or other amount payable without encroachment by any deemed HST portion.

4.04 Business Taxes and Other Taxes of Lessee

The Lessee shall pay to the lawful taxing authorities, when the same becomes due and payable:

- a) all taxes, rates, duties, assessments and other charges that are levied, rated, charged or assessed against or in respect of all improvements, equipment and facilities of the Lessee on or in the Leased Premises; and
- b) every tax and license fee which is levied, rated, charged or assessed against or in respect of any business carried on in the Leased Premises or in respect of the use or occupancy thereof

whether in any case any such taxes, rates, duties, assessments or license fees are rated, charged or assessed by any federal, provincial, municipal or other body.

ARTICLE V

UTILITIES

5.01 Utilities

The Lessee shall pay all utilities directly to the utility company, on a metered basis. In the event that a Lessee leases cooler space with the Leased Premises, the Lessee shall pay to the Lessor the Lessee’s proportionate share of any utility consumed.

ARTICLE VI

MERCHANTS’ ASSOCIATION

6.01 Merchants’ Association

If and when an association or corporation of merchants or lessees (the “Association”) is formed comprising tenants of the City Market, the Lessee shall forthwith become a member of such Association or if such an Association has already been formed, the Lessee shall forthwith become a member thereof and the Lessee shall retain its membership in such Association during the entire Term and shall abide by all rules, regulations, by-laws, decisions, directions, dues and assessments of the Association. Such Association shall in no way affect the rights of the Lessor and any by-laws, rules and regulations of such Association shall at all times be subject to the prior approval of the Lessor.

6.02 Promotion Fund

The Lessee shall pay to the Lessor an amount equal to 6% of annual Gross Rent to be paid in twelve (12) monthly instalments each instalment payable on the 1st day of each month during the Term.

ARTICLE VII

CONDUCT OF BUSINESS BY TENANT

7.01 Use of Leased Premises

The Leased Premises shall be used continuously, actively and diligently for the sole purpose of **selling Greek, Romanian and Arabic Foods including shawarma (lamb, goat, chicken, turkey, beef or mixture thereof cooked on a spit), falafel wraps (rib eye, chicken, beef, pork or mixture thereof) beef sausage, cold beverages, Greek, Arabic desserts and Asian snacks.**

The Lessee will not use or permit or suffer the use of the Leased Premises or any part thereof for any other business or purpose. In connection with the business to be conducted by the Lessee on the Leased Premises, the Lessee shall only use the advertised name **“Shawarma Hut”** and will not change the advertised name of the business to be operated in the Leased Premises without the prior written consent of the Lessor.

The Lessee shall not introduce new product lines, or offer new services to its customers without first obtaining the written consent of the Lessor. The Lessee acknowledges that it would be reasonable for the Lessor to withhold its consent if the introduction by the Lessee of such product line or service would compete with the business of other tenants in the City Market or infringe on exclusive covenants granted by the Lessor.

Unless otherwise specifically set out in this Lease to the contrary, nothing contained in this Lease shall: (i) confer upon the Lessee the exclusive right to sell or provide in the City Market any of the products or services permitted to be sold or provided from the Leased Premises pursuant to this Section 7.01; nor (ii) prevent the Lessor from leasing any other premises in the City Market to any other tenant(s) carrying on a business which is similar in whole or in part to the business permitted to be carried on from the Leased Premises pursuant to this Section 7.01.

- a) The Lessee acknowledges that its continued occupancy of the Leased Premises and the regular conduct of business therein are of utmost importance to neighbouring tenants and to the Lessor in the renting of space in the City Market, the renewal of other leases therein, the efficient and economic supply of services and utilities, and in the character and quality of other tenants in the City Market. The Lessee therefore covenants and agrees that throughout the Term it will occupy the entire Leased Premises, comply strictly with the provisions of Section 7.01 and not vacate or abandon the Leased Premises at any time during the Term. The Lessee acknowledges that the Lessor is executing this Lease in reliance thereupon and that the same is a material element inducing the Lessor to execute this Lease. The Lessee further agrees that if it vacates or abandons the Leased Premises or fails to so conduct its business therein, or uses or permits or suffers the use of the Leased Premises for any purpose not specifically herein authorized and allowed, the Lessee will be in breach of the Lessee’s obligations under the Lease, and then, without constituting a waiver of the Lessee’s obligations or limiting the Lessor’s remedies under this Lease, all Rent reserved in this Lease will immediately become due and payable to the Lessor unless guaranteed to the satisfaction of the Lessor. The Lessor will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring the Lessee to comply with the provisions of this Section 7.01(b).
- b) The Lessee acknowledges that its continued occupancy of the Leased Premises and the regular conduct of business therein are of utmost importance to neighbouring tenants and to the Lessor in the renting of space in the City Market, the renewal of other leases therein, the efficient and economic supply of services and utilities, and in the character and quality of other tenants in the City Market. The Lessee therefore covenants and agrees that throughout the Term it will occupy the entire Leased Premises, comply strictly with the provisions of Section 7.01 and not vacate or abandon the Leased Premises at any time during the Term. The Lessee acknowledges that the Lessor is executing this Lease in reliance thereupon and that the same is a material element

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inducing the Lessor to execute this Lease. The Lessee further agrees that if it vacates or abandons the Leased Premises or fails to so conduct its business therein, or uses or permits or suffers the use of the Leased Premises for any purpose not specifically herein authorized and allowed, the Lessee will be in breach of the Lessee’s obligations under the Lease, and then, without constituting a waiver of the Lessee’s obligations or limiting the Lessor’s remedies under this Lease, all Rent reserved in this Lease will immediately become due and payable to the Lessor unless guaranteed to the satisfaction of the Lessor. The Lessor will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring the Lessee to comply with the provisions of this Section 7.01(b).

7.02 Conduct and Operation of Business

The Lessee shall occupy the Leased Premises from and after the Commencement Date and thereafter shall conduct continuously and actively the business set out in Section 7.01, in the whole of the Leased Premises. In the conduct of the Lessee’s business pursuant to this Lease the Lessee shall:

- a) operate its business with due diligence and efficiency and maintain an adequate staff to properly serve all customers; own, install and keep in good order and condition free from liens or rights of third parties, fixtures and equipment of first class quality; and carry at all times such stock of goods and merchandise of such size, character and quality as will produce the maximum volume of sales from the Leased Premises consistent with good business practices;
- b) conduct its business in the Leased Premises during such hours and on such days as the Lessor from time to time requires or permits and at no other time. However the Lessee is not required or permitted to carry on its business during any period prohibited by any law regulating the hours of business. If the Lessee fails to open during the days and/or hours required by the Lessor, then in addition to all other amounts of Rent payable under this Lease the Lessee shall pay as Additional Rent to the Lessor upon demand as liquidated damages and not as a penalty, an amount equal to two hundred fifty dollars (\$250.00) per day for each and every day that the Lessee is in default. When not open for business the security of the Leased Premises is the sole responsibility of the Lessee;
- c) keep displays of merchandise in the display windows (if any) of the Leased Premises, and keep the display windows and signs (if any) in the Leased Premises well-lit during the hours the Lessor designates from time to time, acting reasonably;
- d) stock in the Leased Premises only merchandise the Lessee intends to offer for retail sale from the Leased Premises, and not use any portion of the Leased Premises for office, clerical or other non-selling purposes except minor parts reasonably required for the Lessee’s business in the Leased Premises;
- e) abide by all rules and regulations and general policies formulated by the Lessor, acting reasonably, from time to time relating to the delivery of goods to the Leased Premises;
- f) not allow or cause to be committed any waste upon or damage to the Leased Premises or any nuisance or other act or thing which disturbs the quiet enjoyment of any other lessee in the City Market or which unreasonably disturbs or interferes with or annoys any third party, or which may damage the City Market;
- g) not allow or cause to be done any act in or about the Common Areas or the City Market which in the Lessor’s opinion, acting reasonably, hinders or interrupts the City Market’s flow of traffic in any way, obstructs the free movement or parties doing business in the City Market;
- h) not allow or cause business to be solicited in any part of the City Market other than the Leased Premises, nor display any merchandise outside the Leased Premises at any time without the prior written consent of the Lessor;
- i) use the name designated for the City Market by the Lessor from time to time and all insignia or other identifying names and marks designated by the Lessor in connection with the advertising of the business conducted in the Leased Premises. Notwithstanding the foregoing the Lessee will not acquire any rights in such names, marks or insignia and upon the Lessor’s request the Lessee will abandon or assign to the Lessor any such rights which the Lessee may acquire by operation of law and will promptly execute any documents required by the Lessor to give effect to this subparagraph (i);
- j) not install or allow in the Leased Premises any transmitter device nor erect any aerial on the roof of any building forming part of the City Market or on any exterior walls of the

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Leased Premises or in any of the Common Areas. Any such installation shall be subject to removal by the Lessor without notice at any time and such removal shall be done and all damage as a result thereof shall be made good, in each case, at the cost of the Lessee, payable as Additional Rent on demand;

- k) not use any travelling or flashing lights or signs or any loudspeakers, television, phonograph, radio or other audiovisual or mechanical devices in a manner so that they can be heard or seen outside of the Leased Premises without the prior written consent of the Lessor. If the Lessee uses any such equipment without receiving the prior written consent of the Lessor, the Lessor shall be entitled to remove such equipment without notice at any time and such removal shall be done and all damage as a result thereof shall be made good, in each case, at the cost of the Lessee, payable as Additional Rent on demand;
- l) not install or allow in the Leased Premises any equipment which will exceed or overload the capacity of any utility, electrical or mechanical facilities in the Leased Premises or of which the Lessor has not approved. If the Lessee requires additional utility, electrical or mechanical facilities, the Lessor may in its sole discretion if they are available elect to install them at the Lessee’s expense and in accordance with plans and specifications to be approved in advance in writing by the Lessor;
- m) not bring upon the Leased Premises any machinery, equipment, article or thing that by reason of its weight, size or use, might in the opinion of the Lessor, acting reasonably, damage the Leased Premises or overload the floors of the Leased Premises. Any such machinery, equipment, article or thing shall be subject to removal by the Lessor without notice at any time and such removal shall be done and all damages as a result thereof shall be made good, in each case, at the cost of the Lessee, payable as Additional Rent on demand;
- n) observe and comply with all federal, provincial or municipal laws pertaining to or affecting the Leased Premises, the Lessee’s use of the Leased Premises or the conduct of any business in the Leased Premises, or the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Leased Premises, and the regulations of any insurance underwriters in respect of the insurance maintained by the Lessor in respect of the City Market, and carry out all modifications to the Leased Premises and the Lessee’s conduct of business or in use of the Leased Premises which may be required by any such authorities.

7.03 Prohibited Activities

- a) The Lessee acknowledges that it is only one of many tenants in the City Market and that therefore the Lessee shall conduct its business in the Leased Premises in a manner consistent with the best interests of the City Market as a whole;
- b) The Lessor shall have the right to cause the Lessee to discontinue and the Lessee shall thereupon forthwith discontinue the sale of any item, merchandise, commodity or the supply of any service or the carrying on of any business, any of which is either prohibited by this Section 7.03 or which the Lessor, acting reasonably, determines is not directly related to the business set out in Section 7.01. The Lessee will not allow or cause the use of any part of the Leased Premises for any of the following businesses or activities:
 - i. the sale of secondhand goods or surplus articles, insurance salvage stock, fire sale stock or bankruptcy stock;
 - ii. the sale of goods, except as may be specifically permitted by the provisions of Section 7.01;
 - iii. an auction, bulk sale (other than a bulk sale made to an assignee or sublessee pursuant to a permitted assignment or subletting hereunder), liquidation sale, “going out of business” or bankruptcy sale, or warehouse sale;
 - iv. any advertising or selling procedures which would, or any sale or business conduct or practice which would, because of the merchandising methods or quality of operation likely to be used, in either case in the Lessor’s opinion, tend to lower the character of the City Market or harm or tend to harm the business or reputation of the Lessor or reflect unfavourably on the City Market, the Lessor or other tenants in the City Market or tend to confuse, deceive, mislead or be fraudulent to the public; or

- v. a mail order business, save and except for dulce and maple products or a department store, junior department store or variety store.

7.04 Hazardous Substances

The Tenant covenants and agrees to utilize the Leased Premises and operate its business in a manner so that no part of the Leased Premises or surrounding lands are used to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any Hazardous Substance, except in strict compliance with all applicable federal, provincial and municipal statutes, by-laws and regulations, including, without limitation, environmental, land use and occupational and health and safety laws, regulations, requirements, permits, statutes, by-laws and regulations. Further the Lessee hereby covenants and agrees to indemnify and save harmless the Lessor and those for whom the Lessor is in law responsible from any and all losses, costs, claims, damages, liabilities, expenses or injuries caused or contributed to by any Hazardous Substances which are at any time located, stored or incorporated in any part of the Leased Premises. The Lessee hereby agrees that the Lessor or its authorized representatives shall have the right at the Lessee's expense, payable as Additional Rent within fifteen (15) days of receipt of an invoice therefor, to conduct such environmental site reviews and investigations as it may deem necessary for the purpose of ensuring compliance with this Section 7.04. The Lessee's obligations pursuant to this Section 7.04 shall survive the expiration or earlier termination of the Term.

ARTICLE VIII

FIXTURES, ALTERATIONS AND REPAIRS AND

LESSOR'S CONTROL OF CITY MARKET

8.01 Installations by the Lessee

All equipment, fixtures and improvements installed by the Lessee in the Leased Premises shall be new or completely reconditioned. The Lessee shall not make any alterations, additions or improvements or install or cause to be installed any trade fixtures, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings or make any changes to the store front without first obtaining the Lessor's written approval and consent. The Lessee shall present to the Lessor plans and specifications in form, content and such detail as the Lessor may reasonably require for such work at the time approval is sought. The Lessee covenants that any work that may be done in respect of the Leased Premises by or on behalf of the Lessee shall be done in such a manner as not to conflict or interfere with any work being done or about to be done by the Lessor in or about the City Market, whether such conflict or interference shall arise in relation to labour unions or otherwise and the Lessee shall obtain all requisite permits, licenses and inspections in respect of any such work done by or on the Lessee's behalf. Notwithstanding anything herein contained, the Lessee shall make no alterations, additions or improvements that are of a structural nature or that would lessen the value or Rentable Area of the Leased Premises or the City Market, or would interfere with the usage of the Common Areas.

All alterations, decorations, additions and improvements made by the Lessee or made by the Lessor on the Lessee's behalf by agreement under this Lease shall immediately upon installation or affixation become the property of the Lessor without compensation therefor to the Lessee, but the Lessor shall be under no obligation to repair, maintain or insure the alterations, decorations, additions or improvements. Such alterations, decorations, additions and improvements shall not be removed from the Leased Premises without prior consent in writing from the Lessor. Upon expiration of this Lease, the Lessee shall, at the option of the Lessor, remove all trade fixtures and personal property and shall remove all such alterations, decorations, additions and improvements and restore the Leased Premises as required by the Lessor.

8.02 Maintenance and Repair by the Lessee

The Lessee will at all times keep the Leased Premises (including exterior entrances and all glass and show windows) and all partitions, doors, fixtures, equipment and appurtenances thereof (including lighting, heating and plumbing fixtures, and the electrical and mechanical systems) in good order, condition and repair (including periodic painting or redecorating and preventative maintenance as determined by the Lessor and including such repairs or replacements as are required to keep the Leased Premises in good repair and condition). All aforesaid maintenance, repairs, restorations and replacements shall be in quality and class equal to the original work or installations.

8.03 Signs, Awnings, Canopies

The Lessee will not place or suffer to be placed or maintained on any exterior door, wall or window of the Leased Premises any sign, awning or canopy or advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any

window or door of the Leased Premises without first obtaining the Lessor’s written approval and consent. The Lessee further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times, and in addition to the foregoing, the Lessee shall maintain any signs or displays of its goods or wares which may be seen from the exterior of the Leased Premises in a manner which is in keeping with the character of the City Market of which the Leased Premises form a part and which is designed to enhance the business of the Lessee.

8.04 Surrender of Leased Premises

Subject to Article 10.01, the Lessee will leave the Leased Premises in good repair, reasonable wear and tear only excepted. Without limiting the generality of the foregoing, at the expiration or earlier termination of the Term the Lessee shall surrender the Leased Premises in the same condition as the Leased Premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear only excepted, and shall surrender all keys for the Leased Premises to the Landlord at the place then fixed for the payment of Rent and shall inform the Lessor of all combinations on locks, safes and vaults, if any, in the Leased Premises. Should the Lessee fail to remove its fixtures and personal property, such fixtures and personal property shall be deemed to be abandoned by the Lessee and may be appropriated, sold or otherwise disposed of by the Lessor without notice or obligation to compensate the Lessee or to account therefor. The Lessee’s obligations to observe or perform this covenant shall survive the expiration or earlier termination of the Term of this Lease.

8.05 Lessee to Discharge all Liens

The Lessee will ensure that no construction or other lien or charge, or notice thereof, is registered or filed against:

- a) the City Market or any part of it; or
- b) the Lessee’s interest in the Leased Premises or any of the leasehold improvements in the Leased Premises.

by any person claiming by, through, under or against the Lessee or its contractors or subcontractors. If such a lien or charge or notice thereof is registered or filed and the Lessee fails to discharge it within five (5) days after written notice from the Lessor, the Lessor may discharge it by paying the amount claimed to be due into court or directly to the claimant and the Lessee will pay to the Lessor as Additional Rent on demand all costs (including legal fees) incurred by the Lessor in connection therewith, together with an administrative overhead charge of fifteen percent (15%) thereon.

8.06 Rules and Regulations

The Lessee will comply with the Rules and Regulations. The Lessor reserves the right from time to time to amend or supplement the Rules and Regulations. Notice of such amendments and supplements, if any, shall be given to the Lessee, and the Lessee agrees thereupon to comply with and observe all such amendments and supplements, provided that no Rule or Regulation shall contradict any provision of this Lease. The Lessor shall not be responsible to the Lessee for non-observance or violation of any of the provisions of such Rules and Regulations by any other tenant of the City Market or of the terms of any other lease of premises in the City Market and the Lessor shall be under no obligation to enforce any such provisions. All Rules and Regulations shall be enforced against the Lessee in a non-discriminatory manner.

8.07 Maintenance and Repair by the Lessor

The Lessor shall, subject to the other provisions of this Lease, maintain and repair or cause to be maintained and repaired, the structure of the City Market, including without limitation, the foundations, exterior weather walls, subfloor, roof, bearing walls and structural columns and beams of the City Market. If, however, the Lessor is required to maintain or repair any structural portions or any other portion of the Leased Premises or the City Market by reason of the negligent acts or omissions of the Lessee, its employees, agents, invitees, suppliers, agents and servants of suppliers, licensees, concessionaires or subtenants, the Lessee shall pay on demand as Additional Rent, the Lessor’s costs for making such maintenance or repairs, together with an administrative fee of fifteen percent (15%) of such costs. Notwithstanding Clause 8.07 above, the Landlord shall remove existing floor coverings and replace with a commercial grade floor covering and shall also clean and paint the interior walls of Stall 5 on or before June 15, 2018.

8.08 Control of City Market by Lessor

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The City Market and the Common Areas are at all times subject to the exclusive control and management of the Lessor. Without limiting the generality of the foregoing, the Lessor has the right in its control, management and operation of the City Market and by the establishment of rules and regulations and general policies with respect to the operation of the City Market or any part thereof at all times throughout the Term to construct, maintain and operate lighting facilities and heating, ventilating and air conditioning systems; provide supervision and policing services for the City Market; close all or any portion of the City Market to such extent as may in the opinion of the Lessor’s counsel be legally sufficient to prevent a dedication thereof or the accrual of any rights to any third party or the public; grant, modify and terminate easements or other agreements pertaining to the use and maintenance of all or any part of the City Market; obstruct or close off all or any part of the City Market for the purpose of maintenance, repair or construction, employ all personnel, including supervisory personnel and managers necessary for the operation, maintenance and control of the City Market; use any part of the Common Areas from time to time for merchandising, display, decorations, entertainment and structures designed for retail selling or special features or promotional activities; designate the areas and entrances and the times in, through and at which loading and unloading of goods shall be carried out; control, supervise and generally regulate the delivery or shipping of merchandise, supplies and fixtures to and from the Leased Premises, and other portions of the City Market; designate and specify the kind of container to be used for garbage and refuse in the manner and the times and places at which same is to be placed for collection (if the Lessor for the more efficient and proper operation of the City Market provides or designates a commercial service for the pickup and disposal of refuse and garbage instead of or in addition to the service provided by the municipality, the Lessee shall use same at the Lessee’s cost); from time to time change the area, level, location, arrangement or use of the City Market or any part thereof; construct other buildings or improvements in the City Market and make changes to any part thereof; construct other buildings or improvements in the City Market and make changes to any part of the City Market; and do and perform such other acts in and to the City Market as in the use of good business judgment the Lessor determines to be advisable for the more efficient and proper operation of the City Market.

Notwithstanding anything to the contrary, if as a result of the exercise by the Lessor of any of its rights as set out in this Section 8.08, the Common Areas are diminished or altered in any manner whatsoever, the Lessor is not subject to any liability nor is the Lessee entitled to any compensation or diminution or abatement of Rent nor is any alteration or diminution of the Common Areas deemed constructive or actual eviction, or a breach of any covenant for quiet enjoyment contained in this Lease.

8.09 Lessor’s Right to Enter Leased Premises

- a) It is not a re-entry or a breach of quiet enjoyment if the Lessor or its authorized representatives enter the Leased Premises at reasonable times to:
 - i. examine them;
 - ii. make permitted or required repairs, alterations, improvements or additions to the Leased Premises (including the pipes, conduits, wiring, ducts, columns and other installations in the Leased Premises) or the City Market or adjacent property; or
 - iii. excavate land adjacent or subjacent to the Leased Premises; in each case (to the extent reasonably possible in the circumstances) without unreasonably interfering with the Lessee’s business operations in the Leased Premises, and the Lessor may take material into and on the Leased Premises for those purposes. Rent will not abate or be reduced while the repairs, alterations, improvements or additions are being made. The Lessor will take reasonable steps to minimize any interruption of business resulting from any entry.
- b) At any time during the Term, the Lessor may exhibit the Leased Premises to prospective purchasers and during the six (6) months prior to the expiration of the term of this Lease, the Lessor may exhibit the Leased Premises to prospective tenants and place upon the Leased Premises the usual notice “To Let” which notice the Lessee shall permit to remain where placed without molestation;
- c) If the Lessee shall not be personally present to open and permit an entry into the Leased Premises, at any time, when for any reason an entry therein shall be necessary or permissible, the Lessor or the Lessor’s agents may enter the same by a master key, or may forcibly enter the same, without rendering the Lessor or such agents liable therefor, and without in any manner affecting the obligations and covenants of this Lease;
- d) Nothing in this Section contained, however, shall be deemed or construed to impose upon the Lessor any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the City Market or any part thereof, except as otherwise in this Lease specifically provided.

ARTICLE IX

INSURANCE AND INDEMNITY

9.01 Lessee’s Insurance

- a) The Lessee shall throughout the Term, at its own cost and expense, take out and keep in full force and effect the following insurance:
 - i. All-risk insurance upon property owned by the Lessee or for which the Lessee is legally liable (including, signs and plate glass) and which is located within the City Market in an amount of not less than the full replacement cost thereof;
 - ii. Comprehensive General Liability with minimum limits of at least Five Million Dollars (\$5,000,000.00) or such higher limits as the Lessor may reasonably require from time to time. This policy shall include:
 - a) The City added as an Additional Insured;
 - b) Inclusive limits for bodily injury and property damage;
 - c) Personal injury liability;
 - d) Tenant’s Legal Liability;
 - e) Contractual Liability with respect to this Lease;
 - f) Premises, Property and Operations;
 - g) Completed Operations;
 - h) A Cross Liability Clause;
 - i) A Thirty (30) days written notice of Cancellation shall be given to the City of Saint John.
 - iii. The Lessee shall also provide any other form of insurance as the Lessee or the Lessor may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would insure.
- b) All policies shall be taken out with reputable and recognized insurers acceptable to the Lessor and shall be in a form satisfactory from time to time to the Lessor. The Lessee agrees that certificates of insurance of each such insurance policy will be delivered to the Lessor as soon as practicable after the placing of the required insurance. All policies shall contain an undertaking by the insurers to notify the Lessor in writing not less than thirty (30) days prior to any material change, cancellation or termination thereof;
- c) The Lessee agrees that if the Lessee fails to take out or keep in force any such insurance referred to in this Section 9.01, or should any such insurance not be approved by the Lessor and should the Lessee not rectify the situation immediately after written notice by the Lessor to the Lessee, the Lessor has the right without assuming any obligation in connection therewith to effect such insurance at the sole cost of the Lessee and all outlays by the Lessor shall be immediately paid by the Lessee to the Lessor as Additional Rent without prejudice to any other rights and remedies of the Lessor under this Lease.

9.02 Increase in Insurance Premium

The Lessee will not allow or cause anything to occur in the Leased Premises which shall cause any increase of premium for any insurance on the Leased Premises or the City Market or any part thereof above the rate for the least hazardous type of occupancy legally permitted in the Leased Premises. If the Lessee is in default under this Section 9.02 the Lessee shall pay any resulting additional premium on any insurance policies taken out or maintained by the Lessor, or if any insurance policy upon the Leased Premises or the City Market or any part thereof shall be cancelled or refused to be renewed by an insurer by reason of the use or occupation of the Leased Premises or any part thereof or the acts or omissions of the Lessee, the Lessee shall forthwith remedy or rectify such use or occupation upon request to do so in writing by the Lessor, and if the Lessee shall fail to do so within twenty-four (24) hours of such written request, the Lessor shall have the right to enter the Leased Premises and rectify the situation, without liability to the Lessee for any loss or damage occasioned by such entry and rectification, or shall be entitled to hold the Lessee liable for any damage or loss resulting from such cancellation or refusal, or the Lessor may at its option determine this Lease forthwith by leaving upon the Leased Premises notice in writing of its intention to do so, and thereupon Rent and any other payments for which the Lessee is liable under this Lease shall

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be apportioned and paid in full to the date of such determination of the Lease, and together with an amount equal to the Gross Rent payable for a period of one (1) year as liquidated damages, and the Lessee shall immediately deliver up possession of the Leased Premises, a schedule issued by the organization making the insurance rate on the Leased Premises, showing the various components of such rate, shall be conclusive evidence of the several items and charges which make the fire insurance rate of the Leased Premises. Bills for such additional premiums shall be rendered by the Lessor to the Lessee at such times as the Lessor may elect and shall be due from and payable by the Lessee when rendered, and the amount thereof shall be deemed to be and be paid as Additional Rent.

9.03 Loss or Damage

The Lessor shall not be liable for any death or injury arising from or out of any occurrence in, upon, at or relating to the City Market, or damage to property of the Lessee or of others located on the Leased Premises, nor shall it be responsible for any loss of or damage to any property of the Lessee or others from any cause whatsoever, except any such death, injury, loss or damage results from the negligence of the Lessor, its agents, servants or employees or other persons for whom the Lessor is in law responsible. Without limiting the generality of the foregoing, the Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Leased Premises or from the pipes, appliances, plumbing works, roof or subsurface of any floor or ceiling or from the street or any other place or other tenants or persons in the City Market or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Lessee kept or stored on the Leased Premises shall be so kept or stored at the risk of the Lessee only and the Lessee shall indemnify the Lessor and save it harmless from any claims arising out of any damages to the same, including, without limitation, any subrogation claims by the Lessor’s insurers. In no event shall the Lessor be liable for any injury to the Lessee, its servants, agents, employees, customers and invitees or for any injury or damage to the Leased Premises or to any property of the Lessee, or to any property of any other person, firm or corporation on or about the Leased Premises caused by an interruption, suspension or failure in the supply of any utilities to the Leased Premises.

9.04 Indemnification of the Lessor

The Lessee will indemnify the Lessor, and save harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Leased premises, the occupancy or use by the Lessee of the Leased premises or any part thereof, or occasioned wholly or in part by any act or omission of the Lessee, its agents, contractors, employees, servants, licensees, or concessionaires or invitees. In case the Lessor shall, without fault on its part, be made a party to any litigation commenced by or against the Lessee, then the Lessee shall protect and hold it harmless and shall pay all costs, expenses and solicitors’ and counsel fees on a solicitor and client basis incurred or paid by them in connection with such litigation.

ARTICLE X

DAMAGE, DESTRUCTION AND EXPROPRIATION

10.01 Total or Partial Destruction of Leased Premises

If, during the Term, the Leased Premises are expropriated or totally or partially destroyed or damaged by any cause in respect of which the Lessor is insured, the following provisions shall have effect:

- a) If the Leased Premises are rendered partially unfit for occupancy by the Lessee, Gross Rent only shall abate in part only, in the proportion that the part of the Leased Premises rendered unfit for occupancy by the Lessee bears to the whole of the Leased Premises or if the Leased Premises are rendered wholly unfit for occupancy by the Lessee the Rent hereby reserved shall be suspended in either event until the day following a reasonable period (taking into account the extent of the Lessee’s restoration) following completion of the Lessor’s restoration;
- b) Notwithstanding the provisions of subparagraph (a), if the Leased Premises in the opinion of the Architect shall be incapable of being rebuilt and/or repaired or restored with reasonable diligence within 180 days of the happening of such destruction or damage, then the Lessor may at its option terminate this Lease by notice in writing to the Lessee given within thirty (30) days of the date of such destruction or damage and in the event of such notice being so given this Lease shall cease and become null and void from the date of such destruction or damage and the Lessee shall immediately surrender the Leased Premises and all interest therein to the Lessor and the Rent shall

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be apportioned and shall be payable by the Lessee only to the date of such destruction or damage and the Lessor may re-enter and repossess the Leased Premises discharged of this Lease;

If the Leased Premises are capable of being rebuilt and/or repaired or restored within 180 days of the happening of such damage or destruction or if within the period of thirty (30) days referred to in Section 10.01(b) the Lessor shall not give notice terminating this Lease, the Lessor shall with reasonable promptitude proceed to rebuild and/or repair or restore the Leased Premises to the extent of the Lessor’s repair obligations under the Lease and the Lessee shall immediately upon substantial completion of the Lessor’s work and, within a reasonable period determined by the Lessor (given the extent of the Lessee’s restoration) complete the restoration of the Leased Premises.

The certificate of the Architect shall bind the parties as to the (i) extent to which the Leased Premises are unfit for occupancy; (ii) time required to rebuild and/or repair or restore the Leased Premises; and (iii) due completion of repairs.

10.02 Total or Partial Destruction of City Market

In the event that a substantial portion of the City Market shall be expropriated or damaged or destroyed by fire or other cause, or in the event the costs as estimated by the Lessor of repairing, restoring or rebuilding will exceed by \$250,000 or more the proceeds of insurance available to the Lessor, notwithstanding that the Leased Premises may be unaffected, or in the event the Lessor shall have the right, to be exercised by notice in writing delivered to the Lessee within sixty (60) days from and after said occurrence, to elect to cancel and terminate this Lease. Upon the giving of such notice to the Lessee, the Term of this Lease shall expire upon the third (3rd) day after such notice is given, and the Lessee shall vacate the Leased Premises and surrender the same to the Lessor.

10.03 Abatement of Rent

Notwithstanding anything herein before contained, all abatements of Rent set out in this Article X shall be limited to an amount equal to the amount which the Lessor collects under any rental income insurance.

10.04 Expropriation Awards

The Lessor and the Lessee will co-operate with each other if there is an expropriation of all or part of the Leased Premises or the City Market, so that each may receive the maximum award that it is entitled to at law. To the extent, however, that a part of the City Market, other than the Leased Premises, is expropriated, the full proceeds that are paid or awarded as a result, will belong solely to the Lessor, and the Lessee will assign to the Lessor any rights that it may have or acquire in respect of the proceedings or awards and will execute the documents that the Lessor reasonably requires in order to give effect to this intention.

ARTICLE XI

STATUS STATEMENT, SUBORDINATION AND ATTORNMENT

11.01 Status Statement

Within fifteen (15) days after request, the Lessee will sign and deliver to the Lessor a status statement or certificate, stating that this Lease is in full force and effect, any modifications to this Lease, the commencement and expiry dates of this Lease, the date to which Rent has been paid, the amount of any prepaid Rent or deposits held by the Lessor, whether there is any existing default and the particulars, and any other information required by the party requesting it.

11.02 Power of Attorney

The Lessee hereby irrevocably appoints the Lessor as the attorney for the Lessee with full power and authority to execute and deliver in the name of the Lessee any instruments or certificates required to carry out the intent of Section 11.01 which the Lessee shall have failed to sign and deliver within fifteen (15) days after the date of a written request by the Lessor to execute such instruments.

ARTICLE XII

TRANSFERS BY LESSEE

12.01 Transfer Defined

“Transfer” means, (i) an assignment, sale, conveyance, sublease, or other disposition of this Lease or the Leased Premises, or any part of them or any interest in this Lease (whether by operation of law or otherwise), or in a partnership that is a Lessee under this Lease, (ii) a mortgage, charge or debenture (floating or otherwise) or other encumbrance of this Lease or the Leased Premises or any part of them, or of any interest in this Lease or of a partnership, or partnership interest, where the partnership is a Lessee under this Lease, (iii) a parting with or sharing of possession of all or part of the Leased Premises, and (iv) a transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription of all or part of the corporate shares of the Lessee or an “affiliate” (as that term is defined on the date of this Lease under the *Canada Business Corporations Act*) of the Lessee which results in a change in the effective voting control of the Lessee. “Transferor” and “Transferee” have meanings corresponding to the definition of “Transfer” set out above, (it being understood that for a Transfer described in clause (iv) the Transferor is the person that has effective voting control before the Transfer and the Transferee is the person that has effective voting control after the Transfer).

12.02 Consent Required

The Lessee will not allow or cause a Transfer, without the prior written consent of the Lessor in each instance which consent may not be unreasonably withheld. Notwithstanding any statutory provisions to the contrary, Lessor’s consent shall not be deemed to have been unreasonably withheld where Lessor refuses consent to a Transfer within twenty-four (24) months of either the Commencement Date or a previous Transfer. Without limiting the generality of the foregoing, no Transfer shall be effective and no consent shall be given unless the following provisions have been complied with:

- i. There is no default of the obligations of the Lessee under this Lease;
- ii. The Lessee shall have given at least thirty (30) days’ prior written notice of the proposed Transfer and the effective date thereof to the Lessor;
- iii. A duplicate original of the documents affecting the Transfer shall be given to the Lessor within thirty (30) days after the execution and delivery thereof;
- iv. The Transferee, except in the case of a Transfer described in Section 12.01(iv), shall have assumed in writing with the Lessor the due and punctual performance and observance of all the agreements, provisions, covenants and conditions hereof on the Lessee’s part to be performed or observed from and after the effective date of the Transfer.

The Lessee acknowledges that the factors governing the granting of the Lessor’s consent to any Transfer may include, without limitation, the restrictive clauses entered into with other tenants by the Lessor, the financial background, business history and the capability of the proposed Transferee in the Lessee’s line of business, and the nature of the business practices of the proposed Transferee. The consent by the Lessor to any Transfer shall not constitute a waiver of the necessity for such consent to any subsequent Transfer. If a Transfer takes place, the Lessor may collect rent from the Transferee, and apply the net amount collected to the Rent herein reserved, but no such action shall be deemed a waiver of the requirement to obtain consent or the acceptance of the Transferee as lessee, or a release of the Lessee or any Indemnifier from the further performance by the Lessee of covenants on the part of the Lessee herein contained. Notwithstanding any Transfer, the Lessee shall remain fully liable under this Lease and shall not be released from performing any of the obligations of the Lessee under this Lease.

Any Transfer, if consented to by the Lessor, may at the Lessor’s option be documented by the Lessor or its solicitors, and any and all legal costs and the Lessor’s then-standard fee with respect thereto or to any documents reflecting the Lessor’s consent to the Transfer shall be payable by the Lessee on demand as Additional Rent.

12.03 No Advertising of Leased Premises

The Lessee shall not print, publish, post, display or broadcast any notice or advertisement to the effect that the Leased Premises are for lease or for sale or otherwise advertise the proposed sale or lease of the whole or any part of the Leased Premises and shall not permit any broker or other party to do any of the foregoing, unless the complete text and format of any such notice, advertisement or offer is first approved in writing by the Lessor. Without in any way restricting or limiting the Lessor’s right to refuse any text or format on other grounds, any text or format proposed by the Lessee shall not contain any reference to the rental rate of the Leased Premises.

ARTICLE XIII

DEFAULT OF LESSEE

13.01 Right to Re-Enter

When

- a) the Lessee shall be in default in the payment of any Rent whether lawfully demanded or not and such default shall continue for a period of five (5) consecutive days; or
- b) the Lessee shall be in default of any of its covenants, obligations or agreements under this Lease or of any term or condition of this Lease (other than its covenant to pay Rent) and such default shall continue for a period of fifteen (15) consecutive days or such longer or shorter period as the Lessor, acting reasonably, determines after five (5) days written notice by the Lessor to the Lessee specifying with reasonable particularity the nature of such default and requiring the same to be remedied;

then and in any of such cases the then current month’s Rent, together with the Rent for the three (3) months next ensuing shall immediately become due and payable, and at the option of the Lessor, the Terms shall become forfeited and void, and the Lessor may without notice or any form of legal process whatsoever forthwith re-enter upon the Leased Premises or any part thereof in the name of the whole and repossess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding, provided however, that such forfeiture shall be wholly without prejudice to the right of the Lessor to recover arrears of rent or damages for any antecedent default by the Lessee of its covenants, obligations or agreements under this Lease or any term or condition of this Lease and provided further that notwithstanding any such forfeiture the Lessor may subsequently recover from the Lessee damages for loss of Rent suffered by reason of this Lease having been prematurely determined. In addition, the Lessor shall have the right to remove and sell the Lessee’s goods and chattels and trade fixtures and apply the proceeds thereof to Rent due under the Lease.

13.02 Right to Re-Let

Should the Lessor elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Leased Premises, and re-let the Leased Premises or any part thereof as agent for the Lessee for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as the Lessor in its sole discretion may deem advisable; upon each re-letting all rentals received by the Lessor from such re-letting shall be applied; first, to the payment of any indebtedness other than rent due hereunder from the Lessee to the Lessor; second, to the repayment of any reasonable costs and expenses of such re-letting, including brokerage fees and solicitors’ fees and of costs of such alterations and repairs; third, to the payment of Rent due as the same may become due and payable hereunder. If such Rent received from such re-letting during any month be less than that to be paid during that month by the Lessee hereunder, the Lessee shall pay any such deficiency to the Lessor. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Leased Premises by the Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to the lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, the Lessor may at any time thereafter elect to terminate this Lease for such previous breach. Should the Lessor at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from the Lessee all damages it may incur by reason of such breach, including the cost of recovering the Leased Premises, and including the worth at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to Rent reserved in this Lease for the remainder of the Term hereof over the then reasonable rental value of the Leased Premises for the remainder of the Term hereof, all of which amounts shall be immediately due and payable from the Lessee to the Lessor. In determining the Rent which would be payable by the Lessee hereunder, subsequent to default, the annual Rent for each year of the unexpired Term shall be equal to the greater of: (a) the average annual Gross Rent and Percentage Rent payable by the Lessee from the Commencement Date to the time of default or during the preceding three (3) full calendar years, whichever period is shorter; and (b) Gross Rent payable hereunder, together with all Additional Rent which would have been payable during the calendar year in which this Lease was terminated, prorated over a full calendar year, if required.

13.03 Legal Expenses

In case suit shall be brought for recovery of possession of the Leased Premises, for the recovery of Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of the Lessee to be kept or performed and a breach shall be established, the Lessee shall pay to the Lessor all expenses incurred therefor, including reasonable solicitors’ and counsel fees on a solicitor and his client basis.

13.04 Bankruptcy

Schedule “C”

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The Lessee covenants and agrees that if the Term or any of the goods and chattels of the Lessee on the Leased Premises shall be at any time during the Term seized or taken in execution or attachment by any creditor of the Lessee or if a receiver, interim receiver or receiver and manager is appointed for the assets or business of the Lessee or if the Lessee shall make any assignment for the benefit of creditors or any bulk sale or, becoming bankrupt or insolvent, shall take the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors or if any order shall be made for the winding up of the Lessee, or if the Leased Premises shall without the written consent of the Lessor become and remain vacant for a period of fifteen (15) days, or be used by any other persons than such as are entitled to use them under the terms of this Lease, or if the Lessee shall without the written consent of the Lessor abandon or attempt to abandon the Leased Premises or to sell or dispose of goods or chattels of the Lessee or to remove them or any of them from the Leased Premises so that there would not in the event of such abandonment, sale or disposal be sufficient goods on the Leased Premises subject to distress to satisfy the Rent above due or accruing due, then and in every such case the then current month's Rent and the next ensuing three (3) months' Rent shall immediately become due and be paid and the Lessor may re-enter and take possession of the Leased premises as though the Lessee or the servants of the Lessee or any other occupant of the Leased Premises were holding over after the expiration of the Term and the Term shall, at the option of the Lessor, immediately without any notice or opportunity for cure provided to the Lessee, become forfeited and determined, and in every one of the cases above such accelerated Rent shall be recoverable by the Lessor in the same manner as the Rent hereby reserved and if Rent were in arrears and the said option shall be deemed to have been exercised if the Lessor or its agents given notice to the Lessee as provided for herein.

13.05 Lessor May Perform Lessee's Covenants

If the Lessee shall fail to perform any of its covenants or obligations under or in respect of this Lease, the Lessor may from time to time at its discretion, perform or cause to be performed any such covenants or obligations, or any part thereof, and for such purpose may do such things upon or in respect of the Leased Premises or any part thereof as the Lessor may consider requisite or necessary.

All expenses incurred and expenditures made by or on behalf of the Lessor under this Section, together with an administrative fee equal to fifteen (15%) percent thereon, shall be forthwith paid by the Lessee to the Lessor on demand as Additional Rent.

13.06 Waiver of Exemptions from Distress

Despite any applicable Act, legislation or any legal or equitable rule of law: (a) none of the inventory, furniture, equipment or other property at any time owned by the Lessee is exempt from distress; and (b) no lack of compliance with any requirement concerning the day of the week, time of day or night, method of entry, giving of notice, appraising of goods, or anything else, will render any distress unlawful where the Lessee owes arrears of Rent at the time of the distress.

13.07 Remedies Cumulative

No reference to nor exercise of any specific right or remedy by the Lessor will prejudice or preclude the Lessor from exercising or invoking any other remedy in respect thereof, whether allowed at law or expressly provided for in this Lease. No such remedy will be exclusive or dependent upon any other such remedy, but the Lessor may from time to time exercise any one or more of such remedies independently or in combination.

ARTICLE XIV

MISCELLANEOUS

14.01 Overholding

If the Lessee remains in possession of the Leased Premises after the end of the Term and without the execution and delivery of a new lease, there shall be no tacit renewal of this Lease and the Term hereby granted, and the Lessee shall be deemed to be occupying the Leased Premises as a Lessee from month to month at monthly rent payable in advance on the first day of each month equal to the sum of:

- i. one and one half (1 ½) times the Gross Rent payable during the last month of the Term; and
- ii. one-twelfth of the Additional Rent payable by the Lessee for the Lease Year immediately preceding the last Lease Year of the Term;

and otherwise upon the same terms and conditions as are set forth in this Lease, except as to duration of Term, and any right of renewal mutatis mutandis.

14.02 Successors

Schedule “C”

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This Lease applies to the successors and assigns of the Lessor and, if Article XII is complied with, the heirs, executors, administrators and permitted successors and permitted assigns of the Lessee. If there is more than one party named as Lessee, they are jointly and severally liable under this Lease.

14.03 Waiver

Failure by the Lessor to require performance of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the Lessor shall not be deemed to be a waiver of any preceding breach of the Lessee of any term, covenant or condition of this Lease, other than the failure of the Lessee to pay the particular rent so accepted, regardless of the Lessor’s knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term or condition of this Lease shall be deemed to have been waived by the Lessor, unless such waiver be in writing by the Lessor.

14.04 Accord and Satisfaction

No payment by the Lessee or receipt by the Lessor of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement or any cheque or any letter accompanying any cheque or payment as Rent be deemed an accord and satisfaction, and the Lessor may accept such cheque or payment without prejudice to the Lessor’s right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

14.05 Entire Agreement

This Lease sets forth all the covenants, promises, agreements, conditions and understandings between the Lessor and the Lessee concerning the Leased Premises and there are no covenants, promises, agreements, conditions or representations, either oral or written, between them other than are herein and in the said schedules and rider, if any, set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Lessor or the Lessee unless reduced to writing and signed by them.

14.06 No Partnership

The Lessor does not, in any way or for any purpose, become a partner of the Lessee in the conduct of its business, or otherwise or joint venturer or a member of a joint enterprise with the Lessee.

14.07 Force Majeure

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labour troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding anything herein contained, the provisions of this Section 14.07 shall not operate to excuse the Lessee from the prompt payment of Gross Rent, Additional Rent or any other payments required by the terms of this Lease, nor entitle the Lessee to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

14.08 Notices

Any notice herein provided or permitted to be given by the Lessee to the Lessor shall be sufficiently given if delivered personally to the Common Clerk, or if transmitted by telecopier or if mailed in Canada, registered and postage prepaid, addressed to the Lessor at: C/O The Common Clerk, The City of Saint John, P. O. Box 1971, 15 Market Square, Saint John, New Brunswick, E2L 4L1, with a copy to Facility Management Division, The City of Saint John, P. O. Box 1971, 15 Market Square, Saint John, New Brunswick, E2L 4L1, and any notice herein provided or permitted to be given by the Lessor to the Lessee shall be sufficiently given if delivered personally to the party being given such notice or to a responsible employee of the party being given such notice, or if transmitted by telecopier or if mailed in Canada, **registered and postage prepaid, addressed to the Lessee at 16 Cove Crescent, Rothesay, N.B., E2E 4Y5** Any such notice given as aforesaid shall be conclusively deemed to have been given on the day on which such notice is delivered or transmitted or on the third day that there is postal delivery following the day on which such notice is mailed, as the case may be. Either party may at any time give notice in writing to the other of any change of address of the party given such notice and from and after the giving of such notice the address therein specified shall be deemed to include any request, statement or other writing in this Lease provided or permitted to be given by the Lessor to the Lessee or by the Lessee to the Lessor. If there is more than one party named as Lessee, notice to one shall be deemed sufficient as notice to all.

14.09 Place for Payment of Rent

Schedule “C”

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The Lessee shall pay the Rent. Including all Additional Rent, at the office of the Lessor specified in Section 14.08 or as such place or places as the Lessor may designate from time to time by notice in writing: currently to the Cashier’s Office, City Hall, P. O. Box 1971, 15 Market Square, Saint John, New Brunswick, E2L 4L1.

14.10 Approval in Writing

Wherever the Lessor’s consent is required to be given hereunder or wherever the Lessor must approve any act or performance by the Lessee, such consent or approval, as the case may be, shall be given in writing by the Lessor before same and shall be deemed to be effective.

14.11 Governing Law

The Lease is to be governed by and construed according to the laws of the Province of New Brunswick.

14.12 Captions and Section Numbers

The captions, section numbers and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles or of this Lease, nor in any way affect this Lease.

14.13 Partial Invalidity

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease and/or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be separately valid and enforceable to the fullest extent permitted by law.

14.14 No Option

The submission of this Lease for examination does not constitute a reservation of or option for the Leased Premises and this Lease becomes effective as a Lease only upon execution and delivery thereof by the Lessor and the Lessee.

14.15 Time To Be of the Essence

Time shall be of the essence of this Lease.

14.16 Quiet Enjoyment

The Lessor covenants with the Lessee for quiet enjoyment.

14.17 Riders and Schedules

Schedules attached hereto form part of this Lease.

14.18 Basement Storage Space

Where the Leased Premises includes any area of basement storage space, notwithstanding any provision herein contained, the Lessee acknowledges and agrees that water and sewer lines are located within the basement area of the Leased Premises and that there is a possibility that water and/or sewage may escape from the lines as a result of breakage, blockage, overflow or other cause, and may cause damage to anything stored in the basement area of the Leased Premises. The Lessee acknowledges and agrees that if it chooses to store anything, whether belonging to it or to others, in the basement area of the Leased Premises, it does so at its own risk and the Lessee hereby releases and indemnifies and saves harmless the Lessor from and against any and all manner of actions, suits, damages, loss, costs, claims and demands of any nature whatsoever relating to or arising out of breakage, blockage, overflow or other problem of the water or sewage lines.

COUNCIL REPORT

| | |
|--------------|---|
| M&C No. | 2019-228 |
| Report Date | September 04, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Transportation and Environment Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: Public Information Session: Cedarpoint Anchorage Improvements

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|----------------|----------------------------------|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| | <i>Michael Hugenholtz</i> | <i>John Collin</i> |

RECOMMENDATION

It is recommended that this report be received and filed.

EXECUTIVE SUMMARY

The purpose of this report is to respond to some concerns raised during a recent Public Information Session on the improvements planned for the Cedarpoint Anchorage neighbourhood and to update Council on the status of the project.

REPORT

The 2019 Asphalt Resurfacing program includes a number of streets in the Cedarpoint Anchorage neighbourhood. The scope of this work includes asphalt resurfacing on most of Cedarwood Drive, Birchdale Crescent and a portion of Rivershore Drive. Along Cedarwood Drive the scope also includes the construction of a traffic circle to act as a traffic-calming measure, as well as a paved 1.5 m wide pedestrian passage which will be separated from traffic by a painted line and rumble strips.

This work is in response to citizen concerns about the appearance of the subdivision, and issues with vehicles speeding and the lack of safe pedestrian passage.

This is a significant project that will have an impact on the traffic flow through the local area during construction. It is for this reason that staff held a Public

Information Session to allow local residents an opportunity to view the project design drawings, ask questions and give their feedback.

After this meeting a letter was circulated to Council members outlining several concerns about the project. While this report is not intended to respond to each point raised by Ms. Barrett, staff felt it important to respond to some of the issues as follows:

Cost of Traffic Circle and Possible Alternatives

The estimated cost of the traffic circle including detailed design and construction is in the order of \$60,000 plus HST. A traffic circle in this location will help calm traffic through the area thus addressing one of the main issues of concern for the residents. Due to challenges with existing grades and the limited right-of-way available, a second traffic circle that was originally contemplated further down Cedarwood Drive was not feasible. It is staff's intent to monitor traffic speeds after construction of the traffic circle to determine if further traffic-calming measures are warranted. The analysis and design of the proposed work was carried out according to the City's *Traffic Calming Policy* (attached).

There are other potential measures considered including speed bumps/humps, street narrowing, and speed feedback signs. Each of these other measures have varying costs and pros and cons. The particular circumstances on Cedarwood Drive (grade, numerous driveways, little truck traffic) indicated that a traffic circle would be effective. The installation of traffic circles is a proven method of traffic-calming and is used by many of our neighbouring municipalities. It is anticipated that these will be used more widely in upcoming years.

Stakeholder Engagement

The letter suggests a lack of consultation with the neighbours – this is not true. This latest meeting was to communicate the details of the plan, and impacts during construction. It was preceeded however by a previous public meeting with the neighbourhood in May 17, 2017 where the plan and timing for the work currently underway was presented. There were other meetings with residents generally to discuss issues in the area, public hearings associated with the re-zoning application of the future phases of the subdivision in 2017, and specific consultation on drainage challenges on Leeward Lane. During these discussions the main concerns of the residents around vehicle speeds and safe pedestrian passage were made clear.

The work currently underway is in line with what was communicated in open session of Council on November 28, 2016.

Snowplowing

There are no anticipated impacts to snow-clearing as a result of this traffic circle, contrary to what is suggested in the letter.

ATTACHMENTS

M&C 2016-276 Cedarpoint Anchorage Neighbourhood – Plan for Resurfacing
City of Saint John Traffic Calming Policy

COUNCIL REPORT

| | |
|--------------|---|
| M&C No. | 2016-276 |
| Report Date | November 22, 2016 |
| Meeting Date | November 28, 2016 |
| Service Area | Transportation and Environment Services |

His Worship Mayor Don Darling and Members of Common Council:

SUBJECT: 228 - Attachment A - 2016-276 - Cedarpoint Anchorage Plan for Resurfacing.docx

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|----------------------------------|----------------------------------|--------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Michael Hugenholtz</i> | <i>Michael Hugenholtz</i> | <i>Jeff Trail</i> |

RECOMMENDATION

City staff recommends that this report be received and filed.

EXECUTIVE SUMMARY

Cedarpoint Anchorage was built to a rural standard with open ditches, overhead wiring and no curb and sidewalk. There have been numerous requests over the years for extensive upgrades to the construction standard of the streets in this area. The purpose of this report is to seek Common Council's support for the proposed plan for resurfacing the streets in this neighbourhood which will also address some of the concerns of the residents with respect to traffic calming and safe pedestrian passage.

PREVIOUS RESOLUTION

N/A

STRATEGIC ALIGNMENT

This matter aligns with the Council Priority of Sustainable Infrastructure.

REPORT

The subdivision has asphalt streets, gravel shoulders, open ditches and culverts to handle local road drainage, and overhead utilities. This infrastructure is consistent with the development standards for the Serviced Suburban Residential (RSS) Zone.

Streets in this neighbourhood will be scheduled for regular renewal in the upcoming years. This represents an opportunity to address some of the other concerns of residents at the same time including stormwater runoff, traffic calming and safe pedestrian passage.

Based on the condition of the streets currently staff anticipate that in 2019 (subject to budget support) the following street sections will be included in the annual asphalt resurfacing program: Cedarwood Drive to from Woodward Avenue to Civic #102, Rivershore Drive from Cedarwood to Whitetail, Birchdale from Cedarwood to Whitetail. In conjunction with the street resurfacing the work will include proper grading and reinstatement of the gravel shoulders to allow for water runoff to reach the ditches.

In addition the work on Cedarwood Drive will incorporate features intended to calm traffic and allow for safer pedestrian passage (refer to attached figure 1 as an illustration):

- A centerline and two white sidelines will be painted to delineate driving lanes
- A 1.5m wide pathway will be created on one side of the street to allow for safe pedestrian passage
- 'Rumble strips' will be milled into the asphalt surface to provide some additional separation of pedestrian and vehicle traffic
- At least one traffic circle will be installed in lieu of the existing stop sign to slow vehicle traffic through the area

Future years will see additional streets in the neighbourhood resurfaced as they reach the end of their effective service life.

Between now and 2019 maintenance work is required throughout the neighbourhood, but particularly along Cedarwood Drive at the entrance. As is typical in the area sod has been placed up to the edge of the asphalt and the built-up road shoulders are preventing the water runoff from reaching the ditches. This is leading to washouts along the edge of the roadway and deterioration of the asphalt edge.

Staff propose to address some of the worst areas through regular maintenance in the 2017 construction season and beyond. In general this work will involve grading off of the sod from the road shoulders and clearing the ditches as required to ensure stormwater runoff can be properly managed. It should be noted that this approach will not be embraced by all residents but is necessary when considering the overall good of the neighbourhood.

There have been conflicting accounts of what the residents in the area are seeking, and it is not clear if they are aware of what is currently being proposed by staff. Communication is key to ensuring that residents' concerns are incorporated into any new investments in the area. Homeowners also need to be aware of the impact of some of the unauthorized modifications to the public right of way.

Staff suggest that a meeting be held with local residents and interested members of Council to communicate the planned work as outlined above, and the plan for ongoing regular maintenance in the interim. This will allow residents to communicate any particular concerns about the planned course of action. If changes to the recommended approach are warranted staff will then report back to Council.

SERVICE AND FINANCIAL OUTCOMES

The resurfacing work proposed for the streets in this neighbourhood is part of the annual asphalt resurfacing program and as such are planned expenditures. Additional work to incorporate a pedestrian lane and traffic circles represent only a moderate incremental cost.

Resurfacing of the asphalt roadway combined with the reinstatement of the gravel shoulders will result in an improved appearance and will address the major issues of shoulder washouts. In addition the other elements will calm vehicle traffic through the area and improve pedestrian safety.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

This report largely builds upon previous work on this file including discussions with the residents and a thorough review of various options. It also takes into account previous discussions with Council.

ATTACHMENTS

Figure 1: Illustration of Proposed Road Standard for Cedarwood Drive



Figure 1: Proposed Road Standard for Cedarwood Drive



SAINT JOHN

CITY OF SAINT JOHN TRAFFIC CALMING POLICY

VERSION: 1.0
April 10, 2012



Pedestrians, Cyclists and Motorists Sharing Street Spaces

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INTRODUCTION

Neighbourhood streets attempt to serve two roles. Firstly, these are used to move vehicle traffic to and from homes. Some streets are designated as Arterial or Collector streets and are meant to move larger volumes of vehicle traffic, sometimes at the expense of separating a neighbourhood. Other streets designated as Local carry fewer vehicles. Secondly, many streets are integral parts of a neighbourhood, used by children and families for cycling, walking and other community activities. Although these two street functions can sometimes conflict, ultimately both must be satisfied. To this end, special steps may sometimes need to be taken to regain an appropriate balance through an overall City of Saint John Traffic Calming Policy and a specific Traffic Calming Plan for a neighbourhood.

Traffic Calming, as defined by the Institute of Transportation Engineers, is *"the combination of mainly physical measures that reduce the negative effects of motor vehicle use, alter driver behavior and improve conditions for non-motorized street users."*

POLICY GOAL

The goal of this Traffic Calming Policy is to reduce vehicular traffic speed on City streets to within the posted speed limit and/or reduce vehicle traffic volume on a Local street to 1000 vehicles per day or less to improve community and road users' safety.

POLICY OBJECTIVES

The goal of this Traffic Calming Policy is supported with the following objectives:

1. Consider a Traffic Calming Plan when there is measured evidence of excessive vehicle speed, traffic volumes higher than levels typically acceptable for a neighbourhood street, or in combination with potential conflict between pedestrians and motorists.
2. Prioritize implementation of Traffic Calming Plans via criteria identified herein by recognizing that demand for such plans could exceed available resources,
3. Coordinate implementation of Traffic Calming Plans in conjunction with the Neighbourhood Planning process established in PlanSJ or pre-planned Capital projects where possible,
4. Ensure input on a Traffic Calming Plan is received from the neighbourhood as a whole,
5. Obtain input on a Traffic Calming Plan from Saint John Transit and the three Emergency Services,
6. Use sound engineering judgment and industry best practices, such as the Transportation Association of Canada's "Canadian Guide to Neighbourhood Traffic Calming" (TAC's Guide) in developing Traffic Calming Measures (described later in document) to be included as part of an overall Plan,

7. Install Multi-Way Stop intersections where there are collision problems or traffic flow improvement opportunities and where the installation of the multi-way stop is warranted based on sound engineering criteria and judgment but not as a solution to a traffic speed problem, and
8. Evaluate the performance of implemented Traffic Calming measures to continuously improve the Policy and future Plans.

GUIDING PRINCIPLE

All neighbourhoods that request Traffic Calming Plans shall be treated fairly, equitably and transparently through a consistently applied **Traffic Calming Policy**.

TRAFFIC CALMING PLAN IMPLEMENTATION PROCESS

Each Traffic Calming Plan will follow the same process:



The remainder of this Policy document describes each step in this process.

FULFILL COMMUNITY’S EXPECTATION OF A BALANCED USE OF CITY STREETS

Through this Policy and the investigation and development of each Traffic Calming Plan, the community’s expectation and understanding of a balanced use of City streets is respected.

FOLLOW TRAFFIC CALMING POLICY

As such, when there is a concern of higher than desirable vehicle traffic speed or volume on a street, or a concern about potential conflict between pedestrians and motorists, this Traffic Calming Policy provides a consistent and equitable avenue to investigate such a concern and mitigate it if required.

IMPLEMENT PROACTIVE TRANSPORTATION PLANNING

The most effective means of Traffic Calming is a proactive approach when a residential or other development is in its initial planning stages. Potential vehicle traffic speed or volume issues can be prevented before subdivisions and neighbourhoods are constructed through effective planning and design. A Municipal Plan that identifies the strong inter-relationship between land development and the transportation network is key in this regard. To that end:

It is vital and considered policy that potential vehicle traffic speed or volume issues are considered and mitigated during the planning stage of a residential or other development.

TRIGGER OPPORTUNITY FOR POTENTIAL TRAFFIC CALMING PLAN

At times, proactive land development planning cannot go far enough, resulting in a potential need for a Traffic Calming Plan. An opportunity for such a Plan can be triggered in one of four ways, with each opportunity documented in the City’s Work Request system:

1. Request from citizen(s) of a neighbourhood,
2. Inclusion within an overall Neighbourhood Plan resulting from the City’s Municipal Plan (PlanSJ),
3. Inclusion within a planned Capital project, or
4. Request from the Saint John Police Force.

MEASURE TRAFFIC SPEED AND/OR VOLUME

Regardless of the means by which a potential Traffic Calming Plan is triggered, measured evidence of high speed and/or volume is required to justify the investment of resources required to develop and implement a Traffic Calming Plan. Streets are designed to carry an appropriate volume of vehicle traffic and those vehicles are permitted to drive up to (but not over) the posted speed limit. Investing resources where there is no measured problem impedes finding solutions where real problems exist.

A traffic survey, using specialized equipment to measure speed and/or volume of the vehicle traffic, shall be completed on behalf of the Traffic Engineer. The results of this survey shall be analyzed and one of the three following criteria must be satisfied:

Where the neighbourhood is concerned about the speed of vehicle traffic, the average speed of vehicles must be equal to or greater than 2 KM/H below the current or appropriate¹ posted speed limit for the Plan to be considered further.

Where the neighbourhood is concerned about the volume of vehicle traffic on a Local street, there must be more than an average of 1000 vehicles per day counted over the length of the traffic survey for the Plan to be considered further. Traffic Calming Plans will not be considered on Collector or Arterial streets when the concern is vehicle traffic volume as such streets are expected to service higher volumes, including through traffic.

Where the neighbourhood is concerned about conflicts between vehicles and pedestrians, there must be no sidewalks on the street, the street must be classified as Local and either (1) the average speed of vehicles must be equal to or greater than 5 KM/H below the current or appropriate posted speed or (2) there must be more than an average of 500 vehicles per day counted over the length of the traffic survey for the Plan to be considered further.

The requesting citizen, Planning Staff (in the case of a Neighbourhood Plan), Capital project coordinator or Police Force (depending upon the means by which the potential opportunity was triggered) shall be notified of the results of the survey and whether the results indicate the Plan would continue to the next phase in this process based on the above criteria.

PRIORITIZE TRAFFIC CALMING PLAN

The number of Traffic Calming Plans that are warranted to reduce higher than desirable vehicle traffic speed and/or volume is often greater than the number that can be designed and implemented within one year based on existing resources. Criteria are to be used to prioritize each Plan so that the most critical Plans get implemented first. The criteria and point system on the following page are used to weigh and prioritize the list of outstanding Plans:

¹ As determined by the Traffic Engineer, the suitability of the posted speed limit on a street may be reviewed when the concern is vehicle speed. TAC's "Canadian Guide for Establishing Posted Speed Limits" will be referenced in these instances to determine if a more appropriate (than currently posted) speed limit is warranted. In cases where such a review results in a recommended change to the posted speed limit, the new appropriate speed limit will be referenced in the place of the currently posted speed limit against the actual surveyed speeds. The new speed limit will be considered as part of the Traffic Calming Plan and would result in a staff-recommended amendment to the *Traffic By-Law* (to be considered by Common Council). A review of the speed limit is intensive in the traffic engineering resources required to complete the assessment, and therefore this analysis will occur at the discretion of the Traffic Engineer.

| CRITERIA | WEIGHTING |
|---|------------|
| Street is within a Neighbourhood Intensification Area, as defined within the Municipal Plan | 0 or 1 |
| Street has no sidewalks physically separating pedestrians from vehicles | 0 or 1 |
| Stopping sight distance for motorist's view of pedestrians at marked or unmarked crosswalks can be brought within acceptable levels at the posted speed limit | 0 or 1 |
| Street has no painted bike lanes or separated bike trails separating cyclists from vehicles | 0 or 1 |
| Street is within 500 m walking distance from a daycare, pre-school, elementary school or middle school | 0 or 2 |
| Street is within 500 m walking distance from a park, place of worship, hospital, or community centre | 0 or 2 |
| Average speed of vehicles measured is equal to or greater than 5 km/h over the speed limit during the traffic survey | 0 or 1 |
| Over 1500 vehicles per day are counted on a local street during the traffic survey | 0 or 1 |
| TOTAL | /10 |

IDENTIFY TIMING OF PLAN DEVELOPMENT

The timing of development of a Traffic Calming Plan will be influenced by its Priority relative to other Plans, a neighbourhood's willingness to fund the Traffic Calming project, timing of a planned Capital project or timing of an overall Neighbourhood Plan through PlanSJ.

A neighbourhood group can, at their expense, engage an engineering consultant to develop a Traffic Calming Plan based on this Policy. The Traffic and City Engineer shall consider this option in context of this Policy if this avenue was chosen by a neighbourhood group.

A Traffic Calming Plan on a street planned for reconstruction within a Capital project will be developed and implemented as the Capital project timeline unfolds.

A Traffic Calming Plan included within an area encompassing a future Neighbourhood Plan requires coordination with the PlanSJ team:

If development of a Traffic Calming Plan is anticipated to be within 10 years of planned completion of a larger Neighbourhood Plan, a Short Term Phase and a Long Term Phase of the Traffic Calming Plan shall be developed. The Short Term Phase of the Traffic Calming Plan with minor and less costly investments shall be developed and implemented in a time dictated by the Plan’s Priority relative to other Traffic Calming Plans or by a neighbourhood group’s willingness to pay. The Long Term Phase with more significant investment shall be developed and implemented in coordination with the completion of the Neighbourhood Plan.

If development of a Traffic Calming Plan is anticipated to not be within 10 years of planned completion of a larger Neighbourhood Plan, the entire Traffic Calming Plan (Short and/or Long Term Phases) shall be developed and implemented in a time dictated by the Plan’s Priority relative to other Traffic Calming Plans or by a neighbourhood group’s willingness to pay.

In all other cases, Traffic Calming Plans shall be developed and implemented in a time dictated by the Plan’s Priority relative to other Traffic Calming Plans.

DEVELOP TRAFFIC CALMING MEASURES

When it is time to develop the Traffic Calming Plan, street-specific Traffic Calming Measures will be developed by the Traffic Engineer, Capital Engineering (in the case of a pre-planned Capital project), or an engineering consultant engaged by a neighbourhood group. Measures used will be unique to the differing issues of each neighbourhood. Given the documented effectiveness, physical traffic calming measures will be incorporated into most Traffic Calming Plans, with support of other steps such as signage enhancements. Although a wide range of physical and other measures are available, including those detailed in TAC’s Guide, the following will be generally given consideration first:

Speed Limit Enforcement

The Police Force enforces speed limits and other traffic regulations. Enforcement along busier arterial streets is typically given priority, limiting availability of resources on neighbourhood streets. Speed limit enforcement is considered a short term solution.

Land Use Planning Opportunities

In some instances vehicles generated by a land use near a neighbourhood street will influence characteristics of traffic on the street. Collaboration with City Planners to identify opportunities to modify land use will occur in these instances.

| | | |
|---|--|---|
| Transportation System Improvements | Excessive volume of cut-through traffic on neighbourhood streets may be diverted back onto arterial or collector streets if motorists perceive the alternative as being a shorter-route option through improvements to traffic flow. | |
| Speed Humps | Speed humps are similar to speed bumps but are wider for speeds expected on a street and can effectively reduce vehicle speed. These cause a vehicle to rise and fall over a portion of a street giving a sense of speed to the motorist when travelling too fast. Variations of the speed hump are possible depending on street type and situations where emergency vehicle speed should not be negatively impacted. |  |
| Raised Crosswalk | Raised crosswalks are similar to speed humps, but are located at crosswalks to both slow vehicle speed and to enhance the visibility of pedestrians to motorists. |  |
| Street Narrowing | Narrowing a street puts roadside features such as curbing, sidewalks, trees, etc. as well as vehicles approaching from the other direction closer to a motorist, causing a motorist to perceive less lateral room to travel and thus to slow down. This measure can be costly. |  |
| Traffic Circle or Roundabout | Traffic Circles and Roundabouts are circular street intersections where vehicles travel counter-clockwise through them until reaching the street they intend to travel. They can improve traffic flow and safety at an intersection. They force vehicles to slow down as they navigate around the circle. Traffic circles, being smaller, can be retrofit into an existing intersection, can be less expensive but both are considerably more expensive than most other options. |  |

Painted White/Yellow Lines

Painting white or yellow lines on a street is an economical alternative to street narrowing. White lines adjacent to the edge of the street and/or a yellow line along its centre create narrowed vehicle travel lanes. The space between the street edge and the white line can also be a bike lane where such facilities are deemed appropriate.



Directional Closure

A directional closure involves converting a street from 2-way to one-way traffic, often with physical changes to one end of the street. This measure is used to reduce vehicle volume.



Change to Posted Speed Limit

Speed limits should reflect the physical characteristics of the street and potential use by other users such as cyclists or pedestrians. The posted speed limit will be reviewed in some cases using TAC's "Canadian Guide for Establishing Posted Speed Limits". Common Council would be asked to consider staff recommended changes on a case-by-case basis.

Amendment to the Traffic By-Law is required – to add subsections 3 and 4 to section 18 and to add Schedule M-3 (30 KM/H Speed Limits) and M-4 (40 KM/H Speed Limits) - as some local streets warrant a 30 KM/H or 40 KM/H posted speed limit as opposed to existing 50 KM/H or higher limits.

Speed Display Signs

Electronic signs that measure and display vehicle speeds provide a visual cue to motorists (to compliment their own speedometer) when travelling over the posted speed limit. These signs could be temporary or permanent, but are costly.



School Zone Signs

In 2007 the Province of New Brunswick amended its *Motor Vehicle Act* to allow issued fines for speeding in a clearly marked School Zone between the hours of 7:30 a.m. and 4:00 p.m. to be doubled. Within a municipality the speed limit in a School Zone is also 50 KM/H within these times regardless of the posted limit on the street outside the Zone. Such penalties seek to discourage speeding in School Zones where there are young children. A clearly marked School Zone requires florescent yellow-green "School Zone" and "School Zone End" signs. These zones also need to be listed in the City's *Traffic By-Law*. In appropriate instances a reduced speed limit for the School Zone would also be considered. Common Council would be asked to consider staff recommended changes on a case-by-case basis.



TAC has guidelines and will be referenced when establishing the location of School Zones.

Amendment to the Traffic By-Law is required – to amend Section 23 and to add Schedule S (School Zones) and S-1 (School Zones having a 40 km/h rate of speed).

Brighter Crosswalk Signs

Florescent crosswalk signs replace standard signs in school areas and at some busier crosswalks. Such signs may be placed where crosswalks are part of a Traffic Calming Plan only in very limited instances where a heightened awareness of a crosswalk by motorists is required.



Pedestrian or Traffic Signals

Signals that give clear right-of-way to pedestrians and motorists are suggested in instances outlined by TAC guidelines and may be considered as part of an overall Traffic Calming Plan.



Multi-Way Stop Intersections

Installation of Stop signs at all approaches of an intersection can be effective where there is a history of collisions associated with turning vehicles and where installation of the signs are warranted based on engineering criteria and judgment. Traffic flow improvement is possible in some cases. A different TAC guide² provides warrants in these situations. Multi-Way Stop intersections **will not** be considered as a solution to a vehicle traffic speed problem because of their documented ineffectiveness.



SEEK INPUT FROM EMERGENCY AND TRANSIT SERVICES

Physical traffic calming measures that reduce the speed of vehicle traffic may also reduce the speed and response time of Emergency Service vehicles. Physical measures may also impact Transit vehicles. The proposed Traffic Calming Measures shall be distributed to the Emergency Services (Fire, Police and Ambulance) as well as to Saint John Transit for input with potential changes to the proposed measures made based on input received from these services. Some measures, such as speed humps with open wheel paths for the wider Emergency vehicles, can be considered for example. Ultimately, the overall safety of a neighbourhood needs to be considered by balancing a need to reduce vehicle speed with ensuring Emergency Services can respond to an incident within an acceptable time frame and with operational requirements of Saint John Transit.

CONDUCT NEIGHBOURHOOD MEETING

A neighbourhood meeting will be chaired jointly by the Traffic Engineer (or his/her designate) and the citizen who raised the original concern (or that person's designate), and be supported by the Saint John Police Force. The primary purposes of this meeting are:

1. To educate the neighbourhood of the *Traffic Calming Policy* and the benefits and limitations of Traffic Calming plans and measures,
2. Clarify the concerns of the neighbourhood, and
3. Review the intended Traffic Calming Measures with the neighbourhood to ensure they address the concerns where possible and seek support for the intended measures or obtain suggestions for alternate measures.

² Manual of Uniform Traffic Control Devices for Canada

In the case of an approved Capital project, this neighbourhood meeting will be coordinated by the project coordinator as part of a larger project meeting. In the case of a Traffic Calming Plan being developed through funding by a neighbourhood group, the engineering consultant shall coordinate the meeting with the neighbourhood and City's Traffic Engineer. In the case where implementation of a Traffic Calming Plan is within ten years of a proposed Neighbourhood Plan, the discussion of more significant and costly traffic calming measures (Long Term Phase) shall be incorporated into community meetings for the Neighbourhood Plan.

REFINE PLAN WITH NEIGHBOURHOOD INPUT

The Traffic Engineer, Capital project coordinator, or consultant will consider adjustments to the Traffic Calming plan and/or measures based on the feedback at the Neighbourhood Meeting where possible.

COMMON COUNCIL CONSIDERS APPROVAL OF PLAN WHERE REQUIRED

Some Traffic Calming Plans, including less costly measures in a Short Term Phase of a Plan, can be implemented within the scope of the Operating budget. In such a case City staff will schedule completion of the Plan. Isolated physical measures such as speed humps, raised crosswalks, and painted lines, as well as posting of speed limit, speed display and School Zone signs are often within the scope of the Operating budget.

In other cases, where the Plan for a neighbourhood is outside the scope of the Operating budget, staff will present to Common Council for consideration of approving the plan, including the resources required for implementation of the Plan within a future year Transportation Capital or Operating budget.

More costly traffic calming measures (Long Term Phase) to be incorporated into a Neighbourhood Plan will follow the approval process of the Neighbourhood Plan.

IMPLEMENT PLAN

The Traffic Calming measures are implemented within the neighbourhood when the Plan is approved and/or appropriate level of resources is available.

MEASURE PERFORMANCE OF PLAN

Measuring the performance of implemented Traffic Calming Plans is key to assuring success and to learn toward continuous improvement of future Plans, as well as for updates to this *Traffic Calming Policy*. Key Performance Measures to be considered shall include:

1. Comparison of the vehicle traffic speed and/or volume before and after the implementation;
and
2. Cost of the design and installation of an implemented Plan.

UPDATE TRAFFIC CALMING POLICY

This policy is a living document; to be updated periodically, as required through opportunities learned in developing a Traffic Calming Plan or other strategic plans such as implementation of the Municipal Plan or the Transportation Strategic Plan. Such updates will continuously improve this Policy and subsequent Plans. Recommended policy updates will be presented to Common Council for consideration.

COUNCIL REPORT

| | |
|--------------|--|
| M&C No. | 2019 - 222 |
| Report Date | September 03, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Finance and Administrative Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: City Market Lease with H & S Meats Ltd.

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|---------------------------------|-------------------------------------|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>David Kirkpatrick</i> | <i>Ian Fogan/Kevin Fudge</i> | <i>John Collin</i> |

RECOMMENDATION

1. That the City enter into a Lease for Stall's "No. 12, 13 and 14" in the City Market with H & S Meats Ltd., under the terms and conditions as set out in the Lease submitted with M&C 2019 –222.
2. That the Mayor and Common Clerk be authorized to execute any necessary documents.

EXECUTIVE SUMMARY

City staff and the owner's/operators of H & S Meats Ltd. have reached an agreement that will have the business lease space within Stall's "No. 12, 13 and 14" of the City Market. The term will be for five (5) years, commencing October 1st, 2019 with an option to renew for an additional five (5) years. Rents will be at market value with the first three months of the term being rent free to offset equipment and build out costs, and its up-front investment into the space.

The focus of the business will be a butcher shop, selling meat, poultry, cheeses and dulce.

The lease document as attached is standard and consistent with the leases granted to other tenants in the City Market.

PREVIOUS RESOLUTION

N/A

STRATEGIC ALIGNMENT

Providing for entrepreneur opportunities in the City's Uptown Core which aid in creating a livable community that is vibrant and diverse, while providing an integrated approach to economic development. This opportunity provides citizens with a local butcher shop and the ability to purchase fresh meat and poultry within the South Central Peninsula. This will greatly enhance the existing offerings of the Market by once again offering the Uptown core a full complement of grocery services.

REPORT

City staff has an agreement with a new tenant, H & S Meats Ltd. to operate in Stall's No. 12, 13 and 14 that would commence effective October 1st, 2019. Their sales would be primarily derived from the sale of meat's and poultry to both residential and commercial customers. The initial term is for 5 years with an option to renew for an additional 5 years. There are some renovations required to prepare the space for lease and also some considerable equipment cost to start the business. The attached lease will provide three months' rent free to offset the costs associated with establishing the new business. The lease document is standard and consistent with the leases granted to other tenants in the City Market.

SERVICE AND FINANCIAL OUTCOMES

The operation and presence of H & S Meats Ltd. within the City Market will add to the ethnic vitality offerings in the City's Uptown area. This Lease will generate revenue of approximately \$27,500 of revenue in year one and \$29,600 in revenue by year three.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

Staff of the City Market and Facility Management has provided input into the preparation of this report.

ATTACHMENT

1. Lease Agreement with H & S Meats Ltd.

Form A19
LEASE

Standard Forms of Conveyances Act, S.N.B. 1980, c. S-12, s.2

The parties to this lease are:

The City of Saint John, having its City Hall at 15 Market Square, Saint John, New Brunswick, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick, the "Lessor"

- and -

H and S Meat’s LTD., 18 Gorham Road, Quispamsis, New Brunswick, E2E 4V8 a corporation, registered under the laws of the Province of New Brunswick, “the Lessee”.

The “Rules and Regulations” attached hereto as Schedule “D” and the Form attached hereto as Schedule “D-1” form part of this Lease.

The Lessor leases to the Lessee the premises described in Schedule “A” attached hereto on the following conditions:

| | |
|-----------------------|--|
| Duration: | 5 years |
| Date of Commencement: | _____, 2019 |
| Date of Termination: | _____, 2024 |
| Payment Dates: | First day of each and every month during the term hereof |
| Place of Payment: | Cashier’s Office City Hall Saint John, NB |

This lease contains the covenants and conditions which are attached and set out in Schedule “C”.

DATED _____, 2019.

| | | |
|----------------------------|---|----------------------------|
| SIGNED, SEALED & DELIVERED |) | THE CITY OF SAINT JOHN |
| in the presence of: |) | |
| |) | |
| |) | |
| |) | _____ |
| |) | Mayor |
| |) | |
| |) | |
| |) | _____ |
| |) | Common Clerk |
| |) | |
| |) | Common Council Resolution: |
| |) | _____, 2019 |
| |) | |
| |) | |
| |) | H and S Meat’s Ltd. |
| |) | |
| |) | Per: |
| |) | _____ |
| |) | |
| |) | |
| |) | And: |
| |) | |
| |) | _____ |

SCHEDULE “D”

RULES AND REGULATIONS

1. All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances, designated for such purposes by the Landlord.
2. The delivery or shipping of merchandise, supplies and fixtures to and from the Leased Premises shall be subject to such controls as in the judgment of the Landlord are necessary for the proper operation of the Leased Premises and/or the City Market.
3. All garbage and refuse shall be kept in the kind of containers specified by the Landlord and shall not be burned in or about the Leased Premises.
4. No radio, television, telegraphic or telephone or similar device and no water pipe, gas pipe or electric wire shall be installed or connected without obtaining in each instance the written consent of the Landlord. All such connections shall be installed in accordance with the Landlord's direction and without such direction no boring or cutting for wires or pipes shall be permitted.
5. The Tenant will be required to remain open for business as follows:
 - a. Stalls shall be open for business at all times while the market is open to the public.
 - b. Year round stands shall be open for business at all times while the market is open to the public.
6. The plumbing facilities shall not be used for any other purpose than that for which they are intended, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by the Tenant.
7. The Tenant shall use at the cost of the Tenant a nationally recognized pest extermination contractor.
8. The Tenant, its employees or agents, shall not mark, paint, drill or in any way deface any walls, ceilings, partitions, floors, wood, stone or iron without the written consent of the Landlord.
9. Except as permitted in the lease to which these rules and regulations are annexed, the Tenant shall not permit any cooking in the Leased Premises without the written consent of the Landlord.
10. No aisle, sidewalk, entry, passageway, elevator or staircase shall be obstructed or used by the Tenant, its officers, agents, servants, employees, contractors, customers, invitees or licensees for any purpose other than ingress to and egress from the Leased Premises.
11. The Tenant, its officers, agents, servants, employees, contractors, customers, invitees or licensees shall not bring in or take out, position, construct, install or move any safe or other heavy equipment or furniture without first obtaining the consent in writing of the Landlord. In giving such consent, the Landlord shall have the right in its sole discretion, to prescribe the weight permitted and the position thereof, and the use and design of planks, skids or platforms to distribute the weight thereof. All damage done to the City Market by moving or using any such safe, heavy equipment or furniture shall be repaired at the expense of the Tenant. The moving of all equipment and the furniture shall occur only during those hours when the City Market shall not be open for business or any other time consented to by the landlord.
12. All persons entering and leaving the building in which the Leased Premises are situated must do so during hours the City Market is staffed by City Market employees. The Landlord at its sole discretion may determine the hours the City Market is staffed. Tenants shall register in books if so required by the Landlord when accessing the Market “after Market hours”. The Landlord is under no responsibility for failure to enforce this rule.
13. The Tenant shall not place or cause to be placed any additional locks upon any doors of the Leased Premises without the approval of the Landlord and subject to any conditions imposed by the Landlord.
14. No one shall use the Leased Premises for sleeping apartments or residential purposes, or for the storage of personal effects or articles other than those required for the purposes permitted by the lease to which these rules and regulations are annexed.

SCHEDULE “D”

RULES AND REGULATIONS

Page 2

15. Subject to the Landlord’s providing such service, the Tenant shall permit window cleaners to clean the windows of the Leased Premises from time to time and at reasonable times.
16. Any hand trucks, carryalls or similar appliances used in any building in the Shopping Centre shall be equipped with rubber tires, side guards and such other safeguards as the Landlord shall require.
17. No animals or birds shall be brought into the Leased Premises except as permitted by the lease to which these rules and regulations are annexed.
18. Except as permitted in the lease to which these rules and regulations are annexed, the Tenant shall not permit the delivery of any food or beverage to the Leased Premises without the approval of the Landlord.
19. The Tenant shall not solicit business in the common areas or distribute any handbills or other advertising matter in the common areas or in automobiles parked in the parking areas.
20. The Tenant may only sell merchandise that is approved by the Landlord through their lease or otherwise.
21. The Tenant shall not keep or display any merchandise on or otherwise obstruct the common areas adjacent to the Leased Premises.
22. The Tenant shall not use or permit any of the Leased Premises to be used in such a manner as to cause annoying noises or vibrations or offensive odours.
23. The Tenant is responsible to remove garbage from their premises and deliver to the compactor designated by the Landlord and to place the garbage in the compactor.
24. A set of plans must be presented and the approval must be given by the landlord for any improvements or painting, etc. to the stands (including signs).
25. Merchandise, displays, shelves, etc., are not to exceed the height of the bottom meat hook bars on each stand.
26. No solid dividers are to be placed between the top and bottom meat hook bars.
27. Displays underneath the stands must be set up 6” off the floor on legs or wheels so the floor can be swept and washed down properly.
28. Covers are not to be placed over merchandise on stands without the prior approval of the Landlord.
29. Signage is to be in keeping with the historic character of the City Market and must meet the following criteria:

Materials: Wood and metal are considered to be appropriate materials. Plastic may be used provided that it looks like one of the acceptable materials. Internally-illuminated plastic faced box signs will not be acceptable;

Number of Signs: Each tenancy will be permitted one bench-top sign on each bench (7’-0” length), or one projecting sign on each aisle-side that identifies the business by name and type;

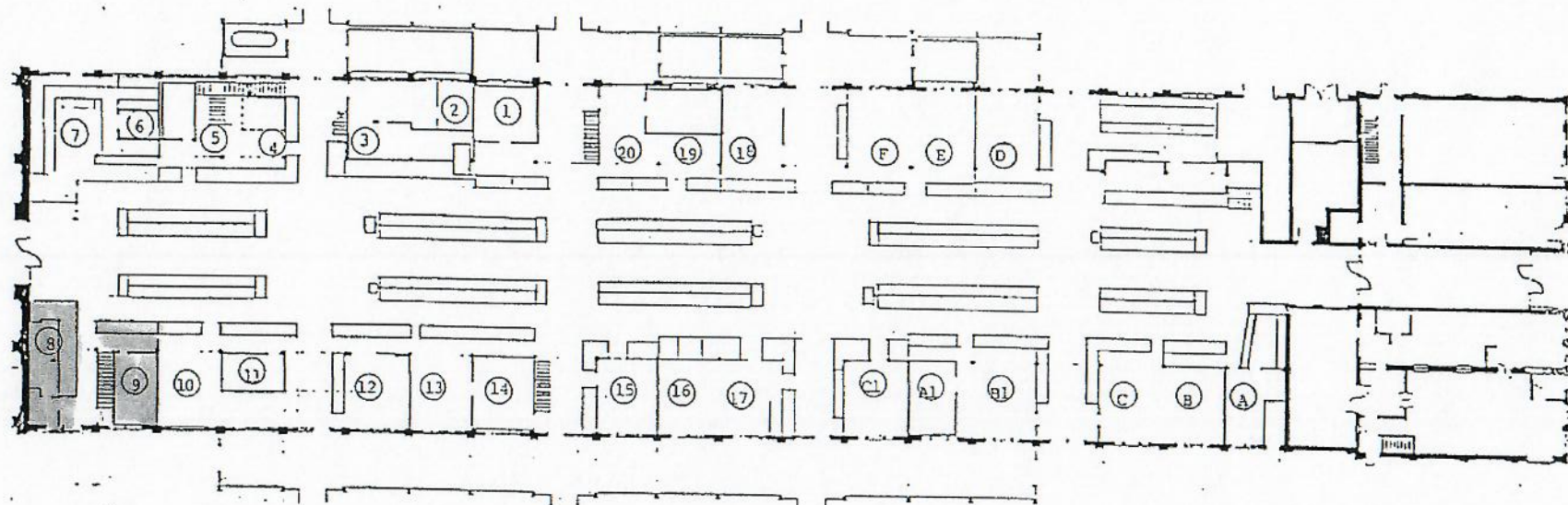
Bench-top Signs: These signs are the preferred primary form of signage. They must be located 1 to 2 inches above the top rail of the bench, and should display the business name. They will consist of a 8” high by 6’-0” long narrow band of material with the lettering printed, painted, composed of individual raised letters, or lettering cut into the material and painted a contrasting colour. The rear may not be used for signage over another tenancy;

Projecting Signs: Projecting signs may be used and shall be constructed as two-sided signs. They may only be located at a bench post, and must be rigidly fastened in place. They shall be vertical in proportion. The maximum size for projecting signs shall be 18” high x 12” wide. Only one per tenancy per aisle side shall be permitted as Business identifications;

Lighted Signs: Not permitted;

Temporary Signs: Any number of signs advertising goods for sale, specials, etc. shall be permitted. They may not exceed 8.5” x 11” in size, and must not excessively obscure the view through the bench between the first and last rail above the bench.

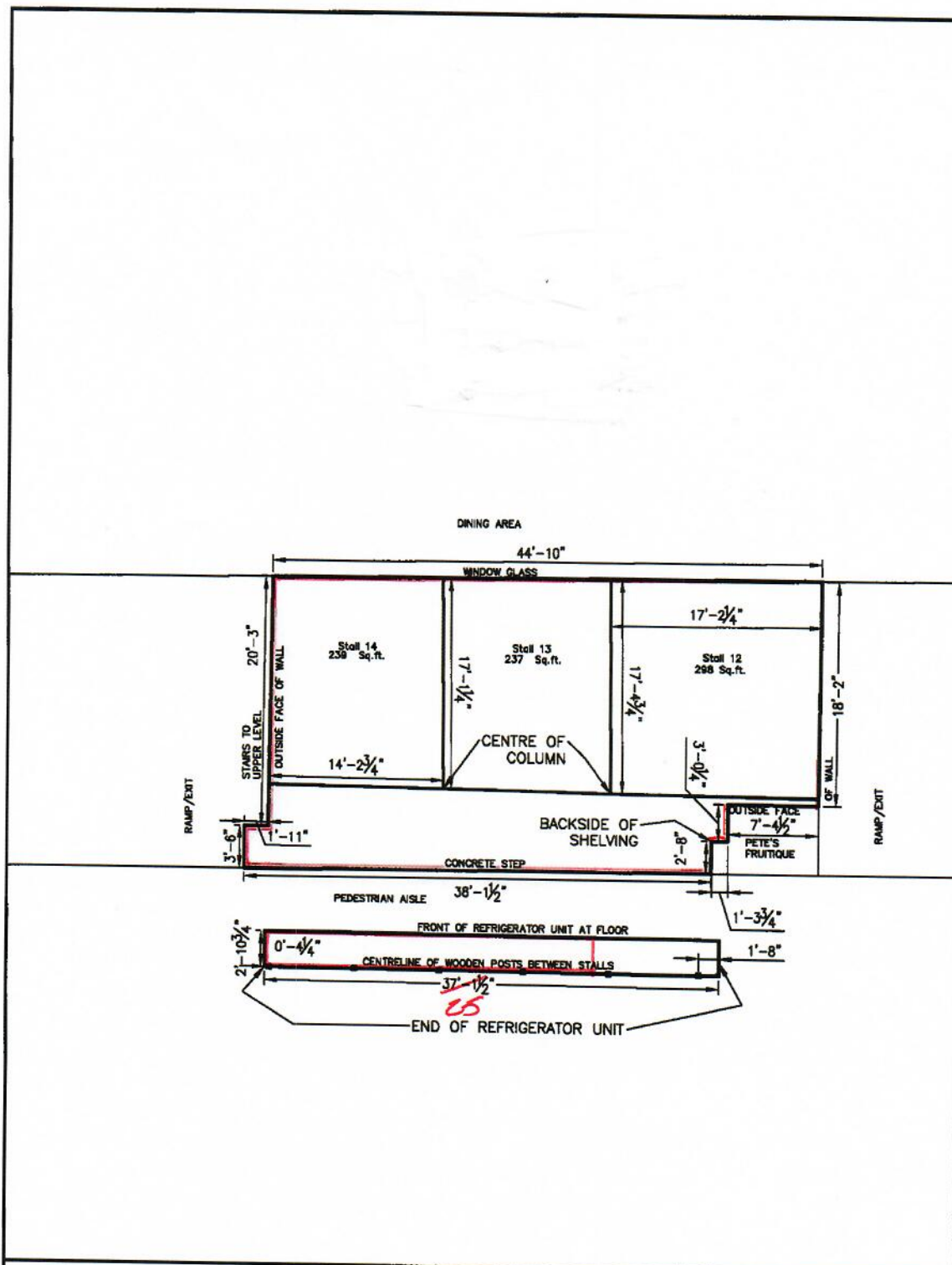
GERMAIN STREET



GROUND FLOOR

THE CITY MARKET

Saint John, N.B.



Name and Address of Space: **Dean's Meats**
City Market, Stalls 12, 13 & 14
Saint John, N.B.

I hereby certify that the rentable area as shown above and described
in the lease agreement is:

| Ground Floor | Aisle Space | Upper Level |
|------------------|-----------------|----------------|
| 1029 Square Feet | 108 Square Feet | 72 Square Feet |

Date: July 24, 2012
Scale: 1"=10'

HUGHES SURVEYS & CONSULTANTS INC.
Saint John, N.B.

Job Number: Y12-227 CAD Drawing: DEANS_MEATS Date: 2012/08/08 Drawn By: MJC Area: G/08-T2C,SE(1)

**LEASE FOR STALL SPACE
CITY MARKET
H & S Meats Ltd.**

SCHEDULE “C”

ARTICLE I

DEFINITIONS

1.01 Definitions

In this lease:

- a) “Additional Rent” means all and any monies required to be paid by the Lessee to the Lessor under or pursuant to the terms of this Lease, save only for Gross Rent;
- b) “Architect” shall mean the architect from time to time named by the Lessor or at the option of the Lessor, the Lessor’s general contractor. Any certificate provided by the Architect and called for by the terms of this Lease shall be final and binding on the parties hereto;
- c) “Commencement Date” means a date determined in accordance with the provisions of Section 2.03;
- d) “Common Areas” means those areas, facilities, utilities, improvements, equipment and installations in the City Market which from time to time are not designated or intended by the Lessor to be leased to tenants of the City Market, and those areas, facilities, utilities, improvements, equipment and installations which serve or are for the benefit of the City Market whether or not located in, adjacent to or near the City Market and which are designated from time to time by the Lessor as part of the Common Areas. Without limiting the generality of the foregoing, Common Areas includes all parking areas, all entrances and exits thereto and all structural elements thereof, access roads, truck courts, driveways, truckways, delivery passages, the roof, exterior weather walls, exterior and interior structural elements and bearing walls in the building and improvements comprising the City Market, package pick-up stations, loading and related areas, pedestrian stairways, ramps, electrical, telephone, meter, valve, mechanical, mail storage service and janitor rooms and galleries, fire preventions, security and communication systems, columns, pipes, electrical, plumbing, drainage, any central system for the provision of heating, ventilating or air conditioning to leaseable premises or any enclosed Common Areas and all other installations, equipment or services located therein or related thereto as well as the structures housing installations, including but not limited to all open and enclosed malls, courts and arcades, public seating and service areas, corridors, furniture, first aid and/or information stations, auditoria, conference rooms, nurseries, childcare play areas and related kitchen and storage facilities, escalators, elevators, public washrooms, music systems and any atrium seating/food court;
- e) “C.P.I.” means the Consumer Price Index (All Items) for Canada (or any index published in substitution for the Consumer Price Index or any other replacement index reasonably designated by the Lessor, if it is no longer published) published by Statistics Canada (or by any successor thereof or any other governmental agency, including a provincial agency);
- f) “Atrium Seating/Food Court” means those portions of the Common Areas designated by the Lessor from time to time for use in support of the operations of any group of premises providing quick food service to customers of the City Market and includes, without limiting the generality of the foregoing, public table and seating areas, waste collection facilities and other areas, facilities and equipment intended for such use;
- g) “HST” means harmonized sales taxes, value-added taxes, multi-stage taxes, business transfer taxes or other similar taxes however they are characterized and any taxes in lieu thereof;
- h) “Hazardous Substances” means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, PCB’s or any other substances or materials that are declared or defined to be hazardous, toxic, contaminants or pollutants in or pursuant to any applicable federal, provincial or municipal statute, by-law or regulation;

- i) “Lessor” includes the Lessor and its successors and assigns;
- j) “Lease” means this indenture of lease and includes any riders and schedules hereto and shall also include any agreements entered into which have the effect of amending this indenture from time to time;
- k) “Leased Premises” means the premises leased to the Lessee as referred to and described in Section 2.01 hereof. Save as mentioned below, the boundaries of the Leased Premises shall extend from the top surface of the structural subfloor to the bottom surface of the structural ceiling. If the Leased Premises have no ceiling abutting the demising walls, but rather are open to the ceiling of the City Market building, the boundaries of the Leased Premises extend from the top surface of the structural subfloor to the height of the demising walls;
- l) “Lease Year” shall mean a period of time commencing on **October 1st, 2019** and ending on **September 30th** of the following year. Thereafter Lease Years shall consist of consecutive periods of twelve calendar months ending in each case on **September 30**, save for the last Lease Year of the Term which shall terminate upon the expiration or earlier termination of this Lease, as the case may be.
- m) “Gross Rent” means the annual Gross Rent payable by the Lessee pursuant to Section 3.01;
- n) “Operating Costs” means the total cost and expense incurred in owning, operating, maintaining, managing and administering the City Market and the Common Areas, specifically including without limiting the generality of the foregoing, any capital or place of ownership taxes levied against the Lessor or any owners of the City Market on account of their interest in the City Market, in an amount equitably allocated to the City Market by the Lessor; gardening and landscaping charges; the cost and expenses of taking out the insurance described in Section 9.03; cleaning, snow removal, garbage and waste collection and disposal; lighting, electricity, public utilities, loud speakers, public address and musical broadcasting systems and any telephone answering service used in or serving the City Market, and the cost of electricity and maintenance for any signs designated by the Lessor as part of the Common Areas; policing, security, supervision and traffic control; salaries and benefits of all supervisory and other personnel employed in connection with the City Market and management office rent imputed to the City Market by the Lessor, acting reasonably; Management Fee, the cost of providing additional parking or other Common Areas for the benefit of the City Market, whether such costs be Taxes or other type of costs; the costs and expenses of environmental site reviews and investigations, removal and/or clean-up of Hazardous Substances from the Common Areas; the cost of the rental of any equipment and signs and the costs of supplies used in the maintenance and operation of the City Market and the Common Areas; accounting and audit fees incurred in the preparation of the statements required to be prepared and supplied by the Lessor under the terms of this Lease; heating, ventilating and air conditioning of the Common Areas; all repairs and replacements to and maintenance and operation of the City Market and the Common Areas; depreciation or amortization of the costs, including repair and replacement, of all maintenance and cleaning equipment, master utility meters, and all other fixtures, equipment, and facilities serving or comprising the City Market or the Common Areas; which are not charged fully in the Lease Year in which they are incurred, from the earlier of the date when the cost was incurred or the Commencement Date, at rates on the various items determined from time to time by the Lessor in accordance with sound accounting principles;
- o) “Proportionate Share” means a fraction, the numerator of which is the Rentable Area of the Leased Premises and the denominator of which is the Rentable Area of the City Market;
- p) “Rent” means all Gross Rent and Additional Rent payable pursuant to the terms of this Lease;
- q) “Rentable Area of the Leased Premises” means the area expressed in square feet of all floors of the Leased Premises measured from:
 - i. the exterior face of all exterior walls, doors and windows;
 - ii. the exterior face of all interior walls, doors and windows separating the Leased Premises from Common Areas; if any; and
 - iii. the centre line of all interior walls separating the Leased Premises from adjoining leasable premises.

The Rentable Area of the Leased Premises includes all interior space whether or not occupied by projections, structures or columns, structural or non-structural, and if the

store front is recessed from the lease line, the area of such recess for all purposes lies within the Rentable Area of the Leased Premises.

- r) “Rentable Area of the City Market” means the area in square feet of all rentable premises in the City Market set aside for leasing by the Lessor from time to time, except for any occupancy as designated by the Lessor for which there is no Gross Rent payable. Provided however that the Lessor shall credit to Operating Costs any contributions received in respect of such Operating Costs from the occupants of any of the areas excluded from the Rentable Area of the City Market in accordance with this definition. Provided further that in determining the fraction that is the Lessee’s Proportionate Share, if the Leased Premises consists of any of the foregoing excluded categories, the Rentable Area of that category will be included in the Rentable Area of the City Market;
- s) “Rules and Regulations” means the rules and regulations adopted and promulgated by the Lessor from time to time acting reasonably, including those listed on Schedule “D”;
- t) “City Market” means the lands and premises known by the civic address 47 Charlotte Street, Saint John, New Brunswick, as such lands and premises may be altered, expanded or reduced from time to time and the buildings, improvements, equipment and facilities erected thereon or situate from time to time therein;
- u) “Taxes” means all duties, real property taxes, charges, assessments and payments, from time to time levied, assessed or imposed upon the City Market or any part thereof or upon the Lessor by reason of its ownership of the City Market, by any taxing authority. Taxes shall also include any penalties, late payment or interest charges imposed by any municipality or other taxing authority as a result of the Lessee’s late payments of any taxes or instalments thereof. For greater certainty “Taxes” shall exclude any penalties or interest incurred by the Lessor as a result of its failure to pay Taxes in a timely manner, except Taxes shall include any interest in respect of a deferral of payment in accordance with sound accounting practices if permitted by statute or pursuant to an agreement with the taxing authority; and (ii) income, profit or excess profits taxes of the Lessor;
- v) “Lessee” means the party named as Lessee in this Lease; and
- w) “Term” means the period referred to in Section 2.03.

ARTICLE II

GRANT, TERM AND INTENT

2.01 Leased Premises

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Lessor demises and leases to the Lessee and the Lessee leases from the Lessor, the Leased Premises. The Leased Premises are presently designated as **Stall’s No. 12, 13 and 14** as shown on Schedule “A” attached hereto and contain a Rentable Area of approximately **One Thousand One Hundred and One Square Feet (1,101 ft²)** which is comprised of approximately **Five Hundred and Sixty-Four Square Feet (564 ft²)** of leasable retail area, and **Five Hundred and Thirty-Seven Square Feet (537 ft²)** of cooler area.

2.02 Use of Common Areas

The use and occupation by the Lessee of the Leased Premises shall entitle the Lessee to the use in common with all others entitled thereto of the Common Areas, subject however, to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by the Landlord.

2.03 Term of Lease

TO HAVE AND TO HOLD the Leased Premises for and during the term of **five (5) years** to be computed from _____ and fully to be completed and ended on _____ save as hereinafter provided for earlier termination.

PROVIDED THAT if there is any Lessor’s Work or Lessee’s Work to be performed prior to the Lessee opening for business in the Leased Premises or the Leased Premises are occupied by a third party as of the date of this Lease, the Commencement Date shall be the earlier of:

- a) **sixty (60)** days after the Lessor has delivered vacant possession of the Leased Premises to the Lessee notwithstanding that the Lessor may still, during such **sixty (60)** day period, be completing its work; or
- b) the opening by the Lessee to the public of its business in the Leased Premises.

Notwithstanding any change in the Commencement Date calculated in accordance with the preceding provisions hereof, the Terms shall expire on the date set for such expiry in the first paragraph of this Section 2.03, subject always to earlier termination as provided for in this Lease.

PROVIDED THAT upon the Lessor or its Architect giving notice to the Lessee that the Leased Premises are available for the commencement of the Lessee’s Work, the Lessee shall immediately take possession of the Leased Premises and shall occupy same for the purpose of fixturing and installing its inventory, at its own risk, for a period of **zero (0)** days after receipt of such notice or until the Lessee opens for business to the public in the Leased Premises, free of the payment of Gross Rent, and Additional Rent save for the obligation of the Lessee to pay for all utility charges used by the Lessee or consumed in the Leased Premises during the period of such fixturing, and shall during the period from the giving of such notice until the Commencement Date be a tenant in the Leased Premises subject to the same covenants and agreements as are contained in this Lease, mutatis mutandis.

FURTHER PROVIDED THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY, if the Lessor is unable to deliver vacant possession of the Leased Premises to the Lessee for any reason, including but not limited to the holding over or retention of possession of any other lessee or occupant, or the lack of completion of any repairs, improvements or alterations required to be completed before the Lessee’s occupancy of the Leased Premises, then the time for commencement of the Term shall be extended to correspond with the period of delay and the Lessee shall not be entitled to any abatement or diminution of Rent (except that Rent shall not commence to be payable until possession of the Leased Premises is given by the Lessor to the Lessee) nor shall the validity of this Lease or the parties’ respective obligations hereunder be affected. However, if the Lessor does not give vacant possession of the Leased Premises to the Lessee within six (6) months of the date of this Lease, then the Lessor may, at is option, terminate this Lease by written notice to the Lessee and in such event this Lease shall be null and void and of no effect whatsoever. Any deposit paid by the Lessee to the Lessor shall be returned without interest or deduction, and neither party shall have any further liability to the other.

Forthwith, upon the Commencement Date being determined in accordance with the foregoing, the Lessee shall execute an acknowledgement of same on Lessor’s usual form.

The Lessee shall pay all Gross Rent and Additional Rent calculated on a per diem basis, from the **end of the 90 day rent-free period** to the last day of the month in which the Commencement Date occurs and thereafter all payments of Rent shall be made on the first day of each month throughout the Term unless otherwise specified herein.

2.04 Option to Renew

The Lessee shall have the option to renew this Lease for a further one (1) term of five (5) years at the then prevailing market rate by providing written notice of its intention to renew to the Lessor no later than six (6) months prior to the expiration of the Initial Term. In the event that the Lessor and the Lessee do not agree on the then prevailing market rate, such rate may be determined by a single arbitrator appointed by the agreement between the Lessor and the lessee or pursuant to the *Arbitration Act*.

ARTICLE III

RENT AND DEPOSIT

3.01 Gross Rent

The Lessee shall pay annual Gross Rent to the average amount of **Twenty- Seven Dollars (\$27.00)** per square foot of leaseable retail area of the Leased Premises, for the first year. The Gross Rent shall be paid in equal monthly instalments, monthly in advance. According to the following schedule:

| Rate | Retail Space | Cooler Space | | |
|-------------|--------------|--------------|-------------|------------|
| Year 1 | \$27.00 | \$19.99 | | |
| Year 2 | \$29.00 | \$23.00 | | |
| Year's 3 -5 | \$31.00 | \$23.00 | | |
| | | | | |
| Year | Retail Space | Cooler Space | | |
| | 564 sq feet | 537 sq feet | | |
| | Year | Month | Year | Month |
| 1 | \$15,228.00 | \$1,269.00 | \$10,734.63 | \$894.55 |
| 2 | \$16,356.00 | \$1,363.00 | \$12,351.00 | \$1,029.25 |
| 3-5 | \$17,484.00 | \$1,457.00 | \$12,351.00 | \$1,029.25 |

| | Totals | | |
|--------------------|-------------|-------------|-------------|
| | Year 1 | Year 2 | Years 3-5 |
| | \$25,962.63 | \$28,707.00 | \$29,835.00 |
| Promotional Fee 6% | \$1,557.76 | \$1,722.42 | \$1,790.10 |
| Total | \$27,520.39 | \$30,429.42 | \$31,625.10 |
| Per Month | \$2,293.37 | \$2,535.79 | \$2,635.43 |

There shall be no Additional Rent payable under this Agreement, save and except monies to be paid under Article VI of this Lease.

3.02 Rent Past Due

If the Lessee fails to pay, when the same is due and payable, any Gross Rent, Additional Rent or other amount payable by the Lessee under this Lease, such unpaid amounts shall bear interest from the due date thereof to the date of payment, compounded monthly at the rate equal to four (4) percentage points in excess of the Prime Rate.

3.03 Deposit

The Lessor acknowledges receipt of **Zero Dollars (\$0.00)** which it will apply towards the payment of Gross Rent for the first and last months of the Term except that the Lessor may apply all or part of the amount retained for application towards the last month’s Gross Rent as compensation for any loss or damage arising from the breach by the Lessee of any provisions of this Lease. This right will not be construed to limit the Lessor’s other rights under this Lease or at law or to limit the amount recoverable by the Lessor for damages in respect of breaches by the Lessee of this Lease. If the Lessor uses all or part of the deposit for the last month’s Gross Rent as provided above, the Lessee will, upon notification by the Lessor, pay to the Lessor the amount required to reimburse it for the amounts so applied. The Lessor will not be required to pay interest to the Lessee on any of the amounts paid to the Lessor or retained by it under this section. The Lessor may deliver the aforesaid deposit to any purchaser of the Lessor’s interest in the City Market or any part thereof, whereupon the Lessor will immediately be discharged from any further liability with respect to the deposit. The Lessee will not assign or encumber its interest in the deposit except in connection with a permitted Transfer, in which case the Lessee’s interest in the deposit will be deemed to have been assigned to the permitted Transferee as of the date of the Transfer.

3.04 Pre-Authorized Payments

The Lessee shall participate in a pre-authorized payment plan whereby the Lessor will be authorized to debit the Lessee’s bank account each month from time to time during each Lease Year in an amount equal to the Gross Rent and Additional Rent payable on a monthly basis, and, if applicable, generally any amount payable provisionally pursuant to the provisions of this Lease on an estimated basis. The Lessor shall sign a form of application which is the same or similar to Schedule “D-1”, or as may be required by the Lessee’s bank, credit union or other financial institution.

ARTICLE IV

TAXES

4.01 Taxes Payable by the Lessor

The Lessor shall pay all Taxes which are levied, rated, charged or assessed against the City Market or any part thereof subject always to the provisions of this Lease regarding payment of Taxes by the Lessee. However, the Lessor may defer payment of any such Taxes or defer compliance with any statute, law, by-law, regulation or ordinance in connection with the levying of any such Taxes in each case to the fullest extent permitted by law, so long as it diligently prosecutes any contest or appeal of any such Taxes.

4.02 Taxes Payable by Lessee

- a) The Lessee shall during the Term pay, without any deduction, abatement or set-off whatsoever, all Taxes levied, laid or assessed on or against the Leased Premises;
- b) In the case of assessments for local improvements or betterments which are assessed or imposed during the term and which may by law be payable in instalments, the Lessee shall only be obligated to pay such instalments as same fall due during the Term, together with interest on deferred payments;

- c) In any suit or proceeding of any kind or nature arising or growing out of the failure of the Lessee to keep any covenant contained in this Article, the certificate or receipt of the department, officer or bureau charged with collection of the Taxes, showing that the tax, assessment or other charge affecting the Leased Premises is due and payable or has been paid, shall be prima facie evidence that such tax, assessment or other charge was due and payable as a lien or charge against the Leased Premises or that it has been paid as such by the Lessor;
- d) The Lessee, if allowed by the taxing authority, shall have the right to contest or review by legal proceedings or in such manner as the Lessee in its opinion shall deem advisable (which proceedings or other steps taken by the Lessee shall be conducted diligently at its own expense and free of expense to the Lessor) any and all Taxes levied, assessed or imposed upon or against the Leased Premises or Taxes in lieu thereof required to be paid by the Lessee hereunder. No such contest shall defer or suspend the Lessee’s obligations to pay the Taxes as herein provided pending the contest, but if by law it is necessary that such payment be suspended to preserve or perfect the Lessee’s contest, then the contest shall not be undertaken without there being first deposited with the Lessor a sum of money equal to twice the amount of the Taxes that are the subject of the contest, to be held by the Lessor as an indemnity to pay such Taxes upon conclusion of the contest and all costs thereof that may be imposed upon the Lessor or the Leased Premises. Any costs associated with an appeal undertaken by the Lessor, the Lessee shall pay their proportionate share of such costs;
- e) The Lessee upon request of the Lessor will promptly exhibit to the Lessor all paid bills for Taxes which bills after inspection by the Lessor shall be returned to the Lessee.

4.03 HST Payable by Lessee

The Lessee shall pay to the Lessor all HST on Rent and any other HST imposed by the applicable legislation on the Lessor or Lessee with respect to this Lease, in the manner and at the times required by the applicable legislation. Such amounts are not consideration for the rental of space or the provision by the Lessor of any service under this Lease, but shall be deemed to be Rent and the Lessor shall have all of the same remedies for and rights of recovery of such amounts as it has for recovery of Rent under this Lease. If a deposit is forfeited to the Lessor, or an amount becomes payable to the Lessor due to a default or as consideration for a modification of this Lease, and the applicable legislation deems a part of the deposit or amount to include HST, the deposit or amount will be increased and the increase paid by the Lessee so that the Lessor will receive the full amount of the forfeited deposit or other amount payable without encroachment by any deemed HST portion.

4.04 Business Taxes and Other Taxes of Lessee

The Lessee shall pay to the lawful taxing authorities, when the same becomes due and payable:

- a) all taxes, rates, duties, assessments and other charges that are levied, rated, charged or assessed against or in respect of all improvements, equipment and facilities of the Lessee on or in the Leased Premises; and
- b) every tax and license fee which is levied, rated, charged or assessed against or in respect of any business carried on in the Leased Premises or in respect of the use or occupancy thereof

whether in any case any such taxes, rates, duties, assessments or license fees are rated, charged or assessed by any federal, provincial, municipal or other body.

ARTICLE V

UTILITIES

5.01 Utilities

The Lessee shall pay all utilities directly to the utility company, on a metered basis. In the event that a Lessee leases cooler space with the Leased Premises, the Lessee shall pay to the Lessor the Lessee’s proportionate share of any utility consumed.

ARTICLE VI

MERCHANTS’ ASSOCIATION

6.01 Merchants’ Association

If and when an association or corporation of merchants or lessees (the “Association”) is formed comprising tenants of the City Market, the Lessee shall forthwith become a member of such Association or if such an Association has already been formed, the Lessee shall forthwith become a member thereof and the Lessee shall retain its membership in such Association during the entire Term and shall abide by all rules, regulations, by-laws, decisions, directions, dues and assessments of the Association. Such Association shall in no way affect the rights of the Lessor and any by-laws, rules and regulations of such Association shall at all times be subject to the prior approval of the Lessor.

6.02 Promotion Fund

The Lessee shall pay to the Lessor an amount equal to 6% of annual Gross Rent to be paid in twelve (12) monthly instalments each instalment payable on the 1st day of each month during the Term.

ARTICLE VII

CONDUCT OF BUSINESS BY TENANT

7.01 Use of Leased Premises

The Leased Premises shall be used continuously, actively and diligently for the sole purpose of **selling of beef, poultry, hams, cheeses, frozen meats, processed meats and dulce.**

The Lessee will not use or permit or suffer the use of the Leased Premises or any part thereof for any other business or purpose. In connection with the business to be conducted by the Lessee on the Leased Premises, the Lessee shall only use the advertised name “**H and S Meat’s**” and will not change the advertised name of the business to be operated in the Leased Premises without the prior written consent of the Lessor.

The Lessee shall not introduce new product lines, or offer new services to its customers without first obtaining the written consent of the Lessor. The Lessee acknowledges that it would be reasonable for the Lessor to withhold its consent if the introduction by the Lessee of such product line or service would compete with the business of other tenants in the City Market or infringe on exclusive covenants granted by the Lessor.

Unless otherwise specifically set out in this Lease to the contrary, nothing contained in this Lease shall: (i) confer upon the Lessee the exclusive right to sell or provide in the City Market any of the products or services permitted to be sold or provided from the Leased Premises pursuant to this Section 7.01; nor (ii) prevent the Lessor from leasing any other premises in the City Market to any other tenant(s) carrying on a business which is similar in whole or in part to the business permitted to be carried on from the Leased Premises pursuant to this Section 7.01.

- a) The Lessee acknowledges that its continued occupancy of the Leased Premises and the regular conduct of business therein are of utmost importance to neighbouring tenants and to the Lessor in the renting of space in the City Market, the renewal of other leases therein, the efficient and economic supply of services and utilities, and in the character and quality of other tenants in the City Market. The Lessee therefore covenants and agrees that throughout the Term it will occupy the entire Leased Premises, comply strictly with the provisions of Section 7.01 and not vacate or abandon the Leased Premises at any time during the Term. The Lessee acknowledges that the Lessor is executing this Lease in reliance thereupon and that the same is a material element inducing the Lessor to execute this Lease. The Lessee further agrees that if it vacates or abandons the Leased Premises or fails to so conduct its business therein, or uses or permits or suffers the use of the Leased Premises for any purpose not specifically herein authorized and allowed, the Lessee will be in breach of the Lessee’s obligations under the Lease, and then, without constituting a waiver of the Lessee’s obligations or limiting the Lessor’s remedies under this Lease, all Rent reserved in this Lease will immediately become due and payable to the Lessor unless guaranteed to the satisfaction of the Lessor. The Lessor will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring the Lessee to comply with the provisions of this Section 7.01(b).

7.02 Conduct and Operation of Business

The Lessee shall occupy the Leased Premises from and after the Commencement Date and thereafter shall conduct continuously and actively the business set out in Section 7.01, in the whole of the Leased Premises. In the conduct of the Lessee’s business pursuant to this Lease the Lessee shall:

- a) operate its business with due diligence and efficiency and maintain an adequate staff to properly serve all customers; own, install and keep in good order and condition free from liens or rights of third parties, fixtures and equipment of first class quality; and carry at all times such stock of goods and merchandise of such size, character and quality as will produce the maximum volume of sales from the Leased Premises consistent with good business practices;
- b) conduct its business in the Leased Premises during such hours and on such days as the Lessor from time to time requires or permits and at no other time. However the Lessee is not required or permitted to carry on its business during any period prohibited by any law regulating the hours of business. If the Lessee fails to open during the days and/or hours required by the Lessor, then in addition to all other amounts of Rent payable under this Lease the Lessee shall pay as Additional Rent to the Lessor upon demand as liquidated damages and not as a penalty, an amount equal to two hundred fifty dollars (\$250.00) per day for each and every day that the Lessee is in default. When not open for business the security of the Leased Premises is the sole responsibility of the Lessee;
- c) keep displays of merchandise in the display windows (if any) of the Leased Premises, and keep the display windows and signs (if any) in the Leased Premises well-lit during the hours the Lessor designates from time to time, acting reasonably;
- d) stock in the Leased Premises only merchandise the Lessee intends to offer for retail sale from the Leased Premises, and not use any portion of the Leased Premises for office, clerical or other non-selling purposes except minor parts reasonably required for the Lessee’s business in the Leased Premises;
- e) abide by all rules and regulations and general policies formulated by the Lessor, acting reasonably, from time to time relating to the delivery of goods to the Leased Premises;
- f) not allow or cause to be committed any waste upon or damage to the Leased Premises or any nuisance or other act or thing which disturbs the quiet enjoyment of any other lessee in the City Market or which unreasonably disturbs or interferes with or annoys any third party, or which may damage the City Market;
- g) not allow or cause to be done any act in or about the Common Areas or the City Market which in the Lessor’s opinion, acting reasonably, hinders or interrupts the City Market’s flow of traffic in any way, obstructs the free movement or parties doing business in the City Market;
- h) not allow or cause business to be solicited in any part of the City Market other than the Leased Premises, nor display any merchandise outside the Leased Premises at any time without the prior written consent of the Lessor;
- i) use the name designated for the City Market by the Lessor from time to time and all insignia or other identifying names and marks designated by the Lessor in connection with the advertising of the business conducted in the Leased Premises. Notwithstanding the foregoing the Lessee will not acquire any rights in such names, marks or insignia and upon the Lessor’s request the Lessee will abandon or assign to the Lessor any such rights which the Lessee may acquire by operation of law and will promptly execute any documents required by the Lessor to give effect to this subparagraph (i);
- j) not install or allow in the Leased Premises any transmitter device nor erect any aerial on the roof of any building forming part of the City Market or on any exterior walls of the Leased Premises or in any of the Common Areas. Any such installation shall be subject to removal by the Lessor without notice at any time and such removal shall be done and all damage as a result thereof shall be made good, in each case, at the cost of the Lessee, payable as Additional Rent on demand;
- k) not use any travelling or flashing lights or signs or any loudspeakers, television, phonograph, radio or other audiovisual or mechanical devices in a manner so that they can be heard or seen outside of the Leased Premises without the prior written consent of the Lessor. If the Lessee uses any such equipment without receiving the prior written consent of the Lessor, the Lessor shall be entitled to remove such equipment without notice at any time and such removal shall be done and all damage as a result thereof shall be made good, in each case, at the cost of the Lessee, payable as Additional Rent on demand;
- l) not install or allow in the Leased Premises any equipment which will exceed or overload the capacity of any utility, electrical or mechanical facilities in the Leased Premises or of which the Lessor has not approved. If the Lessee requires additional utility, electrical or mechanical facilities, the Lessor may in its sole discretion if they are available elect to

install them at the Lessee’s expense and in accordance with plans and specifications to be approved in advance in writing by the Lessor;

- m) not bring upon the Leased Premises any machinery, equipment, article or thing that by reason of its weight, size or use, might in the opinion of the Lessor, acting reasonably, damage the Leased Premises or overload the floors of the Leased Premises. Any such machinery, equipment, article or thing shall be subject to removal by the Lessor without notice at any time and such removal shall be done and all damages as a result thereof shall be made good, in each case, at the cost of the Lessee, payable as Additional Rent on demand;
- n) observe and comply with all federal, provincial or municipal laws pertaining to or affecting the Leased Premises, the Lessee’s use of the Leased Premises or the conduct of any business in the Leased Premises, or the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Leased Premises, and the regulations of any insurance underwriters in respect of the insurance maintained by the Lessor in respect of the City Market, and carry out all modifications to the Leased Premises and the Lessee’s conduct of business or in use of the Leased Premises which may be required by any such authorities.

7.03 Prohibited Activities

- a) The Lessee acknowledges that it is only one of many tenants in the City Market and that therefore the Lessee shall conduct its business in the Leased Premises in a manner consistent with the best interests of the City Market as a whole;
- b) The Lessor shall have the right to cause the Lessee to discontinue and the Lessee shall thereupon forthwith discontinue the sale of any item, merchandise, commodity or the supply of any service or the carrying on of any business, any of which is either prohibited by this Section 7.03 or which the Lessor, acting reasonably, determines is not directly related to the business set out in Section 7.01. The Lessee will not allow or cause the use of any part of the Leased Premises for any of the following businesses or activities:
 - i. the sale of secondhand goods or surplus articles, insurance salvage stock, fire sale stock or bankruptcy stock;
 - ii. the sale of goods, except as may be specifically permitted by the provisions of Section 7.01;
 - iii. an auction, bulk sale (other than a bulk sale made to an assignee or sublessee pursuant to a permitted assignment or subletting hereunder), liquidation sale, “going out of business” or bankruptcy sale, or warehouse sale;
 - iv. any advertising or selling procedures which would, or any sale or business conduct or practice which would, because of the merchandising methods or quality of operation likely to be used, in either case in the Lessor’s opinion, tend to lower the character of the City Market or harm or tend to harm the business or reputation of the Lessor or reflect unfavourably on the City Market, the Lessor or other tenants in the City Market or tend to confuse, deceive, mislead or be fraudulent to the public; or
 - v. a mail order business, save and except for dulce and maple products or a department store, junior department store or variety store.

7.04 Hazardous Substances

The Tenant covenants and agrees to utilize the Leased Premises and operate its business in a manner so that no part of the Leased Premises or surrounding lands are used to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any Hazardous Substance, except in strict compliance with all applicable federal, provincial and municipal statutes, by-laws and regulations, including, without limitation, environmental, land use and occupational and health and safety laws, regulations, requirements, permits, statutes, by-laws and regulations. Further the Lessee hereby covenants and agrees to indemnify and save harmless the Lessor and those for whom the Lessor is in law responsible from any and all losses, costs, claims, damages, liabilities, expenses or injuries caused or contributed to by any Hazardous Substances which are at any time located, stored or incorporated in any part of the Leased Premises. The Lessee hereby agrees that the Lessor or its authorized representatives shall have the right at the Lessee’s expense, payable as Additional Rent within fifteen (15) days of receipt of an invoice therefor, to conduct such environmental site reviews and investigations as it may deem necessary for the purpose of ensuring compliance with this Section 7.04. The Lessee’s obligations pursuant to this Section 7.04 shall survive the expiration or earlier termination of the Term.

ARTICLE VIII

FIXTURES, ALTERATIONS AND REPAIRS AND

LESSOR’S CONTROL OF CITY MARKET

8.01 Installations by the Lessee

All equipment, fixtures and improvements installed by the Lessee in the Leased Premises shall be new or completely reconditioned. The Lessee shall not make any alterations, additions or improvements or install or cause to be installed any trade fixtures, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings or make any changes to the store front without first obtaining the Lessor’s written approval and consent. The Lessee shall present to the Lessor plans and specifications in form, content and such detail as the Lessor may reasonably require for such work at the time approval is sought. The Lessee covenants that any work that may be done in respect of the Leased Premises by or on behalf of the Lessee shall be done in such a manner as not to conflict or interfere with any work being done or about to be done by the Lessor in or about the City Market, whether such conflict or interference shall arise in relation to labour unions or otherwise and the Lessee shall obtain all requisite permits, licenses and inspections in respect of any such work done by or on the Lessee’s behalf. Notwithstanding anything herein contained, the Lessee shall make no alterations, additions or improvements that are of a structural nature or that would lessen the value or Rentable Area of the Leased Premises or the City Market, or would interfere with the usage of the Common Areas.

All alterations, decorations, additions and improvements made by the Lessee or made by the Lessor on the Lessee’s behalf by agreement under this Lease shall immediately upon installation or affixation become the property of the Lessor without compensation therefor to the Lessee, but the Lessor shall be under no obligation to repair, maintain or insure the alterations, decorations, additions or improvements. Such alterations, decorations, additions and improvements shall not be removed from the Leased Premises without prior consent in writing from the Lessor. Upon expiration of this Lease, the Lessee shall, at the option of the Lessor, remove all trade fixtures and personal property and shall remove all such alterations, decorations, additions and improvements and restore the Leased Premises as required by the Lessor.

8.02 Maintenance and Repair by the Lessee

The Lessee will at all times keep the Leased Premises (including exterior entrances and all glass and show windows) and all partitions, doors, fixtures, equipment and appurtenances thereof (including lighting, heating and plumbing fixtures, and the electrical and mechanical systems) in good order, condition and repair (including periodic painting or redecorating and preventative maintenance as determined by the Lessor and including such repairs or replacements as are required to keep the Leased Premises in good repair and condition). All aforesaid maintenance, repairs, restorations and replacements shall be in quality and class equal to the original work or installations.

8.03 Signs, Awnings, Canopies

The Lessee will not place or suffer to be placed or maintained on any exterior door, wall or window of the Leased Premises any sign, awning or canopy or advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Leased Premises without first obtaining the Lessor’s written approval and consent. The Lessee further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times, and in addition to the foregoing, the Lessee shall maintain any signs or displays of its goods or wares which may be seen from the exterior of the Leased Premises in a manner which is in keeping with the character of the City Market of which the Leased Premises form a part and which is designed to enhance the business of the Lessee.

8.04 Surrender of Leased Premises

Subject to Article 10.01, the Lessee will leave the Leased Premises in good repair, reasonable wear and tear only excepted. Without limiting the generality of the foregoing, at the expiration or earlier termination of the Term the Lessee shall surrender the Leased Premises in the same condition as the Leased Premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear only excepted, and shall surrender all keys for the Leased Premises to the Landlord at the place then fixed for the payment of Rent and shall inform the Lessor of all combinations on locks, safes and vaults, if any, in the Leased Premises. Should the Lessee fail to remove its fixtures and personal property, such fixtures and personal property shall be deemed to be abandoned by the Lessee and may be appropriated, sold or otherwise disposed of by the Lessor without notice or obligation to compensate the Lessee or to account therefor. The Lessee’s obligations to observe or perform this covenant shall survive the expiration or earlier termination of the Term of this Lease.

8.05 Lessee to Discharge all Liens

The Lessee will ensure that no construction or other lien or charge, or notice thereof, is registered or filed against:

- a) the City Market or any part of it; or
- b) the Lessee’s interest in the Leased Premises or any of the leasehold improvements in the Leased Premises.

by any person claiming by, through, under or against the Lessee or its contractors or subcontractors. If such a lien or charge or notice thereof is registered or filed and the Lessee fails to discharge it within five (5) days after written notice from the Lessor, the Lessor may discharge it by paying the amount claimed to be due into court or directly to the claimant and the Lessee will pay to the Lessor as Additional Rent on demand all costs (including legal fees) incurred by the Lessor in connection therewith, together with an administrative overhead charge of fifteen percent (15%) thereon.

8.06 Rules and Regulations

The Lessee will comply with the Rules and Regulations. The Lessor reserves the right from time to time to amend or supplement the Rules and Regulations. Notice of such amendments and supplements, if any, shall be given to the Lessee, and the Lessee agrees thereupon to comply with and observe all such amendments and supplements, provided that no Rule or Regulation shall contradict any provision of this Lease. The Lessor shall not be responsible to the Lessee for non-observance or violation of any of the provisions of such Rules and Regulations by any other tenant of the City Market or of the terms of any other lease of premises in the City Market and the Lessor shall be under no obligation to enforce any such provisions. All Rules and Regulations shall be enforced against the Lessee in a non-discriminatory manner.

8.07 Maintenance and Repair by the Lessor

The Lessor shall, subject to the other provisions of this Lease, maintain and repair or cause to be maintained and repaired, the structure of the City Market, including without limitation, the foundations, exterior weather walls, subfloor, roof, bearing walls and structural columns and beams of the City Market. If, however, the Lessor is required to maintain or repair any structural portions or any other portion of the Leased Premises or the City Market by reason of the negligent acts or omissions of the Lessee, its employees, agents, invitees, suppliers, agents and servants of suppliers, licensees, concessionaires or subtenants, the Lessee shall pay on demand as Additional Rent, the Lessor’s costs for making such maintenance or repairs, together with an administrative fee of fifteen percent (15%) of such costs. Notwithstanding Clause 8.07 above, the Landlord shall remove existing floor coverings and replace with a commercial grade floor covering and shall also clean and paint the interior walls of Stall 5 on or before June 15, 2018.

8.08 Control of City Market by Lessor

The City Market and the Common Areas are at all times subject to the exclusive control and management of the Lessor. Without limiting the generality of the foregoing, the Lessor has the right in its control, management and operation of the City Market and by the establishment of rules and regulations and general policies with respect to the operation of the City Market or any part thereof at all times throughout the Term to construct, maintain and operate lighting facilities and heating, ventilating and air conditioning systems; provide supervision and policing services for the City Market; close all or any portion of the City Market to such extent as may in the opinion of the Lessor’s counsel be legally sufficient to prevent a dedication thereof or the accrual of any rights to any third party or the public; grant, modify and terminate easements or other agreements pertaining to the use and maintenance of all or any part of the City Market; obstruct or close off all or any part of the City Market for the purpose of maintenance, repair or construction, employ all personnel, including supervisory personnel and managers necessary for the operation, maintenance and control of the City Market; use any part of the Common Areas from time to time for merchandising, display, decorations, entertainment and structures designed for retail selling or special features or promotional activities; designate the areas and entrances and the times in, through and at which loading and unloading of goods shall be carried out; control, supervise and generally regulate the delivery or shipping of merchandise, supplies and fixtures to and from the Leased Premises, and other portions of the City Market; designate and specify the kind of container to be used for garbage and refuse in the manner and the times and places at which same is to be placed for collection (if the Lessor for the more efficient and proper operation of the City Market provides or designates a commercial service for the pickup and disposal of refuse and garbage instead of or in addition to the service provided by the municipality, the Lessee shall use same at the Lessee’s cost); from time to time change the area, level, location, arrangement or use of the City Market or any part thereof; construct other buildings or improvements in the City Market and make changes to any part thereof; construct other buildings or improvements in the City Market and make changes to any part of the City Market; and do and perform

such other acts in and to the City Market as in the use of good business judgment the Lessor determines to be advisable for the more efficient and proper operation of the City Market.

Notwithstanding anything to the contrary, if as a result of the exercise by the Lessor of any of its rights as set out in this Section 8.08, the Common Areas are diminished or altered in any manner whatsoever, the Lessor is not subject to any liability nor is the Lessee entitled to any compensation or diminution or abatement of Rent nor is any alteration or diminution of the Common Areas deemed constructive or actual eviction, or a breach of any covenant for quiet enjoyment contained in this Lease.

8.09 Lessor’s Right to Enter Leased Premises

- a) It is not a re-entry or a breach of quiet enjoyment if the Lessor or its authorized representatives enter the Leased Premises at reasonable times to:
 - i. examine them;
 - ii. make permitted or required repairs, alterations, improvements or additions to the Leased Premises (including the pipes, conduits, wiring, ducts, columns and other installations in the Leased Premises) or the City Market or adjacent property; or
 - iii. excavate land adjacent or subjacent to the Leased Premises; in each case (to the extent reasonably possible in the circumstances) without unreasonably interfering with the Lessee’s business operations in the Leased Premises, and the Lessor may take material into and on the Leased Premises for those purposes. Rent will not abate or be reduced while the repairs, alterations, improvements or additions are being made. The Lessor will take reasonable steps to minimize any interruption of business resulting from any entry.
- b) At any time during the Term, the Lessor may exhibit the Leased Premises to prospective purchasers and during the six (6) months prior to the expiration of the term of this Lease, the Lessor may exhibit the Leased Premises to prospective tenants and place upon the Leased Premises the usual notice “To Let” which notice the Lessee shall permit to remain where placed without molestation;
- c) If the Lessee shall not be personally present to open and permit an entry into the Leased Premises, at any time, when for any reason an entry therein shall be necessary or permissible, the Lessor or the Lessor’s agents may enter the same by a master key, or may forcibly enter the same, without rendering the Lessor or such agents liable therefor, and without in any manner affecting the obligations and covenants of this Lease;
- d) Nothing in this Section contained, however, shall be deemed or construed to impose upon the Lessor any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the City Market or any part thereof, except as otherwise in this Lease specifically provided.

ARTICLE IX

INSURANCE AND INDEMNITY

9.01 Lessee’s Insurance

- a) The Lessee shall throughout the Term, at its own cost and expense, take out and keep in full force and effect the following insurance:
 - i. All-risk insurance upon property owned by the Lessee or for which the Lessee is legally liable (including, signs and plate glass) and which is located within the City Market in an amount of not less than the full replacement cost thereof;
 - ii. Comprehensive General Liability with minimum limits of at least Five Million Dollars (\$5,000,000.00) or such higher limits as the Lessor may reasonably require from time to time. This policy shall include:
 - a) The City added as an Additional Insured;
 - b) Inclusive limits for bodily injury and property damage;
 - c) Personal injury liability;
 - d) Tenant’s Legal Liability;
 - e) Contractual Liability with respect to this Lease;

- f) Premises, Property and Operations;
 - g) Completed Operations;
 - h) A Cross Liability Clause;
 - i) A Thirty (30) days written notice of Cancellation shall be given to the City of Saint John.
- iii. The Lessee shall also provide any other form of insurance as the Lessee or the Lessor may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would insure.
- b) All policies shall be taken out with reputable and recognized insurers acceptable to the Lessor and shall be in a form satisfactory from time to time to the Lessor. The Lessee agrees that certificates of insurance of each such insurance policy will be delivered to the Lessor as soon as practicable after the placing of the required insurance. All policies shall contain an undertaking by the insurers to notify the Lessor in writing not less than thirty (30) days prior to any material change, cancellation or termination thereof;
- c) The Lessee agrees that if the Lessee fails to take out or keep in force any such insurance referred to in this Section 9.01, or should any such insurance not be approved by the Lessor and should the Lessee not rectify the situation immediately after written notice by the Lessor to the Lessee, the Lessor has the right without assuming any obligation in connection therewith to effect such insurance at the sole cost of the Lessee and all outlays by the Lessor shall be immediately paid by the Lessee to the Lessor as Additional Rent without prejudice to any other rights and remedies of the Lessor under this Lease.

9.02 Increase in Insurance Premium

The Lessee will not allow or cause anything to occur in the Leased Premises which shall cause any increase of premium for any insurance on the Leased Premises or the City Market or any part thereof above the rate for the least hazardous type of occupancy legally permitted in the Leased Premises. If the Lessee is in default under this Section 9.02 the Lessee shall pay any resulting additional premium on any insurance policies taken out or maintained by the Lessor, or if any insurance policy upon the Leased Premises or the City Market or any part thereof shall be cancelled or refused to be renewed by an insurer by reason of the use or occupation of the Leased Premises or any part thereof or the acts or omissions of the Lessee, the Lessee shall forthwith remedy or rectify such use or occupation upon request to do so in writing by the Lessor, and if the Lessee shall fail to do so within twenty-four (24) hours of such written request, the Lessor shall have the right to enter the Leased Premises and rectify the situation, without liability to the Lessee for any loss or damage occasioned by such entry and rectification, or shall be entitled to hold the Lessee liable for any damage or loss resulting from such cancellation or refusal, or the Lessor may at its option determine this Lease forthwith by leaving upon the Leased Premises notice in writing of its intention to do so, and thereupon Rent and any other payments for which the Lessee is liable under this Lease shall be apportioned and paid in full to the date of such determination of the Lease, and together with an amount equal to the Gross Rent payable for a period of one (1) year as liquidated damages, and the Lessee shall immediately deliver up possession of the Leased Premises, a schedule issued by the organization making the insurance rate on the Leased Premises, showing the various components of such rate, shall be conclusive evidence of the several items and charges which make the fire insurance rate of the Leased Premises. Bills for such additional premiums shall be rendered by the Lessor to the Lessee at such times as the Lessor may elect and shall be due from and payable by the Lessee when rendered, and the amount thereof shall be deemed to be and be paid as Additional Rent.

9.03 Loss or Damage

The Lessor shall not be liable for any death or injury arising from or out of any occurrence in, upon, at or relating to the City Market, or damage to property of the Lessee or of others located on the Leased Premises, nor shall it be responsible for any loss of or damage to any property of the Lessee or others from any cause whatsoever, except any such death, injury, loss or damage results from the negligence of the Lessor, its agents, servants or employees or other persons for whom the Lessor is in law responsible. Without limiting the generality of the foregoing, the Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Leased Premises or from the pipes, appliances, plumbing works, roof or subsurface of any floor or ceiling or from the street or any other place or other tenants or persons in the City Market or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Lessee kept or stored on the Leased Premises shall be so kept or stored at the risk of the Lessee only and the Lessee shall indemnify the Lessor and save it harmless from any claims arising out of any damages to the same, including, without limitation, any subrogation claims by the Lessor's insurers. In no event shall the Lessor be liable for any

injury to the Lessee, its servants, agents, employees, customers and invitees or for any injury or damage to the Leased Premises or to any property of the Lessee, or to any property of any other person, firm or corporation on or about the Leased Premises caused by an interruption, suspension or failure in the supply of any utilities to the Leased Premises.

9.04 Indemnification of the Lessor

The Lessee will indemnify the Lessor, and save harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Leased premises, the occupancy or use by the Lessee of the Leased premises or any part thereof, or occasioned wholly or in part by any act or omission of the Lessee, its agents, contractors, employees, servants, licensees, or concessionaires or invitees. In case the Lessor shall, without fault on its part, be made a party to any litigation commenced by or against the Lessee, then the Lessee shall protect and hold it harmless and shall pay all costs, expenses and solicitors' and counsel fees on a solicitor and client basis incurred or paid by them in connection with such litigation.

ARTICLE X

DAMAGE, DESTRUCTION AND EXPROPRIATION

10.01 Total or Partial Destruction of Leased Premises

If, during the Term, the Leased Premises are expropriated or totally or partially destroyed or damaged by any cause in respect of which the Lessor is insured, the following provisions shall have effect:

- a) If the Leased Premises are rendered partially unfit for occupancy by the Lessee, Gross Rent only shall abate in part only, in the proportion that the part of the Leased Premises rendered unfit for occupancy by the Lessee bears to the whole of the Leased Premises or if the Leased Premises are rendered wholly unfit for occupancy by the Lessee the Rent hereby reserved shall be suspended in either event until the day following a reasonable period (taking into account the extent of the Lessee's restoration) following completion of the Lessor's restoration;
- b) Notwithstanding the provisions of subparagraph (a), if the Leased Premises in the opinion of the Architect shall be incapable of being rebuilt and/or repaired or restored with reasonable diligence within 180 days of the happening of such destruction or damage, then the Lessor may at its option terminate this Lease by notice in writing to the Lessee given within thirty (30) days of the date of such destruction or damage and in the event of such notice being so given this Lease shall cease and become null and void from the date of such destruction or damage and the Lessee shall immediately surrender the Leased Premises and all interest therein to the Lessor and the Rent shall be apportioned and shall be payable by the Lessee only to the date of such destruction or damage and the Lessor may re-enter and repossess the Leased Premises discharged of this Lease;

If the Leased Premises are capable of being rebuilt and/or repaired or restored within 180 days of the happening of such damage or destruction or if within the period of thirty (30) days referred to in Section 10.01(b) the Lessor shall not give notice terminating this Lease, the Lessor shall with reasonable promptitude proceed to rebuild and/or repair or restore the Leased Premises to the extent of the Lessor's repair obligations under the Lease and the Lessee shall immediately upon substantial completion of the Lessor's work and, within a reasonable period determined by the Lessor (given the extent of the Lessee's restoration) complete the restoration of the Leased Premises.

The certificate of the Architect shall bind the parties as to the (i) extent to which the Leased Premises are unfit for occupancy; (ii) time required to rebuild and/or repair or restore the Leased Premises; and (iii) due completion of repairs.

10.02 Total or Partial Destruction of City Market

In the event that a substantial portion of the City Market shall be expropriated or damaged or destroyed by fire or other cause, or in the event the costs as estimated by the Lessor of repairing, restoring or rebuilding will exceed by \$250,000 or more the proceeds of insurance available to the Lessor, notwithstanding that the Leased Premises may be unaffected, or in the event the Lessor shall have the right, to be exercised by notice in writing delivered to the Lessee within sixty (60) days from and after said occurrence, to elect to cancel and terminate this Lease. Upon the giving of such notice to the Lessee, the Term of this Lease shall expire upon the third (3rd) day after such notice is given, and the Lessee shall vacate the Leased Premises and surrender the same to the Lessor.

10.03 Abatement of Rent

Notwithstanding anything herein before contained, all abatements of Rent set out in this Article X shall be limited to an amount equal to the amount which the Lessor collects under any rental income insurance.

10.04 Expropriation Awards

The Lessor and the Lessee will co-operate with each other if there is an expropriation of all or part of the Leased Premises or the City Market, so that each may receive the maximum award that it is entitled to at law. To the extent, however, that a part of the City Market, other than the Leased Premises, is expropriated, the full proceeds that are paid or awarded as a result, will belong solely to the Lessor, and the Lessee will assign to the Lessor any rights that it may have or acquire in respect of the proceedings or awards and will execute the documents that the Lessor reasonably requires in order to give effect to this intention.

ARTICLE XI

STATUS STATEMENT, SUBORDINATION AND ATTORNMENT

11.01 Status Statement

Within fifteen (15) days after request, the Lessee will sign and deliver to the Lessor a status statement or certificate, stating that this Lease is in full force and effect, any modifications to this Lease, the commencement and expiry dates of this Lease, the date to which Rent has been paid, the amount of any prepaid Rent or deposits held by the Lessor, whether there is any existing default and the particulars, and any other information required by the party requesting it.

11.02 Power of Attorney

The Lessee hereby irrevocably appoints the Lessor as the attorney for the Lessee with full power and authority to execute and deliver in the name of the Lessee any instruments or certificates required to carry out the intent of Section 11.01 which the Lessee shall have failed to sign and deliver within fifteen (15) days after the date of a written request by the Lessor to execute such instruments.

ARTICLE XII

TRANSFERS BY LESSEE

12.01 Transfer Defined

“Transfer” means, (i) an assignment, sale, conveyance, sublease, or other disposition of this Lease or the Leased Premises, or any part of them or any interest in this Lease (whether by operation of law or otherwise), or in a partnership that is a Lessee under this Lease, (ii) a mortgage, charge or debenture (floating or otherwise) or other encumbrance of this Lease or the Leased Premises or any part of them, or of any interest in this Lease or of a partnership, or partnership interest, where the partnership is a Lessee under this Lease, (iii) a parting with or sharing of possession of all or part of the Leased Premises, and (iv) a transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription of all or part of the corporate shares of the Lessee or an “affiliate” (as that term is defined on the date of this Lease under the *Canada Business Corporations Act*) of the Lessee which results in a change in the effective voting control of the Lessee. “Transferor” and “Transferee” have meanings corresponding to the definition of “Transfer” set out above, (it being understood that for a Transfer described in clause (iv) the Transferor is the person that has effective voting control before the Transfer and the Transferee is the person that has effective voting control after the Transfer).

12.02 Consent Required

The Lessee will not allow or cause a Transfer, without the prior written consent of the Lessor in each instance which consent may not be unreasonably withheld. Notwithstanding any statutory provisions to the contrary, Lessor’s consent shall not be deemed to have been unreasonably withheld where Lessor refuses consent to a Transfer within twenty-four (24) months of either the Commencement Date or a previous Transfer. Without limiting the generality of the foregoing, no Transfer shall be effective and no consent shall be given unless the following provisions have been complied with:

- i. There is no default of the obligations of the Lessee under this Lease;
- ii. The Lessee shall have given at least thirty (30) days’ prior written notice of the proposed Transfer and the effective date thereof to the Lessor;
- iii. A duplicate original of the documents affecting the Transfer shall be given to the Lessor within thirty (30) days after the execution and delivery thereof;

- iv. The Transferee, except in the case of a Transfer described in Section 12.01(iv), shall have assumed in writing with the Lessor the due and punctual performance and observance of all the agreements, provisions, covenants and conditions hereof on the Lessee’s part to be performed or observed from and after the effective date of the Transfer.

The Lessee acknowledges that the factors governing the granting of the Lessor’s consent to any Transfer may include, without limitation, the restrictive clauses entered into with other tenants by the Lessor, the financial background, business history and the capability of the proposed Transferee in the Lessee’s line of business, and the nature of the business practices of the proposed Transferee. The consent by the Lessor to any Transfer shall not constitute a waiver of the necessity for such consent to any subsequent Transfer. If a Transfer takes place, the Lessor may collect rent from the Transferee, and apply the net amount collected to the Rent herein reserved, but no such action shall be deemed a waiver of the requirement to obtain consent or the acceptance of the Transferee as lessee, or a release of the Lessee or any Indemnifier from the further performance by the Lessee of covenants on the part of the Lessee herein contained. Notwithstanding any Transfer, the Lessee shall remain fully liable under this Lease and shall not be released from performing any of the obligations of the Lessee under this Lease.

Any Transfer, if consented to by the Lessor, may at the Lessor’s option be documented by the Lessor or its solicitors, and any and all legal costs and the Lessor’s then-standard fee with respect thereto or to any documents reflecting the Lessor’s consent to the Transfer shall be payable by the Lessee on demand as Additional Rent.

12.03 No Advertising of Leased Premises

The Lessee shall not print, publish, post, display or broadcast any notice or advertisement to the effect that the Leased Premises are for lease or for sale or otherwise advertise the proposed sale or lease of the whole or any part of the Leased Premises and shall not permit any broker or other party to do any of the foregoing, unless the complete text and format of any such notice, advertisement or offer is first approved in writing by the Lessor. Without in any way restricting or limiting the Lessor’s right to refuse any text or format on other grounds, any text or format proposed by the Lessee shall not contain any reference to the rental rate of the Leased Premises.

ARTICLE XIII

DEFAULT OF LESSEE

13.01 Right to Re-Enter

When

- a) the Lessee shall be in default in the payment of any Rent whether lawfully demanded or not and such default shall continue for a period of five (5) consecutive days; or
- b) the Lessee shall be in default of any of its covenants, obligations or agreements under this Lease or of any term or condition of this Lease (other than its covenant to pay Rent) and such default shall continue for a period of fifteen (15) consecutive days or such longer or shorter period as the Lessor, acting reasonably, determines after five (5) days written notice by the Lessor to the Lessee specifying with reasonable particularity the nature of such default and requiring the same to be remedied;

then and in any of such cases the then current month’s Rent, together with the Rent for the three (3) months next ensuing shall immediately become due and payable, and at the option of the Lessor, the Terms shall become forfeited and void, and the Lessor may without notice or any form of legal process whatsoever forthwith re-enter upon the Leased Premises or any part thereof in the name of the whole and reposess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding, provided however, that such forfeiture shall be wholly without prejudice to the right of the Lessor to recover arrears of rent or damages for any antecedent default by the Lessee of its covenants, obligations or agreements under this Lease or any term or condition of this Lease and provided further that notwithstanding any such forfeiture the Lessor may subsequently recover from the Lessee damages for loss of Rent suffered by reason of this Lease having been prematurely determined. In addition, the Lessor shall have the right to remove and sell the Lessee’s goods and chattels and trade fixtures and apply the proceeds thereof to Rent due under the Lease.

13.02 Right to Re-let

Should the Lessor elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Leased Premises, and re-let the Leased Premises or any part thereof as agent for the

Lessee for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as the Lessor in its sole discretion may deem advisable; upon each re-letting all rentals received by the Lessor from such re-letting shall be applied; first, to the payment of any indebtedness other than rent due hereunder from the Lessee to the Lessor; second, to the repayment of any reasonable costs and expenses of such re-letting, including brokerage fees and solicitors' fees and of costs of such alterations and repairs; third, to the payment of Rent due as the same may become due and payable hereunder. If such Rent received from such re-letting during any month be less than that to be paid during that month by the Lessee hereunder, the Lessee shall pay any such deficiency to the Lessor. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Leased Premises by the Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to the lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, the Lessor may at any time thereafter elect to terminate this Lease for such previous breach. Should the Lessor at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from the Lessee all damages it may incur by reason of such breach, including the cost of recovering the Leased Premises, and including the worth at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to Rent reserved in this Lease for the remainder of the Term hereof over the then reasonable rental value of the Leased Premises for the remainder of the Term hereof, all of which amounts shall be immediately due and payable from the Lessee to the Lessor. In determining the Rent which would be payable by the Lessee hereunder, subsequent to default, the annual Rent for each year of the unexpired Term shall be equal to the greater of: (a) the average annual Gross Rent and Percentage Rent payable by the Lessee from the Commencement Date to the time of default or during the preceding three (3) full calendar years, whichever period is shorter; and (b) Gross Rent payable hereunder, together with all Additional Rent which would have been payable during the calendar year in which this Lease was terminated, prorated over a full calendar year, if required.

13.03 Legal Expenses

In case suit shall be brought for recovery of possession of the Leased Premises, for the recovery of Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of the Lessee to be kept or performed and a breach shall be established, the Lessee shall pay to the Lessor all expenses incurred therefor, including reasonable solicitors' and counsel fees on a solicitor and his client basis.

13.04 Bankruptcy

The Lessee covenants and agrees that if the Term or any of the goods and chattels of the Lessee on the Leased Premises shall be at any time during the Term seized or taken in execution or attachment by any creditor of the Lessee or if a receiver, interim receiver or receiver and manager is appointed for the assets or business of the Lessee or if the Lessee shall make any assignment for the benefit of creditors or any bulk sale or, becoming bankrupt or insolvent, shall take the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors or if any order shall be made for the winding up of the Lessee, or if the Leased Premises shall without the written consent of the Lessor become and remain vacant for a period of fifteen (15) days, or be used by any other persons than such as are entitled to use them under the terms of this Lease, or if the Lessee shall without the written consent of the Lessor abandon or attempt to abandon the Leased Premises or to sell or dispose of goods or chattels of the Lessee or to remove them or any of them from the Leased Premises so that there would not in the event of such abandonment, sale or disposal be sufficient goods on the Leased Premises subject to distress to satisfy the Rent above due or accruing due, then and in every such case the then current month's Rent and the next ensuing three (3) months' Rent shall immediately become due and be paid and the Lessor may re-enter and take possession of the Leased premises as though the Lessee or the servants of the Lessee or any other occupant of the Leased Premises were holding over after the expiration of the Term and the Term shall, at the option of the Lessor, immediately without any notice or opportunity for cure provided to the Lessee, become forfeited and determined, and in every one of the cases above such accelerated Rent shall be recoverable by the Lessor in the same manner as the Rent hereby reserved and if Rent were in arrears and the said option shall be deemed to have been exercised if the Lessor or its agents given notice to the Lessee as provided for herein.

13.05 Lessor May Perform Lessee's Covenants

If the Lessee shall fail to perform any of its covenants or obligations under or in respect of this Lease, the Lessor may from time to time at its discretion, perform or cause to be performed any such covenants or obligations, or any part thereof, and for such purpose may do such things upon or in respect of the Leased Premises or any part thereof as the Lessor may consider requisite or necessary.

All expenses incurred and expenditures made by or on behalf of the Lessor under this Section, together with an administrative fee equal to fifteen (15%) percent thereon, shall be forthwith paid by the Lessee to the Lessor on demand as Additional Rent.

13.06 Waiver of Exemptions from Distress

Despite any applicable Act, legislation or any legal or equitable rule of law: (a) none of the inventory, furniture, equipment or other property at any time owned by the Lessee is exempt from distress; and (b) no lack of compliance with any requirement concerning the day of the week, time of day or night, method of entry, giving of notice, appraising of goods, or anything else, will render any distress unlawful where the Lessee owes arrears of Rent at the time of the distress.

13.07 Remedies Cumulative

No reference to nor exercise of any specific right or remedy by the Lessor will prejudice or preclude the Lessor from exercising or invoking any other remedy in respect thereof, whether allowed at law or expressly provided for in this Lease. No such remedy will be exclusive or dependent upon any other such remedy, but the Lessor may from time to time exercise any one or more of such remedies independently or in combination.

ARTICLE XIV

MISCELLANEOUS

14.01 Overholding

If the Lessee remains in possession of the Leased Premises after the end of the Term and without the execution and delivery of a new lease, there shall be no tacit renewal of this Lease and the Term hereby granted, and the Lessee shall be deemed to be occupying the Leased Premises as a Lessee from month to month at monthly rent payable in advance on the first day of each month equal to the sum of:

- i. one and one half (1 ½) times the Gross Rent payable during the last month of the Term; and
- ii. one-twelfth of the Additional Rent payable by the Lessee for the Lease Year immediately preceding the last Lease Year of the Term;

and otherwise upon the same terms and conditions as are set forth in this Lease, except as to duration of Term, and any right of renewal mutatis mutandis.

14.02 Successors

This Lease applies to the successors and assigns of the Lessor and, if Article XII is complied with, the heirs, executors, administrators and permitted successors and permitted assigns of the Lessee. If there is more than one party named as Lessee, they are jointly and severally liable under this Lease.

14.03 Waiver

Failure by the Lessor to require performance of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the Lessor shall not be deemed to be a waiver of any preceding breach of the Lessee of any term, covenant or condition of this Lease, other than the failure of the Lessee to pay the particular rent so accepted, regardless of the Lessor's knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term or condition of this Lease shall be deemed to have been waived by the Lessor, unless such waiver be in writing by the Lessor.

14.04 Accord and Satisfaction

No payment by the Lessee or receipt by the Lessor of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement or any cheque or any letter accompanying any cheque or payment as Rent be deemed an accord and satisfaction, and the Lessor may accept such cheque or payment without prejudice to the Lessor's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

14.05 Entire Agreement

This Lease sets forth all the covenants, promises, agreements, conditions and understandings between the Lessor and the Lessee concerning the Leased Premises and there are no covenants, promises, agreements, conditions or representations, either oral or written, between them other than are herein and in the said schedules and rider, if any, set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Lessor or the Lessee unless reduced to writing and signed by them.

14.06 No Partnership

The Lessor does not, in any way or for any purpose, become a partner of the Lessee in the conduct of its business, or otherwise joint venture or a member of a joint enterprise with the Lessee.

14.07 Force Majeure

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labour troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding anything herein contained, the provisions of this Section 14.07 shall not operate to excuse the Lessee from the prompt payment of Gross Rent, Additional Rent or any other payments required by the terms of this Lease, nor entitle the Lessee to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

14.08 Notices

Any notice herein provided or permitted to be given by the Lessee to the Lessor shall be sufficiently given if delivered personally to the Common Clerk, or if transmitted by telecopier or if mailed in Canada, registered and postage prepaid, addressed to the Lessor at: C/O The Common Clerk, The City of Saint John, P. O. Box 1971, 15 Market Square, Saint John, New Brunswick, E2L 4L1, with a copy to Facility Management Division, The City of Saint John, P. O. Box 1971, 15 Market Square, Saint John, New Brunswick, E2L 4L1, and any notice herein provided or permitted to be given by the Lessor to the Lessee shall be sufficiently given if delivered personally to the party being given such notice or to a responsible employee of the party being given such notice, or if transmitted by telecopier or if mailed in Canada, **registered and postage prepaid, addressed to the Lessee at 18 Gorham Road, Quispamsis, N.B., E2E 4V8**. Any such notice given as aforesaid shall be conclusively deemed to have been given on the day on which such notice is delivered or transmitted or on the third day that there is postal delivery following the day on which such notice is mailed, as the case may be. Either party may at any time give notice in writing to the other of any change of address of the party given such notice and from and after the giving of such notice the address therein specified shall be deemed to include any request, statement or other writing in this Lease provided or permitted to be given by the Lessor to the Lessee or by the Lessee to the Lessor. If there is more than one party named as Lessee, notice to one shall be deemed sufficient as notice to all.

14.09 Place for Payment of Rent

The Lessee shall pay the Rent. Including all Additional Rent, at the office of the Lessor specified in Section 14.08 or as such place or places as the Lessor may designate from time to time by notice in writing: currently to the Cashier's Office, City Hall, P. O. Box 1971, 15 Market Square, Saint John, New Brunswick, E2L 4L1.

14.10 Approval in Writing

Wherever the Lessor's consent is required to be given hereunder or wherever the Lessor must approve any act or performance by the Lessee, such consent or approval, as the case may be, shall be given in writing by the Lessor before same and shall be deemed to be effective.

14.11 Governing Law

The Lease is to be governed by and construed according to the laws of the Province of New Brunswick.

14.12 Captions and Section Numbers

The captions, section numbers and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles or of this Lease, nor in any way affect this Lease.

14.13 Partial Invalidity

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease and/or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be separately valid and enforceable to the fullest extent permitted by law.

14.14 No Option

The submission of this Lease for examination does not constitute a reservation of or option for the Leased Premises and this Lease becomes effective as a Lease only upon execution and delivery thereof by the Lessor and the Lessee.

14.15 Time To Be of the Essence

Time shall be of the essence of this Lease.

14.16 Quiet Enjoyment

The Lessor covenants with the Lessee for quiet enjoyment.

14.17 Riders and Schedules

Schedules attached hereto form part of this Lease.

14.18 Basement Storage Space

Where the Leased Premises includes any area of basement storage space, notwithstanding any provision herein contained, the Lessee acknowledges and agrees that water and sewer lines are located within the basement area of the Leased Premises and that there is a possibility that water and/or sewage may escape from the lines as a result of breakage, blockage, overflow or other cause, and may cause damage to anything stored in the basement area of the Leased Premises. The Lessee acknowledges and agrees that if it chooses to store anything, whether belonging to it or to others, in the basement area of the Leased Premises, it does so at its own risk and the Lessee hereby releases and indemnifies and saves harmless the Lessor from and against any and all manner of actions, suits, damages, loss, costs, claims and demands of any nature whatsoever relating to or arising out of breakage, blockage, overflow or other problem of the water or sewage lines.

COUNCIL REPORT

| | |
|--------------|--|
| M&C No. | 2019 - 225 |
| Report Date | September 03, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Finance and Administrative Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: City Market Lease with 670486 NB Inc.

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|--------------------------------|-------------------------------------|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Andrew MacDonald</i> | <i>Ian Fogan/Kevin Fudge</i> | <i>John Collin</i> |

RECOMMENDATION

1. That the City enter into a Lease for the premises as referred to and described in Schedule "A" of the lease in the City Market with 670486 NB Inc., under the terms and conditions as set out in the Lease submitted with M&C 2019 – 225.
2. That the Mayor and Common Clerk be authorized to execute any necessary documents.

EXECUTIVE SUMMARY

City staff and the owner's/operators of 670486 NB Inc., doing business as Infusion Tea Room, have reached an agreement that will have the business lease space described in Schedule "A" of the lease in the City Market. The term will be for five (5) years, commencing September 1st, 2019 with an option to renew for an additional five (5) years. Rents will be at market value, and continue at increments as defined in Schedule C.

The lease document as attached is standard and consistent with the leases granted to other tenants in the City Market.

PREVIOUS RESOLUTION

N/A

STRATEGIC ALIGNMENT

Providing for continuing business at a staple in the City's Uptown Core which aids in maintaining a livable community that is vibrant and diverse, while providing an integrated approach to economic development.

REPORT

City staff has an agreement with 670486 NB Inc., doing business as Infusion Team Room, to operate the space described in Section 2.01 of the lease in the City Market that would commence effective September 1st, 2019. Their sales would be centered on making and selling café style sandwiches, soups as well as specialty teas. The initial term is for five years with an option to renew for an additional five years. The lease document is standard and consistent with the leases granted to other tenants in the City Market.

SERVICE AND FINANCIAL OUTCOMES

The operation and presence of 670486 NB Inc. within the City Market will continue to add to a vibrant food scene in the City's Uptown area. This Lease will generate revenue of approximately \$22,600.00 per annum.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

Staff of the City Market and Facility Management has provided input into the preparation of this report and the City's Legal Department has prepared the Lease Agreement.

ATTACHMENT

1. Lease Agreement with 670486 NB Inc.

Form A19

LEASE

Standard Forms of Conveyances Act, S.N.B. 1980, c. S-12, s.2

The parties to this lease are:

The City of Saint John, having its City Hall at 15 Market Square, Saint John, New Brunswick, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick, the "Lessor"

- and -

670486 NB Inc., a corporation, registered under the laws of the Province of New Brunswick, having its registered office at 113 Sherwood Drive, Suite B, Quispamsis, N.B., E2E 1H5, doing business under the name and style "**The Infusion Tea Room**", the "Lessee".

The "Rules and Regulations" attached hereto as Schedule "D" and the Form attached hereto as Schedule "D-1" form part of this Lease.

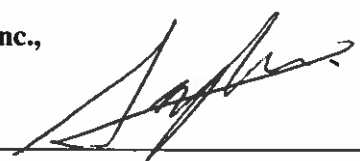
The Lessor leases to the Lessee the premises described in Schedule "A" attached hereto on the following conditions:

| | |
|-----------------------|---|
| Duration: | 5 years and 0 months |
| Date of Commencement: | ,2019 |
| Date of Termination: | , 2024 |
| Payment Dates: | First day of each and every month during the term hereof commencing September 1, 2019 |
| Place of Payment: | Cashier's Office City Hall Saint John, NB |

This lease contains the covenants and conditions which are attached and set out in Schedule "C".

DATED _____, 2019

SIGNED, SEALED & DELIVERED
in the presence of:

| | |
|---|--|
|) | THE CITY OF SAINT JOHN |
|) | |
|) | |
|) | |
|) | _____ |
|) | Mayor |
|) | |
|) | _____ |
|) | Common Clerk |
|) | |
|) | Common Council Resolution: |
|) | _____, 2019 |
|) | |
|) | 670486 NB Inc., |
|) | |
|) | Per: _____ |
|) |  |
|) | |
|) | |
|) | |

SCHEDULE “D”

RULES AND REGULATIONS

1. All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances, designated for such purposes by the Landlord.
2. The delivery or shipping of merchandise, supplies and fixtures to and from the Leased Premises shall be subject to such controls as in the judgment of the Landlord are necessary for the proper operation of the Leased Premises and/or the City Market.
3. All garbage and refuse shall be kept in the kind of containers specified by the Landlord and shall not be burned in or about the Leased Premises.
4. No radio, television, telegraphic or telephone or similar device and no water pipe, gas pipe or electric wire shall be installed or connected without obtaining in each instance the written consent of the Landlord. All such connections shall be installed in accordance with the Landlord's direction and without such direction no boring or cutting for wires or pipes shall be permitted.
5. The Tenant will be required to remain open for business as follows:
 - a. Stalls shall be open for business at all times while the market is open to the public.
 - b. Year round stands shall be open for business at all times while the market is open to the public.
6. The plumbing facilities shall not be used for any other purpose than that for which they are intended, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by the Tenant.
7. The Tenant shall use at the cost of the Tenant a nationally recognized pest extermination contractor.
8. The Tenant, its employees or agents, shall not mark, paint, drill or in any way deface any walls, ceilings, partitions, floors, wood, stone or iron without the written consent of the Landlord.
9. Except as permitted in the lease to which these rules and regulations are annexed, the Tenant shall not permit any cooking in the Leased Premises without the written consent of the Landlord.
10. No aisle, sidewalk, entry, passageway, elevator or staircase shall be obstructed or used by the Tenant, its officers, agents, servants, employees, contractors, customers, invitees or licensees for any purpose other than ingress to and egress from the Leased Premises.
11. The Tenant, its officers, agents, servants, employees, contractors, customers, invitees or licensees shall not bring in or take out, position, construct, install or move any safe or other heavy equipment or furniture without first obtaining the consent in writing of the Landlord. In giving such consent, the Landlord shall have the right in its sole discretion, to prescribe the weight permitted and the position thereof, and the use and design of planks, skids or platforms to distribute the weight thereof. All damage done to the City Market by moving or using any such safe, heavy equipment or furniture shall be repaired at the expense of the Tenant. The moving of all equipment and the furniture shall occur only during those hours when the City Market shall not be open for business or any other time consented to by the landlord.
12. All persons entering and leaving the building in which the Leased Premises are situated must do so during hours the City Market is staffed by City Market employees. The Landlord at its sole discretion may determine the hours the City Market is staffed. Tenants shall register in books if so required by the Landlord when accessing the Market “after Market hours”. The Landlord is under no responsibility for failure to enforce this rule.
13. The Tenant shall not place or cause to be placed any additional locks upon any doors of the Leased Premises without the approval of the Landlord and subject to any conditions imposed by the Landlord.
14. No one shall use the Leased Premises for sleeping apartments or residential purposes, or for the storage of personal effects or articles other than those required for the purposes permitted by the lease to which these rules and regulations are annexed.

SCHEDULE “D”

RULES AND REGULATIONS

Page 2

15. Subject to the Landlord’s providing such service, the Tenant shall permit window cleaners to clean the windows of the Leased Premises from time to time and at reasonable times.
16. Any hand trucks, carryalls or similar appliances used in any building in the Shopping Centre shall be equipped with rubber tires, side guards and such other safeguards as the Landlord shall require.
17. No animals or birds shall be brought into the Leased Premises except as permitted by the lease to which these rules and regulations are annexed.
18. Except as permitted in the lease to which these rules and regulations are annexed, the Tenant shall not permit the delivery of any food or beverage to the Leased Premises without the approval of the Landlord.
19. The Tenant shall not solicit business in the common areas or distribute any handbills or other advertising matter in the common areas or in automobiles parked in the parking areas.
20. The Tenant may only sell merchandise that is approved by the Landlord through their lease or otherwise.
21. The Tenant shall not keep or display any merchandise on or otherwise obstruct the common areas adjacent to the Leased Premises.
22. The Tenant shall not use or permit any of the Leased Premises to be used in such a manner as to cause annoying noises or vibrations or offensive odours.
23. The Tenant is responsible to remove garbage from their premises and deliver to the compactor designated by the Landlord and to place the garbage in the compactor.
24. A set of plans must be presented and the approval must be given by the landlord for any improvements or painting, etc. to the stands (including signs).
25. Merchandise, displays, shelves, etc., are not to exceed the height of the bottom meat hook bars on each stand.
26. No solid dividers are to be placed between the top and bottom meat hook bars.
27. Displays underneath the stands must be set up 6” off the floor on legs or wheels so the floor can be swept and washed down properly.
28. Covers are not to be placed over merchandise on stands without the prior approval of the Landlord.
29. Signage is to be in keeping with the historic character of the City Market and must meet the following criteria:

Materials: Wood and metal are considered to be appropriate materials. Plastic may be used provided that it looks like one of the acceptable materials. Internally-illuminated plastic faced box signs will not be acceptable;

Number of Signs: Each tenancy will be permitted one bench-top sign on each bench (7’-0” length), or one projecting sign on each aisle-side that identifies the business by name and type;

Bench-top Signs: These signs are the preferred primary form of signage. They must be located 1 to 2 inches above the top rail of the bench, and should display the business name. They will consist of a 8” high by 6’-0” long narrow band of material with the lettering printed, painted, composed of individual raised letters, or lettering cut into the material and painted a contrasting colour. The rear may not be used for signage over another tenancy;

Projecting Signs: Projecting signs may be used and shall be constructed as two-sided signs. They may only be located at a bench post, and must be rigidly fastened in place. They shall be vertical in proportion. The maximum size for projecting signs shall be 18” high x 12” wide. Only one per tenancy per aisle side shall be permitted as Business identifications;

Lighted Signs: Not permitted;

Temporary Signs: Any number of signs advertising goods for sale, specials, etc. shall be permitted. They may not exceed 8.5” x 11” in size, and must not excessively obscure the view through the bench between the first and last rail above the bench.


PROVINCE OF NEW BRUNSWICK
COUNTY OF SAINT JOHN

- I, SANG HYUCK KWAK, of Quispamsis, in the County of Kings, and Province of New Brunswick, MAKE OATH AND SAY THAT:-
- 1. I am the President of 670486 NB INC., and as such have a personal knowledge of the matters and facts hereinafter deposed to.
 - 2. I am the signing officer to make and execute documents on behalf of the Company.
 - 3. The signature "SANG HYUCK KWAK" subscribed to the foregoing Indenture is the true and proper signature of me, your deponent.
 - 4. The Corporation has no seal.

SWORN TO at the City of Saint)
John, in the County of Saint)
John, in the Province of New)
Brunswick, this 4th day of)
September, A.D., 2019.)

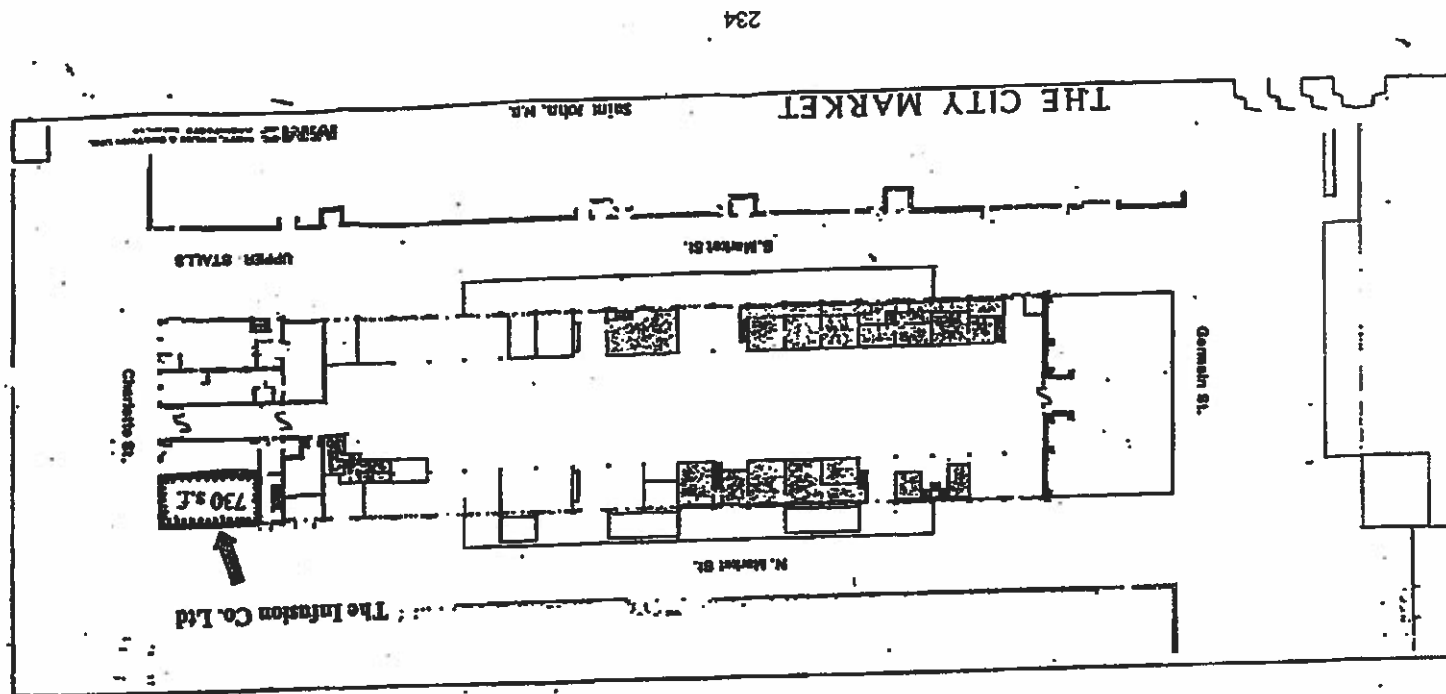
BEFORE ME:

A COMMISSIONER OF OATHS
BEING A SOLICITOR



SANG HYUCK KWAK

Schedule "A"



**LEASE FOR STALL SPACE
CITY MARKET
670486 NB Inc.
doing business under the name and style
The Infusion Tearoom**

SCHEDULE “C”

ARTICLE I

DEFINITIONS

1.01 Definitions

In this lease:

- a) “Additional Rent” means all and any monies required to be paid by the Lessee to the Lessor under or pursuant to the terms of this Lease, save only for Gross Rent;
- b) “Architect” shall mean the architect from time to time named by the Lessor or at the option of the Lessor, the Lessor’s general contractor. Any certificate provided by the Architect and called for by the terms of this Lease shall be final and binding on the parties hereto;
- c) “Commencement Date” means a date determined in accordance with the provisions of Section 2.03;
- d) “Common Areas” means those areas, facilities, utilities, improvements, equipment and installations in the City Market which from time to time are not designated or intended by the Lessor to be leased to tenants of the City Market, and those areas, facilities, utilities, improvements, equipment and installations which serve or are for the benefit of the City Market whether or not located in, adjacent to or near the City Market and which are designated from time to time by the Lessor as part of the Common Areas. Without limiting the generality of the foregoing, Common Areas includes all parking areas, all entrances and exits thereto and all structural elements thereof, access roads, truck courts, driveways, truckways, delivery passages, the roof, exterior weather walls, exterior and interior structural elements and bearing walls in the building and improvements comprising the City Market, package pick-up stations, loading and related areas, pedestrian stairways, ramps, electrical, telephone, meter, valve, mechanical, mail storage service and janitor rooms and galleries, fire preventions, security and communication systems, columns, pipes, electrical, plumbing, drainage, any central system for the provision of heating, ventilating or air conditioning to leaseable premises or any enclosed Common Areas and all other installations, equipment or services located therein or related thereto as well as the structures housing installations, including but not limited to all open and enclosed malls, courts and arcades, public seating and service areas, corridors, furniture, first aid and/or information stations, auditoria, conference rooms, nurseries, childcare play areas and related kitchen and storage facilities, escalators, elevators, public washrooms, music systems and any atrium seating/food court;
- e) “C.P.I.” means the Consumer Price Index (All Items) for Canada (or any index published in substitution for the Consumer Price Index or any other replacement index reasonably designated by the Lessor, if it is no longer published) published by Statistics Canada (or by any successor thereof or any other governmental agency, including a provincial agency);
- f) “Atrium Seating/Food Court” means those portions of the Common Areas designated by the Lessor from time to time for use in support of the operations of any group of premises providing quick food service to customers of the City Market and includes, without limiting the generality of the foregoing, public table and seating areas, waste collection facilities and other areas, facilities and equipment intended for such use;
- g) “HST” means harmonized sales taxes, value-added taxes, multi-stage taxes, business transfer taxes or other similar taxes however they are characterized and any taxes in lieu thereof;
- h) “Hazardous Substances” means any contaminant, pollutant, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, hazardous waste, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, PCB’s or any other substances or materials that are declared or defined to be

Schedule “C”

- Page 2 -

hazardous, toxic, contaminants or pollutants in or pursuant to any applicable federal, provincial or municipal statute, by-law or regulation;

- i) “Lessor” includes the Lessor and its successors and assigns;
- j) “Lease” means this indenture of lease and includes any riders and schedules hereto and shall also include any agreements entered into which have the effect of amending this indenture from time to time;
- k) “Leased Premises” means the premises leased to the Lessee as referred to and described in Section 2.01 hereof. Save as mentioned below, the boundaries of the Leased Premises shall extend from the top surface of the structural subfloor to the bottom surface of the structural ceiling. If the Leased Premises have no ceiling abutting the demising walls, but rather are open to the ceiling of the City Market building, the boundaries of the Leased Premises extend from the top surface of the structural subfloor to the height of the demising walls;
- l) “Lease Year” shall mean a period of time commencing on and ending on of the following year;
- m) “Gross Rent” means the annual Gross Rent payable by the Lessee pursuant to Section 3.01;
- n) “Operating Costs” means the total cost and expense incurred in owning, operating, maintaining, managing and administering the City Market and the Common Areas, specifically including without limiting the generality of the foregoing, any capital or place of ownership taxes levied against the Lessor or any owners of the City Market on account of their interest in the City Market, in an amount equitably allocated to the City Market by the Lessor; gardening and landscaping charges; the cost and expenses of taking out the insurance described in Section 9.03; cleaning, snow removal, garbage and waste collection and disposal; lighting, electricity, public utilities, loud speakers, public address and musical broadcasting systems and any telephone answering service used in or serving the City Market, and the cost of electricity and maintenance for any signs designated by the Lessor as part of the Common Areas; policing, security, supervision and traffic control; salaries and benefits of all supervisory and other personnel employed in connection with the City Market and management office rent imputed to the City Market by the Lessor, acting reasonably; Management Fee, the cost of providing additional parking or other Common Areas for the benefit of the City Market, whether such costs be Taxes or other type of costs; the costs and expenses of environmental site reviews and investigations, removal and/or clean-up of Hazardous Substances from the Common Areas; the cost of the rental of any equipment and signs and the costs of supplies used in the maintenance and operation of the City Market and the Common Areas; accounting and audit fees incurred in the preparation of the statements required to be prepared and supplied by the Lessor under the terms of this Lease; heating, ventilating and air conditioning of the Common Areas; all repairs and replacements to and maintenance and operation of the City Market and the Common Areas; depreciation or amortization of the costs, including repair and replacement, of all maintenance and cleaning equipment, master utility meters, and all other fixtures, equipment, and facilities serving or comprising the City Market or the Common Areas; which are not charged fully in the Lease Year in which they are incurred, from the earlier of the date when the cost was incurred or the Commencement Date, at rates on the various items determined from time to time by the Lessor in accordance with sound accounting principles;
- o) “Proportionate Share” means a fraction, the numerator of which is the Rentable Area of the Leased Premises and the denominator of which is the Rentable Area of the City Market;
- p) “Rent” means all Gross Rent and Additional Rent payable pursuant to the terms of this Lease;
- q) “Rentable Area of the Leased Premises” means the area expressed in square feet of all floors of the Leased Premises measured from:
 - i. the exterior face of all exterior walls, doors and windows;
 - ii. the exterior face of all interior walls, doors and windows separating the Leased Premises from Common Areas; if any; and
 - iii. the centre line of all interior walls separating the Leased Premises from adjoining leasable premises.

Schedule “C”

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The Rentable Area of the Leased Premises includes all interior space whether or not occupied by projections, structures or columns, structural or non-structural, and if the store front is recessed from the lease line, the area of such recess for all purposes lies within the Rentable Area of the Leased Premises.

- r) “Rentable Area of the City Market” means the area in square feet of all rentable premises in the City Market set aside for leasing by the Lessor from time to time, except for any occupancy as designated by the Lessor for which there is no Gross Rent payable. Provided however that the Lessor shall credit to Operating Costs any contributions received in respect of such Operating Costs from the occupants of any of the areas excluded from the Rentable Area of the City Market in accordance with this definition. Provided further that in determining the fraction that is the Lessee’s Proportionate Share, if the Leased Premises consists of any of the foregoing excluded categories, the Rentable Area of that category will be included in the Rentable Area of the City Market;
- s) “Rules and Regulations” means the rules and regulations adopted and promulgated by the Lessor from time to time acting reasonably, including those listed on Schedule “D”;
- t) “City Market” means the lands and premises known by the civic address 47 Charlotte Street, Saint John, New Brunswick, as such lands and premises may be altered, expanded or reduced from time to time and the buildings, improvements, equipment and facilities erected thereon or situate from time to time therein;
- u) “Taxes” means all duties, real property taxes, charges, assessments and payments, from time to time levied, assessed or imposed upon the City Market or any part thereof or upon the Lessor by reason of its ownership of the City Market, by any taxing authority. Taxes shall also include any penalties, late payment or interest charges imposed by any municipality or other taxing authority as a result of the Lessee’s late payments of any taxes or instalments thereof. For greater certainty “Taxes” shall exclude any penalties or interest incurred by the Lessor as a result of its failure to pay Taxes in a timely manner, except Taxes shall include any interest in respect of a deferral of payment in accordance with sound accounting practices if permitted by statute or pursuant to an agreement with the taxing authority; and (ii) income, profit or excess profits taxes of the Lessor;
- v) “Lessee” means the party named as Lessee in this Lease; and
- w) “Term” means the period referred to in Section 2.03.

ARTICLE II

GRANT, TERM AND INTENT

2.01 Leased Premises

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Lessor demises and leases to the Lessee and the Lessee leases from the Lessor, the Leased Premises. The Leased Premises are presently located in the tower and facing Charlotte Street as shown on Schedule “A” (**730 ft²**).

2.02 Use of Common Areas

The use and occupation by the Lessee of the Leased Premises shall entitle the Lessee to the use in common with all others entitled thereto of the Common Areas, subject however, to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by the Landlord.

2.03 Term of Lease

TO HAVE AND TO HOLD the Leased Premises for and during the term of five (**5**) **years** to be computed from **September 1st, 2019** and fully to be completed and ended on **August 31, 2024** save as hereinafter provided for earlier termination.

2.04 Option to Renew

The Lessee shall have the option to renew this Lease for a further one (1) term of five (5) years at the then prevailing market rate by providing written notice of its intention to renew to the Lessor no later than six (6) months prior to the expiration of the Initial Term. In the event that the Lessor and the Lessee do not agree on the then prevailing market rate, such rate may be determined by a single arbitrator appointed by the agreement between the Lessor and the lessee or pursuant to the *Arbitration Act*.

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PROVIDED THAT if there is any Lessor’s Work or Lessee’s Work to be performed prior to the Lessee opening for business in the Leased Premises or the Leased Premises are occupied by a third party as of the date of this Lease, the Commencement Date shall be the earlier of:

- a) **sixty (60)** days after the Lessor has delivered vacant possession of the Leased Premises to the Lessee notwithstanding that the Lessor may still, during such **sixty (60)** day period, be completing its work; or
- b) the opening by the Lessee to the public of its business in the Leased Premises.

Notwithstanding any change in the Commencement Date calculated in accordance with the preceding provisions hereof, the Terms shall expire on the date set for such expiry in the first paragraph of this Section 2.03, subject always to earlier termination as provided for in this Lease.

PROVIDED THAT upon the Lessor or its Architect giving notice to the Lessee that the Leased Premises are available for the commencement of the Lessee’s Work, the Lessee shall immediately take possession of the Leased Premises and shall occupy same for the purpose of fixturing and installing its inventory, at its own risk, for a period of **zero (0)** days after receipt of such notice or until the Lessee opens for business to the public in the Leased Premises, free of the payment of Gross Rent, and Additional Rent save for the obligation of the Lessee to pay for all utility charges used by the Lessee or consumed in the Leased Premises during the period of such fixturing, and shall during the period from the giving of such notice until the Commencement Date be a tenant in the Leased Premises subject to the same covenants and agreements as are contained in this Lease, mutatis mutandis.

FURTHER PROVIDED THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY, if the Lessor is unable to deliver vacant possession of the Leased Premises to the Lessee for any reason, including but not limited to the holding over or retention of possession of any other lessee or occupant, or the lack of completion of any repairs, improvements or alterations required to be completed before the Lessee’s occupancy of the Leased Premises, then the time for commencement of the Term shall be extended to correspond with the period of delay and the Lessee shall not be entitled to any abatement or diminution of Rent (except that Rent shall not commence to be payable until possession of the Leased Premises is given by the Lessor to the Lessee) nor shall the validity of this Lease or the parties’ respective obligations hereunder be affected. However, if the Lessor does not give vacant possession of the Leased Premises to the Lessee within six (6) months of the date of this Lease, then the Lessor may, at is option, terminate this Lease by written notice to the Lessee and in such event this Lease shall be null and void and of no effect whatsoever. Any deposit paid by the Lessee to the Lessor shall be returned without interest or deduction, and neither party shall have any further liability to the other.

Forthwith, upon the Commencement Date being determined in accordance with the foregoing, the Lessee shall execute an acknowledgement of same on Lessor’s usual form.

The Lessee shall pay all Gross Rent and Additional Rent calculated on a per diem basis, from when the Commencement Date occurs and thereafter all payments of Rent shall be made on the first day of each month throughout the Term unless otherwise specified herein.

ARTICLE III

RENT AND DEPOSIT

3.01 Gross Rent

The Lessee shall pay annual Gross Rent to the average amount of **Thirty-One Dollars and 5 cents (\$31.05)** per square foot of leaseable retail area of the Leased Premises. The Gross Rent shall be paid in equal monthly instalments, monthly in advance. According to the following schedule:

| Rate | Retail Space | | Cooler Space | | Mezzanine Space | | Basement Space | |
|------|--------------|--|--------------|--|-----------------|--|----------------|--|
| 1 | \$29.75 | | \$19.99 | | \$5.31 | | \$2.06 | |
| 2 | \$30.50 | | \$19.99 | | \$5.31 | | \$2.06 | |
| 3 | \$31.00 | | \$19.99 | | \$5.31 | | \$2.06 | |
| 4 | \$31.75 | | \$19.99 | | \$5.31 | | \$2.06 | |
| 5 | \$32.25 | | \$19.99 | | \$5.31 | | \$2.06 | |

| Year | Retail Space | | Cooler Space | | Mezzanine Space | | Basement Space | |
|------|--------------|------------|--------------|--------|-----------------|--------|----------------|--------|
| | 730 | | 0 | | 0 | | 0 | |
| | Year | Month | Year | Month | Year | Month | Year | Month |
| 1 | \$21,717.50 | \$1,809.79 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| 2 | \$22,265.00 | \$1,855.42 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| 3 | \$22,630.00 | \$1,885.83 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| 4 | \$23,177.50 | \$1,931.46 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| 5 | \$23,542.50 | \$1,961.88 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |

There shall be no Additional Rent payable under this Agreement, save and except monies to be paid under Article VI of this Lease.

3.02 Rent Past Due

If the Lessee fails to pay, when the same is due and payable, any Gross Rent, Additional Rent or other amount payable by the Lessee under this Lease, such unpaid amounts shall bear interest from the due date thereof to the date of payment, compounded monthly at the rate equal to four (4) percentage points in excess of the Prime Rate.

3.03 Deposit

The Lessor acknowledges receipt of **Zero Dollars (\$00.00)** which it will apply towards the payment of Gross Rent for the first and last months of the Term except that the Lessor may apply all or part of the amount retained for application towards the last month's Gross Rent as compensation for any loss or damage arising from the breach by the Lessee of any provisions of this Lease. This right will not be construed to limit the Lessor's other rights under this Lease or at law or to limit the amount recoverable by the Lessor for damages in respect of breaches by the Lessee of this Lease. If the Lessor uses all or part of the deposit for the last month's Gross Rent as provided above, the Lessee will, upon notification by the Lessor, pay to the Lessor the amount required to reimburse it for the amounts so applied. The Lessor will not be required to pay interest to the Lessee on any of the amounts paid to the Lessor or retained by it under this section. The Lessor may deliver the aforesaid deposit to any purchaser of the Lessor's interest in the City Market or any part thereof, whereupon the Lessor will immediately be discharged from any further liability with respect to the deposit. The Lessee will not assign or encumber its interest in the deposit except in connection with a permitted Transfer, in which case the Lessee's interest in the deposit will be deemed to have been assigned to the permitted Transferee as of the date of the Transfer.

3.04 Pre-Authorized Payments

The Lessee shall participate in a pre-authorized payment plan whereby the Lessor will be authorized to debit the Lessee's bank account each month from time to time during each Lease Year in an amount equal to the Gross Rent and Additional Rent payable on a monthly basis, and, if applicable, generally any amount payable provisionally pursuant to the provisions of this Lease on an estimated basis. The Lessor shall sign a form of application which is the same or similar to Schedule “D-1”, or as may be required by the Lessee's bank, credit union or other financial institution.

ARTICLE IV

TAXES

4.01 Taxes Payable by the Lessor

The Lessor shall pay all Taxes which are levied, rated, charged or assessed against the City Market or any part thereof subject always to the provisions of this Lease regarding payment of Taxes by the Lessee. However, the Lessor may defer payment of any such Taxes or defer compliance with any statute, law, by-law, regulation or ordinance in connection with the levying of any such Taxes in each case to the fullest extent permitted by law, so long as it diligently prosecutes any contest or appeal of any such Taxes.

4.02 Taxes Payable by Lessee

- a) The Lessee shall during the Term pay, without any deduction, abatement or set-off whatsoever, all Taxes levied, laid or assessed on or against the Leased Premises;
- b) In the case of assessments for local improvements or betterments which are assessed or imposed during the term and which may by law be payable in instalments, the Lessee shall only be obligated to pay such instalments as same fall due during the Term, together with interest on deferred payments;
- c) In any suit or proceeding of any kind or nature arising or growing out of the failure of the Lessee to keep any covenant contained in this Article, the certificate or receipt of the department, officer or bureau charged with collection of the Taxes, showing that the tax, assessment or other charge affecting the Leased Premises is due and payable or has been paid, shall be prima facie evidence that such tax, assessment or other charge was due and payable as a lien or charge against the Leased Premises or that it has been paid as such by the Lessor;

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- d) The Lessee, if allowed by the taxing authority, shall have the right to contest or review by legal proceedings or in such manner as the Lessee in its opinion shall deem advisable (which proceedings or other steps taken by the Lessee shall be conducted diligently at its own expense and free of expense to the Lessor) any and all Taxes levied, assessed or imposed upon or against the Leased Premises or Taxes in lieu thereof required to be paid by the Lessee hereunder. No such contest shall defer or suspend the Lessee’s obligations to pay the Taxes as herein provided pending the contest, but if by law it is necessary that such payment be suspended to preserve or perfect the Lessee’s contest, then the contest shall not be undertaken without there being first deposited with the Lessor a sum of money equal to twice the amount of the Taxes that are the subject of the contest, to be held by the Lessor as an indemnity to pay such Taxes upon conclusion of the contest and all costs thereof that may be imposed upon the Lessor or the Leased Premises. Any costs associated with an appeal undertaken by the Lessor, the Lessee shall pay their proportionate share of such costs;
- e) The Lessee upon request of the Lessor will promptly exhibit to the Lessor all paid bills for Taxes which bills after inspection by the Lessor shall be returned to the Lessee.

4.03 HST Payable by Lessee

The Lessee shall pay to the Lessor all HST on Rent and any other HST imposed by the applicable legislation on the Lessor or Lessee with respect to this Lease, in the manner and at the times required by the applicable legislation. Such amounts are not consideration for the rental of space or the provision by the Lessor of any service under this Lease, but shall be deemed to be Rent and the Lessor shall have all of the same remedies for and rights of recovery of such amounts as it has for recovery of Rent under this Lease. If a deposit is forfeited to the Lessor, or an amount becomes payable to the Lessor due to a default or as consideration for a modification of this Lease, and the applicable legislation deems a part of the deposit or amount to include HST, the deposit or amount will be increased and the increase paid by the Lessee so that the Lessor will receive the full amount of the forfeited deposit or other amount payable without encroachment by any deemed HST portion.

4.04 Business Taxes and Other Taxes of Lessee

The Lessee shall pay to the lawful taxing authorities, when the same becomes due and payable:

- a) all taxes, rates, duties, assessments and other charges that are levied, rated, charged or assessed against or in respect of all improvements, equipment and facilities of the Lessee on or in the Leased Premises; and
- b) every tax and license fee which is levied, rated, charged or assessed against or in respect of any business carried on in the Leased Premises or in respect of the use or occupancy thereof

whether in any case any such taxes, rates, duties, assessments or license fees are rated, charged or assessed by any federal, provincial, municipal or other body.

ARTICLE V

UTILITIES

5.01 Utilities

The Lessee shall pay all utilities directly to the utility company, on a metered basis. In the event that a Lessee leases cooler space with the Leased Premises, the Lessee shall pay to the Lessor the Lessee’s proportionate share of any utility consumed.

ARTICLE VI

MERCHANTS’ ASSOCIATION

6.01 Merchants’ Association

If and when an association or corporation of merchants or lessees (the “Association”) is formed comprising tenants of the City Market, the Lessee shall forthwith become a member of such Association or if such an Association has already been formed, the Lessee shall forthwith become a member thereof and

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the Lessee shall retain its membership in such Association during the entire Term and shall abide by all rules, regulations, by-laws, decisions, directions, dues and assessments of the Association. Such Association shall in no way affect the rights of the Lessor and any by-laws, rules and regulations of such Association shall at all times be subject to the prior approval of the Lessor.

6.02 Promotion Fund

The Lessee shall pay to the Lessor an amount equal to 6% of annual Gross Rent to be paid in twelve (12) monthly instalments each instalment payable on the 1st day of each month during the Term.

ARTICLE VII

CONDUCT OF BUSINESS BY TENANT

7.01 Use of Leased Premises

The Leased Premises shall be used continuously, actively and diligently for the sole purpose of **a tea room. This traditional tearoom will serve tea, coffee and food commonly found in an “old world” tearoom. The food menu will include, but not be limited to, box lunches and High Tea Foods. The tearoom will also feature a tea related gifts boutique of not more than 25% of the floor space.**

The Lessee will not use or permit or suffer the use of the Leased Premises or any part thereof for any other business or purpose. In connection with the business to be conducted by the Lessee on the Leased Premises, the Lessee shall only use the advertised name **“The Infusion Tearoom & Bistro”** and will not change the advertised name of the business to be operated in the Leased Premises without the prior written consent of the Lessor.

The Lessee shall not introduce new product lines, or offer new services to its customers without first obtaining the written consent of the Lessor. The Lessee acknowledges that it would be reasonable for the Lessor to withhold its consent if the introduction by the Lessee of such product line or service would compete with the business of other tenants in the City Market or infringe on exclusive covenants granted by the Lessor.

Unless otherwise specifically set out in this Lease to the contrary, nothing contained in this Lease shall: (i) confer upon the Lessee the exclusive right to sell or provide in the City Market any of the products or services permitted to be sold or provided from the Leased Premises pursuant to this Section 7.01; nor (ii) prevent the Lessor from leasing any other premises in the City Market to any other tenant(s) carrying on a business which is similar in whole or in part to the business permitted to be carried on from the Leased Premises pursuant to this Section 7.01.

- a) The Lessee acknowledges that its continued occupancy of the Leased Premises and the regular conduct of business therein are of utmost importance to neighbouring tenants and to the Lessor in the renting of space in the City Market, the renewal of other leases therein, the efficient and economic supply of services and utilities, and in the character and quality of other tenants in the City Market. The Lessee therefore covenants and agrees that throughout the Term it will occupy the entire Leased Premises, comply strictly with the provisions of Section 7.01 and not vacate or abandon the Leased Premises at any time during the Term. The Lessee acknowledges that the Lessor is executing this Lease in reliance thereupon and that the same is a material element inducing the Lessor to execute this Lease. The Lessee further agrees that if it vacates or abandons the Leased Premises or fails to so conduct its business therein, or uses or permits or suffers the use of the Leased Premises for any purpose not specifically herein authorized and allowed, the Lessee will be in breach of the Lessee’s obligations under the Lease, and then, without constituting a waiver of the Lessee’s obligations or limiting the Lessor’s remedies under this Lease, all Rent reserved in this Lease will immediately become due and payable to the Lessor unless guaranteed to the satisfaction of the Lessor. The Lessor will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring the Lessee to comply with the provisions of this Section 7.01(b).
- b) The Lessee acknowledges that its continued occupancy of the Leased Premises and the regular conduct of business therein are of utmost importance to neighbouring tenants and

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to the Lessor in the renting of space in the City Market, the renewal of other leases therein, the efficient and economic supply of services and utilities, and in the character and quality of other tenants in the City Market. The Lessee therefore covenants and agrees that throughout the Term it will occupy the entire Leased Premises, comply strictly with the provisions of Section 7.01 and not vacate or abandon the Leased Premises at any time during the Term. The Lessee acknowledges that the Lessor is executing this Lease in reliance thereupon and that the same is a material element inducing the Lessor to execute this Lease. The Lessee further agrees that if it vacates or abandons the Leased Premises or fails to so conduct its business therein, or uses or permits or suffers the use of the Leased Premises for any purpose not specifically herein authorized and allowed, the Lessee will be in breach of the Lessee’s obligations under the Lease, and then, without constituting a waiver of the Lessee’s obligations or limiting the Lessor’s remedies under this Lease, all Rent reserved in this Lease will immediately become due and payable to the Lessor unless guaranteed to the satisfaction of the Lessor. The Lessor will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring the Lessee to comply with the provisions of this Section 7.01(b).

7.02 Conduct and Operation of Business

The Lessee shall occupy the Leased Premises from and after the Commencement Date and thereafter shall conduct continuously and actively the business set out in Section 7.01, in the whole of the Leased Premises. In the conduct of the Lessee’s business pursuant to this Lease the Lessee shall:

- a) operate its business with due diligence and efficiency and maintain an adequate staff to properly serve all customers; own, install and keep in good order and condition free from liens or rights of third parties, fixtures and equipment of first class quality; and carry at all times such stock of goods and merchandise of such size, character and quality as will produce the maximum volume of sales from the Leased Premises consistent with good business practices;
- b) conduct its business in the Leased Premises during such hours and on such days as the Lessor from time to time requires or permits and at no other time. However the Lessee is not required or permitted to carry on its business during any period prohibited by any law regulating the hours of business. If the Lessee fails to open during the days and/or hours required by the Lessor, then in addition to all other amounts of Rent payable under this Lease the Lessee shall pay as Additional Rent to the Lessor upon demand as liquidated damages and not as a penalty, an amount equal to two hundred fifty dollars (\$250.00) per day for each and every day that the Lessee is in default. When not open for business the security of the Leased Premises is the sole responsibility of the Lessee;
- c) keep displays of merchandise in the display windows (if any) of the Leased Premises, and keep the display windows and signs (if any) in the Leased Premises well-lit during the hours the Lessor designates from time to time, acting reasonably;
- d) stock in the Leased Premises only merchandise the Lessee intends to offer for retail sale from the Leased Premises, and not use any portion of the Leased Premises for office, clerical or other non-selling purposes except minor parts reasonably required for the Lessee’s business in the Leased Premises;
- e) abide by all rules and regulations and general policies formulated by the Lessor, acting reasonably, from time to time relating to the delivery of goods to the Leased Premises;
- f) not allow or cause to be committed any waste upon or damage to the Leased Premises or any nuisance or other act or thing which disturbs the quiet enjoyment of any other lessee in the City Market or which unreasonably disturbs or interferes with or annoys any third party, or which may damage the City Market;
- g) not allow or cause to be done any act in or about the Common Areas or the City Market which in the Lessor’s opinion, acting reasonably, hinders or interrupts the City Market’s flow of traffic in any way, obstructs the free movement or parties doing business in the City Market;
- h) not allow or cause business to be solicited in any part of the City Market other than the Leased Premises, nor display any merchandise outside the Leased Premises at any time without the prior written consent of the Lessor;
- i) use the name designated for the City Market by the Lessor from time to time and all insignia or other identifying names and marks designated by the Lessor in connection with the advertising of the business conducted in the Leased Premises. Notwithstanding

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the foregoing the Lessee will not acquire any rights in such names, marks or insignia and upon the Lessor’s request the Lessee will abandon or assign to the Lessor any such rights which the Lessee may acquire by operation of law and will promptly execute any documents required by the Lessor to give effect to this subparagraph (i);

- j) not install or allow in the Leased Premises any transmitter device nor erect any aerial on the roof of any building forming part of the City Market or on any exterior walls of the Leased Premises or in any of the Common Areas. Any such installation shall be subject to removal by the Lessor without notice at any time and such removal shall be done and all damage as a result thereof shall be made good, in each case, at the cost of the Lessee, payable as Additional Rent on demand;
- k) not use any travelling or flashing lights or signs or any loudspeakers, television, phonograph, radio or other audiovisual or mechanical devices in a manner so that they can be heard or seen outside of the Leased Premises without the prior written consent of the Lessor. If the Lessee uses any such equipment without receiving the prior written consent of the Lessor, the Lessor shall be entitled to remove such equipment without notice at any time and such removal shall be done and all damage as a result thereof shall be made good, in each case, at the cost of the Lessee, payable as Additional Rent on demand;
- l) not install or allow in the Leased Premises any equipment which will exceed or overload the capacity of any utility, electrical or mechanical facilities in the Leased Premises or of which the Lessor has not approved. If the Lessee requires additional utility, electrical or mechanical facilities, the Lessor may in its sole discretion if they are available elect to install them at the Lessee’s expense and in accordance with plans and specifications to be approved in advance in writing by the Lessor;
- m) not bring upon the Leased Premises any machinery, equipment, article or thing that by reason of its weight, size or use, might in the opinion of the Lessor, acting reasonably, damage the Leased Premises or overload the floors of the Leased Premises. Any such machinery, equipment, article or thing shall be subject to removal by the Lessor without notice at any time and such removal shall be done and all damages as a result thereof shall be made good, in each case, at the cost of the Lessee, payable as Additional Rent on demand;
- n) observe and comply with all federal, provincial or municipal laws pertaining to or affecting the Leased Premises, the Lessee’s use of the Leased Premises or the conduct of any business in the Leased Premises, or the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Leased Premises, and the regulations of any insurance underwriters in respect of the insurance maintained by the Lessor in respect of the City Market, and carry out all modifications to the Leased Premises and the Lessee’s conduct of business or in use of the Leased Premises which may be required by any such authorities.

7.03 Prohibited Activities

- a) The Lessee acknowledges that it is only one of many tenants in the City Market and that therefore the Lessee shall conduct its business in the Leased Premises in a manner consistent with the best interests of the City Market as a whole;
- b) The Lessor shall have the right to cause the Lessee to discontinue and the Lessee shall thereupon forthwith discontinue the sale of any item, merchandise, commodity or the supply of any service or the carrying on of any business, any of which is either prohibited by this Section 7.03 or which the Lessor, acting reasonably, determines is not directly related to the business set out in Section 7.01. The Lessee will not allow or cause the use of any part of the Leased Premises for any of the following businesses or activities:
 - i. the sale of secondhand goods or surplus articles, insurance salvage stock, fire sale stock or bankruptcy stock;
 - ii. the sale of goods, except as may be specifically permitted by the provisions of Section 7.01;
 - iii. an auction, bulk sale (other than a bulk sale made to an assignee or sublessee pursuant to a permitted assignment or subletting hereunder), liquidation sale, “going out of business” or bankruptcy sale, or warehouse sale;
 - iv. any advertising or selling procedures which would, or any sale or business conduct or practice which would, because of the merchandising methods or

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quality of operation likely to be used, in either case in the Lessor’s opinion, tend to lower the character of the City Market or harm or tend to harm the business or reputation of the Lessor or reflect unfavourably on the City Market, the Lessor or other tenants in the City Market or tend to confuse, deceive, mislead or be fraudulent to the public; or

- v. a mail order business, save and except for dulce and maple products or a department store, junior department store or variety store.

7.04 Hazardous Substances

The Tenant covenants and agrees to utilize the Leased Premises and operate its business in a manner so that no part of the Leased Premises or surrounding lands are used to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any Hazardous Substance, except in strict compliance with all applicable federal, provincial and municipal statutes, by-laws and regulations, including, without limitation, environmental, land use and occupational and health and safety laws, regulations, requirements, permits, statutes, by-laws and regulations. Further the Lessee hereby covenants and agrees to indemnify and save harmless the Lessor and those for whom the Lessor is in law responsible from any and all losses, costs, claims, damages, liabilities, expenses or injuries caused or contributed to by any Hazardous Substances which are at any time located, stored or incorporated in any part of the Leased Premises. The Lessee hereby agrees that the Lessor or its authorized representatives shall have the right at the Lessee’s expense, payable as Additional Rent within fifteen (15) days of receipt of an invoice therefor, to conduct such environmental site reviews and investigations as it may deem necessary for the purpose of ensuring compliance with this Section 7.04. The Lessee’s obligations pursuant to this Section 7.04 shall survive the expiration or earlier termination of the Term.

ARTICLE VIII

FIXTURES, ALTERATIONS AND REPAIRS AND

LESSOR’S CONTROL OF CITY MARKET

8.01 Installations by the Lessee

All equipment, fixtures and improvements installed by the Lessee in the Leased Premises shall be new or completely reconditioned. The Lessee shall not make any alterations, additions or improvements or install or cause to be installed any trade fixtures, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings or make any changes to the store front without first obtaining the Lessor’s written approval and consent. The Lessee shall present to the Lessor plans and specifications in form, content and such detail as the Lessor may reasonably require for such work at the time approval is sought. The Lessee covenants that any work that may be done in respect of the Leased Premises by or on behalf of the Lessee shall be done in such a manner as not to conflict or interfere with any work being done or about to be done by the Lessor in or about the City Market, whether such conflict or interference shall arise in relation to labour unions or otherwise and the Lessee shall obtain all requisite permits, licenses and inspections in respect of any such work done by or on the Lessee’s behalf. Notwithstanding anything herein contained, the Lessee shall make no alterations, additions or improvements that are of a structural nature or that would lessen the value or Rentable Area of the Leased Premises or the City Market, or would interfere with the usage of the Common Areas.

All alterations, decorations, additions and improvements made by the Lessee or made by the Lessor on the Lessee’s behalf by agreement under this Lease shall immediately upon installation or affixation become the property of the Lessor without compensation therefor to the Lessee, but the Lessor shall be under no obligation to repair, maintain or insure the alterations, decorations, additions or improvements. Such alterations, decorations, additions and improvements shall not be removed from the Leased Premises without prior consent in writing from the Lessor. Upon expiration of this Lease, the Lessee shall, at the option of the Lessor, remove all trade fixtures and personal property and shall remove all such alterations, decorations, additions and improvements and restore the Leased Premises as required by the Lessor.

8.02 Maintenance and Repair by the Lessee

The Lessee will at all times keep the Leased Premises (including exterior entrances and all glass and show windows) and all partitions, doors, fixtures, equipment and appurtenances thereof (including lighting, heating and plumbing fixtures, and the electrical and mechanical systems) in good order, condition and repair (including periodic painting or redecorating and preventative maintenance as determined by the Lessor and including such repairs or replacements as are required to keep the Leased Premises in good repair and condition). All aforesaid maintenance, repairs, restorations and replacements shall be in quality and class equal to the original work or installations.

8.03 Signs, Awnings, Canopies

The Lessee will not place or suffer to be placed or maintained on any exterior door, wall or window of the Leased Premises any sign, awning or canopy or advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Leased Premises without first obtaining the Lessor’s written approval and consent. The Lessee further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times, and in addition to the foregoing, the Lessee shall maintain any signs or displays of its goods or wares which may be seen from the exterior of the Leased Premises in a manner which is in keeping with the character of the City Market of which the Leased Premises form a part and which is designed to enhance the business of the Lessee.

8.04 Surrender of Leased Premises

Subject to Article 10.01, the Lessee will leave the Leased Premises in good repair, reasonable wear and tear only excepted. Without limiting the generality of the foregoing, at the expiration or earlier termination of the Term the Lessee shall surrender the Leased Premises in the same condition as the Leased Premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear only excepted, and shall surrender all keys for the Leased Premises to the Landlord at the place then fixed for the payment of Rent and shall inform the Lessor of all combinations on locks, safes and vaults, if any, in the Leased Premises. Should the Lessee fail to remove its fixtures and personal property, such fixtures and personal property shall be deemed to be abandoned by the Lessee and may be appropriated, sold or otherwise disposed of by the Lessor without notice or obligation to compensate the Lessee or to account therefor. The Lessee’s obligations to observe or perform this covenant shall survive the expiration or earlier termination of the Term of this Lease.

8.05 Lessee to Discharge all Liens

The Lessee will ensure that no construction or other lien or charge, or notice thereof, is registered or filed against:

- a) the City Market or any part of it; or
- b) the Lessee’s interest in the Leased Premises or any of the leasehold improvements in the Leased Premises.

by any person claiming by, through, under or against the Lessee or its contractors or subcontractors. If such a lien or charge or notice thereof is registered or filed and the Lessee fails to discharge it within five (5) days after written notice from the Lessor, the Lessor may discharge it by paying the amount claimed to be due into court or directly to the claimant and the Lessee will pay to the Lessor as Additional Rent on demand all costs (including legal fees) incurred by the Lessor in connection therewith, together with an administrative overhead charge of fifteen percent (15%) thereon.

8.06 Rules and Regulations

The Lessee will comply with the Rules and Regulations. The Lessor reserves the right from time to time to amend or supplement the Rules and Regulations. Notice of such amendments and supplements, if any, shall be given to the Lessee, and the Lessee agrees thereupon to comply with and observe all such amendments and supplements, provided that no Rule or Regulation shall contradict any provision of this Lease. The Lessor shall not be responsible to the Lessee for non-observance or violation of any of the provisions of such Rules and Regulations by any other tenant of the City Market or of the terms of any other lease of premises in the City Market and the Lessor shall be under no obligation to enforce any such provisions. All Rules and Regulations shall be enforced against the Lessee in a non-discriminatory manner.

8.07 Maintenance and Repair by the Lessor

The Lessor shall, subject to the other provisions of this Lease, maintain and repair or cause to be maintained and repaired, the structure of the City Market, including without limitation, the foundations, exterior weather walls, subfloor, roof, bearing walls and structural columns and beams of the City Market. If, however, the Lessor is required to maintain or repair any structural portions or any other portion of the Leased Premises or the City Market by reason of the negligent acts or omissions of the Lessee, its employees, agents, invitees, suppliers, agents and servants of suppliers, licensees, concessionaires or subtenants, the Lessee shall pay on demand as Additional Rent, the Lessor’s costs for making such maintenance or repairs, together with an administrative fee of fifteen percent (15%) of such costs. Notwithstanding Clause 8.07 above, the Landlord shall remove existing floor coverings and replace with a

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commercial grade floor covering and shall also clean and paint the interior walls of Stall 5 on or before June 15, 2018.

8.08 Control of City Market by Lessor

The City Market and the Common Areas are at all times subject to the exclusive control and management of the Lessor. Without limiting the generality of the foregoing, the Lessor has the right in its control, management and operation of the City Market and by the establishment of rules and regulations and general policies with respect to the operation of the City Market or any part thereof at all times throughout the Term to construct, maintain and operate lighting facilities and heating, ventilating and air conditioning systems; provide supervision and policing services for the City Market; close all or any portion of the City Market to such extent as may in the opinion of the Lessor’s counsel be legally sufficient to prevent a dedication thereof or the accrual of any rights to any third party or the public; grant, modify and terminate easements or other agreements pertaining to the use and maintenance of all or any part of the City Market; obstruct or close off all or any part of the City Market for the purpose of maintenance, repair or construction, employ all personnel, including supervisory personnel and managers necessary for the operation, maintenance and control of the City Market; use any part of the Common Areas from time to time for merchandising, display, decorations, entertainment and structures designed for retail selling or special features or promotional activities; designate the areas and entrances and the times in, through and at which loading and unloading of goods shall be carried out; control, supervise and generally regulate the delivery or shipping of merchandise, supplies and fixtures to and from the Leased Premises, and other portions of the City Market; designate and specify the kind of container to be used for garbage and refuse in the manner and the times and places at which same is to be placed for collection (if the Lessor for the more efficient and proper operation of the City Market provides or designates a commercial service for the pickup and disposal of refuse and garbage instead of or in addition to the service provided by the municipality, the Lessee shall use same at the Lessee’s cost); from time to time change the area, level, location, arrangement or use of the City Market or any part thereof; construct other buildings or improvements in the City Market and make changes to any part thereof; construct other buildings or improvements in the City Market and make changes to any part of the City Market; and do and perform such other acts in and to the City Market as in the use of good business judgment the Lessor determines to be advisable for the more efficient and proper operation of the City Market.

Notwithstanding anything to the contrary, if as a result of the exercise by the Lessor of any of its rights as set out in this Section 8.08, the Common Areas are diminished or altered in any manner whatsoever, the Lessor is not subject to any liability nor is the Lessee entitled to any compensation or diminution or abatement of Rent nor is any alteration or diminution of the Common Areas deemed constructive or actual eviction, or a breach of any covenant for quiet enjoyment contained in this Lease.

8.09 Lessor’s Right to Enter Leased Premises

- a) It is not a re-entry or a breach of quiet enjoyment if the Lessor or its authorized representatives enter the Leased Premises at reasonable times to:
 - i. examine them;
 - ii. make permitted or required repairs, alterations, improvements or additions to the Leased Premises (including the pipes, conduits, wiring, ducts, columns and other installations in the Leased Premises) or the City Market or adjacent property; or
 - iii. excavate land adjacent or subjacent to the Leased Premises; in each case (to the extent reasonably possible in the circumstances) without unreasonably interfering with the Lessee’s business operations in the Leased Premises, and the Lessor may take material into and on the Leased Premises for those purposes. Rent will not abate or be reduced while the repairs, alterations, improvements or additions are being made. The Lessor will take reasonable steps to minimize any interruption of business resulting from any entry.
- b) At any time during the Term, the Lessor may exhibit the Leased Premises to prospective purchasers and during the six (6) months prior to the expiration of the term of this Lease, the Lessor may exhibit the Leased Premises to prospective tenants and place upon the Leased Premises the usual notice “To Let” which notice the Lessee shall permit to remain where placed without molestation;
- c) If the Lessee shall not be personally present to open and permit an entry into the Leased Premises, at any time, when for any reason an entry therein shall be necessary or permissible, the Lessor or the Lessor’s agents may enter the same by a master key, or may forcibly enter the same, without rendering the Lessor or such agents liable therefor, and without in any manner affecting the obligations and covenants of this Lease;

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- d) Nothing in this Section contained, however, shall be deemed or construed to impose upon the Lessor any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the City Market or any part thereof, except as otherwise in this Lease specifically provided.

ARTICLE IX

INSURANCE AND INDEMNITY

9.01 Lessee’s Insurance

- a) The Lessee shall throughout the Term, at its own cost and expense, take out and keep in full force and effect the following insurance:
- i. All-risk insurance upon property owned by the Lessee or for which the Lessee is legally liable (including, signs and plate glass) and which is located within the City Market in an amount of not less than the full replacement cost thereof;
 - ii. Comprehensive General Liability with minimum limits of at least Five Million Dollars (\$5,000,000.00) or such higher limits as the Lessor may reasonably require from time to time. This policy shall include:
 - a) The City added as an Additional Insured;
 - b) Inclusive limits for bodily injury and property damage;
 - c) Personal injury liability;
 - d) Tenant’s Legal Liability;
 - e) Contractual Liability with respect to this Lease;
 - f) Premises, Property and Operations;
 - g) Completed Operations;
 - h) A Cross Liability Clause;
 - i) A Thirty (30) days written notice of Cancellation shall be given to the City of Saint John.
 - iii. The Lessee shall also provide any other form of insurance as the Lessee or the Lessor may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would insure.
- b) All policies shall be taken out with reputable and recognized insurers acceptable to the Lessor and shall be in a form satisfactory from time to time to the Lessor. The Lessee agrees that certificates of insurance of each such insurance policy will be delivered to the Lessor as soon as practicable after the placing of the required insurance. All policies shall contain an undertaking by the insurers to notify the Lessor in writing not less than thirty (30) days prior to any material change, cancellation or termination thereof;
- c) The Lessee agrees that if the Lessee fails to take out or keep in force any such insurance referred to in this Section 9.01, or should any such insurance not be approved by the Lessor and should the Lessee not rectify the situation immediately after written notice by the Lessor to the Lessee, the Lessor has the right without assuming any obligation in connection therewith to effect such insurance at the sole cost of the Lessee and all outlays by the Lessor shall be immediately paid by the Lessee to the Lessor as Additional Rent without prejudice to any other rights and remedies of the Lessor under this Lease.

9.02 Increase in Insurance Premium

The Lessee will not allow or cause anything to occur in the Leased Premises which shall cause any increase of premium for any insurance on the Leased Premises or the City Market or any part thereof above the rate for the least hazardous type of occupancy legally permitted in the Leased Premises. If the Lessee is in default under this Section 9.02 the Lessee shall pay any resulting additional premium on any insurance policies taken out or maintained by the Lessor, or if any insurance policy upon the Leased Premises or the City Market or any part thereof shall be cancelled or refused to be renewed by an insurer by reason of the use or occupation of the Leased Premises or any part thereof or the acts or omissions of the Lessee, the

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Lessee shall forthwith remedy or rectify such use or occupation upon request to do so in writing by the Lessor, and if the Lessee shall fail to do so within twenty-four (24) hours of such written request, the Lessor shall have the right to enter the Leased Premises and rectify the situation, without liability to the Lessee for any loss or damage occasioned by such entry and rectification, or shall be entitled to hold the Lessee liable for any damage or loss resulting from such cancellation or refusal, or the Lessor may at its option determine this Lease forthwith by leaving upon the Leased Premises notice in writing of its intention to do so, and thereupon Rent and any other payments for which the Lessee is liable under this Lease shall be apportioned and paid in full to the date of such determination of the Lease, and together with an amount equal to the Gross Rent payable for a period of one (1) year as liquidated damages, and the Lessee shall immediately deliver up possession of the Leased Premises, a schedule issued by the organization making the insurance rate on the Leased Premises, showing the various components of such rate, shall be conclusive evidence of the several items and charges which make the fire insurance rate of the Leased Premises. Bills for such additional premiums shall be rendered by the Lessor to the Lessee at such times as the Lessor may elect and shall be due from and payable by the Lessee when rendered, and the amount thereof shall be deemed to be and be paid as Additional Rent.

9.03 Loss or Damage

The Lessor shall not be liable for any death or injury arising from or out of any occurrence in, upon, at or relating to the City Market, or damage to property of the Lessee or of others located on the Leased Premises, nor shall it be responsible for any loss of or damage to any property of the Lessee or others from any cause whatsoever, except any such death, injury, loss or damage results from the negligence of the Lessor, its agents, servants or employees or other persons for whom the Lessor is in law responsible. Without limiting the generality of the foregoing, the Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Leased Premises or from the pipes, appliances, plumbing works, roof or subsurface of any floor or ceiling or from the street or any other place or other tenants or persons in the City Market or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Lessee kept or stored on the Leased Premises shall be so kept or stored at the risk of the Lessee only and the Lessee shall indemnify the Lessor and save it harmless from any claims arising out of any damages to the same, including, without limitation, any subrogation claims by the Lessor’s insurers. In no event shall the Lessor be liable for any injury to the Lessee, its servants, agents, employees, customers and invitees or for any injury or damage to the Leased Premises or to any property of the Lessee, or to any property of any other person, firm or corporation on or about the Leased Premises caused by an interruption, suspension or failure in the supply of any utilities to the Leased Premises.

9.04 Indemnification of the Lessor

The Lessee will indemnify the Lessor, and save harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Leased premises, the occupancy or use by the Lessee of the Leased premises or any part thereof, or occasioned wholly or in part by any act or omission of the Lessee, its agents, contractors, employees, servants, licensees, or concessionaires or invitees. In case the Lessor shall, without fault on its part, be made a party to any litigation commenced by or against the Lessee, then the Lessee shall protect and hold it harmless and shall pay all costs, expenses and solicitors’ and counsel fees on a solicitor and client basis incurred or paid by them in connection with such litigation.

ARTICLE X

DAMAGE, DESTRUCTION AND EXPROPRIATION

10.01 Total or Partial Destruction of Leased Premises

If, during the Term, the Leased Premises are expropriated or totally or partially destroyed or damaged by any cause in respect of which the Lessor is insured, the following provisions shall have effect:

- a) If the Leased Premises are rendered partially unfit for occupancy by the Lessee, Gross Rent only shall abate in part only, in the proportion that the part of the Leased Premises rendered unfit for occupancy by the Lessee bears to the whole of the Leased Premises or if the Leased Premises are rendered wholly unfit for occupancy by the Lessee the Rent hereby reserved shall be suspended in either event until the day following a reasonable period (taking into account the extent of the Lessee’s restoration) following completion of the Lessor’s restoration;

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- b) Notwithstanding the provisions of subparagraph (a), if the Leased Premises in the opinion of the Architect shall be incapable of being rebuilt and/or repaired or restored with reasonable diligence within 180 days of the happening of such destruction or damage, then the Lessor may at its option terminate this Lease by notice in writing to the Lessee given within thirty (30) days of the date of such destruction or damage and in the event of such notice being so given this Lease shall cease and become null and void from the date of such destruction or damage and the Lessee shall immediately surrender the Leased Premises and all interest therein to the Lessor and the Rent shall be apportioned and shall be payable by the Lessee only to the date of such destruction or damage and the Lessor may re-enter and repossess the Leased Premises discharged of this Lease;

If the Leased Premises are capable of being rebuilt and/or repaired or restored within 180 days of the happening of such damage or destruction or if within the period of thirty (30) days referred to in Section 10.01(b) the Lessor shall not give notice terminating this Lease, the Lessor shall with reasonable promptitude proceed to rebuild and/or repair or restore the Leased Premises to the extent of the Lessor’s repair obligations under the Lease and the Lessee shall immediately upon substantial completion of the Lessor’s work and, within a reasonable period determined by the Lessor (given the extent of the Lessee’s restoration) complete the restoration of the Leased Premises.

The certificate of the Architect shall bind the parties as to the (i) extent to which the Leased Premises are unfit for occupancy; (ii) time required to rebuild and/or repair or restore the Leased Premises; and (iii) due completion of repairs.

10.02 Total or Partial Destruction of City Market

In the event that a substantial portion of the City Market shall be expropriated or damaged or destroyed by fire or other cause, or in the event the costs as estimated by the Lessor of repairing, restoring or rebuilding will exceed by \$250,000 or more the proceeds of insurance available to the Lessor, notwithstanding that the Leased Premises may be unaffected, or in the event the Lessor shall have the right, to be exercised by notice in writing delivered to the Lessee within sixty (60) days from and after said occurrence, to elect to cancel and terminate this Lease. Upon the giving of such notice to the Lessee, the Term of this Lease shall expire upon the third (3rd) day after such notice is given, and the Lessee shall vacate the Leased Premises and surrender the same to the Lessor.

10.03 Abatement of Rent

Notwithstanding anything herein before contained, all abatements of Rent set out in this Article X shall be limited to an amount equal to the amount which the Lessor collects under any rental income insurance.

10.04 Expropriation Awards

The Lessor and the Lessee will co-operate with each other if there is an expropriation of all or part of the Leased Premises or the City Market, so that each may receive the maximum award that it is entitled to at law. To the extent, however, that a part of the City Market, other than the Leased Premises, is expropriated, the full proceeds that are paid or awarded as a result, will belong solely to the Lessor, and the Lessee will assign to the Lessor any rights that it may have or acquire in respect of the proceedings or awards and will execute the documents that the Lessor reasonably requires in order to give effect to this intention.

ARTICLE XI

STATUS STATEMENT, SUBORDINATION AND ATTORNMENT

11.01 Status Statement

Within fifteen (15) days after request, the Lessee will sign and deliver to the Lessor a status statement or certificate, stating that this Lease is in full force and effect, any modifications to this Lease, the commencement and expiry dates of this Lease, the date to which Rent has been paid, the amount of any prepaid Rent or deposits held by the Lessor, whether there is any existing default and the particulars, and any other information required by the party requesting it.

11.02 Power of Attorney

The Lessee hereby irrevocably appoints the Lessor as the attorney for the Lessee with full power and authority to execute and deliver in the name of the Lessee any instruments or certificates required to carry out the intent of Section 11.01 which the Lessee shall have failed to sign and deliver within fifteen (15) days after the date of a written request by the Lessor to execute such instruments.

ARTICLE XII

TRANSFERS BY LESSEE

12.01 Transfer Defined

“Transfer” means, (i) an assignment, sale, conveyance, sublease, or other disposition of this Lease or the Leased Premises, or any part of them or any interest in this Lease (whether by operation of law or otherwise), or in a partnership that is a Lessee under this Lease, (ii) a mortgage, charge or debenture (floating or otherwise) or other encumbrance of this Lease or the Leased Premises or any part of them, or of any interest in this Lease or of a partnership, or partnership interest, where the partnership is a Lessee under this Lease, (iii) a parting with or sharing of possession of all or part of the Leased Premises, and (iv) a transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription of all or part of the corporate shares of the Lessee or an “affiliate” (as that term is defined on the date of this Lease under the *Canada Business Corporations Act*) of the Lessee which results in a change in the effective voting control of the Lessee. “Transferor” and “Transferee” have meanings corresponding to the definition of “Transfer” set out above, (it being understood that for a Transfer described in clause (iv) the Transferor is the person that has effective voting control before the Transfer and the Transferee is the person that has effective voting control after the Transfer).

12.02 Consent Required

The Lessee will not allow or cause a Transfer, without the prior written consent of the Lessor in each instance which consent may not be unreasonably withheld. Notwithstanding any statutory provisions to the contrary, Lessor’s consent shall not be deemed to have been unreasonably withheld where Lessor refuses consent to a Transfer within twenty-four (24) months of either the Commencement Date or a previous Transfer. Without limiting the generality of the foregoing, no Transfer shall be effective and no consent shall be given unless the following provisions have been complied with:

- i. There is no default of the obligations of the Lessee under this Lease;
- ii. The Lessee shall have given at least thirty (30) days’ prior written notice of the proposed Transfer and the effective date thereof to the Lessor;
- iii. A duplicate original of the documents affecting the Transfer shall be given to the Lessor within thirty (30) days after the execution and delivery thereof;
- iv. The Transferee, except in the case of a Transfer described in Section 12.01(iv), shall have assumed in writing with the Lessor the due and punctual performance and observance of all the agreements, provisions, covenants and conditions hereof on the Lessee’s part to be performed or observed from and after the effective date of the Transfer.

The Lessee acknowledges that the factors governing the granting of the Lessor’s consent to any Transfer may include, without limitation, the restrictive clauses entered into with other tenants by the Lessor, the financial background, business history and the capability of the proposed Transferee in the Lessee’s line of business, and the nature of the business practices of the proposed Transferee. The consent by the Lessor to any Transfer shall not constitute a waiver of the necessity for such consent to any subsequent Transfer. If a Transfer takes place, the Lessor may collect rent from the Transferee, and apply the net amount collected to the Rent herein reserved, but no such action shall be deemed a waiver of the requirement to obtain consent or the acceptance of the Transferee as lessee, or a release of the Lessee or any Indemnifier from the further performance by the Lessee of covenants on the part of the Lessee herein contained. Notwithstanding any Transfer, the Lessee shall remain fully liable under this Lease and shall not be released from performing any of the obligations of the Lessee under this Lease.

Any Transfer, if consented to by the Lessor, may at the Lessor’s option be documented by the Lessor or its solicitors, and any and all legal costs and the Lessor’s then-standard fee with respect thereto or to any documents reflecting the Lessor’s consent to the Transfer shall be payable by the Lessee on demand as Additional Rent.

12.03 No Advertising of Leased Premises

The Lessee shall not print, publish, post, display or broadcast any notice or advertisement to the effect that the Leased Premises are for lease or for sale or otherwise advertise the proposed sale or lease of the whole or any part of the Leased Premises and shall not permit any broker or other party to do any of the foregoing, unless the complete text and format of any such notice, advertisement or offer is first approved in writing by the Lessor. Without in any way restricting or limiting the Lessor’s right to refuse any text or format on other grounds, any text or format proposed by the Lessee shall not contain any reference to the rental rate of the Leased Premises.

ARTICLE XIII

DEFAULT OF LESSEE

13.01 Right to Re-Enter

When

- a) the Lessee shall be in default in the payment of any Rent whether lawfully demanded or not and such default shall continue for a period of five (5) consecutive days; or
- b) the Lessee shall be in default of any of its covenants, obligations or agreements under this Lease or of any term or condition of this Lease (other than its covenant to pay Rent) and such default shall continue for a period of fifteen (15) consecutive days or such longer or shorter period as the Lessor, acting reasonably, determines after five (5) days written notice by the Lessor to the Lessee specifying with reasonable particularity the nature of such default and requiring the same to be remedied;

then and in any of such cases the then current month’s Rent, together with the Rent for the three (3) months next ensuing shall immediately become due and payable, and at the option of the Lessor, the Terms shall become forfeited and void, and the Lessor may without notice or any form of legal process whatsoever forthwith re-enter upon the Leased Premises or any part thereof in the name of the whole and repossess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding, provided however, that such forfeiture shall be wholly without prejudice to the right of the Lessor to recover arrears of rent or damages for any antecedent default by the Lessee of its covenants, obligations or agreements under this Lease or any term or condition of this Lease and provided further that notwithstanding any such forfeiture the Lessor may subsequently recover from the Lessee damages for loss of Rent suffered by reason of this Lease having been prematurely determined. In addition, the Lessor shall have the right to remove and sell the Lessee’s goods and chattels and trade fixtures and apply the proceeds thereof to Rent due under the Lease.

13.02 Right to Re-Let

Should the Lessor elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Leased Premises, and re-let the Leased Premises or any part thereof as agent for the Lessee for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as the Lessor in its sole discretion may deem advisable; upon each re-letting all rentals received by the Lessor from such re-letting shall be applied; first, to the payment of any indebtedness other than rent due hereunder from the Lessee to the Lessor; second, to the repayment of any reasonable costs and expenses of such re-letting, including brokerage fees and solicitors’ fees and of costs of such alterations and repairs; third, to the payment of Rent due as the same may become due and payable hereunder. If such Rent received from such re-letting during any month be less than that to be paid during that month by the Lessee hereunder, the Lessee shall pay any such deficiency to the Lessor. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Leased Premises by the Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to the lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, the Lessor may at any time thereafter elect to terminate this Lease for such previous breach. Should the Lessor at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from the Lessee all damages it may incur by reason of such breach, including the cost of recovering the Leased Premises, and including the worth at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to Rent reserved in this Lease for the remainder of the Term hereof over the then reasonable rental value of the Leased Premises for the remainder of the Term hereof, all of which amounts shall be immediately due and payable from the Lessee to the Lessor. In determining the Rent which would be payable by the Lessee hereunder, subsequent to default, the annual Rent for each year of the unexpired Term shall be equal to the greater of: (a) the average annual Gross Rent and Percentage Rent payable by the Lessee from the Commencement Date to the time of default or during the preceding three (3) full calendar years, whichever period is shorter; and (b) Gross Rent payable hereunder, together with all Additional Rent which would have been payable during the calendar year in which this Lease was terminated, prorated over a full calendar year, if required.

13.03 Legal Expenses

In case suit shall be brought for recovery of possession of the Leased Premises, for the recovery of Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of the Lessee to be kept or performed and a breach shall be

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established, the Lessee shall pay to the Lessor all expenses incurred therefor, including reasonable solicitors’ and counsel fees on a solicitor and his client basis.

13.04 Bankruptcy

The Lessee covenants and agrees that if the Term or any of the goods and chattels of the Lessee on the Leased Premises shall be at any time during the Term seized or taken in execution or attachment by any creditor of the Lessee or if a receiver, interim receiver or receiver and manager is appointed for the assets or business of the Lessee or if the Lessee shall make any assignment for the benefit of creditors or any bulk sale or, becoming bankrupt or insolvent, shall take the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors or if any order shall be made for the winding up of the Lessee, or if the Leased Premises shall without the written consent of the Lessor become and remain vacant for a period of fifteen (15) days, or be used by any other persons than such as are entitled to use them under the terms of this Lease, or if the Lessee shall without the written consent of the Lessor abandon or attempt to abandon the Leased Premises or to sell or dispose of goods or chattels of the Lessee or to remove them or any of them from the Leased Premises so that there would not in the event of such abandonment, sale or disposal be sufficient goods on the Leased Premises subject to distress to satisfy the Rent above due or accruing due, then and in every such case the then current month’s Rent and the next ensuing three (3) months’ Rent shall immediately become due and be paid and the Lessor may re-enter and take possession of the Leased premises as though the Lessee or the servants of the Lessee or any other occupant of the Leased Premises were holding over after the expiration of the Term and the Term shall, at the option of the Lessor, immediately without any notice or opportunity for cure provided to the Lessee, become forfeited and determined, and in every one of the cases above such accelerated Rent shall be recoverable by the Lessor in the same manner as the Rent hereby reserved and if Rent were in arrears and the said option shall be deemed to have been exercised if the Lessor or its agents given notice to the Lessee as provided for herein.

13.05 Lessor May Perform Lessee’s Covenants

If the Lessee shall fail to perform any of its covenants or obligations under or in respect of this Lease, the Lessor may from time to time at its discretion, perform or cause to be performed any such covenants or obligations, or any part thereof, and for such purpose may do such things upon or in respect of the Leased Premises or any part thereof as the Lessor may consider requisite or necessary.

All expenses incurred and expenditures made by or on behalf of the Lessor under this Section, together with an administrative fee equal to fifteen (15%) percent thereon, shall be forthwith paid by the Lessee to the Lessor on demand as Additional Rent.

13.06 Waiver of Exemptions from Distress

Despite any applicable Act, legislation or any legal or equitable rule of law: (a) none of the inventory, furniture, equipment or other property at any time owned by the Lessee is exempt from distress; and (b) no lack of compliance with any requirement concerning the day of the week, time of day or night, method of entry, giving of notice, appraising of goods, or anything else, will render any distress unlawful where the Lessee owes arrears of Rent at the time of the distress.

13.07 Remedies Cumulative

No reference to nor exercise of any specific right or remedy by the Lessor will prejudice or preclude the Lessor from exercising or invoking any other remedy in respect thereof, whether allowed at law or expressly provided for in this Lease. No such remedy will be exclusive or dependent upon any other such remedy, but the Lessor may from time to time exercise any one or more of such remedies independently or in combination.

ARTICLE XIV

MISCELLANEOUS

14.01 Overholding

If the Lessee remains in possession of the Leased Premises after the end of the Term and without the execution and delivery of a new lease, there shall be no tacit renewal of this Lease and the Term hereby granted, and the Lessee shall be deemed to be occupying the Leased Premises as a Lessee from month to month at monthly rent payable in advance on the first day of each month equal to the sum of:

- i. one and one half (1 ½) times the Gross Rent payable during the last month of the Term; and
- ii. one-twelfth of the Additional Rent payable by the Lessee for the Lease Year immediately preceding the last Lease Year of the Term;

Schedule “C”

- Page 19 -

and otherwise upon the same terms and conditions as are set forth in this Lease, except as to duration of Term, and any right of renewal mutatis mutandis.

14.02 Successors

This Lease applies to the successors and assigns of the Lessor and, if Article XII is complied with, the heirs, executors, administrators and permitted successors and permitted assigns of the Lessee. If there is more than one party named as Lessee, they are jointly and severally liable under this Lease.

14.03 Waiver

Failure by the Lessor to require performance of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the Lessor shall not be deemed to be a waiver of any preceding breach of the Lessee of any term, covenant or condition of this Lease, other than the failure of the Lessee to pay the particular rent so accepted, regardless of the Lessor’s knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term or condition of this Lease shall be deemed to have been waived by the Lessor, unless such waiver be in writing by the Lessor.

14.04 Accord and Satisfaction

No payment by the Lessee or receipt by the Lessor of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement or any cheque or any letter accompanying any cheque or payment as Rent be deemed an accord and satisfaction, and the Lessor may accept such cheque or payment without prejudice to the Lessor’s right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

14.05 Entire Agreement

This Lease sets forth all the covenants, promises, agreements, conditions and understandings between the Lessor and the Lessee concerning the Leased Premises and there are no covenants, promises, agreements, conditions or representations, either oral or written, between them other than are herein and in the said schedules and rider, if any, set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Lessor or the Lessee unless reduced to writing and signed by them.

14.06 No Partnership

The Lessor does not, in any way or for any purpose, become a partner of the Lessee in the conduct of its business, or otherwise or joint venturer or a member of a joint enterprise with the Lessee.

14.07 Force Majeure

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labour troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding anything herein contained, the provisions of this Section 14.07 shall not operate to excuse the Lessee from the prompt payment of Gross Rent, Additional Rent or any other payments required by the terms of this Lease, nor entitle the Lessee to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

14.08 Notices

Any notice herein provided or permitted to be given by the Lessee to the Lessor shall be sufficiently given if delivered personally to the Common Clerk, or if transmitted by telecopier or if mailed in Canada, registered and postage prepaid, addressed to the Lessor at: C/O The Common Clerk, The City of Saint John, P. O. Box 1971, 15 Market Square, Saint John, New Brunswick, E2L 4L1, with a copy to Facility Management Division, The City of Saint John, P. O. Box 1971, 15 Market Square, Saint John, New Brunswick, E2L 4L1, and any notice herein provided or permitted to be given by the Lessor to the Lessee shall be sufficiently given if delivered personally to the party being given such notice or to a responsible employee of the party being given such notice, or if transmitted by telecopier or if mailed in Canada, **registered and postage prepaid, addressed to the Lessee at 113 Sherwood Drive, Suite B, Quispamsis, N.B., E2E 1H5** Any such notice given as aforesaid shall be conclusively deemed to have been given on the day on which such notice is delivered or transmitted or on the third day that there is postal delivery following the day on which such notice is mailed, as the case may be. Either party may at any time give notice in writing to the other of any change of address of the party given such notice and

Schedule “C”

- Page 20 -

from and after the giving of such notice the address therein specified shall be deemed to include any request, statement or other writing in this Lease provided or permitted to be given by the Lessor to the Lessee or by the Lessee to the Lessor. If there is more than one party named as Lessee, notice to one shall be deemed sufficient as notice to all.

14.09 Place for Payment of Rent

The Lessee shall pay the Rent. Including all Additional Rent, at the office of the Lessor specified in Section 14.08 or as such place or places as the Lessor may designate from time to time by notice in writing: currently to the Cashier’s Office, City Hall, P. O. Box 1971, 15 Market Square, Saint John, New Brunswick, E2L 4L1.

14.10 Approval in Writing

Wherever the Lessor’s consent is required to be given hereunder or wherever the Lessor must approve any act or performance by the Lessee, such consent or approval, as the case may be, shall be given in writing by the Lessor before same and shall be deemed to be effective.

14.11 Governing Law

The Lease is to be governed by and construed according to the laws of the Province of New Brunswick.

14.12 Captions and Section Numbers

The captions, section numbers and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles or of this Lease, nor in any way affect this Lease.

14.13 Partial Invalidity

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease and/or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be separately valid and enforceable to the fullest extent permitted by law.

14.14 No Option

The submission of this Lease for examination does not constitute a reservation of or option for the Leased Premises and this Lease becomes effective as a Lease only upon execution and delivery thereof by the Lessor and the Lessee.

14.15 Time To Be of the Essence

Time shall be of the essence of this Lease.

14.16 Quiet Enjoyment

The Lessor covenants with the Lessee for quiet enjoyment.

14.17 Riders and Schedules

Schedules attached hereto form part of this Lease.

14.18 Basement Storage Space

Where the Leased Premises includes any area of basement storage space, notwithstanding any provision herein contained, the Lessee acknowledges and agrees that water and sewer lines are located within the basement area of the Leased Premises and that there is a possibility that water and/or sewage may escape from the lines as a result of breakage, blockage, overflow or other cause, and may cause damage to anything stored in the basement area of the Leased Premises. The Lessee acknowledges and agrees that if it chooses to store anything, whether belonging to it or to others, in the basement area of the Leased Premises, it does so at its own risk and the Lessee hereby releases and indemnifies and saves harmless the Lessor from and against any and all manner of actions, suits, damages, loss, costs, claims and demands of any nature whatsoever relating to or arising out of breakage, blockage, overflow or other problem of the water or sewage lines.

| | |
|----------------|--------------------|
| Received Date | September 04, 2018 |
| Meeting Date | September 09, 2018 |
| Open or Closed | Open Session |

His Worship Don Darling and
Members of Common Council

Your Worship and Councillors:

Subject: Regional Facilities Commission – Approved Budget for 2020

The Regional Facilities Commission met on September 4th and approved the 2020 budget as submitted.

REGIONAL FACILITIES COMMISSION 2020 Approved Budget

| | | | <u>Harbour Station</u> | <u>Imperial</u> | <u>Trade Centre</u> | <u>Aquatic Centre</u> | <u>Arts Centre</u> | <u>Total</u> |
|-------------------------|---|----------------|----------------------------|--------------------------|--------------------------|----------------------------|--------------------------|----------------------------|
| 2020 | Approved | | \$ 899,970 | \$ 548,604 | \$ 457,694 | \$ 742,000 | \$ 208,326 | \$ 2,856,594 |
| | Other | | | | 446,964 | | | 446,964 |
| | Capital Expenditures | | | | | 135,000 | | 135,000 |
| | Surplus/(Deficit) from 2nd preceding year (2018) | | 3 | | (29,707) | (466,803) | | (496,507) |
| | Proceeds received in advance in 2019 | | | | | 325,000 | | 325,000 |
| | | | <u>\$ 899,967</u> | <u>\$ 548,604</u> | <u>\$ 934,365</u> | <u>\$ 1,018,803</u> | <u>\$ 208,326</u> | <u>\$ 3,610,065</u> |
| | Municipal Contributions: | | | | | | | |
| | 2020 Budget: | | | | | | | |
| | 2019 Tax | | | | | | | |
| Approved Funding | Base | | | | | | | Total Share |
| Grand Bay/Westfield | \$ 375,785,600 | 3.634% | 32,705 | 19,936 | 33,955 | 37,023 | 7,571 | \$ 131,190 |
| Quispamsis | 1,748,060,900 | 16.905% | 152,139 | 92,742 | 157,954 | 172,229 | 35,218 | 610,282 |
| Rothsay | 1,293,791,950 | 12.512% | 112,604 | 68,641 | 116,908 | 127,473 | 26,066 | 451,692 |
| Saint John | 6,923,084,249 | 66.949% | 602,519 | 367,285 | 625,548 | 682,078 | 139,471 | 2,416,901 |
| Total | <u>\$10,340,722,699</u> | <u>100.00%</u> | <u>899,967</u> | <u>548,604</u> | <u>934,365</u> | <u>1,018,803</u> | <u>208,326</u> | <u>\$ 3,610,065</u> |

Motion:

That the submitted budget from the Regional Facilities Commission for 2020 be received for information.

Respectfully Submitted,

Deputy Mayor McAlary
Chair
Regional Facilities Commission





The City of Saint John

PROCLAMATION

- WHEREAS:*** September is known as Arthritis awareness Month during which time the Arthritis Society promotes public awareness about this chronic disease that can affect children, adults and the elderly; and
- WHEREAS:*** the Society educates people about this disease through the Arthritis Information Line, the Arthritis Society's website, the Arthritis Public Forum series, the Arthritis Self-Management Program, and Chronic Pain Management Workshops; and
- WHEREAS:*** the Society strives to build positive relationships with elected officials in an effort to establish equitable access to care and treatment for arthritis; and
- WHEREAS:*** through education, support, understanding and awareness of arthritis, The Society helps nearly 4.5 million people and raises funds through door-to-door canvassing and initiatives such as Go Blue & Give Too and Bluebird sales; and
- WHEREAS:*** arthritis awareness Month will focus on communities committing to a world without arthritis, providing help to those living with arthritis and supporting innovative research to ultimately find a cure for this debilitating disease.

NOW THEREFORE: I, **Mayor Don Darling**, of **Saint John** do hereby proclaim the month of September as **Arthritis Awareness Month** in the City of Saint John.

In witness whereof I have set my hand and affixed the official seal of the Mayor of the City of Saint John.



PLANNING ADVISORY COMMITTEE



The City of Saint John

August 21, 2019

His Worship Mayor Don Darling and
Members of Common Council

Your Worship and Councillors:

**SUBJECT: Rezoning Application
319 Lancaster Street**

On July 29, 2019, Common Council referred the above matter to the Planning Advisory Committee for a report and recommendation. The Committee considered the attached report at its August 20, 2019 meeting.

Staff presented the proposal to members of the Committee. The applicants/owners Jamie & Kyla Reschny were present. No members of the public spoke in favour or in opposition to the application. The Committee adopted the staff recommendation which included the approval of a temporary use by the Committee to allow for the occupation of the building during the interim period between the Committee meeting and anticipated approval of the rezoning. .

RECOMMENDATION:

1. That Common Council rezone a parcel of land having an area of approximately 1,843 square metres, located at 319 Lancaster Street also identified as PID No. 00365528 from Neighbourhood Community Facility (CFN) to Two-Unit Residential (R2).
2. That pursuant to Section 59 of the *Community Planning Act*, the development and use of the parcel of land with an area of approximately 1,843 square metres located at 319 Lancaster Street also identified as PID No. 00365528, be subject to the following conditions:
 - a. That any development of the site be in accordance with a detailed site plan to be prepared by the proponent and subject to the

approval of the Development Officer, indicating: the location of all buildings and structures, vehicular parking areas & driveways, accessory buildings and structures, landscape and amenity areas, setbacks, and other site features. The site plan is to be attached to the application for the building permit for the proposed development.

Respectfully submitted,



Eric Falkjar
Chair

Attachments

- 1 – Staff Presentation
- 2 – Staff Report dated August 16, 2019



The City of Saint John

Date: August 16, 2019

To: Planning Advisory Committee

From: Growth & Community Planning
Growth & Community Development Services

For: **Meeting of Tuesday, August 20, 2019**

SUBJECT

Applicant: Jamie Reschny

Owner: Jamie & Kyla Reschny

Location: 319 Lancaster Street

PID: 00365528

Plan Designation: Stable Residential

Existing Zoning: Neighbourhood Community Facility (CFN)

Proposed Zoning: **Two-Unit Residential (R2)**

Application Type: Temporary Use & Rezoning

Jurisdiction: The *Community Planning Act* authorizes the Planning Advisory Committee to give its views to Common Council concerning proposed amendments to the Zoning By-law. Common Council will consider the Committee recommendation for the rezoning at a public hearing on **Monday, September 9, 2019**.

The Zoning By-law authorizes the Planning Advisory Committee to permit, for a temporary period of up to one year, a development otherwise prohibited in the By-law. The Committee may impose conditions on both applications.

SUMMARY

The applicant is proposing the rezoning of 319 Lancaster Street from Neighbourhood Community Facility (CFN) to Two-Unit Residential (R2). This rezoning would facilitate the conversion of an existing Place of Worship to become two dwelling units. The applicant is also seeking temporary approval of a residential dwelling unit in order to commence work and occupation of the building in advance of the rezoning being in place. The rezoning and subsequent change of use would allow for the adaptive re-use of Place of Worship.

RECOMMENDATION

1. That the Planning Advisory Committee permit the temporary residential use at 319 Lancaster Street for the duration of one year from the date of issuance of a permit.
2. That Common Council rezone a parcel of land having an area of approximately 1,843 square metres, located at 319 Lancaster Street also identified as PID No. 00365528 from Neighbourhood Community Facility (CFN) to Two-Unit Residential (R2).
3. That pursuant to Section 59 of the *Community Planning Act*, the development and use of the parcel of land with an area of approximately 1,843 square metres located at 319 Lancaster Street also identified as PID No. 00365528, be subject to the following conditions:
 - a. That any development of the site be in accordance with a detailed site plan to be prepared by the proponent and subject to the approval of the Development Officer, indicating: the location of all buildings and structures, vehicular parking areas & driveways, accessory buildings and structures, landscape and amenity areas, setbacks, and other site features. The site plan is to be attached to the application for the building permit for the proposed development.

DECISION HISTORY

There are no relevant planning decisions made for 319 Lancaster Street.

ANALYSIS**Proposal**

This applicant is seeking approval for a rezoning of 319 Lancaster Street from Neighbourhood Community Facility (CFN) to Two-Unit Residential (R2) in order to repurpose an existing Place of Worship into two dwelling units. The applicant is also seeking a temporary approval to occupy the premise prior to the rezoning. Approval of this application would facilitate adaptive re-use of a vacant Place of Worship, enhancing the character of the surrounding community.

Site and Neighbourhood

The subject site is located in the West Saint John community, adjacent to Queen Square West. The surrounding area consists of lots zoned Two-Unit Residential (R2), which contain various single, two and older multiple unit dwellings. Queen Square West is located directly across Lancaster Street from the site and is zoned Park (P). The Place of Worship, formerly St. Jude's Church, has been apart of the West Saint John community since its opening in 1861, and was consecrated later that year. The church was deconsecrated in late 2014, and has had no proposals put forth to re-utilize the space until now.

Municipal Plan and Rezoning

The former Place of Worship has been vacant for some time. The proposed development would allow the site to be re-used in a manner that reflects the intent of the Municipal Plan. The Municipal Plan encourages, through Policy LU-87, that areas designated Stable Residential will evolve over time from a land use and built-form perspective but that new and redevelopment land uses are to reinforce the predominant community character and make a positive contribution to the neighbourhood.

The adaptation of the existing church achieves this policy's intent among other subsequent policies such as Policy LU-88.

| | |
|---|--|
| The proposed land use is desirable and contributes positively to the neighbourhood; | The adaptive re-use of the vacant building provides additional housing for the community and revitalizes a neglected site. |
| The proposal is compatible with surrounding land uses; | The majority of the surrounding residential lots are zoned R2, which is reflected by the proposed rezoning of the site to the same zone. |

The Municipal Plan also encourages projects such as the proposed adaptive re-use of the site in Policies CF-39 and LU-126

| | | |
|--------|--|--|
| CF-39 | Encourage the adaptive re-use of vacant places of worship for appropriate uses. | The proposed use will match the density and character of the surrounding community. |
| LU-126 | Encourage the reuse of existing schools and places of worship, preferably for other community uses and in accordance with the relevant requirements of the Zoning Bylaw. | The requirements set out by the Zoning Bylaw will be met through proposed re-zoning. |

The proposed rezoning to R2 is being done to ensure the site is adapted well with the surrounding community context, as well as due to the existing structure conforming to the zoning standards of the R2 zone once the renovations are complete.

Undertaking a temporary approval prior to receiving Zoning approval is a process not normally undertaken, but one which is available through the Zoning By-law. Staff recognize and have reminded the applicant there may be some risk in this process. That said, Staff fully support this proposal and are of the opinion that the proposed rezoning and temporary use are reasonable and meet the intent of the Municipal Plan.

Conclusion

Approval of the rezoning will facilitate the Municipal Plan's direction to allow for adaptive re-use of vacant places of worship, in this case facilitating two dwelling units. The temporary use will enable occupation of the building and work to commence prior to rezoning being approved by Council. The development will not only benefit the surrounding community by re-using an existing vacant building, but will also allow the addition of additional dwelling units to the community while minimizing any potential impacts to adjacent parcels.

ALTERNATIVES AND OTHER CONSIDERATIONS

No alternatives were considered

ENGAGEMENT

Public

In accordance with the Committee's Rules of Procedure, notification of the proposal was sent to landowners within 100 metres of the subject property on August 1, 2019. The public hearing for the rezoning was advertised on the City of Saint John website on August 16, 2019.

APPROVALS AND CONTACT

| | | |
|---------------------|---|--|
| Primary Author | Senior Planner/Manager | Commissioner/Dept. Heads |
| Corey Cooper | Mark Reade, RPP, P.Eng Kenneth Melanson, RPP | Jacqueline Hamilton, RPP Phil Ouellette |

Contact: Cooper, Corey
Phone: (506) 632-6846
E-mail: corey.cooper@saintjohn.ca
Project: 19-0116 & 19-0117

APPENDIX

Map 1: **Site Location**

Map 2: **Municipal Plan**

Map 3: **Zoning**

Map 4: **Aerial Photography**

Map 5: **Site Photography**

Submission 1: **Floor Plans**



Map 1 - Site Location

Jamie Reschny - 319 Lancaster Street

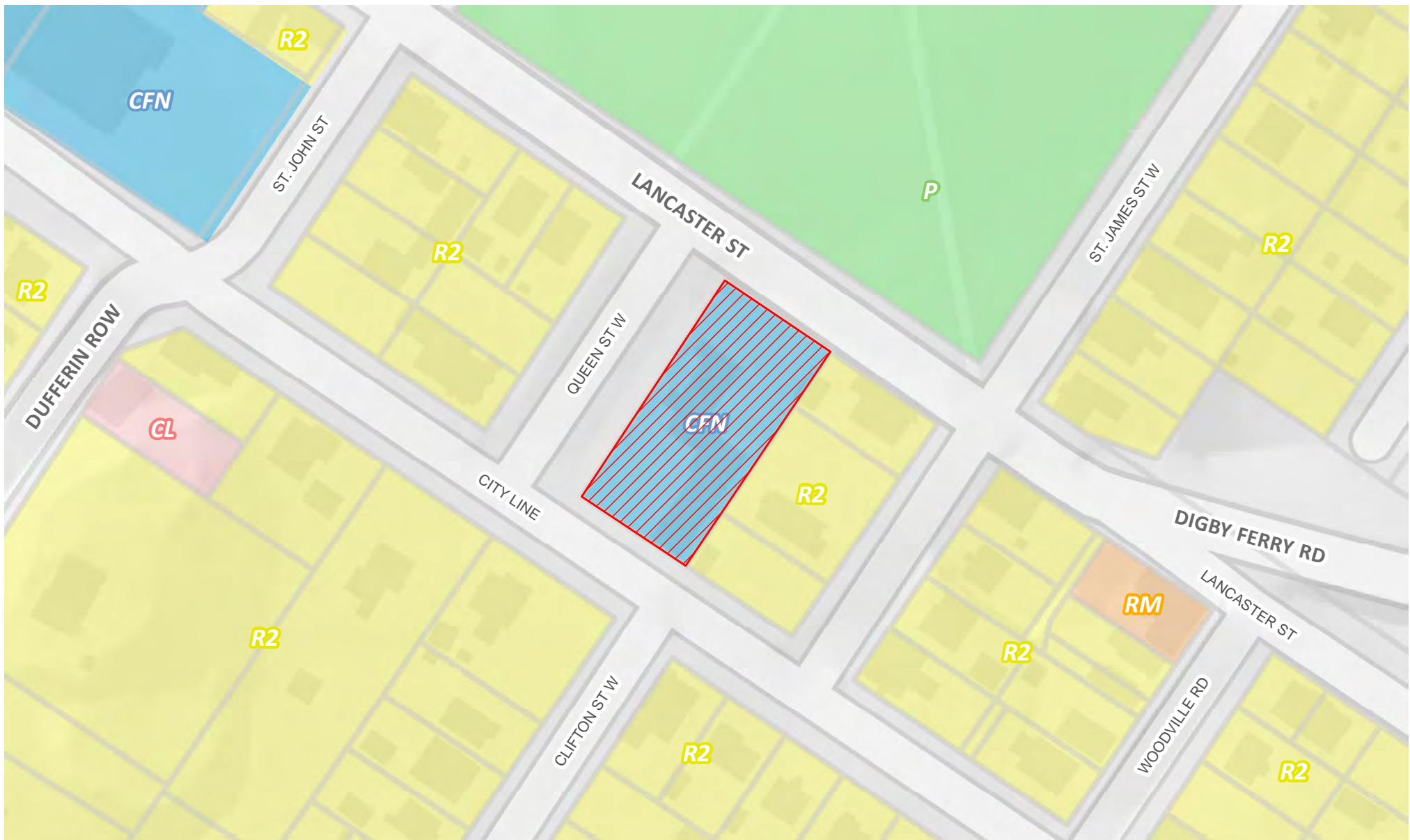




Map 2 - Future Land Use

Jamie Reschny - 319 Lancaster Street





(CFN) Neighbourhood Community Facility

(CL) Local Commercial

(P) Park

(R2) Two-Unit Residential

(RM) Mid-Rise Residential

★ Section 59 Conditions

Map 3 - Zoning

Jamie Reschny - 319 Lancaster Street





Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Map 4 - Aerial Photography

Jamie Reschny - 319 Lancaster Street

190

The City of Saint John
Date: July-18-19

0 25 m













LANCASTER ST

QUEEN ST W

CHURCH

3

BREEZE-
WAY

OFFICES

1

PHASE ONE:

Turn offices
and original
kitchen into
living space

(Potentially)

PHASE TWO:

demolish gym or
salvage

PHASE THREE:

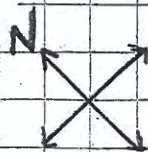
Convert church
into living space
and finish
basement.

2*

HALL /
Gym

CITY LINE

1 SQ = 1 FOOT



← TO BREEZE WAY

OFFICE

OFFICE

FOYER

Wall
Opening

BREAKER PANEL

CLOSET
UNDER
STAIRS

KITCHEN

BATH

HALLWAY

Wall
in
door

Wall
in
door

Create
Exterior
Wall

exterior
entrance

1 SQ. = 1 FOOT

UPSTAIRS



OFFICE

add
wall

add door

CLOSET

LANDING

ADD
OPENING

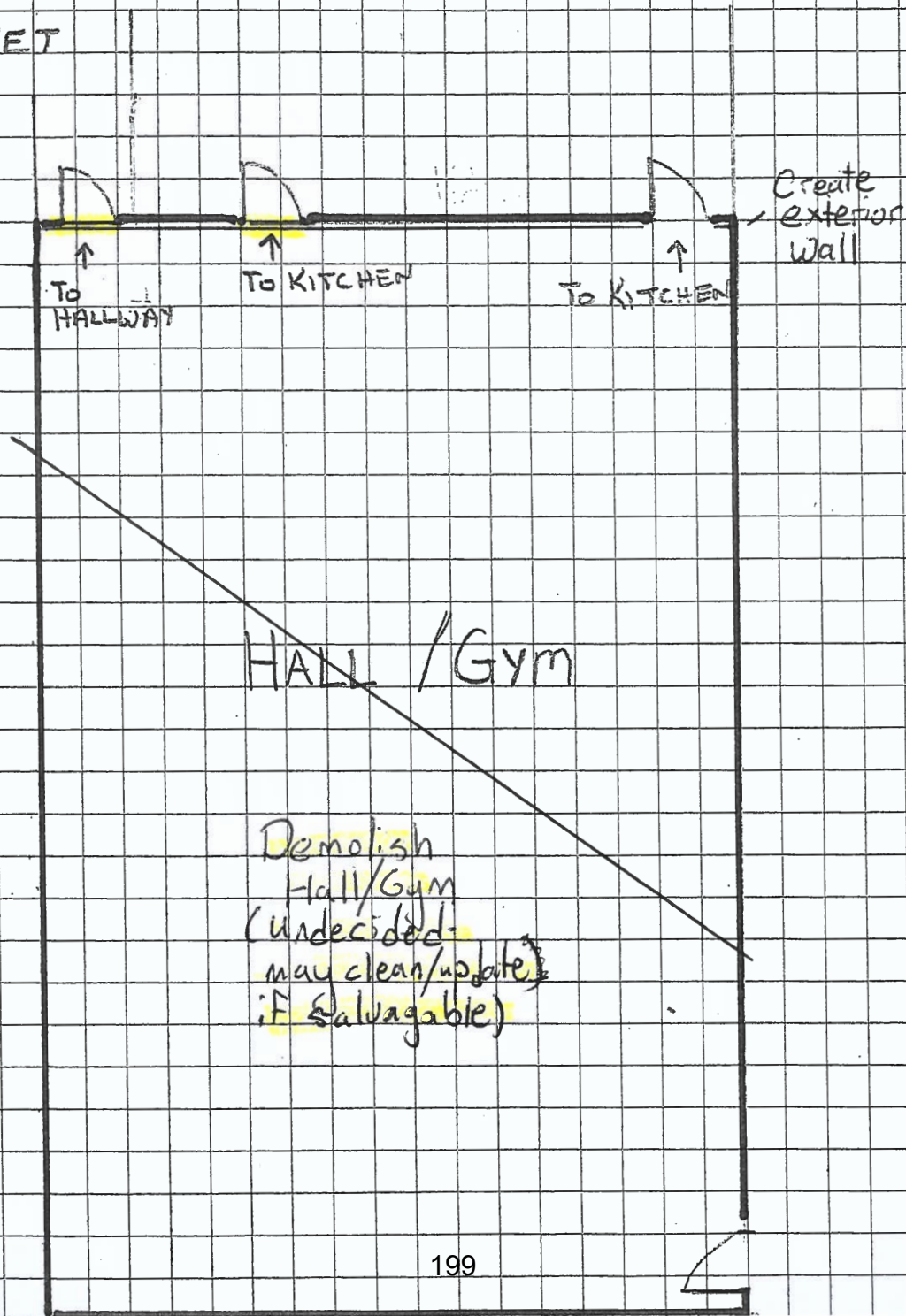
CLOSET

STORAGE
CONVERT
TO
BATHROOM

OFFICE



1 SQ = 2 FEET



From: Sharon Blagden [<mailto:sblagden1948@gmail.com>]
Sent: August 10, 2019 7:43 PM
To: onestop <onestop@saintjohn.ca>
Subject: rezoning application

I think it is wonderful that they are fixing the place up. It will add so much to the neighborhood what ever they decide to do. I just live across the street on City Line.

To whom it may concern,

I am writing to express my approval for the proposed by law amendment to rezone 319 Lancaster Street from Neighbourhood Community Facility to R2 Two-Family residential. I live with my family at 325 ST. James ST West, an adjoining property to this one. I have had the pleasure to meet the applicants and new owners of the old St. Luke's Church on several occasions and the detailed some of their plans to me. I believe they are exactly the right people for this re-use project. I also believe they are a great addition to the area, and fully support their refurbishment and renovation plans for this property.

There were many other proposals I had heard about and I am pleased that none of those people purchased this property. My Wife and I are also very pleased that the previous owner did not demolish this beautiful historic building like said that he had intended. I sincerely hope that Jamie and Kyla will be able to save the oldest part of the structure, the Hall at the rear on the portion nearest to City Line. This structure is the only part of the original church buildings that remain on the site. The original, slightly larger church having burned in the winter of 1893. The hall was lifted and rotated 90 degrees to it's current position after the completion of the current church in 1896.

I wish them all the best in their endeavors here, and with this property.

Yours sincerely,

Christopher Osborne

Owner & Resident of
325 St. James Street West
Saint John, NB
E2M 2E7



319 Lancaster Street

Presentation to Planning Advisory Committee

August 20, 2019



Growth & Community Planning Team
Growth & Community Development Services



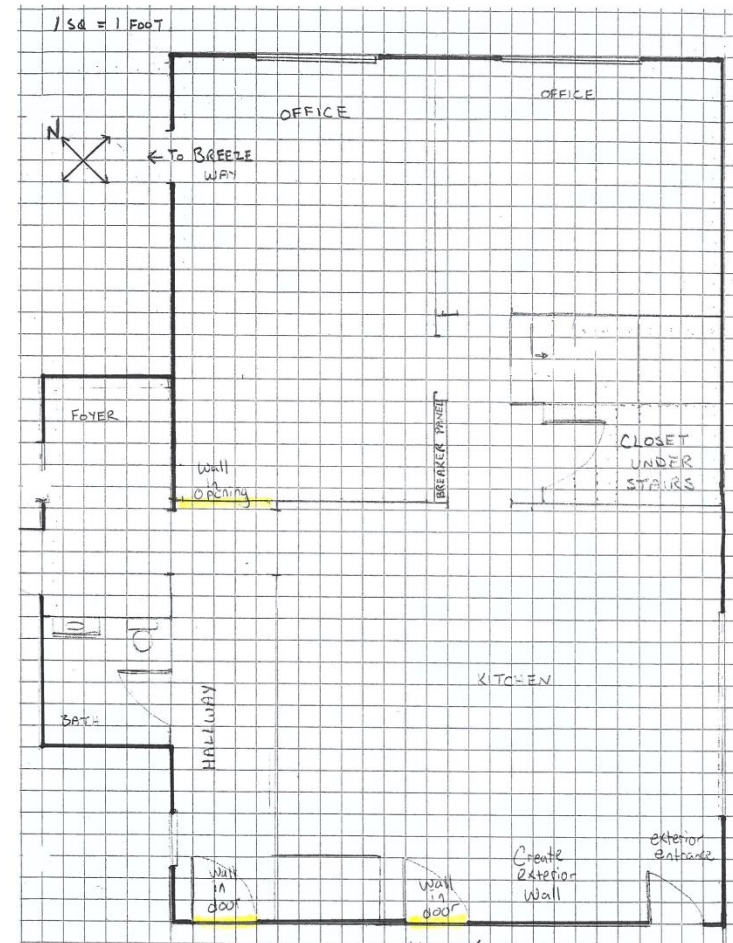
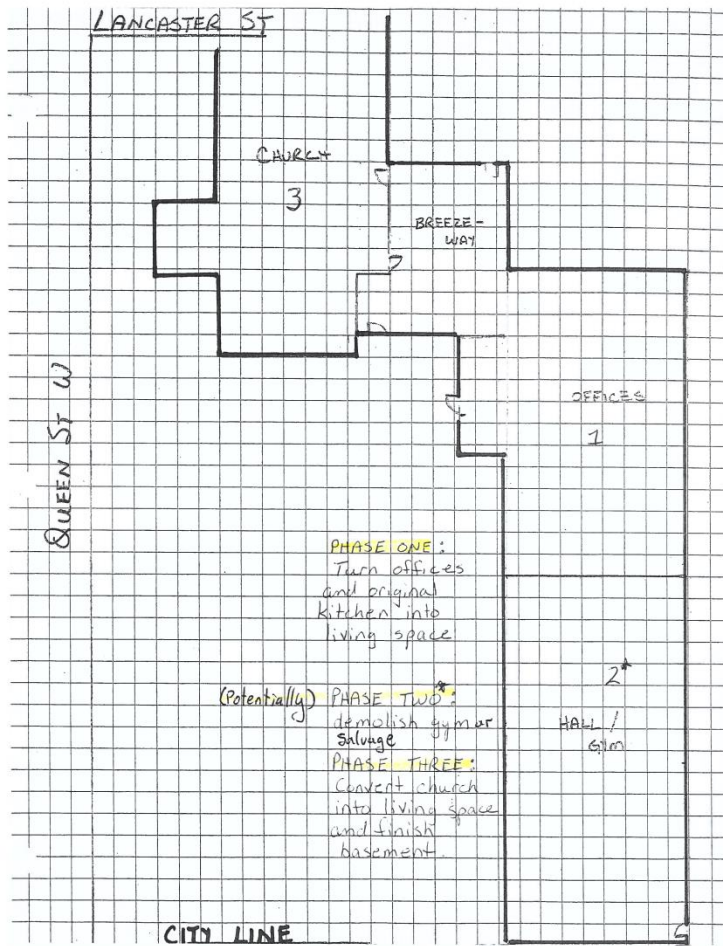
Proposal

To permit the temporary change of use from institutional to residential at 319 Lancaster Street, and to permit the rezoning of the site from Neighbourhood Community Facility (CFN) to Two-Unit Residential.

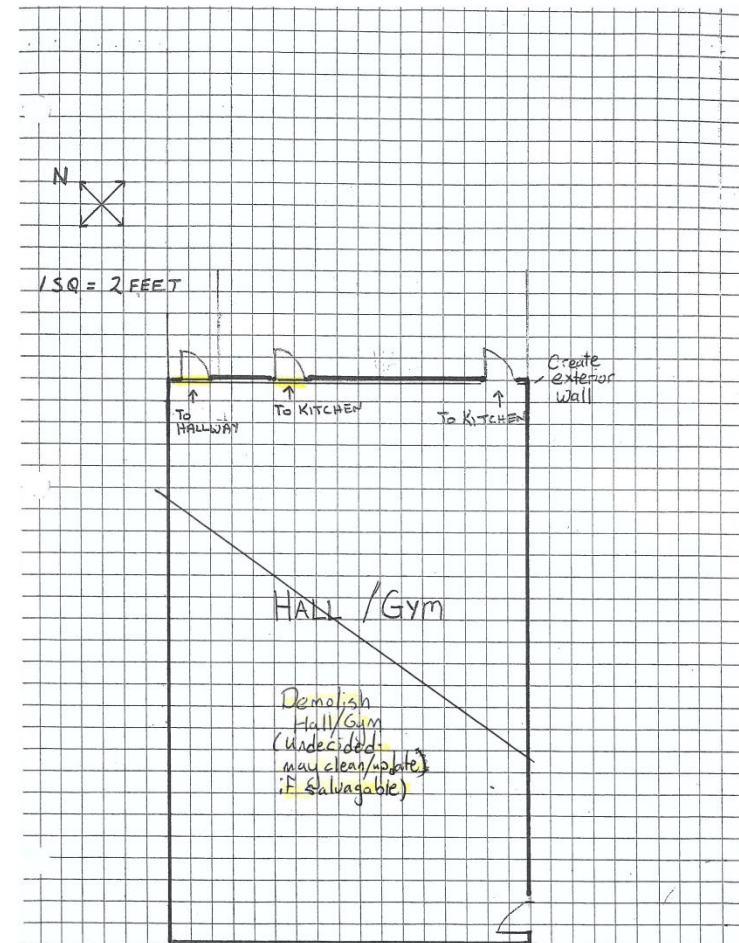
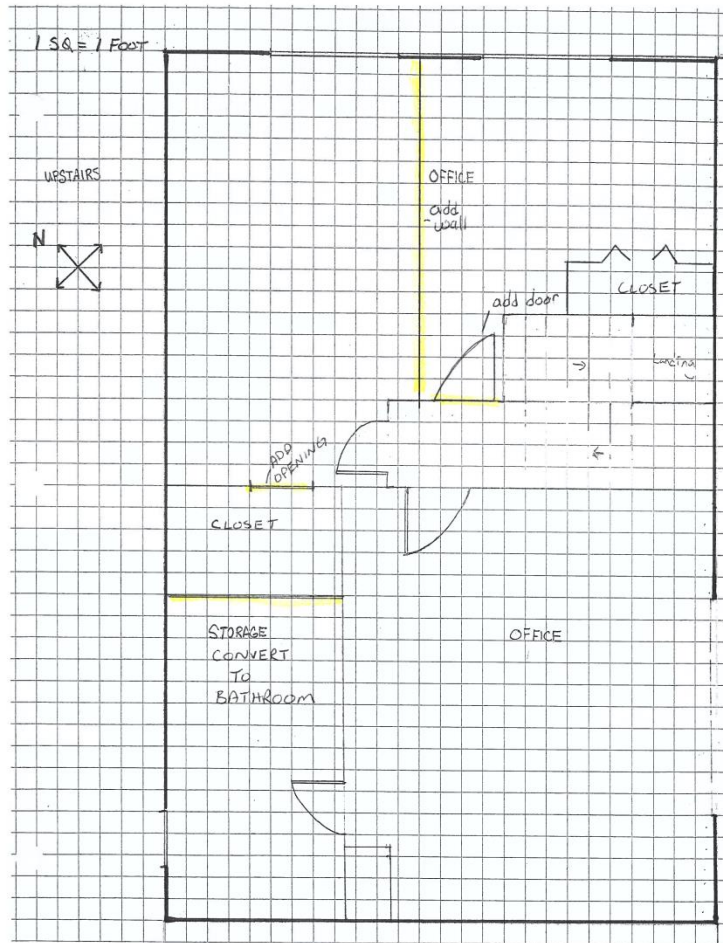
Site Location



Site Plan



Site Plan



Site Aerial



Site Photos



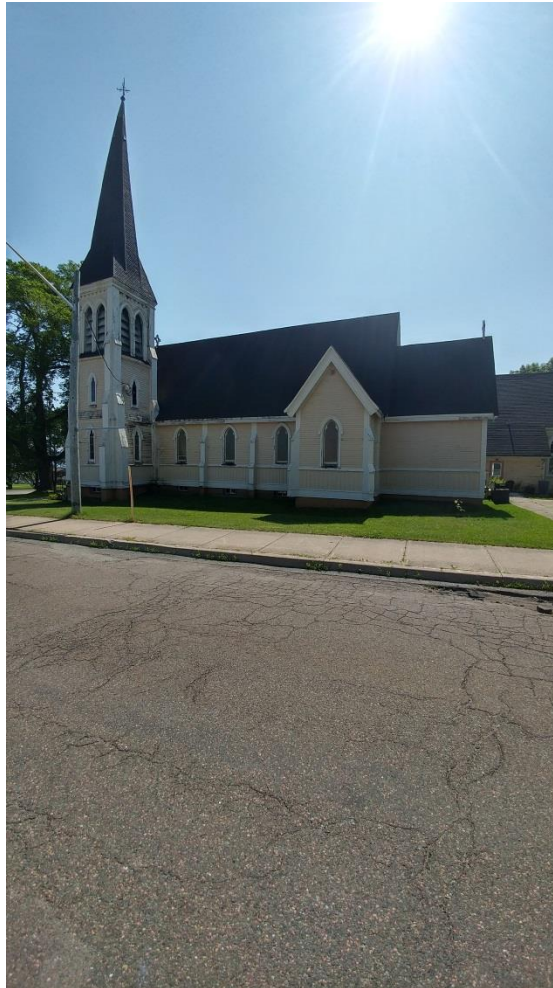
View from Lancaster Street (North East)

Site Photos



View from Queen Street West (West)

Site Photos



View from Queen Street West (West)

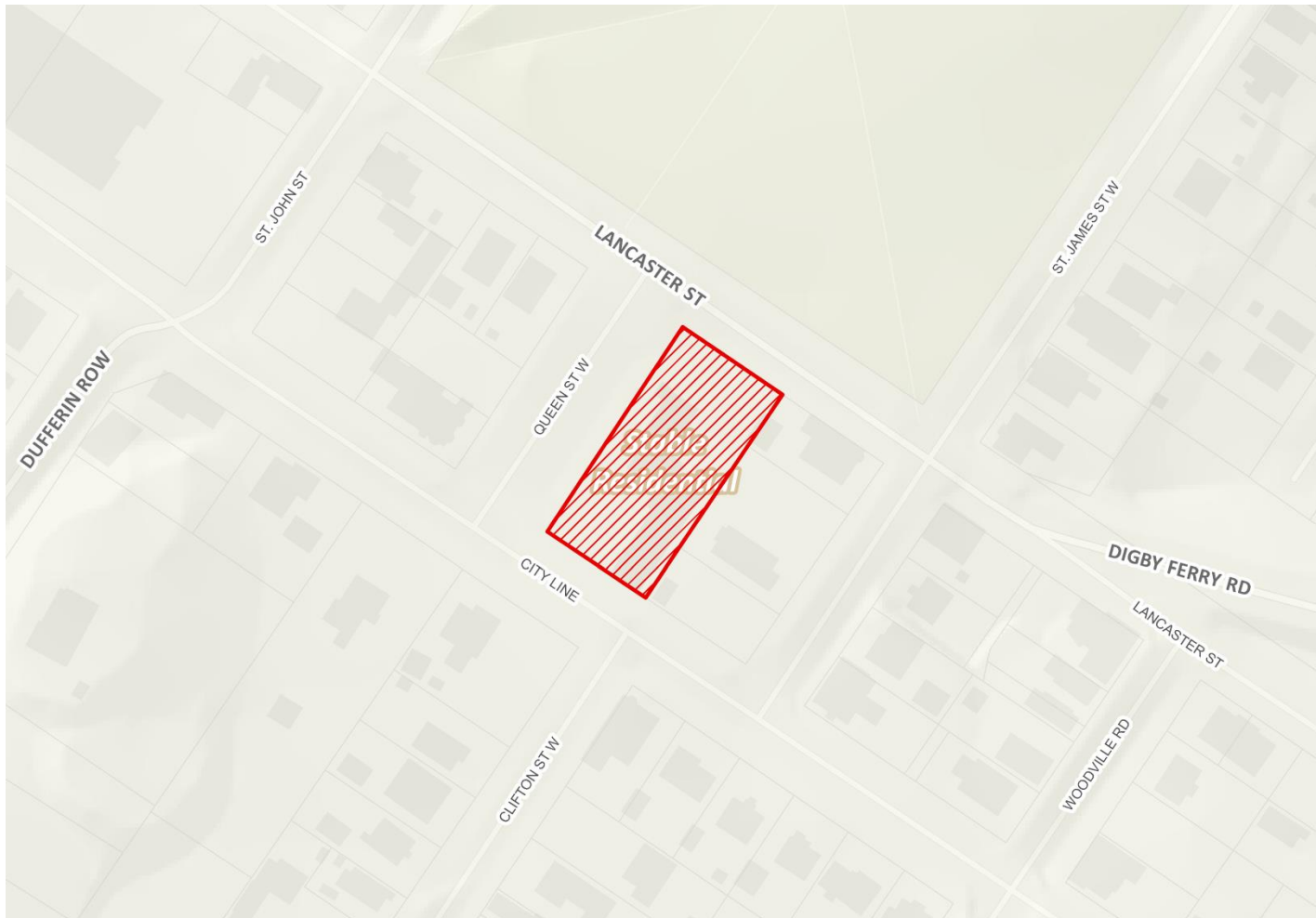
Site Photos



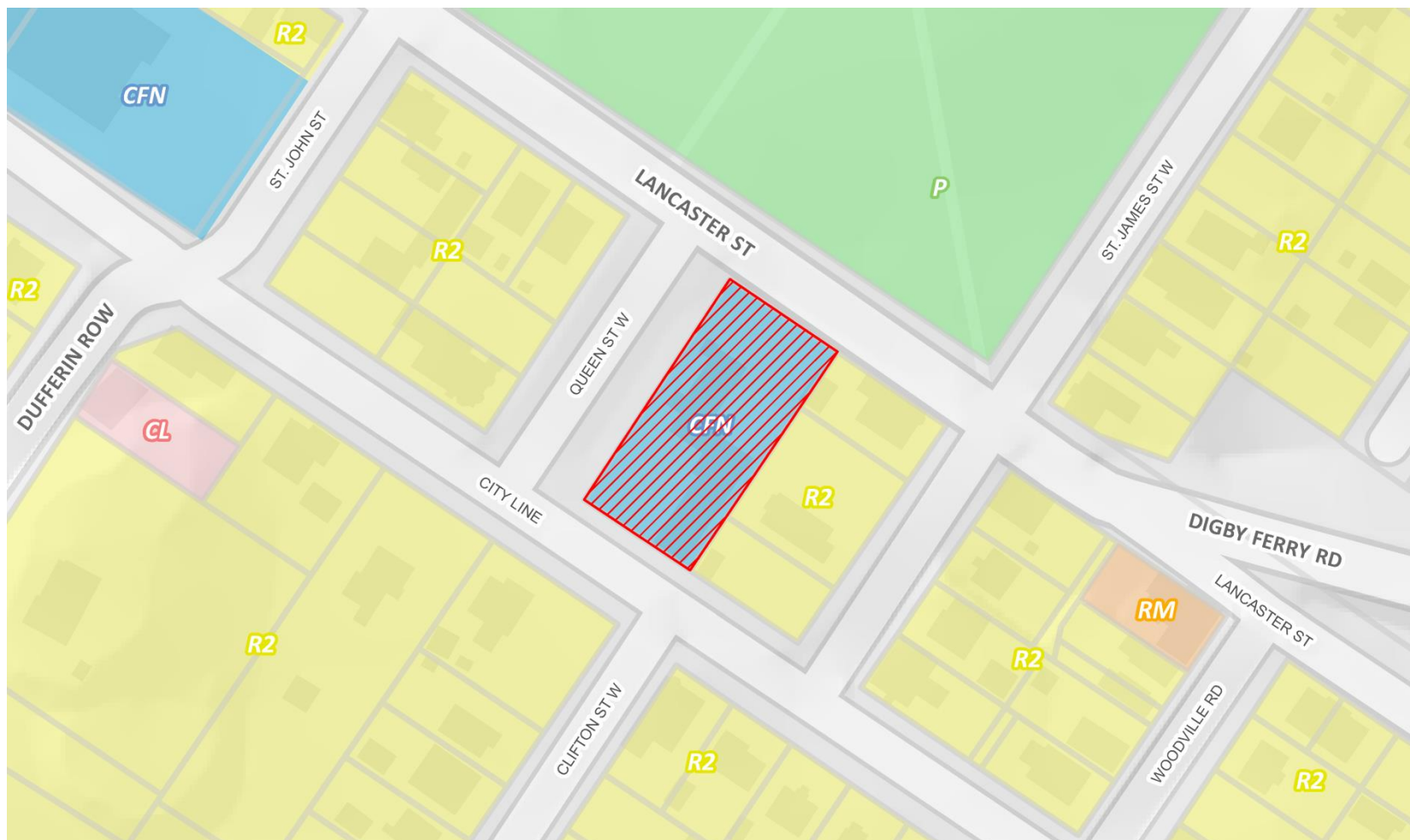
Site Photos



Future Land Use



Site Zoning



- The rezoning of the site would allow for the adaptive re-use of a place of worship.
 - Enhancing the character of the neighbourhood
 - Providing additional residential units in the community
 - Preservation of a unique community asset

Municipal Plan

- Policy CF-39
 - Encourage the adaptive re-use of vacant places of worship for appropriate uses
- Policy LU-87
 - Intend that the areas designated Stable Residential will evolve over time...but that new and redeveloped land uses are to reinforce the predominant community character and make a positive contribution to the neighbourhood.

Letters Received

- Our office has received **2 letters of support** for the temporary use application.
- Notification of the proposal was sent to landowners within 100 metres of the subject property on August 1st, 2019



Staff Recommendation

- To permit the temporary change of use
 - From institutional to residential
- To permit the rezoning of 319 Lancaster Street
 - From Neighbourhood Community Facility (CFN) to Two-Unit Residential (R2)

Public Engagement

- The Public Hearing for the rezoning was advertised on the City's website beginning on August 16th, 2019.
- PAC Meeting – August 20th, 2019
 - Applicant presentation
 - No members of public in attendance



PAC Recommendation

- That Common Council adopt the PAC recommendation to rezone the site, with conditions.



**BY-LAW NUMBER C.P. 111-
A LAW TO AMEND
THE ZONING BY-LAW
OF THE CITY OF SAINT JOHN**

Be it enacted by The City of Saint John in Common Council convened, as follows:

The Zoning By-law of The City of Saint John enacted on the fifteenth day of December, A.D. 2014, is amended by:

1 Amending Schedule A, the Zoning Map of The City of Saint John, by re-zoning a parcel of land having an area of approximately 1,843 square metres, located at 319 Lancaster Street, also identified as PID No. 00365528 from Neighbourhood Community Facility (CFN) to Two-Unit Residential (R2)

- all as shown on the plan attached hereto and forming part of this by-law.

IN WITNESS WHEREOF The City of Saint John has caused the Corporate Common Seal of the said City to be affixed to this by-law the * day of *, A.D. 2019 and signed by:

Mayor/Maire

**ARRÊTÉ N° C.P. 111-
ARRÊTÉ MODIFIANT L'ARRÊTÉ DE
ZONAGE DE THE CITY OF SAINT
JOHN**

Lors d'une réunion du conseil communal, The City of Saint John a décrété ce qui suit :

L'arrêté de zonage de The City of Saint John, décrété le quinze (15) décembre 2014, est modifié par :

1 La modification de l'annexe A, Carte de zonage de The City of Saint John, permettant de modifier la désignation pour une parcelle de terrain d'une superficie d'environ 1,843 mètres carrés, située à 319 rue Lancaster et portant le NID 00365528, de zone d'installations communautaires de quartier (CFN) à zone résidentielle bifamiliale (R2)

- toutes les modifications sont indiquées sur le plan ci-joint et font partie du présent arrêté.

EN FOI DE QUOI, The City of Saint John a fait apposer son sceau communal sur le présent arrêté le * 2019, avec les signatures suivantes :

Common Clerk/Greffier communal

First Reading -
Second Reading -
Third Reading -

Première lecture -
Deuxième lecture -
Troisième lecture -

PROPOSED ZONING BY-LAW

RE: 319 LANCASTER STREET

Public Notice is hereby given that the Common Council of The City of Saint John intends to consider amending The City of Saint John Zoning By-law at its regular meeting to be held in the Ludlow Room, City Hall, on **Monday, September 9, 2019 at 6:30 p.m.**, by:

Rezoning a parcel of land having an area of approximately 1,843 square metres, located at 319 Lancaster Street, also identified as PID No. 00365528, from **Neighbourhood Community Facility (CFN)** to **Two-Unit Residential (R2)**, as illustrated below.

PROJET DE MODIFICATION DE L'ARRÊTÉ DE ZONAGE

OBJET: 319 RUE LANCASTER

Par les présentes, un avis public est donné par lequel le conseil communal de The City of Saint John indique son intention d'étudier la modification suivante à l'Arrêté de zonage de The City of Saint John, lors de la réunion ordinaire qui se tiendra dans la salle Ludlow, à l'hôtel de ville, le **lundi, 9 septembre 2019 à 18 h 30 :**

Rezoning d'une parcelle de terrain d'une superficie d'environ 1843 mètres carrés, située au 319 rue Lancaster, et portant le NID 00365528, de **zone d'installations communautaires de quartier (CFN)** à **zone résidentielle bifamiliale (R2)** comme le montre la carte ci-dessous.



REASON FOR CHANGE:

To allow for the conversion of the former place of worship into a two-unit dwelling.

RAISON DE LA CHANGEMENT:

Permettre la conversion de l'ancien lieu de culte en un immeuble à deux logements.

The proposed amendment may be inspected by any interested person at the office of the Common Clerk, or in the office of Growth and Community Development Services, City Hall, 15 Market Square, Saint John, N.B. between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, inclusive, holidays excepted.

Toute personne intéressée peut examiner le projet de modification au bureau du greffier communal ou au bureau du service de la croissance et du développement communautaire à l'hôtel de ville situé au 15, Market Square, à Saint John, au Nouveau-Brunswick., entre 8 h 30 et 16 h 30 du lundi au vendredi, sauf les jours fériés.

Written objections to the amendment may be sent to the undersigned at City Hall.

Veillez faire part de vos objections au projet de modification par écrit à l'attention du soussigné à l'hôtel de ville.

If you require French services for a Common Council meeting, please contact the office of the Common Clerk.

Si vous avez besoin des services en français pour une réunion de Conseil Communal, veuillez contacter le bureau du greffier communal.

Jonathan Taylor, Common Clerk
658-2862

Jonathan Taylor, Greffier communal
658-2862

Conditional Use
Non-Conforming Use
Similar or Compatible Use
Temporary Approval

Application Checklist & Submission Package



This document and all attachments are provided as assistance to persons seeking certain approvals and permits as required by various by-laws of the City of Saint John and other acts and regulations. Should there be a discrepancy between this document, and all attachments, and the associated by-law, act or regulations, the associated by-law, act or regulation shall prevail.

PAC Application

Checklist required for a complete application for:

- **Conditional Use**
- **Non-Conforming Use**
- **Similar or Compatible Use**
- **Temporary Approval**

Applicant must submit all that are applicable:

- ☐ Completed **Application Form** signed by the registered lot owner or authorized agent.
- ☐ **Fee** in accordance with Schedule B of the Zoning By-law.
- ☐ **Details** of any proposed development, which may include:
 - **Site Plan** drawn to scale illustrating the following:
 - Location of lot lines and lot dimensions;
 - Location and setbacks of buildings and structures;
 - Location and dimensions of easements and rights-of-way;
 - Location and nature of site improvements, including driveway accesses, parking (including barrier free and bicycle), loading, drive-thru facilities, landscaping and amenity spaces, and signs;
 - Topographic features, including watercourses, bodies of water, wetlands, grade changes, and drainage; and
 - **Preliminary Building Plans** drawn to scale, which may include floor plans and elevation drawings.
- ☐ **Other information** may also be required to complete the application. It is therefore strongly recommended that the applicant consult with City staff prior to submission.



General Application Form

GROWTH & COMMUNITY DEVELOPMENT SERVICES
 CITY OF SAINT JOHN

| | | | | | |
|--|--|---|--|---|---|
| LOCATION | CIVIC ADDRESS : | 319 Lancaster St. | | PID # : | |
| STAFF USE | HERITAGE AREA: Y / N INTENSIFICATION AREA: Y / N FLOOD RISK AREA: Y / N APPROVED GRADING PLAN: Y / N | | | | |
| | APPLICATION #: | | DATE RECEIVED: | | |
| | | | RECEIVED BY: | | |
| APPLICANT INFORMATION | APPLICANT | | EMAIL | PHONE | |
| | Jamie Reschny | | jamiereschny@gmail.com | 250-301-1005 | |
| | MAILING ADDRESS | | | POSTAL CODE | |
| | 319 Lancaster St. Saint John NB | | | E2M 1J8 | |
| | CONTRACTOR | | EMAIL | PHONE | |
| | | | | | |
| APPLICANT INFORMATION | MAILING ADDRESS | | | POSTAL CODE | |
| | | | | | |
| | OWNER | | EMAIL | PHONE | |
| | Jamie & Kyla Reschny | | jamiereschny@gmail.com | 250-301-1005 | |
| APPLICANT INFORMATION | MAILING ADDRESS | | | POSTAL CODE | |
| | 319 Lancaster St. | | | E2M 1J8 | |
| PRESENT USE: CFN PROPOSED USE: Residential | | | | | |
| CHECK ALL THAT APPLY | BUILDING | | PLANNING | INFRASTRUCTURE | HERITAGE |
| | <input type="checkbox"/> INTERIOR RENOVATION <input type="checkbox"/> EXTERIOR RENOVATION <input type="checkbox"/> ADDITION <input type="checkbox"/> DECK <input type="checkbox"/> CHANGE OF USE <input type="checkbox"/> MINIMUM STANDARDS | <input type="checkbox"/> NEW CONSTRUCTION <input type="checkbox"/> ACCESSORY BLDG <input type="checkbox"/> POOL <input type="checkbox"/> DEMOLITION <input type="checkbox"/> SIGN <input type="checkbox"/> OTHER | <input type="checkbox"/> VARIANCE <input type="checkbox"/> PLANNING LETTER <input checked="" type="checkbox"/> PAC APPLICATION <input type="checkbox"/> COUNCIL APP <input type="checkbox"/> SUBDIVISION <input type="checkbox"/> OTHER | <input type="checkbox"/> STREET EXCAVATION <input type="checkbox"/> DRIVEWAY CULVERT <input type="checkbox"/> DRAINAGE <input type="checkbox"/> WATER & SEWERAGE <input type="checkbox"/> OTHER | <input type="checkbox"/> HERITAGE DEVELOPMENT <input type="checkbox"/> HERITAGE SIGN <input type="checkbox"/> HERITAGE INFILL <input type="checkbox"/> HERITAGE DEMO <input type="checkbox"/> OTHER |
| DESCRIPTION OF WORK | Conditional use temporary approval to begin plumbing & electrical upgrades and interior renovations prior to rezoning. | | | | |
| | | | | | |
| | | | | | |

☒ I consent to the City of Saint John sending to me commercial electronic messages, from time to time, regarding City initiatives and incentives.

General Collection Statement

This information is being collected in order for the City of Saint John to deliver an existing program / service; the collection is limited to that which is necessary to deliver the program / service. Unless required to do so by law, the City of Saint John will not share your personal information with any third party without your express consent.

The legal authority for collecting this information is to be found in the Municipalities Act and the Right to Information and Protection of Privacy Act. For further information or questions regarding the collection of personal information, please contact the Access & Privacy Officer:

City Hall Building
 8th Floor - 15 Market Square
 Saint John, NB E2L 1E8
 commonclerk@saintjohn.ca
 (506) 658-2862



I, the undersigned, hereby apply for the permit(s) or approval(s), indicated above for the work described on plans, submissions and forms herewith submitted. This application includes all relevant documentation necessary for the applied for permit(s) or approval(s). I agree to comply with the plans, specifications and further agree to comply with all relevant City By-laws and conditions imposed.

Jamie Reschny
 Applicant Name

Applicant Signature

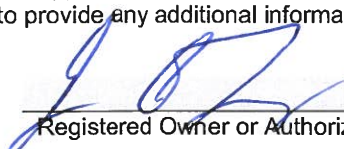

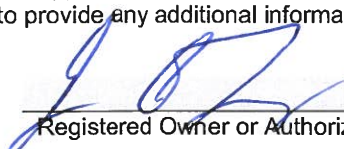

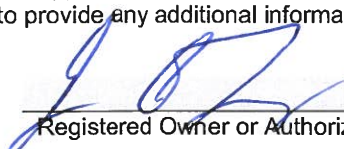

July 3, 2019
 Date

| | | | | | | |
|----------------------|--|----------------------|--|-----------------|----------|----------|
| CIVIC ADDRESS | | APPLICATION # | | FEE PAID | Y | N |
|----------------------|--|----------------------|--|-----------------|----------|----------|

| TYPE OF APPLICATION | | | |
|--|---|--|--|
| <input type="checkbox"/> Conditional Use Service Fee: \$300 | <input type="checkbox"/> Non-Conforming Use Service Fee: \$300 | <input type="checkbox"/> Similar or Compatible Use Service Fee: \$300 | <input checked="" type="checkbox"/> Temporary Approval Service Fee: \$300 |

| DETAILED DESCRIPTION OF APPLICATION |
|--|
| <p>Attach site plans, building elevations, floor plans, and other documentation to fully describe the application. The submission of a preliminary proposal and a Pre-Application Meeting with City staff is encouraged prior to seeking approval. Please contact the One-Stop Development Shop at (506) 658-2911 for further information.</p> <p><i>We plan to renovate previous church property (CFN) into two residences. This will include electrical & plumbing upgrades and interior renovations in accordance with city permitting. Floor plans are included.</i></p> |

| ENCUMBRANCES |
|---|
| Describe any easements, restrictive covenants, and other encumbrances affecting the land. |

| AUTHORIZATION AND CONSENT | | | | | | | | |
|---|--|--|--------------------------------------|-----------------------------|---------------------|---------------------|------|------|
| <p>As of the date of this application, I, the undersigned, am the registered owner of the land described in this application or the authorized agent thereof, and I have examined the contents of this application and hereby certify that the information submitted with the application is correct insofar as I have knowledge of these facts, and I hereby authorize the applicant to represent this matter and to provide any additional information that will be necessary for this application.</p> | | | | | | | | |
| <table> <tr> <td></td> <td></td> </tr> <tr> <td>Registered Owner or Authorized Agent</td> <td>Additional Registered Owner</td> </tr> <tr> <td><i>July 3, 2019</i></td> <td><i>July 3, 2019</i></td> </tr> <tr> <td>Date</td> <td>Date</td> </tr> </table> |  |  | Registered Owner or Authorized Agent | Additional Registered Owner | <i>July 3, 2019</i> | <i>July 3, 2019</i> | Date | Date |
|  |  | | | | | | | |
| Registered Owner or Authorized Agent | Additional Registered Owner | | | | | | | |
| <i>July 3, 2019</i> | <i>July 3, 2019</i> | | | | | | | |
| Date | Date | | | | | | | |
| <p>The information contained in this application and any documentation, including plans, drawings, reports, and studies, provided in support of this application will become part of the public record.</p> | | | | | | | | |

LANCASTER ST

CHURCH

BREEZE-
WAY

OFFICES

HALL /
Gym

QUEEN ST W

CITY LINE

LANCASTER ST

QUEEN ST W

CHURCH

3

BREEZE-
WAY

OFFICES

1

PHASE ONE:

Turn offices
and original
kitchen into
living space

(Potentially) PHASE TWO:

demolish gym or
salvage

PHASE THREE:

Convert church
into living space
and finish
basement.

2*

HALL /
Gym

CITY LINE

1 SQ = 1 FOOT



← TO BREEZE
WAY

OFFICE

OFFICE

FOYER

BREAKER PANEL

CLOSET
UNDER
STAIRS

BATH

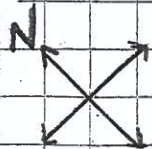
HALLWAY

KITCHEN

231

HALL / CUM

1 SQ = 1 FOOT



← TO BREEZE WAY

OFFICE

OFFICE

FOYER

Wall
Opening

BREAKER PANEL

CLOSET
UNDER
STAIRS

BATH

HALLWAY

KITCHEN

Wall
in
door

Wall
in
door

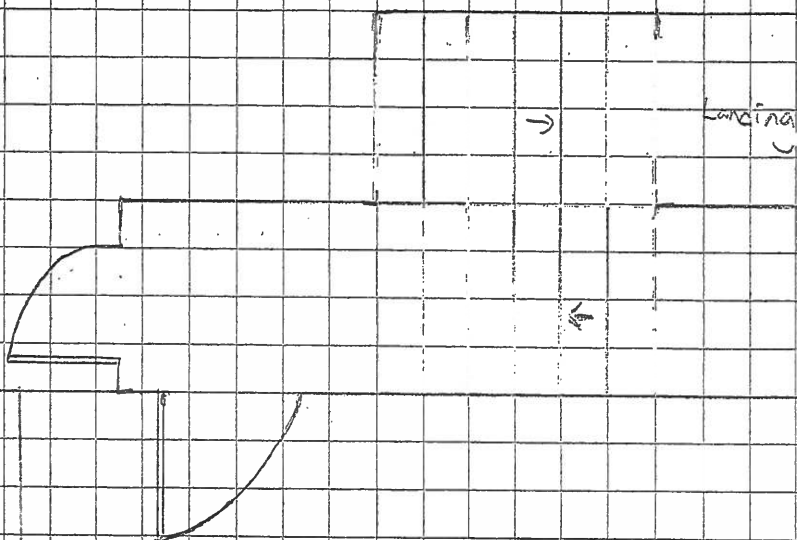
Create
Exterior
Wall

exterior
entrance

1 SQ = 1 FOOT

UPSTAIRS

OFFICE



STORAGE

OFFICE

1 SQ. = 1 FOOT

UPSTAIRS



OFFICE

add
- wall

add door

CLOSET

ADD
OPENING

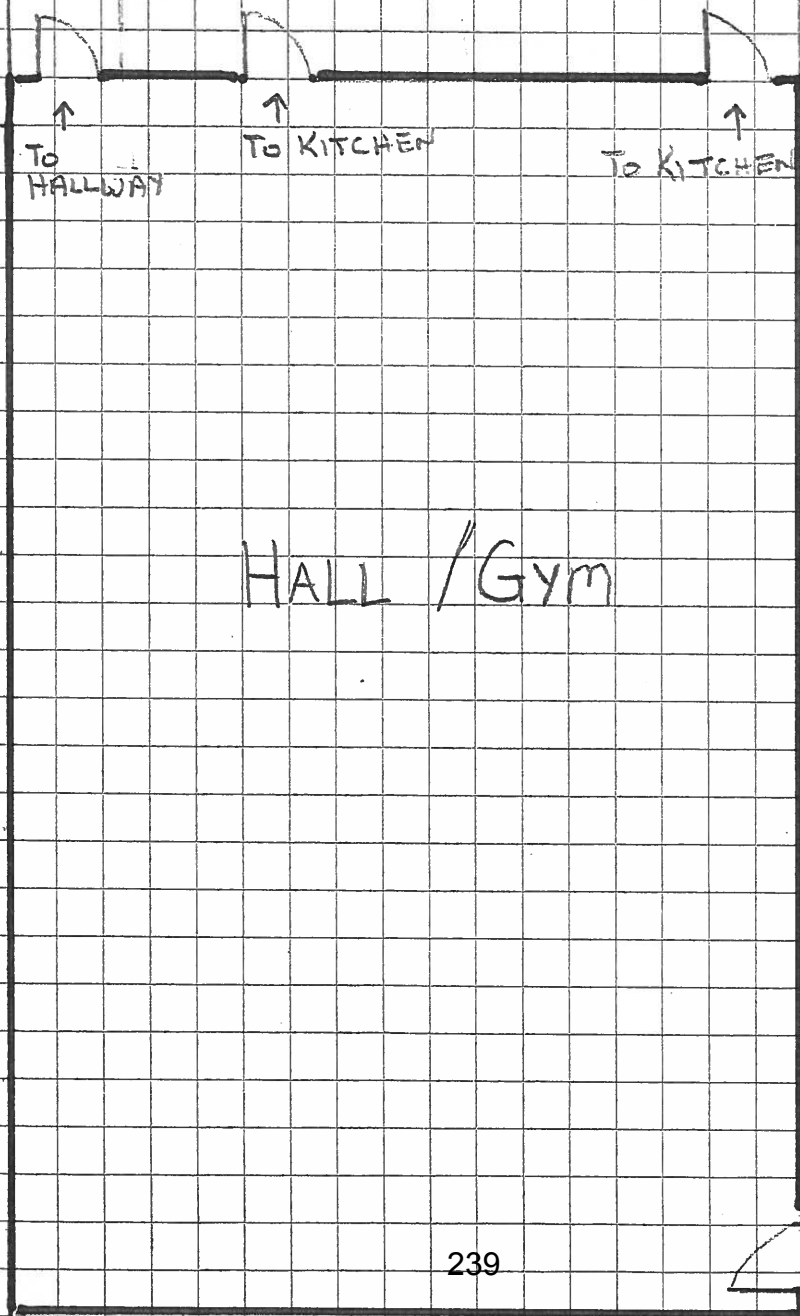
CLOSET

STORAGE
CONVERT
TO
BATHROOM

OFFICE

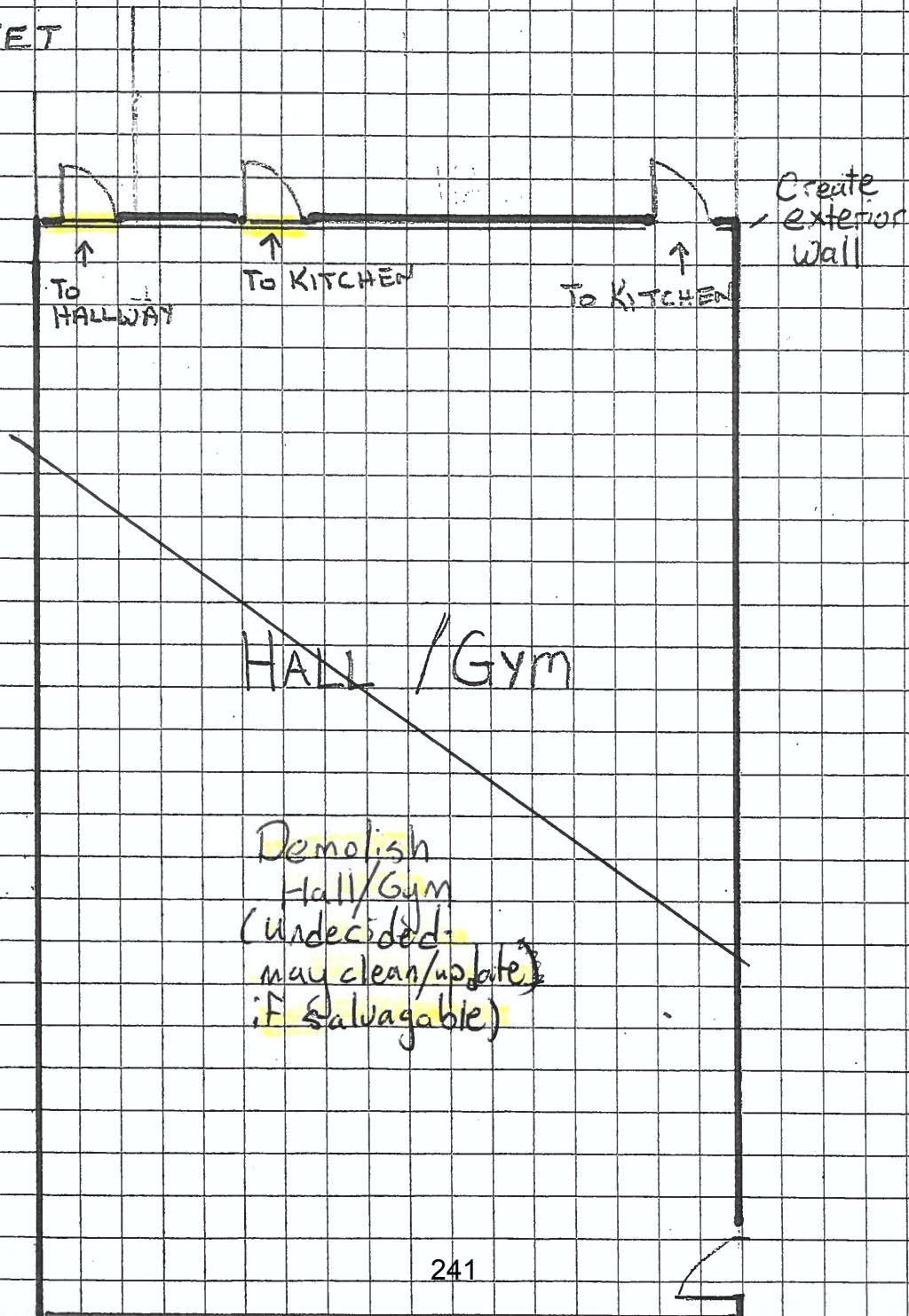


1 SQ = 2 FEET





1 SQ = 2 FEET



Non-Conforming Use Satisfactory Servicing Section 39 Amendment Zoning By-law Amendment

Application Checklist & Submission Package



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Council Application

Checklist required for a complete application for:

- **Non-Conforming Use**
- **Satisfactory Servicing**
- **Section 39 Amendment**
- **Zoning By-law Amendment**

Applicant must submit all that are applicable:

- ☐ Completed **Application Form** signed by the registered lot owner or authorized agent.
- ☐ **Fee** in accordance with Schedule B of the Zoning By-law.
- ☐ **Details** of any proposed development, which may include:
 - **Site Plan** drawn to scale illustrating the following:
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 - Location and nature of site improvements, including driveway accesses, parking (including barrier free and bicycle), loading, drive-thru facilities, landscaping and amenity spaces, and signs;
 - Topographic features, including watercourses, bodies of water, wetlands, grade changes, and drainage; and
 - **Preliminary Building Plans** drawn to scale, which may include floor plans.
- ☐ **Other information** may also be required to complete the application. It is therefore strongly recommended that the applicant consult with City staff prior to submission.



| LOCATION | CIVIC ADDRESS : <u>319 Lancaster St.</u> | PID # : | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--|---|--|----------|----------|----------|----------------|----------|---|---|-----------------------------------|--|--|---|--|---|-----------------------------------|-------------------------------|--|-----------------------------------|-------------------------------|-------------------------------------|---|---|---|-------------------------------|--------------------------------------|--------------------------------|--|--------------------------------|--------------------------------|--------------------------------|
| STAFF USE | HERITAGE AREA: Y / N INTENSIFICATION AREA: Y / N FLOOD RISK AREA: Y / N APPROVED GRADING PLAN: Y / N | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | APPLICATION #: | DATE RECEIVED: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | RECEIVED BY: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| APPLICANT INFORMATION | APPLICANT | | PHONE | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | <u>Jamie Reschny</u> | | <u>250-301-1005</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | EMAIL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | <u>jamiereschny@gmail.com</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | MAILING ADDRESS | | POSTAL CODE | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | <u>319 Lancaster St.</u> | | <u>E2M 1J8</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| APPLICANT INFORMATION | CONTRACTOR | | PHONE | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| | <u>Jam</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | OWNER | | PHONE | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | <u>Jamie and Kyla Reschny</u> | | <u>250-301-1005</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| APPLICANT INFORMATION | EMAIL | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | <u>jamiereschny@gmail.com</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | MAILING ADDRESS | | POSTAL CODE | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | <u>319 Lancaster St.</u> | | <u>E2M 1J8</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | PRESENT USE: <u>CEN</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | PROPOSED USE: <u>Residence</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CHECK ALL THAT APPLY | <table border="1"> <thead> <tr> <th>BUILDING</th> <th>PLANNING</th> <th>INFRASTRUCTURE</th> <th>HERITAGE</th> </tr> </thead> <tbody> <tr> <td><input checked="" type="checkbox"/> INTERIOR RENOVATION</td> <td><input type="checkbox"/> NEW CONSTRUCTION</td> <td><input type="checkbox"/> VARIANCE</td> <td><input type="checkbox"/> STREET EXCAVATION</td> </tr> <tr> <td><input type="checkbox"/> EXTERIOR RENOVATION</td> <td><input type="checkbox"/> ACCESSORY BLDG</td> <td><input type="checkbox"/> PLANNING LETTER</td> <td><input type="checkbox"/> DRIVEWAY CULVERT</td> </tr> <tr> <td><input type="checkbox"/> ADDITION</td> <td><input type="checkbox"/> POOL</td> <td><input type="checkbox"/> PAC APPLICATION</td> <td><input type="checkbox"/> DRAINAGE</td> </tr> <tr> <td><input type="checkbox"/> DECK</td> <td><input type="checkbox"/> DEMOLITION</td> <td><input checked="" type="checkbox"/> COUNCIL APP</td> <td><input type="checkbox"/> WATER & SEWERAGE</td> </tr> <tr> <td><input checked="" type="checkbox"/> CHANGE OF USE</td> <td><input type="checkbox"/> SIGN</td> <td><input type="checkbox"/> SUBDIVISION</td> <td><input type="checkbox"/> OTHER</td> </tr> <tr> <td><input type="checkbox"/> MINIMUM STANDARDS</td> <td><input type="checkbox"/> OTHER</td> <td><input type="checkbox"/> OTHER</td> <td><input type="checkbox"/> OTHER</td> </tr> </tbody> </table> | | | | BUILDING | PLANNING | INFRASTRUCTURE | HERITAGE | <input checked="" type="checkbox"/> INTERIOR RENOVATION | <input type="checkbox"/> NEW CONSTRUCTION | <input type="checkbox"/> VARIANCE | <input type="checkbox"/> STREET EXCAVATION | <input type="checkbox"/> EXTERIOR RENOVATION | <input type="checkbox"/> ACCESSORY BLDG | <input type="checkbox"/> PLANNING LETTER | <input type="checkbox"/> DRIVEWAY CULVERT | <input type="checkbox"/> ADDITION | <input type="checkbox"/> POOL | <input type="checkbox"/> PAC APPLICATION | <input type="checkbox"/> DRAINAGE | <input type="checkbox"/> DECK | <input type="checkbox"/> DEMOLITION | <input checked="" type="checkbox"/> COUNCIL APP | <input type="checkbox"/> WATER & SEWERAGE | <input checked="" type="checkbox"/> CHANGE OF USE | <input type="checkbox"/> SIGN | <input type="checkbox"/> SUBDIVISION | <input type="checkbox"/> OTHER | <input type="checkbox"/> MINIMUM STANDARDS | <input type="checkbox"/> OTHER | <input type="checkbox"/> OTHER | <input type="checkbox"/> OTHER |
| | BUILDING | PLANNING | INFRASTRUCTURE | HERITAGE | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> INTERIOR RENOVATION | <input type="checkbox"/> NEW CONSTRUCTION | <input type="checkbox"/> VARIANCE | <input type="checkbox"/> STREET EXCAVATION | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> EXTERIOR RENOVATION | <input type="checkbox"/> ACCESSORY BLDG | <input type="checkbox"/> PLANNING LETTER | <input type="checkbox"/> DRIVEWAY CULVERT | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> ADDITION | <input type="checkbox"/> POOL | <input type="checkbox"/> PAC APPLICATION | <input type="checkbox"/> DRAINAGE | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> DECK | <input type="checkbox"/> DEMOLITION | <input checked="" type="checkbox"/> COUNCIL APP | <input type="checkbox"/> WATER & SEWERAGE | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> CHANGE OF USE | <input type="checkbox"/> SIGN | <input type="checkbox"/> SUBDIVISION | <input type="checkbox"/> OTHER | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> MINIMUM STANDARDS | <input type="checkbox"/> OTHER | <input type="checkbox"/> OTHER | <input type="checkbox"/> OTHER | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| DESCRIPTION OF WORK | <u>Change of use From CEN to residential. Update plumbing and electrical where necessary. Build walls to separate spaces. Add windows, and door openings.</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

☒ I consent to the City of Saint John sending to me commercial electronic messages, from time to time, regarding City initiatives and incentives.

General Collection Statement

This information is being collected in order for the City of Saint John to deliver an existing program / service; the collection is limited to that which is necessary to deliver the program / service. Unless required to do so by law, the City of Saint John will not share your personal information with any third party without your express consent.

The legal authority for collecting this information is to be found in the Municipalities Act and the Right to Information and Protection of Privacy Act. For further information or questions regarding the collection of personal information, please contact the Access & Privacy Officer:

City Hall Building
8th Floor - 15 Market Square
Saint John, NB E2L 1E8
commonclerk@saintjohn.ca
(506) 658-2862



I, the undersigned, hereby apply for the permit(s) or approval(s), indicated above for the work described on plans, submissions and forms herewith submitted. This application includes all relevant documentation necessary for the applied for permit(s) or approval(s). I agree to comply with the plans, specifications and further agree to comply with all relevant City By-laws and conditions imposed.

Jamie Reschny
Applicant Name

[Signature]
Applicant Signature

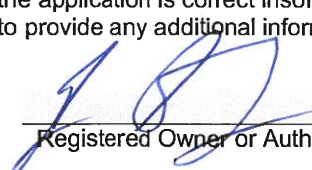
July 3, 2019
Date

| | | | | |
|----------------------|----------------------|-----------------|----------|----------|
| CIVIC ADDRESS | APPLICATION # | FEE PAID | Y | N |
|----------------------|----------------------|-----------------|----------|----------|

| TYPE OF APPLICATION | | |
|---|---|--|
| <input type="checkbox"/> Land for Public Purposes Release Service Fee: \$300 | <input type="checkbox"/> Non-Conforming Use Service Fee: \$200 | <input type="checkbox"/> Satisfactory Servicing Service Fee: \$200 |
| <input type="checkbox"/> Section 39 Amendment Service Fee: \$2,500 | <input checked="" type="checkbox"/> Zoning By-law Amendment Service Fee: \$2,500 | <input type="checkbox"/> Zoning By-law Amendment with a Municipal Plan Amendment Service Fee: \$3,500 |

| DETAILED DESCRIPTION OF APPLICATION |
|--|
| Where applicable, indicate the changes to existing Section 39 conditions, zoning, or Municipal Plan designation being requested. Attach site plans, building elevations, floor plans, and other documentation to fully describe the application. The submission of a preliminary proposal and a Pre-Application Meeting is encouraged prior to seeking approval. Please contact the One-Stop Development Shop at (506) 658-2911 for further information. |
| We plan to renovate previous church property into two residences. This will include electrical and plumbing upgrades and interior renovations in accordance with city permitting. Floor plans are included. |
| |
| |

| ENCUMBRANCES |
|---|
| Describe any easements, restrictive covenants, and other encumbrances affecting the land. |
| |
| |
| |

| AUTHORIZATION |
|---|
| As of the date of this application, I, the undersigned, am the registered owner of the land described in this application or the authorized agent thereof, and I have examined the contents of this application and hereby certify that the information submitted with the application is correct insofar as I have knowledge of these facts, and I hereby authorize the applicant to represent this matter and to provide any additional information that will be necessary for this application. |
| <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">  Registered Owner or Authorized Agent </div> <div style="width: 45%;">  Additional Registered Owner </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> July 3, 2019 Date </div> <div style="width: 45%;"> July 3, 2019 Date </div> </div> |
| The information contained in this application and any documentation, including plans, drawings, reports, and studies, provided in support of this application will become part of the public record. |

LANCASTER ST

CHAURCY

BREEZE-
WAY

QUEEN ST W

OFFICES

HALL /
Gym

CITY LINE

LANCASTER ST

QUEEN ST W

CHURCH

3

BREEZE-
WAY

OFFICES

1

PHASE ONE:

Turn offices
and original
kitchen into
living space

(Potentially) PHASE TWO:

demolish gym or
salvage

PHASE THREE:

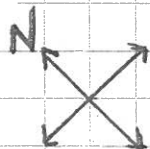
Convert church
into living space
and finish
basement.

2*

HALL /
Gym

CITY LINE

1 SQ = 1 FOOT



← TO BREEZE
WAY

OFFICE

OFFICE

FOYER

BREAKER PANEL

CLOSET
UNDER
STAIRS

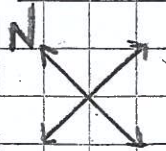
BATH

HALLWAY

KITCHEN

251

1 SQ = 1 FOOT



← TO BREEZE
WAY

OFFICE

OFFICE

FOYER

Wall
opening

BREAKER PANEL

CLOSET
UNDER
STAIRS

BATH

HALLWAY

KITCHEN

Wall
in
door

253

Wall
in
door

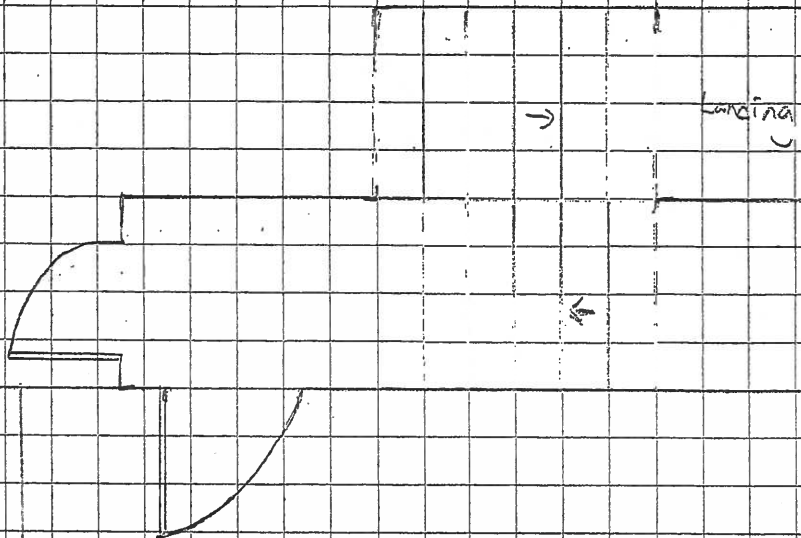
Create
Exterior
Wall

exterior
entrance

1 SQ = 1 FOOT

UPSTAIRS

OFFICE



STORAGE

OFFICE

1 SQ = 1 FOOT

UPSTAIRS



OFFICE

add wall

add door

CLOSET

Landing

ADD OPENING

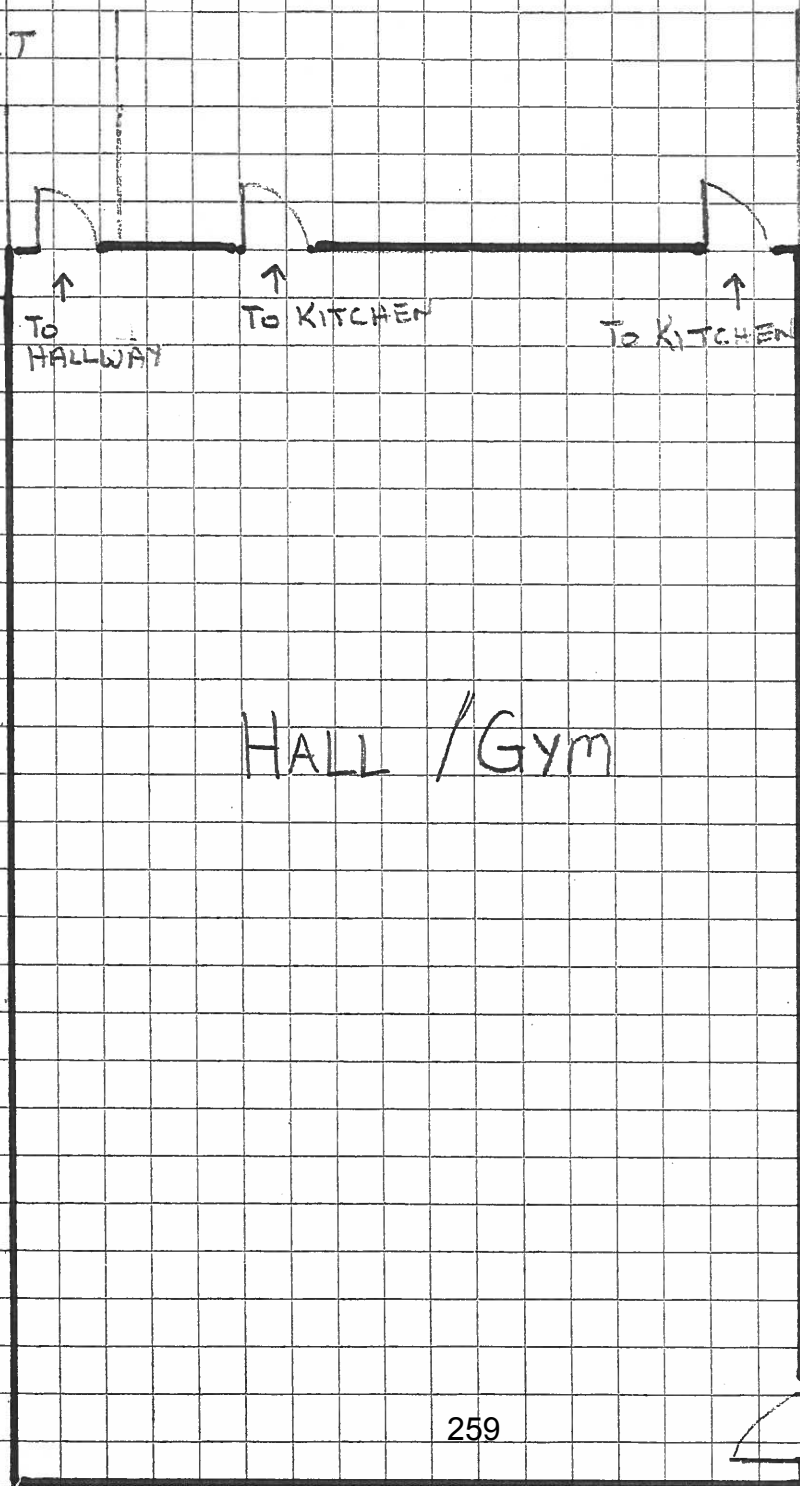
CLOSET

STORAGE
CONVERT
TO
BATHROOM

OFFICE

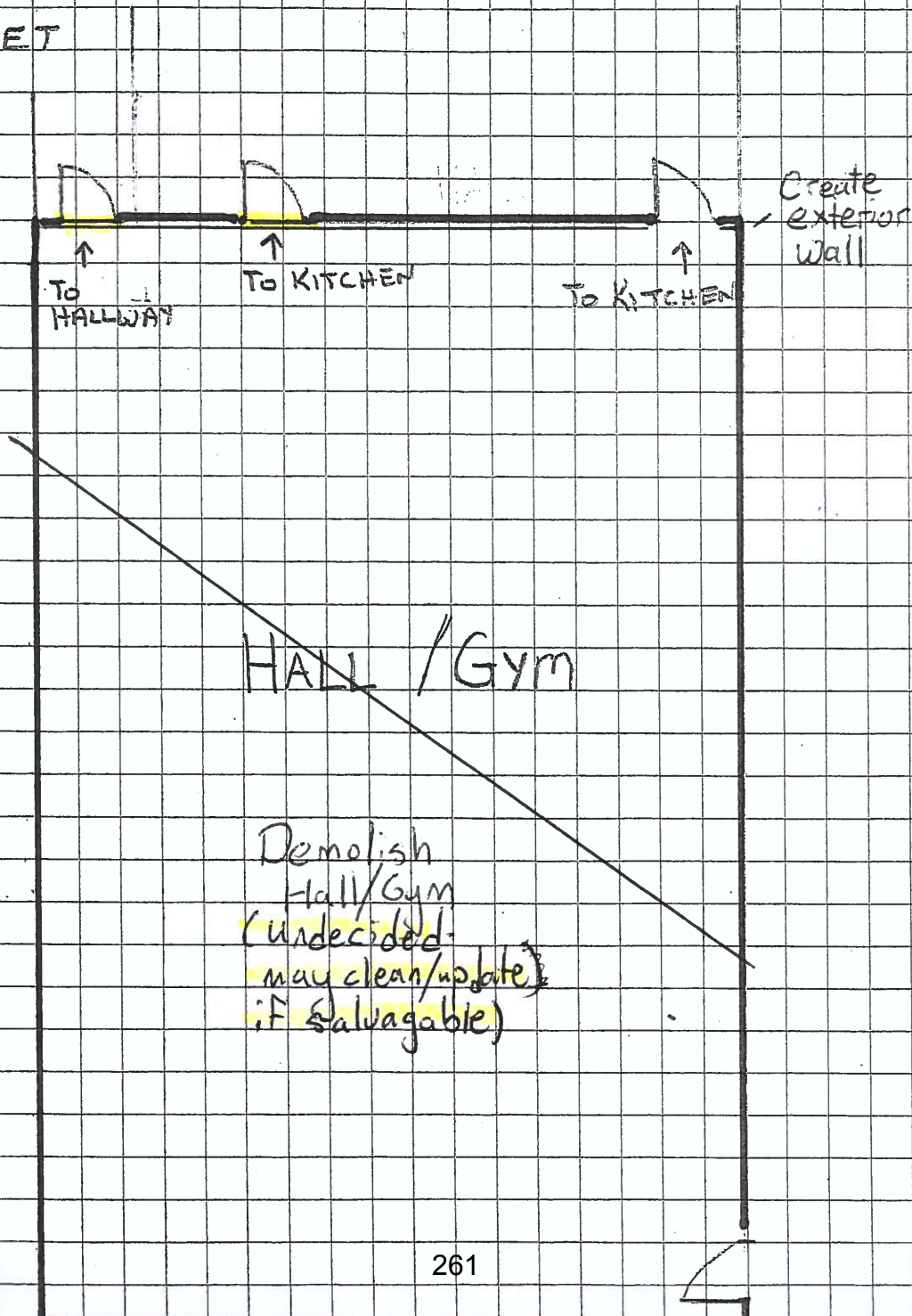


1 SQ = 2 FEET





1 SQ = 2 FEET



| | |
|--------------|--|
| M&C No. | 2019-223 |
| Report Date | September 04, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Growth and Community Development Services |

His Worship Mayor Don Darling and Members of Common Council

***SUBJECT: Saint John Heritage Conservation Areas By-Law – Phase One
Revisions***

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|----------------------------|--|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Emma Sampson</i> | <i>Jacqueline Hamilton / Amy Poffenroth</i> | <i>John Collin</i> |

RECOMMENDATION

Your City Manager recommends that Common Council approve the 1st and 2nd readings to repeal [HC-1] Saint John Heritage Conservation Areas By-Law and to adopt [HC-1] Saint John Heritage Conservation Areas By-Law.

EXECUTIVE SUMMARY

This report will provide a full briefing on the first suite of proposed revisions to the Heritage Conservations Areas By-Law that is being considered at a public hearing on September 9, 2019, as well as on the three external requests for by-law amendments that are included in these revisions. This is the first formal step in implementing an identified priority of Common Council, enabling process improvements and barrier reductions for heritage property owners.

While the proposed changes to the current By-Law are minimal in their wording and much of the content is unchanged, for clarity of process, a repeal of the existing By-Law is being put forward, along with the adoption of the proposed By-Law. These changes will result in increased clarity, efficiency and flexibility for heritage property owners. Streamlined processes, work no longer requiring Heritage Permits and the ability to use non-traditional materials in certain areas of buildings will encourage and promote maintenance, rehabilitation and development of the hundreds of heritage properties within the city.

PREVIOUS RESOLUTION

N/A

STRATEGIC ALIGNMENT

The proposed changes to the *Saint John Heritage Conservation Areas By-Law* align with Common Council's 2016-2020 priorities to support a Vibrant, Safe City through the modernization of Heritage Conservation processes, as well as a Valued Service Delivery through customer-focused services and a culture of continuous improvement.

REPORT

Common Council has recognized the need for improvements to the *Saint John Heritage Conservation Areas By-Law* (Heritage By-Law), and has formalized that need by including the modernization of the Heritage By-Law in the 2016-2020 Common Council Priorities. In removing barriers to development through this modernization, the City will move forward its goals of creating density and growing the residential tax base, further solidifying its Heritage Conservation Areas as desirable, attractive places to live, work and play.

Updating the Heritage By-law began with formal stakeholder engagements organized in the second half of 2017, in conjunction with the development of the Central Peninsula Plan to identify areas of improvement for the By-Law. These engagements were followed by a series of focus groups, workshops with the Heritage Development Board, and a comprehensive review of the Heritage By-Law by Taylor Hazell Architects. Collectively, these engagements highlighted the need for **clarity**, **efficiency** and most importantly, **flexibility** in the Heritage By-Law and its administration, while still protecting the valuable integrity of the City's built heritage.

After the majority of revisions were drafted, a number of presentations were given in the spring and early summer of 2019 to introduce at a very high level the proposed changes and to ensure that, from feedback, the above needs were being addressed. Common Council received a presentation on July 29th formally introducing the proposed changes and to hear initial comments from members of Common Council. Finally, a Public Information Session was held just recently on August 27th, 2019 to again increase public awareness and ensure that residents of Saint John and affected property owners would be informed and engaged coming into the September 9th Public Hearing.

The positive trend leading to these proposed revisions started with amendments to the Heritage By-Law in 2017 which gave authorization to the Heritage Officer to approve a wide range of heritage permit applications, without going to the Heritage Development Board. The continually increasing scope of Heritage Officer permit approvals has resulted in faster turnaround times that have

demonstrated a marked increase in customer satisfaction with service delivery. In 2019, over 55% of Heritage Permit applications have been processed by the Heritage Officer, instead of being reviewed by the Heritage Development Board. This sees permits issued typically within a week, rather than waiting for up to one month for the next Board meeting.

PROPOSED REVISIONS

The revisions that are proposed to be brought forward for Public Hearing on September 9, 2019 come in four main parts. The revisions that have resulted from the by-law review form the largest part, with three external amendment requests included in this suite for reasons of both timing and policy review.

1. Heritage By-Law Phase One Revisions
2. External Amendment Requests
 - a. Request for Removal from Designation: King Street West Heritage Conservation Area
 - b. Request for Designation: 152 Watson Street
 - c. Request for Site-Specific Amendment: The Telegraph

The Phase Two amendments will replace the current infill standards with new infill guidelines. This will follow the adoption timeline of the Central Peninsula Plan which is currently proposed to begin in October 2019, and does not form part of this report.

1. HERITAGE BY-LAW PHASE ONE REVISIONS

Revisions to the Heritage By-Law are proposed in three main categories: housekeeping, non-visible façades, and demolition.

Housekeeping

Definitions have been revised to align the Heritage By-Law with other related municipal and provincial legislation, primarily the *Local Governance Act* and the *Heritage Conservation Act*. There has also been the addition and removal of definitions where required based on changes to other sections of the Heritage By-Law itself.

Non-Visible Façades

To aid in achieving the goals of **efficiency** and **flexibility** in the Heritage By-Law, a key facet of the proposed revisions is an increase in the number of exemptions from Heritage permitting. The most important exemptions are in non-visible areas of buildings, being the rears of buildings and portions of sidewalls. In these areas, the following items will no longer require a heritage permit:

- Window and door replacements, with no change in the size of the opening;
- Decks, stairs, and fire escapes;
- Fences;
- Cladding, except masonry.

This group of exemptions was determined based on two reasons: they are some of the most common applications made, and they are easily reversible, posing minimal impact on the integrity of a heritage property. With these items proposed to be outside of the scope of the Heritage By-Law, property owners will be able to begin improvements on their own schedules and with their choice of modern or traditional materials. This ensures the conservation of the City's public-facing heritage while enabling contemporary options in backyard and private spaces should property owners so choose. Major alterations in these areas, such as additions, partial demolitions or change in openings, will continue to follow the current permitting process for the time being.

Demolition

Improving the **clarity** of the Heritage By-Law, the process for obtaining a demolition permit has been streamlined and strengthened with set expectations for the two available application paths: 'no public benefit' and listing the property for sale.

The application path for 'no public benefit' (formerly 'incompatibility') has been reworked with clearer standards for making that determination. The application path requiring the listing of a property for sale has been made more contemporary with current real estate practices and is designed to help increase the likelihood of a "second chance" for a building:

- Easier determination of list price, in place of appraisers;
- Requiring a 12-month listing period, and,
- Establishing more visible advertisement for listed properties, both on the building itself and on the City website.

It is also proposed that the Board be given the ability, in accordance with the *Heritage Conservation Act* and in alignment with the Building By-Law, to require if it deems necessary the detailed reconstruction of any designated building demolished illegally. While the Heritage By-Law will still cede to any requirements of the 'Dangerous & Vacant Building Program,' this will act as a deterrent to those who would consider not complying with process and procedure.

2. EXTERNAL AMENDMENT REQUESTS

Three external requests for amendments to the Heritage By-Law have been submitted. These requests have been worked into the proposed amendments primarily due to timing and the link to by-law policy matters.

- a. The first requested amendment is to remove the designation for all properties in the King Street West Heritage Conservation Area. The area, originally 12 properties, was designated in 2007 through resident initiative to “maintain and encourage” efforts in the protection of their community investment, to secure the economic viability of tourism for the area, and to be the first of other designated areas in the Lower West Side. Two key properties in the area had their designations removed by Common Council in recent years: the rectory for St. George’s Church in 2014 and St. George’s Church itself in 2016, both against the Heritage Development Board’s recommendation to retain the designations. With the removal of these keystone properties, and due to negligible participation in both the Heritage Permit process and the Heritage Grant Program since the establishment of the area in 2007, the loss of the heritage designation for the area as a whole has been considered a strong possibility.

This was realized with the submission to Staff of a petition for the dissolution of the Area by a property owner from the King Street West Heritage Conservation Area in September 2018. This petition was comprised in majority of signatures from residents in the area, being a mix of property owners and tenants, and while lengthy at approximately 300 signatures, was not considered to be reflective of the opinions of the owners of the designated properties. To gauge said opinions, staff contacted individually the designated property owners with regards to the petition, the Heritage Conservation Area and their designation. Six of seven property owners responded, with only one property owner expressing an interest in retaining a designation.

While there is no denial of the heritage value of King Street West, or of the Lower West Side in general, the intended outcomes of the designation as stated in the initial request to create the area have not been realized, as evidenced through minimal conservation efforts and the removal of key properties from the area by Common Council. Following the staff recommendation, the Heritage Development Board is regretfully recommending to Common Council to approve the removal of the designation for those nine properties within the King Street West Heritage Conservation Area.

- b. The second requested amendment is for the designation of 152 Watson Street, a single residential building two blocks south of King Street West. Per the applicant’s letter on the heritage value of the property, the ‘Peters House’ is an early Gothic Revival design from c. 1840, noted for its

high level of exterior ornamentation, including drip moulding and some stained glass windows. It is believed to be the location of the first surgery performed in Canada with anesthetic, in 1847. In initial discussions with the applicants, their primary focus was on protecting their conservation and restoration efforts from being undone on the property should they not own the building in the future. To that end, differing levels of designation and legal protections were discussed, with staff explaining that a municipal designation through the *Heritage Conservation Areas By-Law* would provide no permanent guarantee, and excludes interior alterations. Municipal designation does, however, provide access to the Heritage Grant Program, in which the applicants expressed interest to aid in the repair and rehabilitation of their building. While the incentives are advantageous, there is no guarantee of the program's longevity. Further, should Council take a ready and open approach to spot designations, property owners may be prompted to seek designation solely to access these funds, against an already limited budget. It should also be noted, as exemplified through the above discussions on the King Street West Heritage Conservation Area, that designation of a property does not necessarily ensure the conservation of a property. Conversely, in this instance, there is no requirement to have a designation in order to properly conserve and maintain one's property.

While Staff has encouraged the applicant to pursue a Provincial designation for stronger building protections, it has been a planned change in policy as part of the Heritage By-Law revisions to be clear that the program's intent is to focus on collections of significant properties instead of individual designations. The overwhelming success of the Heritage Conservation program has been exemplified in larger, denser areas such as the Trinity Royal Heritage Conservation Area, with limited spot designation typically best suited to public buildings of community importance. Area designation best ensures the protection of individual properties within a neighbourhood or streetscape through the support of other designated properties to help create a cultural landscape; the "strength in numbers" approach to conservation which is seen and reinforced not only by the residents of Saint John, but by visitors as well. The proposed revisions to the Heritage By-Law have confirmed the intent to focus on designation of areas, not single sites.

In keeping with the staff recommendation, the Heritage Development Board is recommending to Common Council to deny designating 152 Watson Street as a Heritage Conservation Area.

- c. The third requested amendment is a site-specific amendment for The Telegraph, a proposed six-storey wood-framed development on the current Saint John Parking Commission lot at the corner of Canterbury Street and Grannan Street. As part of the Request for Proposals for a six-

storey wood-framed development on this site, an analysis was carried out by Murdock Boyd Architects on behalf of the City to determine, through their interpretation of the height standard in the *Heritage Conservation Areas By-Law*, the maximum possible height and required setbacks for a new development on that lot. While their analysis was used as the benchmark for this application, the small overage of height, as well as the possibility of other interpretations of the height standard led the applicant to request a site-specific amendment only for the height and setback standard on this development.

| Façade | Maximum Height (m) | Proposed Height | Difference | Proposed Height (incl. pilaster) | Difference |
|------------|--------------------|-----------------|------------|----------------------------------|------------|
| Canterbury | 18.47 | 20.91 | + 2.44 | 21.68 | + 3.21 |
| Grannan | 24.29 | 23.75 | - 0.54 | 24.52 | + 0.23 |

As shown in the table above, the proposed heights on both street-facing façades come in 3.21 metres and 0.23 metres taller than the maximums as determined by the Murdock Boyd Architects analysis, as measured from the absolute highest point of the development. As well, on the Grannan Street façade, the proposed development does not step back at the upper storeys, as it does on the Canterbury Street façade, and as proscribed through the *Heritage Conservation Areas By-Law*. While the final design details have yet to be reviewed by the Heritage Development Board, the height as proposed, while tall against its immediate context, is by no means an outlier against the height of other historic buildings in the vicinity, such as 115 Prince William Street (23.5 m), 126 Prince William (22.3 m) and 22 King Street (20.4 m). The last structure on the site in question, the original Telegraph building, was itself taller than its neighbours, though at five storeys, rather than six as proposed here. The upper-storey setback for this development will occur at a point lower than the overall height of the original Telegraph building. The proposal will not only continue the streetwall and make the pedestrian experience along Canterbury Street full and complete, but is also consistent with the proposed height framework that will come later this year as part of the Central Peninsula Plan

This item was reviewed by the Heritage Development Board at its August 7, 2019 meeting, with a recommendation to Common Council to approve a maximum height on the Canterbury Street façade of 22.50 metres from the center of the façade, and a maximum height on the Grannan Street façade of 25.00 metres from the center of the façade with no upper-storey setback. This will complete the first phase of approvals for this proposed development, with additional approvals by the Heritage Development Board relating to the building design to follow in the near future.

CONCLUSION

The *Saint John Heritage Conservation Areas By-Law* has and will continue to provide for appropriate development and the conservation of historic buildings within the City. Making regular improvements to the Heritage By-Law, particularly when these improvements aid in valued service delivery, will ensure the long-term success of the Heritage Conservation program and, more importantly, the Heritage Conservation Areas themselves. By coordinating this modernization with the larger vision of the Central Peninsula Plan, the City will be setting the stage for transformative change now and for years to come. By reducing barriers to development through flexibility and creating clarity and efficiency through streamlined processes, Common Council has set and met one of its key priorities. Through this progressive by-law, the City of Saint John is sending a clear message that it will be a historic, modern city: respecting its past, while moving into the future.

SERVICE AND FINANCIAL OUTCOMES

The proposed increase in exemptions from heritage permitting requirements will remove barriers and improve timelines for heritage property owners by reducing the number of permits required.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

The Legal Department has provided legal support to the process and has reviewed the proposed changes.

The Heritage Development Board has provided through motions the following recommendations:

1. A motion to approve the proposed changes to the *Saint John Heritage Conservation Areas By-Law* [August 7th, 2019];
2. Regretfully, a motion to approve an amendment removing the Heritage Conservation Area designation for those properties within the King Street West Heritage Conservation Area [June 5th, 2019];
3. A motion to deny an amendment designating 152 Watson Street as a Heritage Conservation Area [June 5th, 2019]; and,
4. A motion to approve the following amendment to the *Saint John Heritage Conservation Areas By-Law*:

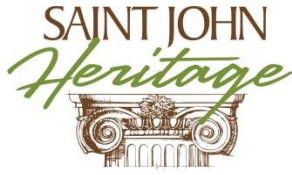
8.2(1) Notwithstanding subsection 8 (1) (d), the maximum allowable height for any development upon one (1) or more of the parcels of land identified by Parcel Identification (PID) Nos. 00011130, 55102438, 55102446, 00018598, and 55102453 shall

not be greater than 22.50 metres for any façade fronting onto Canterbury Street, and notwithstanding subsections 8 (1) (d) (i) and (ii), additional height beyond 120% shall be recessed no less than 2.29 metres from any property line abutting along Canterbury Street.

8.2(2) Notwithstanding subsection 8 (1) (d), the maximum allowable height for any development upon one (1) or more of the parcels of land identified by Parcel Identification (PID) Nos. 00011130, 55102438, 55102446, 00018598, and 55102453 shall not be greater than 25.00 metres for any façade fronting onto Grannan Street, and subsections 8 (1) (d) (i) and (ii) shall be deemed not applicable to any façade fronting onto Grannan Street. [August 7th, 2019].

ATTACHMENTS

1. [HC-1] Saint John Heritage Conservation Areas By-Law
2. Common Council Presentation – Saint John Heritage Conservation Areas By-Law – Phase One Revisions
3. Letter from Heritage Development Board to Common Council



September 4, 2019

Your Worship Don Darling and
Members of Common Council

Re: Heritage Conservation Areas By-Law – Phase One Revisions

Over the past two years, the Heritage Development Board has been involved with the review and revision of the *Saint John Heritage Conservation Areas By-Law*. Through many focus groups, workshops, and public meetings, the Board has worked with staff to create what the Board believes to be a progressive by-law, addressing the unique challenges that Saint John faces while allowing our remarkable heritage to continue to be conserved as a valuable asset to the city and its residents.

At the August 7th, 2019 meeting of the Heritage Development Board, members of the Board unanimously and enthusiastically approved a motion recommending to Common Council the approval of all proposed changes to the *Saint John Heritage Conservation Areas By-Law*. This is a piece of legislation that the Board feels adequately responds to the wants and needs of the community, while respecting and preserving the unique heritage character that Saint John possesses.

The Heritage Development Board has also reviewed three external requests for amendments to accompany this by-law. At its June 5th, 2019 meeting, with great regret, it recommended a motion to approve the removal of the designation for all properties in the King Street West Heritage Conservation Area.

At the same meeting, and following much discussion, it recommended a motion to deny the designation for the property at 152 Watson Street. While the majority of Board members believed it to be the appropriate decision at the time, it was made clear that a larger policy discussion will need to take place on spot designations, including the City's stewardship of its own buildings.

Finally, at its August 7th, 2019 meeting, the Board recommended to Common Council an amendment to allow for limited additional height beyond the maximum for a proposed development at the corner of Canterbury and Grannan Streets, and to allow no step back at the upper storey on Grannan Street. The final design will still need to be reviewed by the Board, but the Board is comfortable with the massing that the applicant has proposed.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be the letters 'B' and 'B' joined together in a stylized, cursive manner.

Bob Boyce, Chair
Heritage Development Board

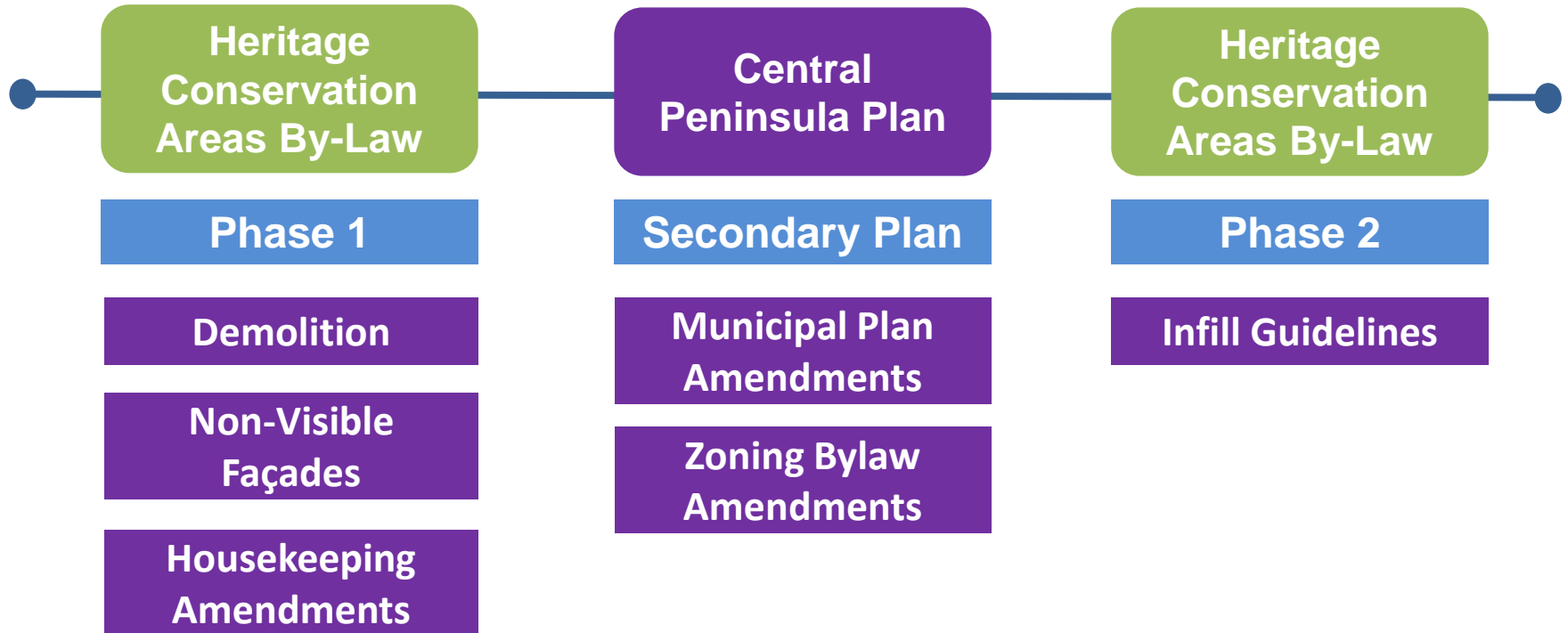


TAKING SHAPE
LA VISION PREND FORME
CENTRAL PENINSULA / PÉNINSULE CENTRALE

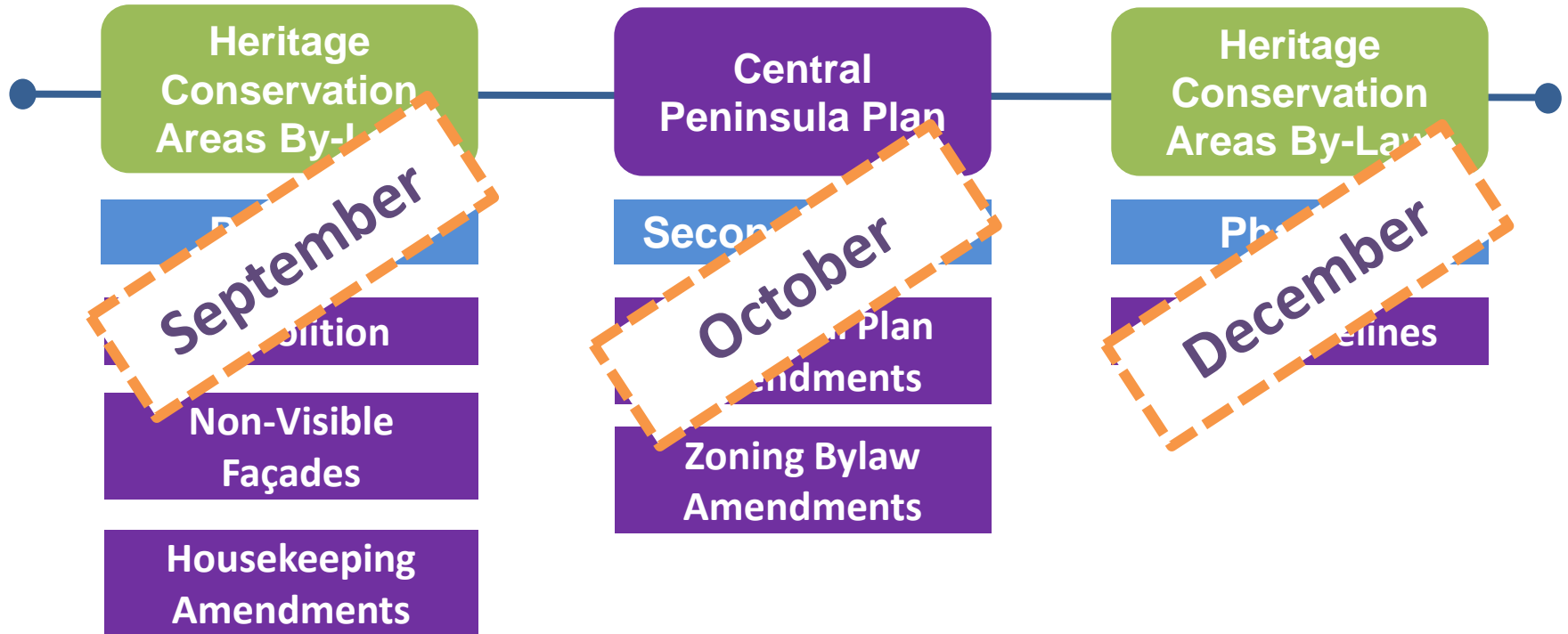
Common Council: Heritage Conservation Areas By-Law September 9, 2019



THE CENTRAL PENINSULA PLAN PROJECT



THE CENTRAL PENINSULA PLAN PROJECT



Heritage Conservation Areas By-Law

Phase 1 Amendments



Heritage By-Law

Phase One:

All planned revisions except Infill (Phase 2)

Three externally requested amendments

- Request for Removal – King Street West HCA
- Request for Designation – 152 Watson Street
- Site-Specific Height Amendment – The Telegraph



Heritage By-Law

Phase One:

Housekeeping

Revision of
Definitions

Correction of
Schedules

Exemptions

Non-Visible Façades

Rears of Buildings,
Parts of Side Walls

Windows & Doors
(no change in size)

Stairs, Decks, Fences,
Siding

Signage

Demolition

Clarity of Process

Two Paths to Permit

No Public Benefit

Listing for Sale

Public
Advertisement

Illegal Demolition



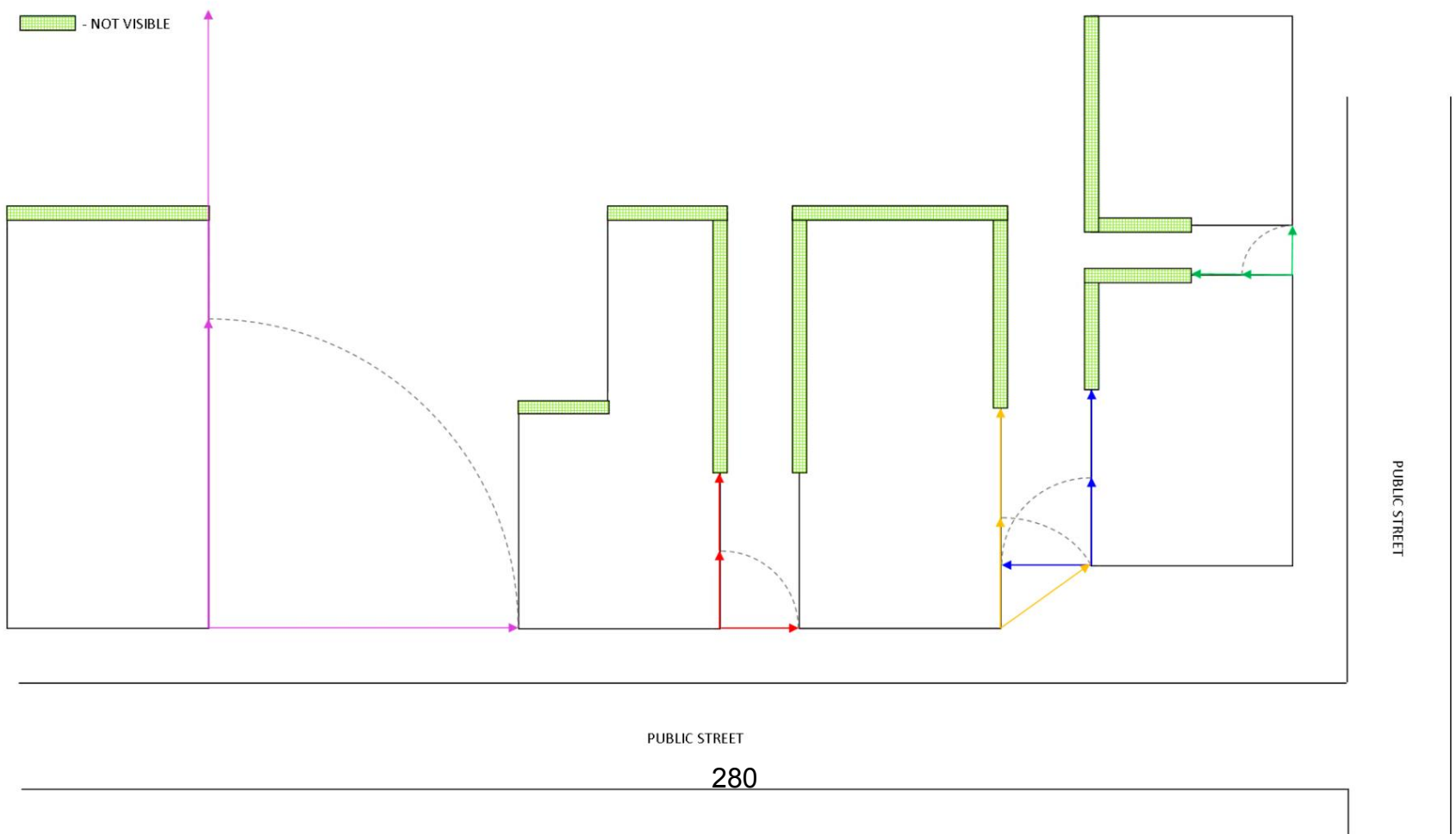
Heritage By-Law

Exemptions

No Heritage Permits
required for:

Windows & Doors
(no change in size)

Stairs, Decks,
Fences, Siding



Heritage By-Law

Phase One:

Housekeeping

Revision of
Definitions

Correction of
Schedules

Exemptions

Non-Visible Façades

Rears of Buildings,
Parts of Side Walls

Windows & Doors
(no change in size)

Stairs, Decks, Fences,
Siding

Signage

Demolition

Clarity of Process

Two Paths to Permit

No Public Benefit

Listing for Sale

Public
Advertisement

Illegal Demolition



Heritage By-Law

Demolition

HERITAGE PERMIT APPLICATION FOR DEMOLITION NO. YY-XXXX

100 EXAMPLE STREET—PID 12345678

Applicant has applied to the City of Saint John for permission to demolish all buildings and structures at the above noted address.

End of Required 12 Month Listing Period: **Day Month Year**

Listing Agent, Realty Office

Phone Number

Email

**FURTHER INFORMATION MAY BE OBTAINED AT:
HERITAGE CONSERVATION, 10th FLOOR, CITY HALL, 506-658-2835**



Heritage By-Law

External Amendment Requests:

Removal of Designation

King Street West Heritage Conservation Area

Request for Designation

152 Watson Street

Site-Specific Height Amendment

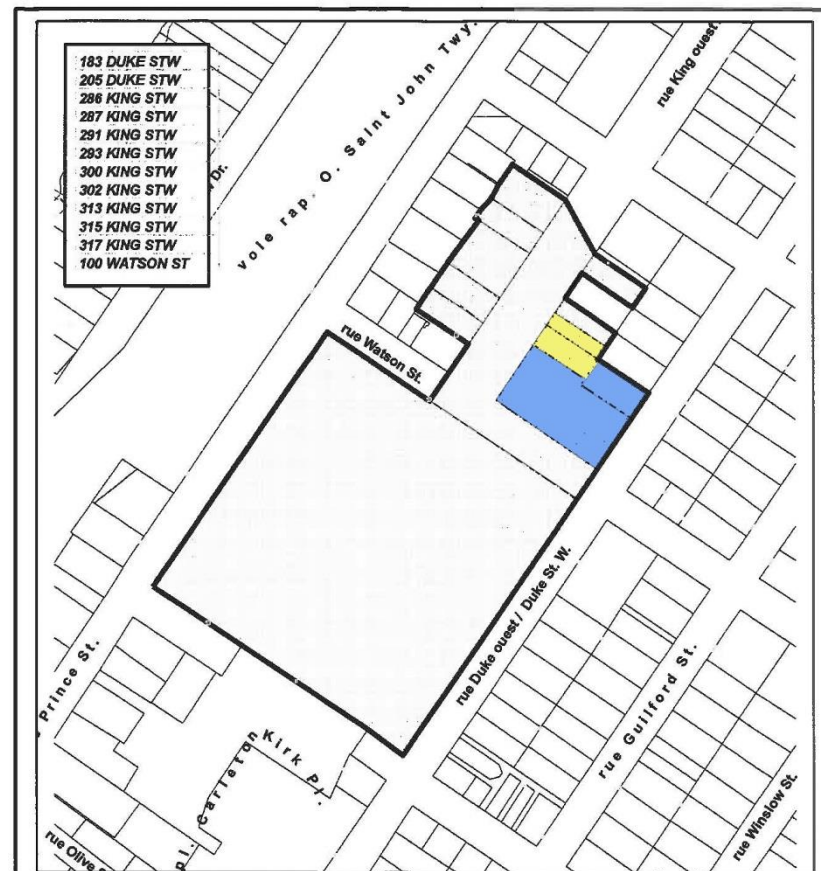
The Telegraph: Canterbury Street & Grannan Street



Heritage By-Law

Removal of Designation

King Street West Heritage Conservation Area



Schedule "G" King Street West Heritage Conservation Area

Includes the buildings, structures and lands individually listed on this schedule as indicated on this map.



Heritage By-Law

Removal of Designation

King Street West Heritage Conservation Area



313-317



293



291

287



286



300-302



285

Heritage By-Law

Request for Designation 152 Watson Street



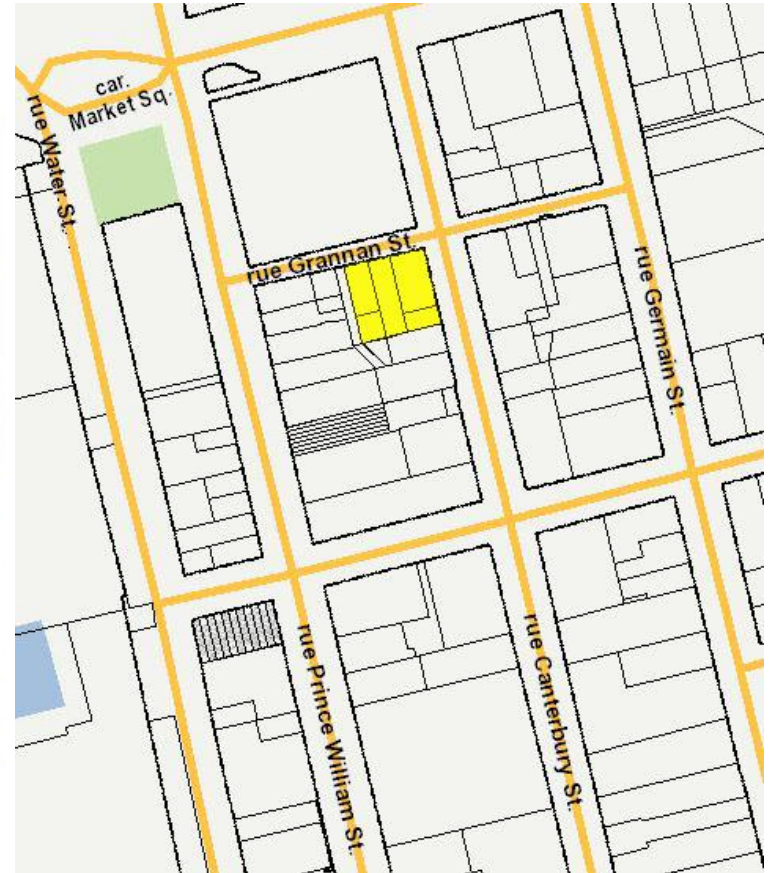
Heritage By-Law

Request for Designation 152 Watson Street



Heritage By-Law

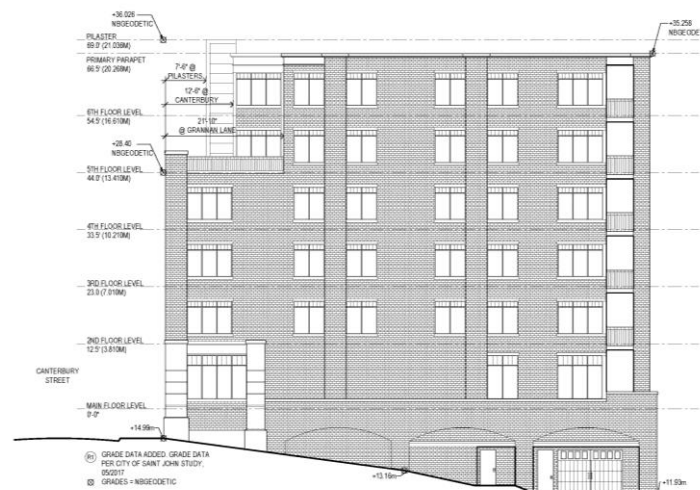
Site-Specific Height Amendment The Telegraph: Canterbury & Grannan Streets



Heritage By-Law

Site-Specific Height Amendment The Telegraph: Canterbury & Grannan Streets

| Façade | Maximum Height (m) | Proposed Height | Difference | Proposed Height (incl. pilaster) | Difference |
|------------|--------------------|-----------------|------------|----------------------------------|------------|
| Canterbury | 18.47 | 20.91 | + 2.44 | 21.68 | + 3.21 |
| Grannan | 24.29 | 23.75 | - 0.54 | 24.52 | + 0.23 |



Heritage By-Law

Recommendation:

Approve the 1st and 2nd readings to repeal [HC-1] Saint John Heritage Conservation Areas By-Law and to adopt [HC-1] Saint John Heritage Conservation Areas By-Law.



BY-LAW NUMBER HC-1
SAINT JOHN HERITAGE CONSERVATION AREAS BY-LAW

RECITALS

- 1 WHEREAS The City of Saint John deems it advisable to pass this by-law because it will establish standards for the conservation and development of heritage buildings and structures within the city;
- 2 AND WHEREAS the *Heritage Conservation Act* (the “Act”) authorizes municipalities to pass by-laws to prescribe standards for the conservation, development, relocating, demolishing, altering, repairing or replacing, or any combination thereof, of a building or structure pursuant to Section 55 of the Act;
- 3 AND WHEREAS pursuant to Section 77 of the Act, a heritage officer or a person authorized by Council has the right to enter at all reasonable times upon any property within the city for the purpose of making any inspection that is necessary for the administration of a by-law under the Act;
- 4 AND WHEREAS pursuant to Section 83 of the Act, if a development is undertaken in contravention of a by-law under the Act or terms and conditions imposed on the development, a heritage board or an inspector appointed by Council, may order
 - (a) the cessation of work;
 - (b) the alteration of the work so as to remove the contravention; and
 - (c) the performance of work to restore the land, building or structure to the condition it was in immediately prior to the activity being carried out that is the subject of the order to cease.
- 5 AND WHEREAS pursuant to Section 90 of the Act a person who violates any provision of a by-law enacted under the Act commits an offense punishable under Part II of the *Provincial Offences Procedure Act* as a category C offence;

NOW THEREFORE the Common Council of The City of Saint John, under authority vested in it by the Heritage Conservation Act, Chapter H-4.05, Acts of New Brunswick 2010, enacts as follows:

INTERPRETATION

- 1 (1) In this By-Law,

accessory building means a building that is incidental, subordinate, and exclusively devoted to the main use, building, or structure located on the same lot;

Act means the Heritage Conservation Act, SNB 2010, c. H-4.05, as amended from time to time by the Legislative Assembly of New Brunswick;

addition means the alteration to the envelope of an existing building or structure that results in an increased footprint or profile in a manner that is incidental and subordinate to said building or structure;

alter means to change in any manner, structurally or otherwise, in whole or in part, the exterior of a building or structure and includes to restore, rehabilitate, preserve, renovate, repair, construct or to change in any manner the design of such building or structure;

alteration means any change set out in the definition for alter;

Appeal Board means the Assessment and Planning Appeal Board of New Brunswick;

appurtenances includes but is not limited to additions, decks, walls, fences, light fixtures and standards, steps, paving and signs;

archaeological resource means a place or area where the evidence of past human activity is or was located in-situ on, below, or above the ground, or lands under water, of which the recovery and understanding of this evidence can be achieved using archaeological methods;

Board means the Heritage Development Board appointed pursuant to Section 8 of the Act;

city means the geographical area within the boundaries of the City of Saint John in the County of Saint John in the Province of New Brunswick

City of Saint John, The means a body corporate by Royal Charter confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick;

character-defining elements includes but is not limited to the materials, forms, locations, spatial configurations, and cultural associations or meanings that contribute to the heritage value of a historic place, which must be retained in order to preserve its heritage value, as identified in the statement of significance of a historic place;

Comparative Market Analysis means the summary of the prices at which similar properties to the subject property in the same area have sold as determined by a Realtor®;

contemporary materials means any material not yet developed or available for common use from the era of a building's construction;

conservation means all actions or processes that are aimed at safeguarding the character-defining elements of a cultural resource so as to retain its heritage value and extend its physical life. This may involve "Preservation", "Rehabilitation", "Restoration", or a combination of these actions or processes;

Council means the Mayor and Councillors of The City of Saint John;

development means the erecting, placing, relocating, removing, renovating, preserving, rehabilitating, restoring, demolishing, altering, repairing or replacing of the exterior of a building or structure including, but not limited to, signs, in whole or in part, both internal and external;

envelope means all those building elements that comprise the weather-tight barrier between the outdoors and interior spaces, including, but not limited to, foundations, exterior wall assemblies, windows, doors and roofs;

façade means the face of a building or structure, including any dormer, gable or roof that is part of or a projection of that plane;

façade opening means any penetration of the solid material comprising the building façade. This includes window openings, doors, and archways. The area devoted to façade opening is measured on an orthographic projection from the façade elevation;

façade opening/wall ratio means the ratio between the area of the façade devoted to windows and door openings and the area of the façade composed of a wall or walls;

façade, rear means one or any façade that is not street-facing or a side façade;

façade, side means one or any façade that faces a side yard;

height of a building or structure means the vertical distance from the ground at the centre of the building façade to the highest point of the coping of a flat roof between the eaves and a ridge or to the deck line of a mansard roof or the average height between the plate and ridge of a gable, hip, or gambrel roof and excluding such structures as elevator penthouses, chimneys, smoke stacks and steeples;

Heritage Conservation Area means an area of properties demonstrably representative of a cohesive collection of architectural, historical and/or cultural significance, established and defined under this By-Law pursuant to the Act;

Heritage Impact Assessment means that document submitted by the project architect as part of a Tier 3 application in accordance with the related template as provided in Schedule O;

Heritage Impact Statement means that document submitted by the project architect as part of a Tier 2 application in accordance with the related template as provided in Schedule O;

Heritage Permit means a municipal heritage permit under this By-Law issued by the Board or the Heritage Officer pursuant to the Act;

heritage value means the aesthetic, historic, scientific, cultural, social or spiritual importance or significance for past, present or future generations. The heritage value of a historic place is embodied in its character-defining materials, forms, design, location, spatial configurations, uses and cultural associations or meanings;

historic place means a structure, buildings, group of buildings, district, landscape, cultural landscape, archaeological site or other place that has been formally recognized for its heritage value;

incidental means that which is related as a minor accompaniment to an existing building or structure;

infill means:

- a) the development of a vacant lot or lots; or,
- b) an addition or alteration to an existing building or structure that is not incidental or subordinate to said building or structure;

intervention means any action, other than demolition or destruction, that results in a physical change to an element of a historic place;

listing means an offer of sale for a building or structure and the land pertaining thereto, assigned a Multiple Listing Service® number and posted on realtor.ca and/or another Multiple Listing Service®;

listing agent means the Realtor® contracted by the property owner to assist in and execute the listing of the property and all subsequent associated acts;

minimal intervention means the gentlest approach with the least physical intervention, which allows functional goals to be met;

Multiple Listing Service® means a real estate database listing service operated by a member of a real estate board and is a registered trade mark of the Canadian Real Estate Association;

non-visible means:

- (a) a rear façade; or,
- (b) that portion of a side façade beyond a point no less than twice the distance from the corner of the street-facing façade and the side façade to the neighbouring building, as further illustrated in Diagram 1; and,
- (c) any non-character-defining windows, doors and other appurtenance that is wholly or in majority beyond the aforementioned point in subsection (b) of this definition;

owner means the registered owner of real property;

Peer Review means that third-party assessment of a Tier 3 application and its Heritage Impact Assessment as contracted by The City of Saint John and written by a third-party architect;

pilaster means an upright architectural member that is rectangular in plan and is structurally a pier but architecturally treated as a column and that usually projects a third of its width or less from a wall;

preservation means the action or process of protecting, maintaining and/or stabilizing the existing materials, forms and integrity of a historic place, or of an individual component, while protecting its heritage value;

primary massing means that footprint of a building supported by a foundation, and does not include porches, verandas or entry stairs;

Realtor® means a licensed real estate salesperson who is a member in good standing of the Saint John Real Estate Board and of the Canadian Real Estate Association;

reasonable offer means an offer of purchase made on a listed property for a price within 10 percent of the sale price stated in the listing and with standard conditions attached, as determined through the average of three (3) Comparative Market Analyses;

rehabilitation means the action or process of making possible a continuing or compatible new use for a historic place, or of an individual component, through repair, removal, alterations and/or additions, while protecting its heritage value;

restoration means the action or process of accurately revealing, recovering or representing the state of a historic place, or an individual component as it appeared at a particular period in its history, while protecting its heritage value;

sandblasting means a technique for the cleaning of buildings or structures which employs abrasive particles under pressure of water or air;

setback means the distance between the street line and the front building line of a principal building or structure projected to the sideline of the lot;

Standards & Guidelines for the Conservation of Historic Places in Canada means the benchmark document providing results-oriented guidance for sound decision-making when planning for, intervening on and using historic places and establishing a consistent, pan-Canadian set of conservation principles and guidelines; as published by Parks Canada in 2010;

statement of significance means the document identifying the historical, cultural and architectural significance of a historic place, including the identification of its character-defining elements, retained by The City of Saint John;

street-facing means a façade or a portion of a façade of a building that fronts onto a public right-of-way;

street line means the dividing line between a lot and the right-of-way of a street, road, highways, avenue, lane, court, or private easement providing generally the primary access to and egress from the property abutting along its length;

structural alteration means any change in the supporting members of a building, such as bearing walls or partitions, columns, beams, girders, etc., which results or could result in a change in the exterior walls or roof of such building or structure;

subordinate means that which is of lesser or secondary importance to an existing building or structure by means including but not limited to its size, materials and/or detailing;

substantial portion means 25 percent or more in volume of an existing building or structure or any or all street-facing façades;

traditional materials means any material commonly used from the era of a building's construction;

yard means an open space on the same lot with a building, such space being unoccupied and unobstructed from the ground upward;

yard, front means a yard extending across the full width of the lot between the street line and any building or structure;

yard, side means the yard between the side lot line and the parts of the building or structure nearest thereto and extends from the street line to the rear line of said lot.

1 (2) For the purposes of this By-Law:

- (a) a word importing the masculine gender includes a feminine gender and a word importing a feminine gender includes the masculine gender;
- (b) a word in the singular includes the plural and a word in the plural includes the singular whenever the context of the By-Law would so require.

1 (3) The headings used in this By-Law are inserted for convenience of reference only and form no part of the By-Law.

HERITAGE CONSERVATION AREA AND APPLICATION OF BY-LAW

2 (1) (a) Trinity Royal Heritage Conservation Area:

That portion of the city illustrated on the attached Schedule "A" which forms part of this By-Law, is hereby established as the Trinity Royal Heritage Conservation Area.

(b) Quinton Farmhouse Heritage Conservation Area:

That portion of the city being the buildings, structures and lands known as the Quinton Farmhouse, situated at civic number 1260 Manawagonish Road, as illustrated on Schedule "B" which forms part of this By-Law, is hereby established as the Quinton Farmhouse Heritage Conservation Area.

(c) Orange Street Heritage Conservation Area:

That portion of the city being the buildings, structures, and lands fronting onto both sides of Orange Street bounded on the east by Crown Street, on the west by Sydney Street, on the north by the rear property line of all properties facing Orange Street, on the south by the rear

property line of all properties facing Orange Street and by all corner buildings fronting onto Carmarthen, Wentworth and Pitt Streets, having a side façade facing onto Orange Street and including the structures at 114 Wentworth Street and 116 Wentworth Street, as illustrated on Schedule “C” which forms part of this By-Law, is hereby established as the Orange Street Heritage Conservation Area.

(d) Douglas Avenue Heritage Conservation Area

That portion of the city being the buildings, structure and lands which are illustrated and listed on Schedule “D” which forms part of this By-Law, is hereby collectively established as the Douglas Avenue Heritage Conservation Area.

(e) Red Rose Tea Heritage Conservation Area:

That portion of the city being the building, structure and land known as the Red Rose Financial, situated at civic number 49 Mill Street (NBGIC numbers 38984 and 55065007), known as the Red Rose Tea Building and only that portion of the site which the building occupies, as illustrated on Schedule “E” which forms part of this By-Law, is hereby established as The Red Rose Tea Heritage Conservation Area.

(f) King Street East Heritage Conservation Area:

That portion of the city being the buildings, structures and lands fronting onto both sides of King Street East bounded on the east by Courtenay Bay, on the west by Sydney Street, bounded on the north by the rear property line of all properties facing King Street East, bounded on the south by the rear property line of all properties facing onto King Street East, and by all corner properties which are facing onto Sydney Street, Carmarthen Street, Wentworth Street, Pitt Street and Crown Streets, having a side façade facing onto King Street East as illustrated on Schedule “F” which forms part of this By-Law, is hereby established as The King Street East Heritage Conservation Area.

(g) Brookville-Torryburn Heritage Conservation Area:

That portion of the city being the buildings, structures, and lands situated at civic numbers 1107 Rothesay Road and 1020 Rothesay Road, as illustrated on Schedule “G” which forms part of this By-Law, is hereby established The Brookville-Torryburn Heritage Conservation Area.

(h) Princess Street Heritage Conservation Area:

That portion of the city being the buildings, structures, and lands fronting onto both sides of Princess Street bounded on the west by Sydney Street, bounded on the east by Carmarthen Street, bounded on the north by the rear property line of all properties facing Princess Street, bounded on the south by the rear property line of all properties facing Princess Street and by all corner properties which are facing onto Sydney Street or Carmarthen Street, having a side façade facing onto Princess Street and shall include the property at the north-west corner of the

intersection of Sydney Street and Princess Street as well as the property at the civic address 80 Sydney Street as illustrated on Schedule “H” which forms part of this By-Law, is hereby established as The Princess Street Heritage Conservation Area.

(i) Lancaster Avenue Heritage Conservation Area:

That portion of the city being the buildings, structures and lands located at 266 Lancaster Avenue (PID 00033225) as illustrated and listed on Schedule “I”, which forms part of this By-Law, is hereby established as The Lancaster Avenue Heritage Conservation Area:

3 Dunnedin Lane
5 Dunnedin Lane
11 Dunnedin Lane
16 Dunnedin Lane
522 Edward Avenue
532 Edward Avenue
266 Lancaster Avenue
2 Tipperary Court
3 Tipperary Court
5 Tipperary Court
6 Tipperary Court

(j) Brunswicker/Ordnance Corps Heritage Conservation Area:

That portion of the city being the buildings, structures and lands located at 274 Sydney Street (PID 55153423) as illustrated and listed on Schedule “J”, which forms part of this By-Law, is hereby established as the Brunswicker/Ordnance Corps Heritage Conservation Area.

2 (2) This By-Law shall apply to the Heritage Conservation Areas established by subsection (1) hereof.

ADMINISTRATION

3 (1) The Board shall carry out the duties assigned to it under this By-Law.

3 (2) The Board may delegate to a Heritage Officer the authority to issue Heritage Permits.

BOARD RECORDS

4 (1) The Board shall acquire or compile a register of all buildings or structures in the Heritage Conservation Areas.

4 (2) In order to provide guidance to the public on standards of design for developments in the Heritage Conservation Area, the Board shall maintain the file or files containing drawings, photographs and other descriptive or pictorial items showing structures, architectural styles, and materials appropriate to the area.

4 (3) Such registers and files shall form part of the records of the Board.

HERITAGE PERMIT

5 (1) Subject to subsection (2), no person shall carry out, or cause to be carried out any development within the Heritage Conservation Areas unless:

- (a) the development meets the standards prescribed by sections 7 or 8, as applicable; and,
- (b) a valid Heritage Permit has been issued pursuant to this By-Law.

5 (2) No development in accordance with the Heritage Permit shall be carried out until every right of appeal under the Act has been exercised in the particular case or until the time prescribed by the Act for the exercise of that right of appeal has expired.

5 (3) Notwithstanding paragraph 5 (1)(b) a person shall be exempted from requiring a Heritage Permit for the following developments:

- (a) Ordinary maintenance or repair of building components that does not include removal or replacement, a change in design, materials, finishes or appearance, brick repair or repointing, sandblasting, or pressure washing;
- (b) Painting with colours that have been previously approved in a prior Heritage Permit for that development;
- (c) The construction of non-visible accessory buildings no larger than 10 square meters in footprint and no taller than 3.2 meters in height;
- (d) Holes no larger than 0.152 m in diameter for service entrance;
- (e) The installation and/or mounting of mechanical equipment on the rears or non-visible areas of buildings;
- (f) Replacing flat-roof roofing material, but not replacing gable or mansard roofing; and,
- (g) Landscaping including, but not limited to, walkway pavers, but not including the alteration, construction or removal of fences.

5 (4) Notwithstanding paragraph 5 (1) (b) a person shall be exempted from requiring a Heritage Permit for the following non-visible developments that do not affect character-defining elements:

- (a) The replacement of doors and windows in existing openings, with no increase or decrease to the size of the opening;

- (b) The construction of decks, stairs and fire escapes;
- (c) The alteration of cladding, not including masonry; and,
- (d) The construction of fences.

5 (5) Notwithstanding paragraph 5 (1) (b) a person shall be exempted from requiring a Heritage Permit for the following signage developments:

- (a) Election signs;
- (b) Temporary signs advertising the sale or rental of a property or a unit therein. Property management signs are not exempt and require a heritage permit;
- (c) Official signs and public notifications posted or erected as required in compliance with the By-Laws of the City of Saint John;
- (d) Window decals, provided that the cumulative decal area does not exceed 20 percent of the window in which the decals are located or a maximum width of 1 meter, whichever is less;
- (e) One (1) interior illuminated, non-flashing window sign that does not exceed 0.70 m in width and 0.30 m in height;

APPLICATION FOR HERITAGE PERMIT

6 (1) An application for a Heritage Permit shall be filed with the Heritage Officer.

6 (2) The Heritage Officer shall review each application for a Heritage Permit upon receipt, with such Heritage Permit application being considered complete when:

- (a) The information submitted appears to be adequate to determine compliance with the provisions of this By-Law;
- (b) the information submitted has been reviewed by the Heritage Officer and found, in all material respects, to be correct; and,
- (c) the application fee prescribed in this By-Law has been paid in full.

6 (3) An application shall be in the form prescribed by the Board and shall include, as applicable:

- (a) in the case of an existing building or structure:

- (i) a site plan showing the property boundaries and location of the proposed development;
 - (ii) elevation drawings, drawn to scale, to illustrate the architectural design, dimensions, materials and colour of the proposed development;
 - (iii) “before and after” drawings, sketches or photographs to illustrate both the existing situation and the proposed alteration;
- (b) in the case of new (infill) development, all materials necessary to demonstrate the appropriateness of the development within the surrounding streetscape context which may include:
- (i) site plans;
 - (ii) building section drawings;
 - (iii) architectural details;
 - (iv) specifications and descriptions of materials to be used;
 - (v) elevation drawings; and
 - (vi) floor plans;
- (c) in the case of an application for demolition:
- (i) photos of all façades of the property;
 - (ii) a copy of the Statement of Significance for the property, if one exists;
 - (iii) for an application made pursuant to subsection 9 (1) (a) (i) or (ii), a detailed written submission outlining the applicant’s argument.

6 (4) The Board, or the Heritage Officer if so authorized, shall issue a Heritage Permit if the proposed development meets the standards prescribed by sections 7, 8, or 9, as applicable.

6 (5) The Board may deny the issuance of a Heritage Permit where it considers that the development plans and specifications submitted as part of the application are incomplete or where such plans and specifications show that the proposed conservation and development, with the exception of demolition, is incompatible with the standards prescribed by sections 7, or 8, as applicable.

6 (6) A Heritage Permit is valid for a period of two years from the date of its issuance.

6 (7) The Board, or the Heritage Officer if so authorized, shall renew a Heritage Permit for a period of up to one year from the original date of expiry upon request of the Heritage Permit holder in the manner prescribed by the Board when the development meets the conditions of this By-Law.

6 (8) A Heritage Permit may be renewed no more than once.

6 (9) The Board, or the Heritage Officer if so authorized, shall notify the Heritage Permit holder, in writing, that the Heritage Permit has been renewed.

6 (10) A Heritage Permit that has expired shall be deemed revoked.

STANDARDS FOR CONSERVATION OF EXISTING BUILDINGS

7 Any development on an existing building in a Heritage Conservation Area, with the exception of new (infill) development or demolition, shall comply with the standards prescribed by the Standards & Guidelines for the Conservation of Historic Places in Canada.

STANDARDS FOR NEW (INFILL) DEVELOPMENT

8 (1) Subject to Section 8.1 any development, with the exception of demolitions, within the Heritage Conservation Areas shall comply with the following regulations:

For the purposes of Section 9 the following definitions apply:

“neighbouring buildings or structures” means the existing buildings or structure fronting upon the same side of the street or streets and adjacent or most proximate to the development.

“side yard ratio” means the ratio of width of the side yard between the side lot line and the parts of the buildings or structure nearest thereto, and the total width of the lot.

(a) Where the setbacks of neighbouring buildings or structure are uniform, the setback of the development shall conform thereto.

(b) Where the setbacks of neighbouring buildings or structure are not uniform:

(i) if the setback of one of the neighbouring buildings or structures is the same as the setback of the building or structure adjacent or most proximate to it then the setback of the development shall conform thereto; or

(ii) if the setback of the neighbouring building or structure on either side of the development is not the same as the setback of those buildings or structures adjacent or most proximate to it, then the setback of the development shall conform to that of either of the neighbouring buildings or structures.

(iii) within the Douglas Avenue Heritage Conservation Area, the setback for new infill development is to be in alignment with the last building from the historic period (1853-1940) to have occupied the site. The Board or the Heritage Development

Officer may permit a different setback where it is compatible with the appearance of and rhythm of the historic streetscape. (By-law 93-241)

- (c) The side yard ratio of each side of a development shall conform to the relative side yard ratios of either of the neighbouring buildings or structures so as to maintain the pattern of open and occupied spaces.
- (d) The height of a development shall not be less than 80 percent and not more than 120 percent of the average height of existing buildings on both sides of the block within which the development is located, regardless of age, except that:
 - (i) additional height at no point shall be greater than 140 percent of the height of all buildings on both sides of the block within which the proposed development is located, and provided that no development shall interrupt a line starting at a point 5 feet (1.5 meters) vertically above the curb on the opposite side of the street and projecting past the top of the roof cornice/parapet at the otherwise maximum permitted 120 percent height calculated for the proposed development; and
 - (ii) if the proposed development is located on a corner lot, the additional height between 120 percent and 140 percent shall not interrupt a line as defined in (i) struck from 5 feet (1.5 meters) above the curb of either street.
- (e) The height/width ratio of the facades of a development shall not vary by more than 10 percent from the height/width ratio of the facades of existing buildings constructed prior to 1915 and not subsequently altered and located within the same block as the development, fronting upon the same side of the street.
- (f) Notwithstanding paragraph (e), the Board may issue a Heritage Permit for a building or structure proposed for a parcel of land of a width greater than the average width of buildings lots within the same block where such proposed building or structure is too wide to comply with the height/width ratio set forth in paragraph (e), provided that, the Developer shall cosmetically divide the façade of such building or structure with pilasters or other design techniques into sections or bays which do conform to the required height/width ratio.
- (g) The allowable façade opening/wall ratio for the façade of a development shall not vary by more than 10 percent from the facades on existing buildings of the same type or style constructed prior to 1915 and not subsequently altered, and located within the same block as the development, fronting upon the same side of the street.
- (h) The dimensions of the windows in a development shall not vary by more than 10 percent from the dimensions of the windows in existing buildings of the same type or style

constructed prior to 1915 and not subsequently altered, and located with the same block as the development, fronting upon the same side of the street.

- (i) The roof or roofs of a development in regard to their direction, pitch and arrangement shall conform to those on existing buildings of the same type or style constructed prior to 1915 and not subsequently altered, and located within the same block as the development, fronting upon the same side of the street.
- (j) The size, shape and prominence of a porch, entrance projection or doorway in a development shall be similar to those found on existing buildings of the same type or style constructed prior to 1915 and not subsequently altered and located within the same block as the development, fronting upon the same side of the street.
- (k) A development shall use traditional detailing and traditional materials for its exterior facades in keeping with those found on existing building or buildings of the same type or style constructed prior to 1915 and not subsequently altered and located within the same block as the development, fronting upon the same side of the street. The Board may permit the use of contemporary materials where their appearance is compatible with the appearance of traditional materials and detailing.

When reviewing proposals to determine compatibility of contemporary materials, the Board shall consider but not be limited to the following:

- Proposed construction assembly detailing and the degree that proposed matches the appearance of the original;
- Proposed cross-sectional profiles and the degree that proposed matches originals;
- Proposed texture and finish and the degree that proposed matches the original;
- When cost is used as a factor, then long-term operating and life-cycle cost, as well as embedded energy, landfill impact, employment generation and spin-offs shall be used rather than short term capital cost.

8 (2) In the case where there is no existing building or structure located within the same block as the development, the standards of this Section are deemed to relate to a building or structure which is most proximate to the development.

8 (3) Mid-Block developments which do not front on any street or streets, are exempt from the standards set forth in this Section.

8.1(1) Section 8 does not apply to the erection of any building or portion thereof upon one (1) or more of the parcels of land identified by Parcel Identification (PID) Nos. 55178784, 55088595, 55184022, 55184014, 55184006, 55202923 and 00009522;

8.1(2) Any building or portion thereof erected upon one or more of the parcels of land identified in subsection (1) shall comply with the following provisions:

- (a) any front yard setback shall not be greater than three (3) metres;
- (b) the side yard setback shall not be less than one (1) metre nor greater than two and one half metres (2.5) metres;
- (c) the maximum height shall not be greater than sixty (60) metres, articulated by base, middle and top proportions as shown on the plans attached hereto as Schedule "1". The building shall include at an elevation of fifteen (15) metres, plus or minus 10 percent (10%), an offset of a minimum of one and one half (1.5) metres from the base façade;
- (d) the facades of the building along King Square South and Sydney Street shall be articulated with three vertical sections through the use of a central recessed bay that is sympathetic to the adjacent buildings along King Square South. The street facing facades of the building shall be developed with horizontal architectural detail reflecting the elevations of the cornice lines of Imperial Theatre and Admiral Beatty buildings;
- (e) window openings on the facades of the buildings shall be consistent with the locations and proportions shown on the plans attached hereto as Schedule "1";
- (f) the building shall have a flat roof sympathetic to the adjacent buildings along King Square South;
- (g) the building entrance on the King Square South façade shall consist of three centrally located double doors with transom windows and incorporate a canopy as shown on the plans attached hereto as Schedule "1";
- (h) the building shall use high quality materials for the facades and the exterior elements. High quality materials shall be used for the base of the building, including but not limited to, stone, masonry, and/or metal with anodized bronze finish. Contemporary, manufactured materials, including architectural pre-cast concrete panels, may be used for the facades at levels above the base provided they have the appearance of the materials used in the facades of the base.

8.2(1) Notwithstanding subsection 8 (1) (d), the maximum allowable height for any development upon one (1) or more of the parcels of land identified by Parcel Identification (PID) Nos. 00011130, 55102438,

55102446, 00018598, and 55102453 shall not be greater than 22.50 metres for any façade fronting onto Canterbury Street, and notwithstanding subsections 8 (1) (d) (i) and (ii), additional height beyond 120% shall be recessed no less than 2.29 metres from any property line abutting along Canterbury Street.

8.2(2) Notwithstanding subsection 8 (1) (d), the maximum allowable height for any development upon one (1) or more of the parcels of land identified by Parcel Identification (PID) Nos. 00011130, 55102438, 55102446, 00018598, and 55102453 shall not be greater than 25.00 metres for any façade fronting onto Grannan Street, and subsections 8 (1) (d) (i) and (ii) shall be deemed not applicable to any façade fronting onto Grannan Street.

DEMOLITION, REMOVAL OR RELOCATION

9 (1) No building or structure within a Heritage Conservation Area shall be demolished, removed or relocated in whole or in substantial portion and no Heritage Permit for such development shall be issued until:

- (a) the building or structure has been determined by the Board to not have any public benefit based on the following criteria:
 - (i) it does not contribute to the heritage value of its Heritage Conservation Area and of the city through the unique or cohesive nature of its building type, style, construction material and/or construction method; or,
 - (ii) it has lost sufficient integrity of condition, materials, design and craftsmanship to render rehabilitation or adaptive reuse a non-viable option; or,
 - (iii) the building or structure is an accessory building and is a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength; or,
 - (iv) the building or structure is an accessory building and is of 40 years of age or newer; or,
- (b) the owner has, in accordance with subsection 9 (3), entered into a contract with a Realtor®, listed the building or structure and the land pertaining thereto for sale with a Multiple Listing Service® and, with no reasonable offer having been made, has not signed nor executed an agreement for the sale of the property.

9 (2) An owner who is making an application pursuant to subsection 9 (1) (a) shall consent to having a public notice posted by the Heritage Officer on or in front of the street-facing façade(s) of the property for a period of not less than 30 days prior to the date of the consideration of the application by the Board, following the template included in this By-Law as Diagram 2.

9 (3) An owner who is making an application pursuant to subsection 9 (1) (b) shall:

- (a) consent to having the listing run for a period of not less than twelve consecutive months, pursuant to all terms and conditions outlined in section 10 of this By-Law;
- (b) before entering into a multiple listing agreement, provide to the Board for its review three (3) full copies of Comparative Market Analyses (CMAs) performed for the property in question for the determination of the maximum list price, as detailed in section 11 of this By-Law;
- (c) consent to having a link to the listing posted to The City of Saint John website for the duration of the listing period;
- (d) consent to having a public notice posted by the Heritage Officer on or in front of the street-facing façade(s) of the property for the duration of the listing period, following the template included in this By-Law as Diagram 3.

9 (4) The listing referenced in subsection 9 (1) (b) shall be in the form principally used by licensed Realtors® within the city and shall cause the property to:

- (a) be listed with a Realtor®;
- (b) be listed via the Multiple Listing Service®;
- (c) adhere to the Saint John Real Estate Board's MLS® Rules and Regulations and its policies for the suitable presentation of the property for marketing purposes;
- (d) include at least one photograph representing a clear and accurate representation of the property for sale and its heritage character defining elements; and,
- (e) include in its description that the property is a designated heritage property and that this listing has been made in accordance with an application for a Heritage Permit for demolition.

9 (5) Exclusive listings with a Realtor® shall not be acceptable for the purposes of this By-Law.

9 (6) Notwithstanding subsection 6 (6) of this By-Law, a Heritage Permit for demolition shall be valid for a period of not more than 180 days from the date of issuance.

9 (7) Notwithstanding subsection 6 (7) of this By-Law, a Heritage Permit for demolition shall be eligible for renewal not more than once upon written request submitted to the Heritage Officer prior to the date of expiry for a further period of not more than 180 days from its date of expiry.

9 (8) The Board shall, upon issuing a Heritage Permit approving the demolition, removal or relocation of a building or structure or any part thereof, under section 9, forthwith, at its own expense,

- (a) cause a notice to be published
 - (i) on the municipal website; or
 - (ii) in a newspaper of general circulation for the city

stating that the building or structure in question has been approved for demolition, removal or relocation, giving the date of issue of the Heritage Permit and outlining the statutory right of appeal which exists against the Board's decision; and,

(b) notify the Minister responsible for the Act that the Heritage Permit has been issued.

9 (9) A property for which an application for a Heritage Permit for demolition has been made and subsequently denied by the Board is ineligible for reconsideration by the Board of a Heritage Permit for demolition for a period of not less than two (2) years from the date of the previous denial unless substantially different from the previous application.

Terms and Conditions for Multiple Listing Service® Applications

10 (1) If, at any point during the listing period, the owner accepts a purchase offer on the property, the owner shall notify the Board in writing within 10 business days of this accepted offer and of the scheduled closing date.

10 (2) Pursuant to subsection 10 (1), the application for a Heritage Permit for demolition is considered revoked following completion of the sale of property.

10 (3) At the end of the listing period, the owner shall:

- (a) provide the Heritage Officer with a list of any and all reasonable offers made on the property; and
- (b) notify the Board in writing if the property has not been sold.

10 (4) The Board may deny the issuance of a Heritage Permit approving the demolition, removal or relocation of a building or structure in whole or in substantial portion should it find that, in an instance where the property has not been sold, one or any reasonable offers have been made on the property during the listing period and subsequently refused.

Comparative Market Analysis

11 The Comparative Market Analyses (CMAs) shall be performed and provided by the listing agent and by two other Realtors® who are each affiliated with a different agency or company from the listing agent. The three CMAs shall be used to obtain an average price for the property in question which is to be the maximum list price in accordance with subsection 9 (3) (b) of this By-Law. Should the Board be unsatisfied with analyses provided upon review, it may at its own expense obtain a fourth CMA from another Realtor® under the same criteria listed above.

Illegal Demolition

12 Should the Board or the Heritage Officer find that a building or structure is being or has been demolished without a Heritage Permit for demolition having been issued, and should an order be issued pursuant to sections 83(2) and 83(3) of the Act, the Board may order the detailed reconstruction of the

envelope and exterior appurtenances of said building or structure, attaching any such terms and conditions as the Board deems necessary.

SAFETY

13 (1) Nothing in this By-Law shall be construed so as to affect the demolition of any building pursuant to a notice issued pursuant to sections 131 (2), 131 (3) or 139 (1) of the *Local Governance Act*, SNB 2017, c 18.

13 (2) Nothing in this By-Law shall be construed so as to affect the demolition of any building pursuant to 137 (1) (b), 137 (1) (c) or 139 (2) of the *Local Governance Act*, SNB 2017, c 18.

FEES

14 The application fees required under this By-Law are listed in Schedule “K”.

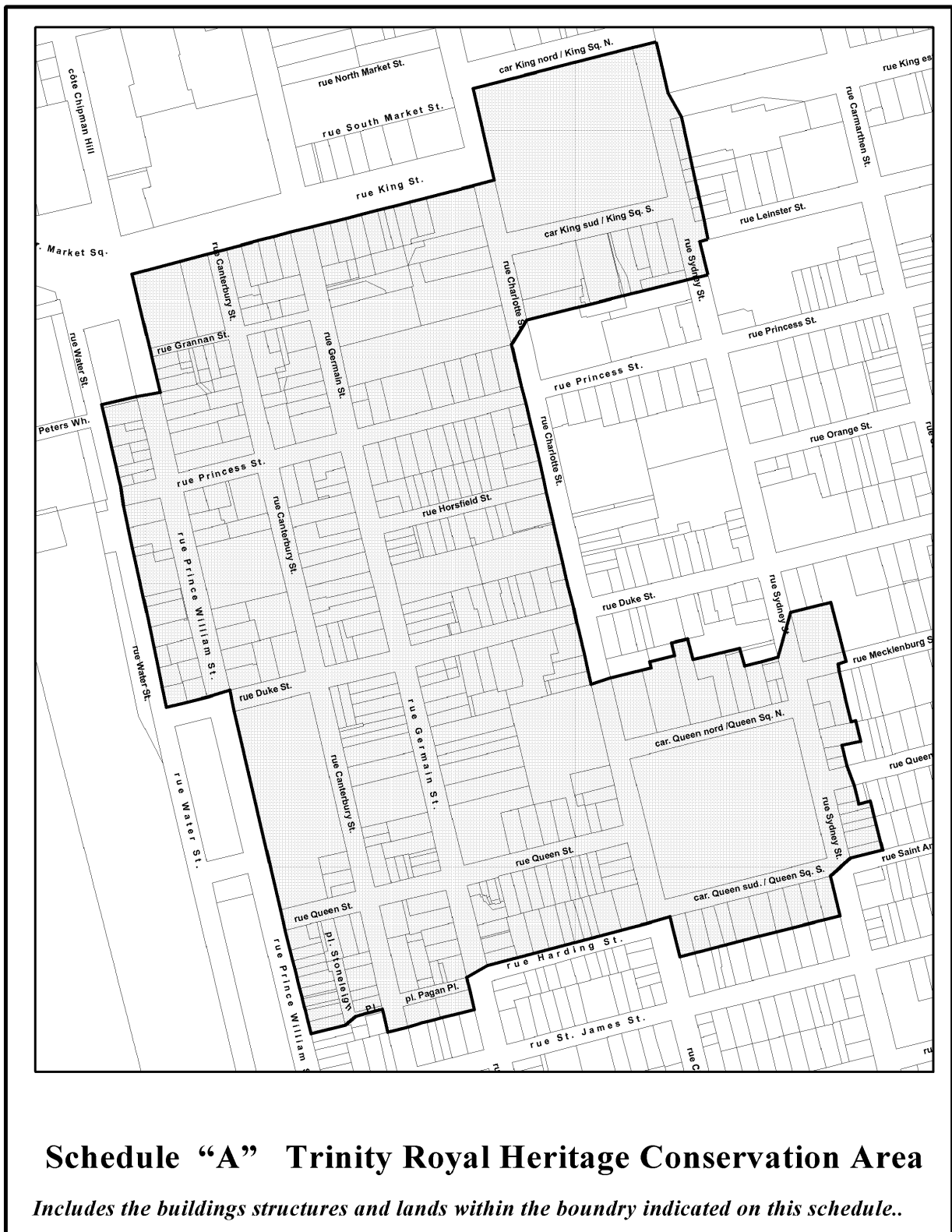
TRANSITION

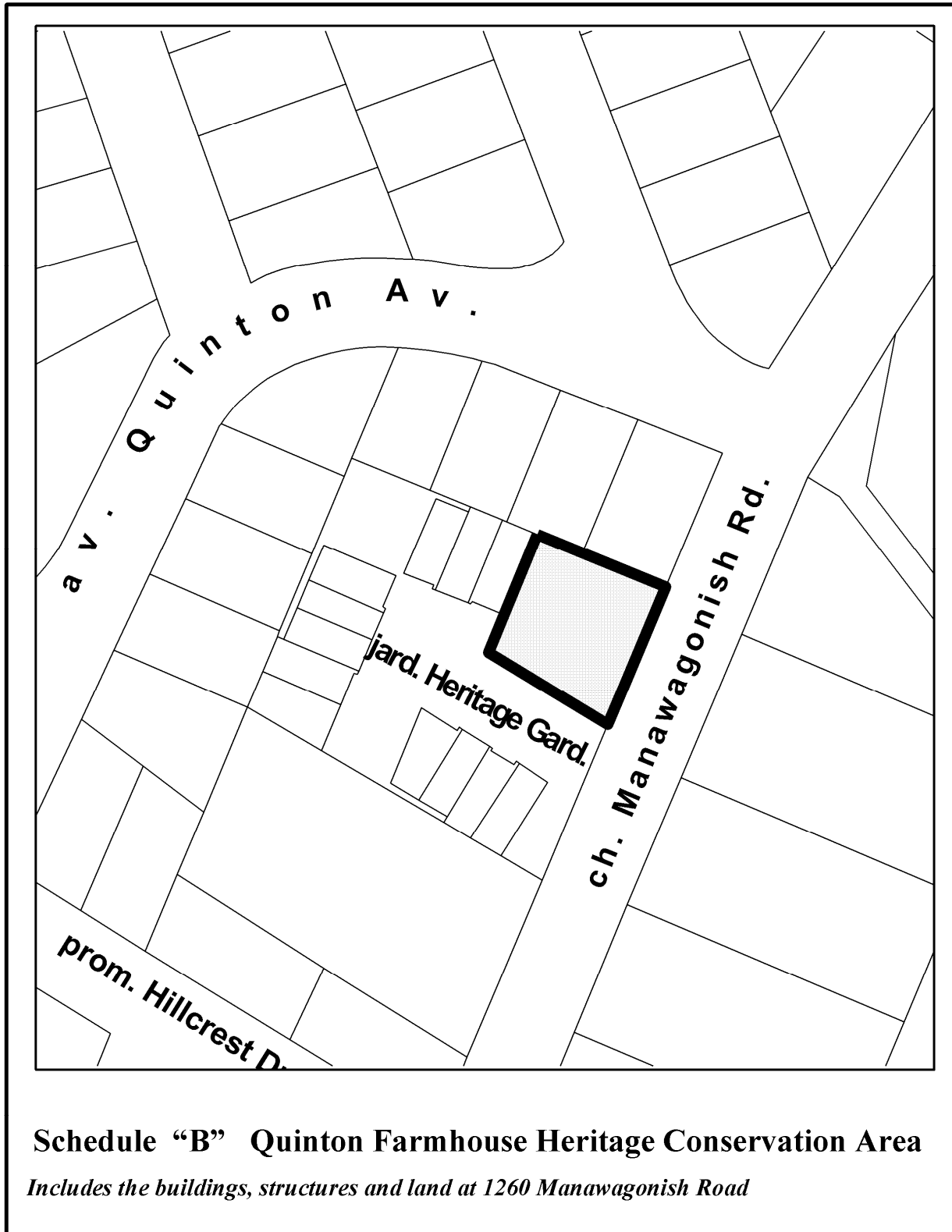
15 (1) A By-Law of The City of Saint John made and enacted on the ____ day of _____, _____ entitled “Saint John Heritage Conservation Areas By-Law” HC-1 and all amendments thereto is repealed on the coming into force of this By-Law.

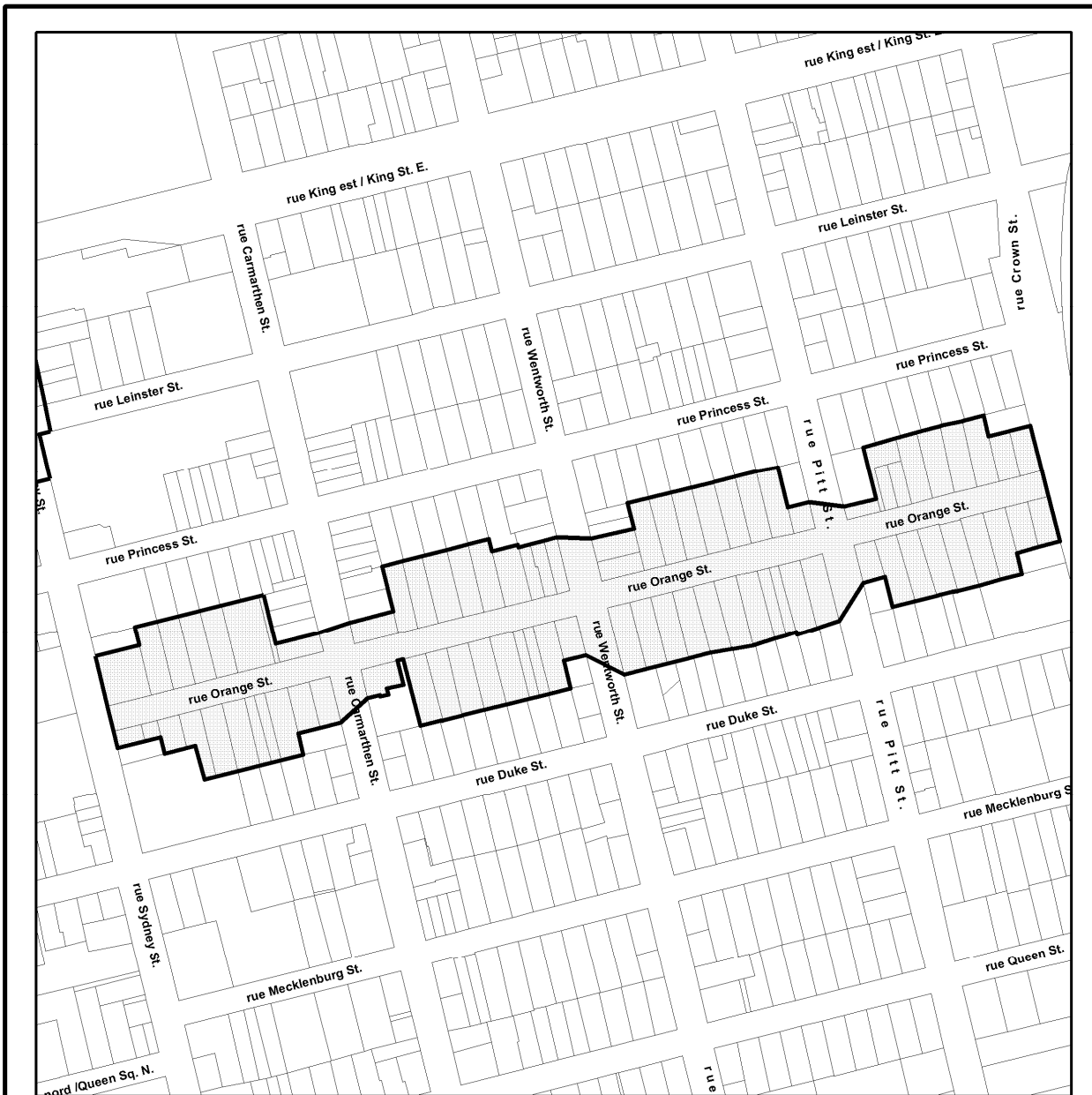
15 (2) This By-Law shall come into force upon the ____ day of _____, 20__.

15 (3) All permits having been issued under Section 8 of “Saint John Heritage Conservation Areas By-Law” and all amendments thereto, after _____, 20__ are deemed to continue and survive under this By-Law subject to all terms and conditions of a permit as if issued under Section 7 of this By-Law, unless otherwise no longer required through this By-Law.

15 (4) All permits having been issued under Section 9 and Section 10 of “Saint John Heritage Conservation Areas By-Law” and all amendments thereto, after _____, 20__ are deemed to continue and survive in accordance with the By-Law under which they were issued.

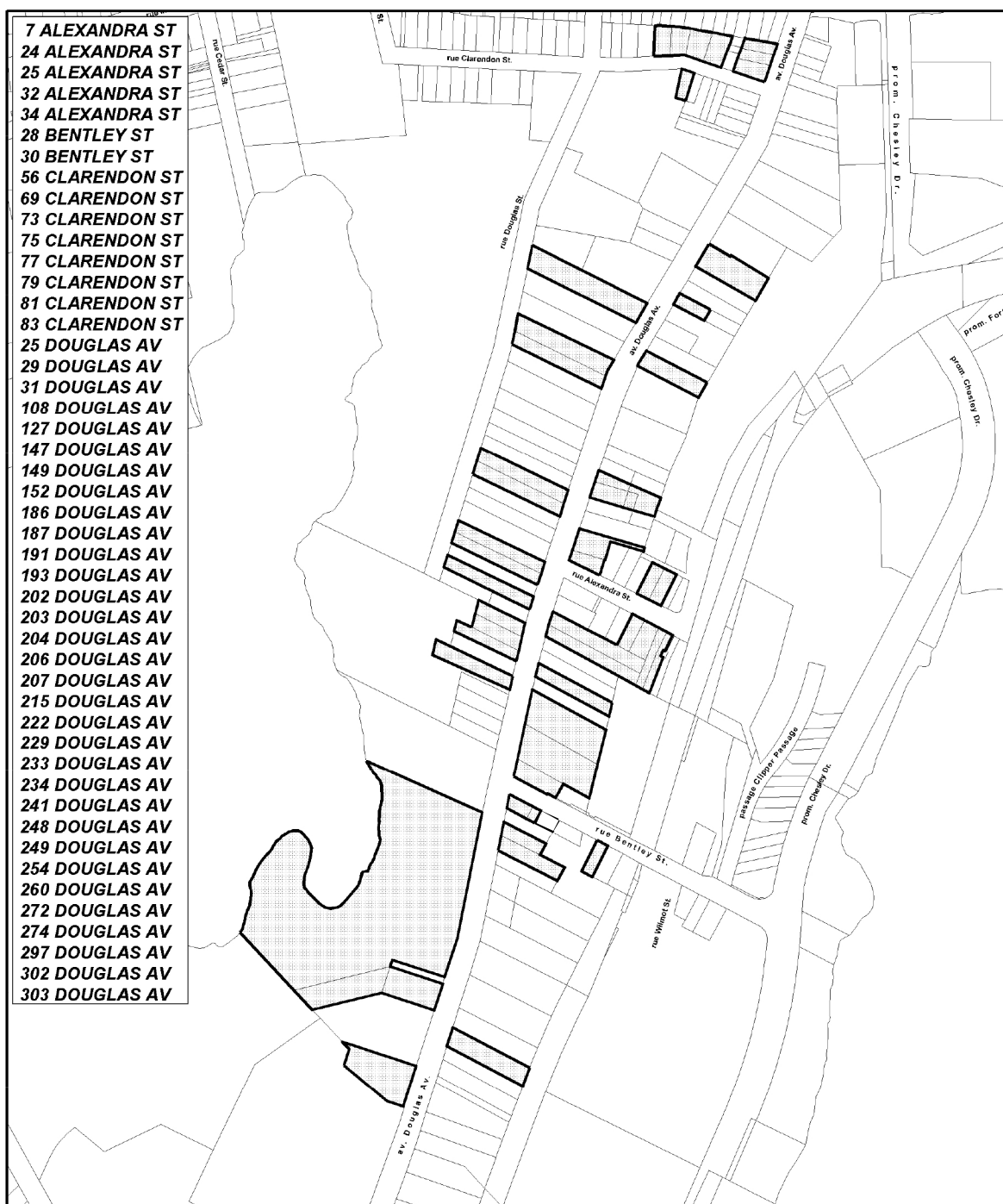






Schedule “C” Orange Street Heritage Conservation Area

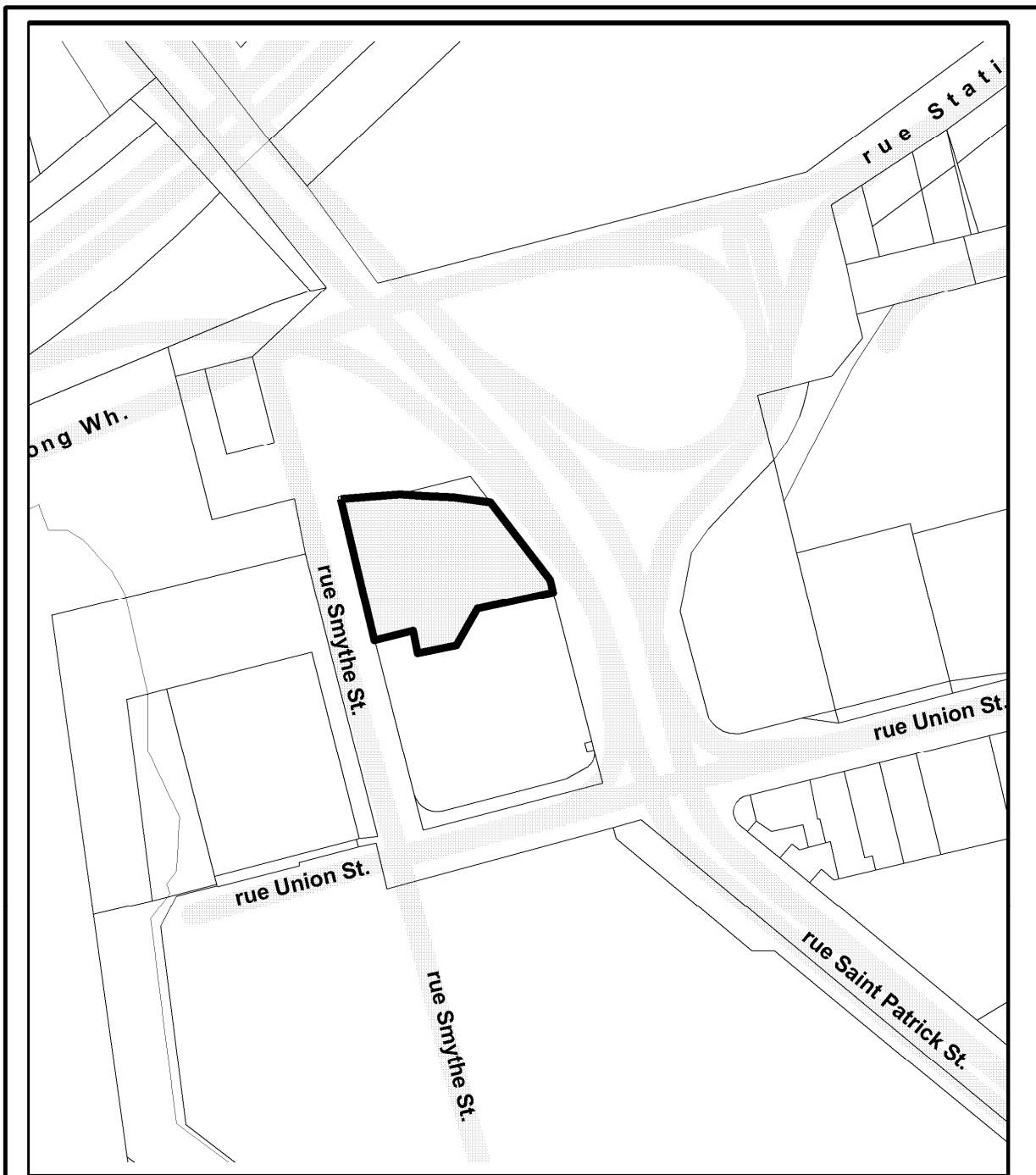
Includes the buildings, structures and lands being the properties on Orange Street bounded on the east by Crown Street, on the west by Sydney Street, on the north by the rear property line of all properties facing Orange Street, on the south by the rear property line of all properties facing Orange Street and by all corner buildings facing onto Carmarthen, Wentworth and Pitt Streets with a side façade facing onto Orange Street, including the two buildings located at civic addresses 114 Wentworth Street and 116 Wentworth Street



7 ALEXANDRA ST
 24 ALEXANDRA ST
 25 ALEXANDRA ST
 32 ALEXANDRA ST
 34 ALEXANDRA ST
 28 BENTLEY ST
 30 BENTLEY ST
 56 CLARENDON ST
 69 CLARENDON ST
 73 CLARENDON ST
 75 CLARENDON ST
 77 CLARENDON ST
 79 CLARENDON ST
 81 CLARENDON ST
 83 CLARENDON ST
 25 DOUGLAS AV
 29 DOUGLAS AV
 31 DOUGLAS AV
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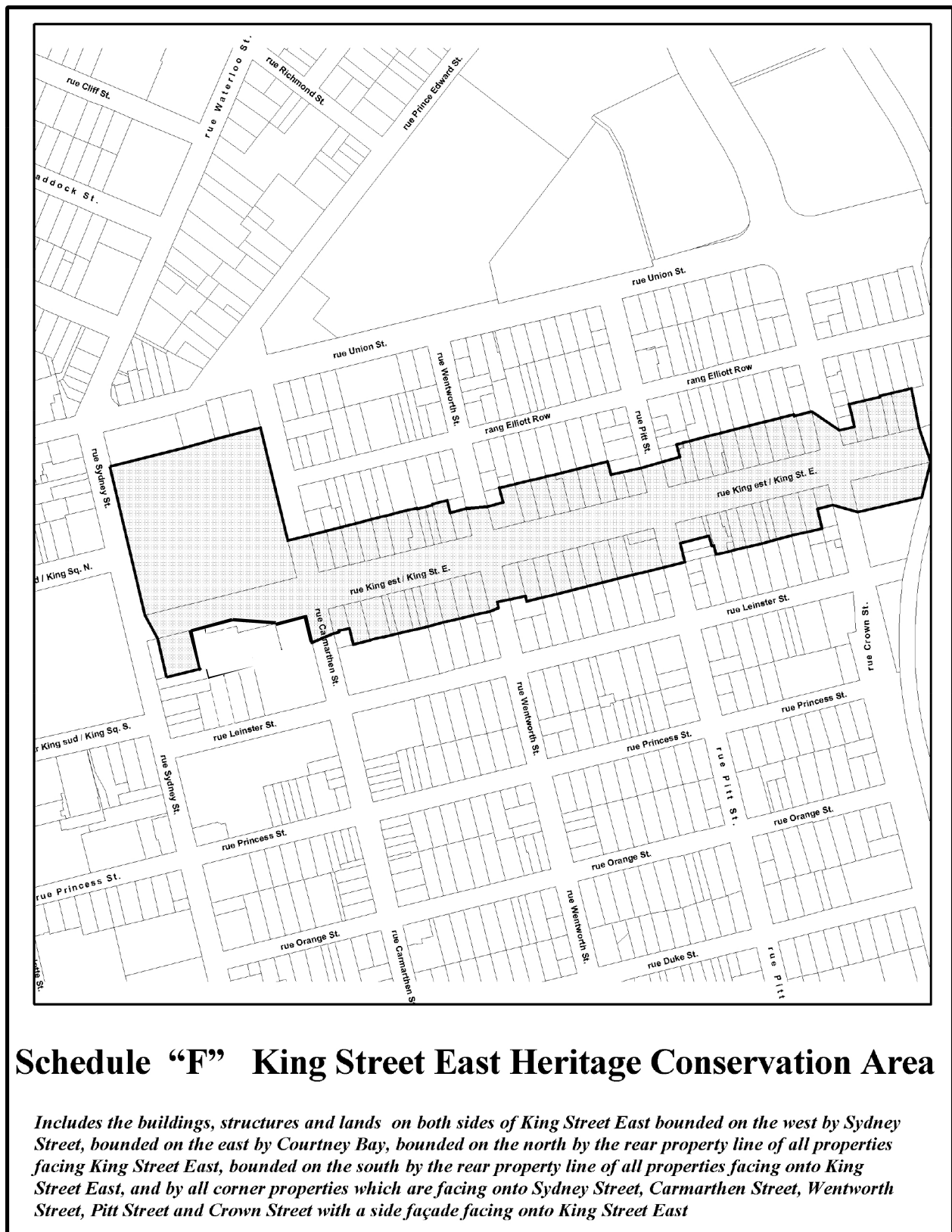
Schedule “D” Douglas Avenue Heritage Conservation Area

Includes the buildings structures and lands as listed and illustrated on this schedule.



Schedule “E” Red Rose Tea Heritage Conservation Area

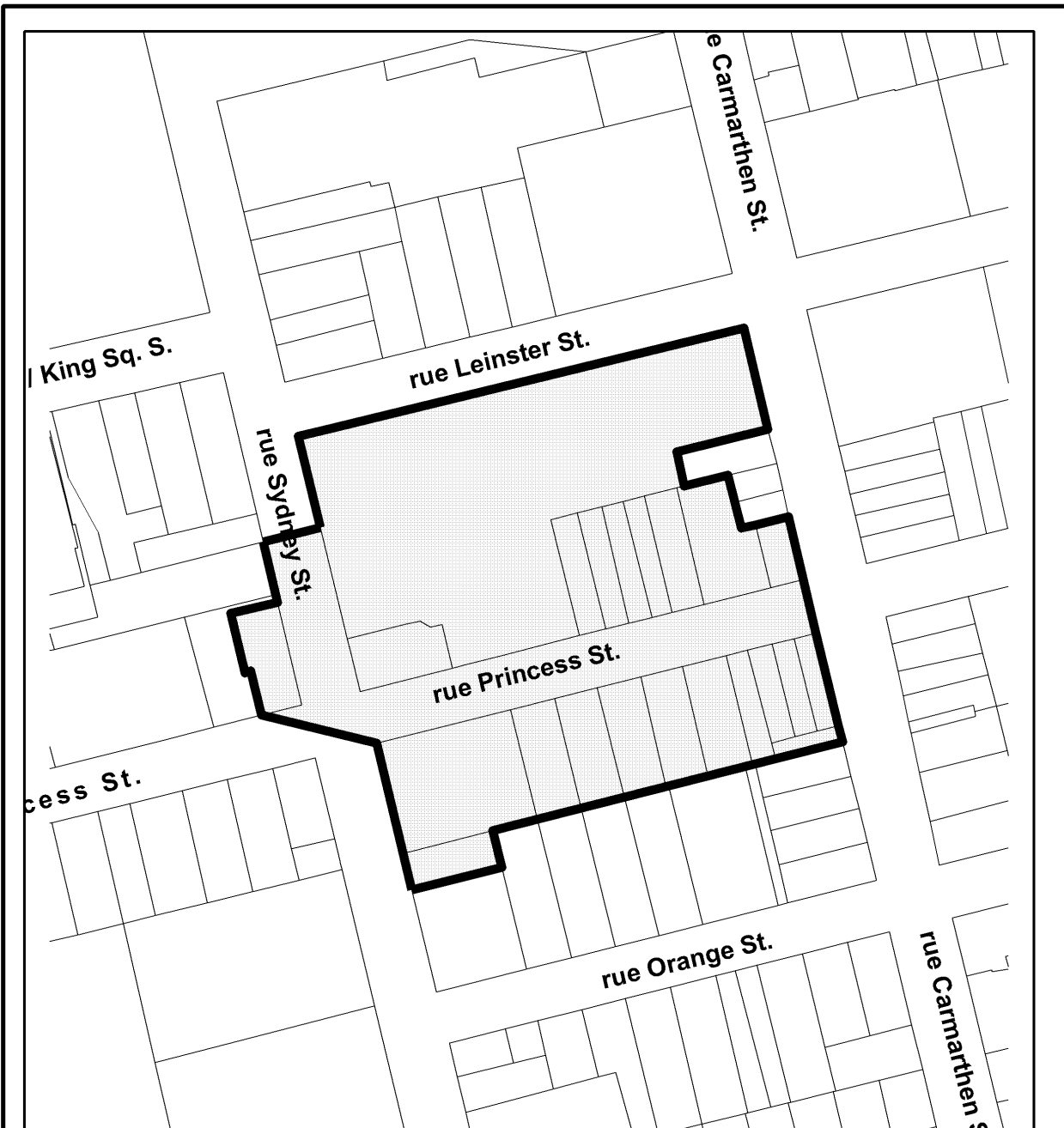
Includes the building structures and land at 49 Mill Street





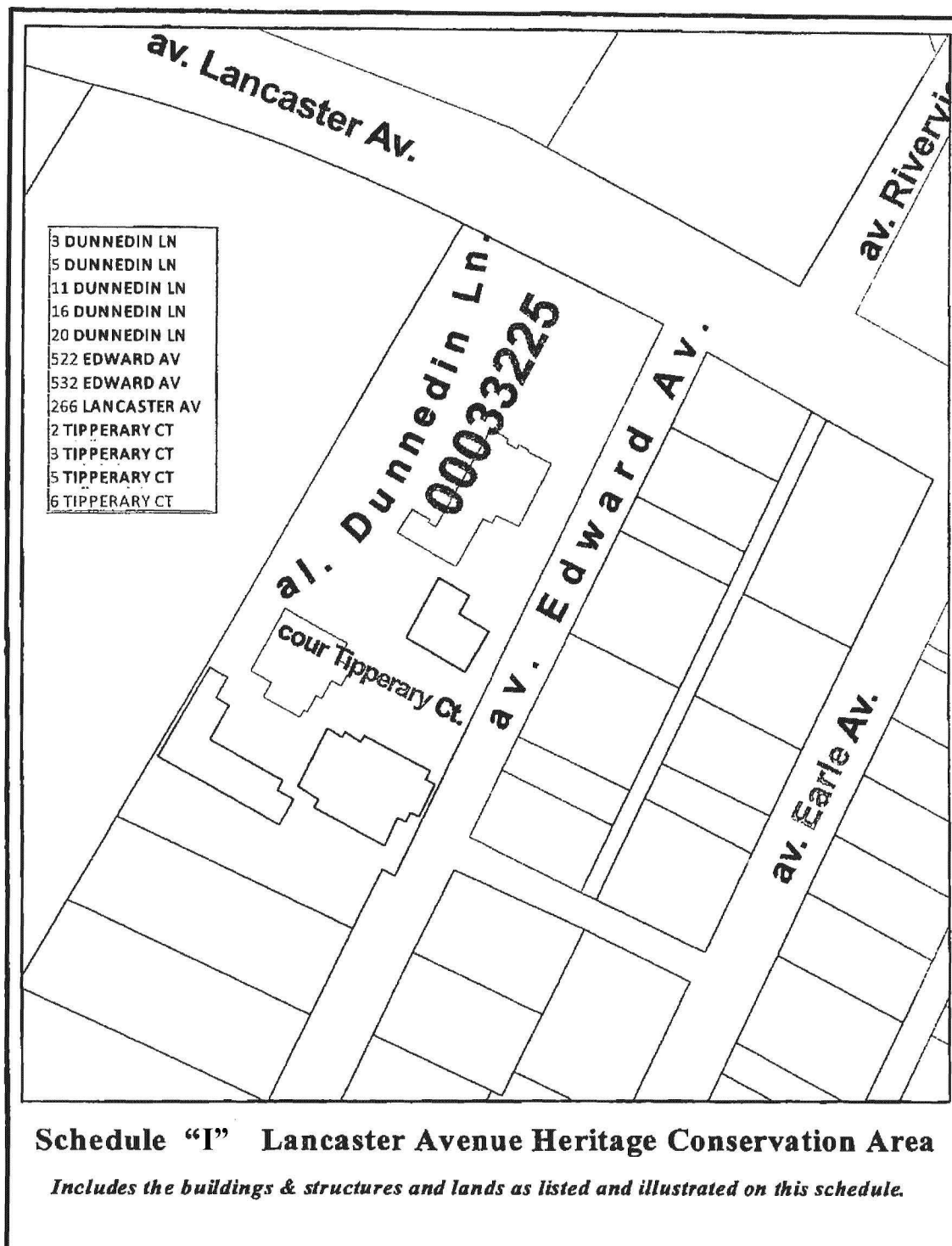
Schedule “G” Torryburn Heritage Conservation Area

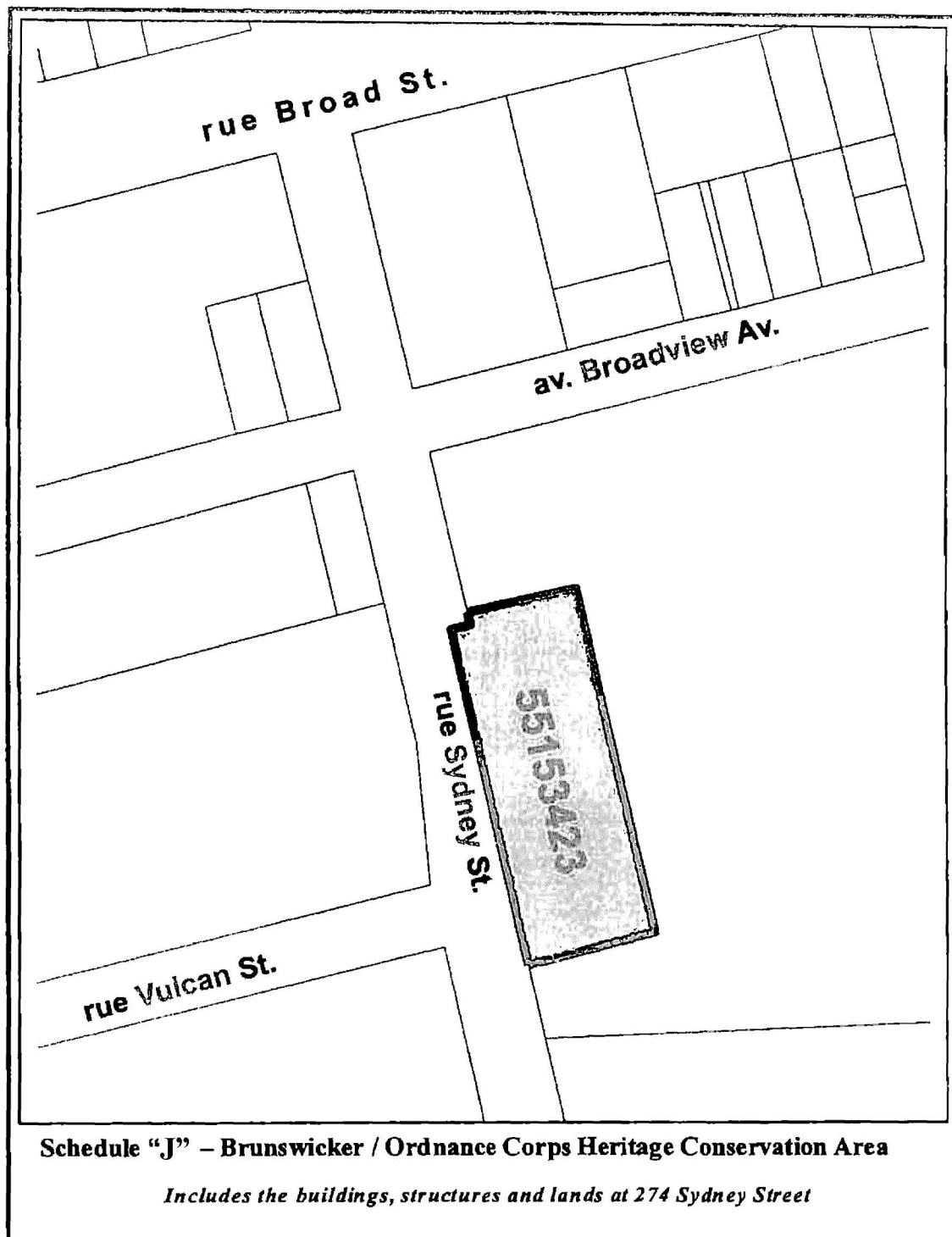
*Inlcudes the buildings, structures and lands located at 1020 Rothesay Road
and 1107 Rothesay Road.*



Schedule “H” Princess Street Heritage Conservation Area

Includes the properties, structures and lands located on both sides of Princess Street bounded on the west by Sydney Street, bounded on the east by Carmarthen Street, bounded on the north by the rear property line of all properties facing Princess Street, bounded on the south by the rear property line of all properties facing Princess Street and by all corner properties which are facing onto Sydney Street or Carmarthen Street, with a side façade facing onto Princess Street and shall include the property at the north-west corner of the intersection of Sydney Street and Princess Street as well as the property at civic address 80 Sydney Street





Schedule K: Fees

The application fees referred to in this By-Law are as follows:

| | |
|--|-------------|
| Developments which include demolition, removal or relocation pursuant to Section 9 | \$1,000.00 |
| All other developments | Free |

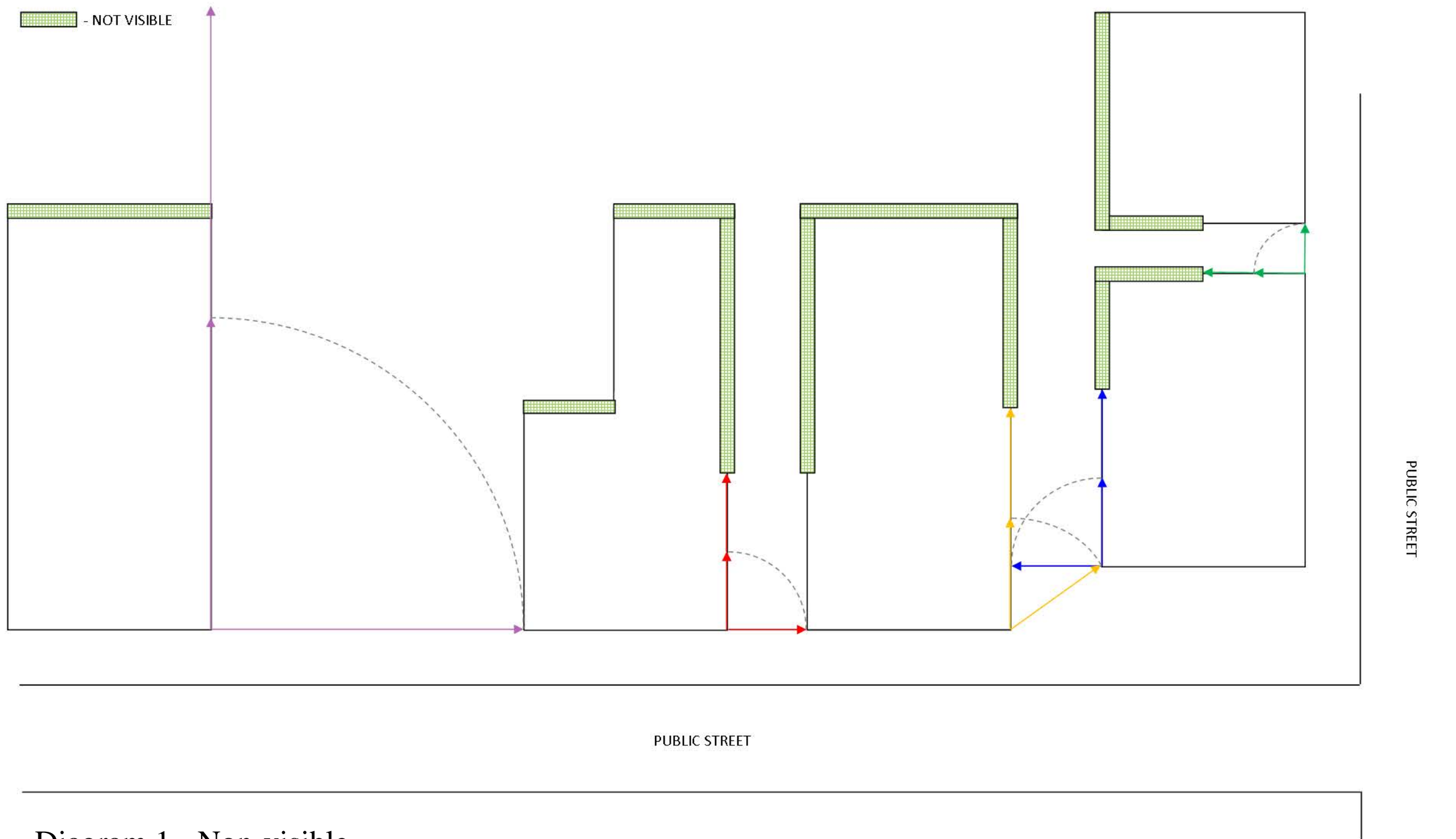


Diagram 1 - Non-visible

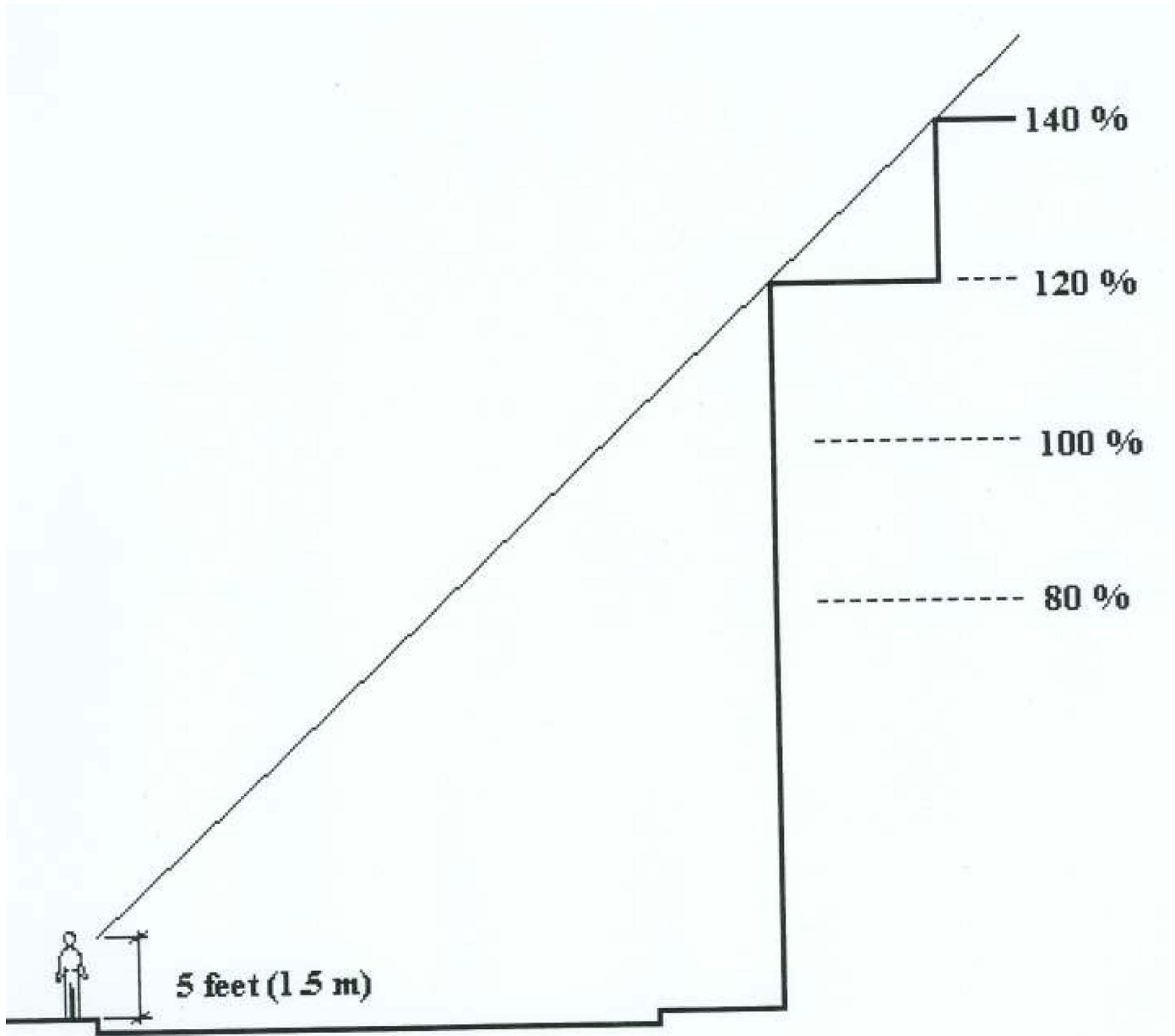


DIAGRAM 2: Height of New (Infill) Construction

[Reference: Section 8 (1) (d)]

Diagram 3

Plot ANSI E (44" x 34")

HERITAGE PERMIT APPLICATION FOR DEMOLITION NO. YY-XXXX

Arial Bold, 160 pt.

100 EXAMPLE STREET—PID 12345678

Arial Bold, 120 pt.

Applicant has applied to the City of Saint John for permission to demolish all buildings and structures at the above noted address.

Arial, 100 pt.

NOTICE OF PUBLIC MEETING:

This application will be heard at a public meeting of the
Heritage Development Board:

**WEDNESDAY, DAY MONTH YEAR
5:30 PM, 10th FLOOR, CITY HALL**

**FURTHER INFORMATION MAY BE OBTAINED AT:
HERITAGE CONSERVATION, 10th FLOOR, CITY HALL, 506-658-2835**

Arial Bold, 90 pt.

Diagram 4

Plot ANSI E (44" x 34")

HERITAGE PERMIT APPLICATION FOR DEMOLITION NO. YY-XXXX

Arial Bold, 160 pt.

100 EXAMPLE STREET—PID 12345678

Arial Bold, 120 pt.

Applicant has applied to the City of Saint John for permission to demolish all buildings and structures at the above noted address.

Arial, 100 pt.

End of Required **12** Month Listing Period: **Day Month Year**

Listing Agent, Realty Office

Phone Number

Email

Arial Bold, 90 pt.

FURTHER INFORMATION MAY BE OBTAINED AT:

HERITAGE CONSERVATION, 10th FLOOR, CITY HALL, 506-658-2835

ARRÊTÉ N^o HC-1
ARRÊTÉ SUR LES SECTEURS DE CONSERVATION DU PATRIMOINE DE SAINT JOHN

PRÉAMBULE

- 1 ATTENDU QUE The City of Saint John estime souhaitable d'adopter le présent arrêté qui établira les normes régissant la conservation et l'aménagement des bâtiments et des constructions à valeur patrimoniale se trouvant dans les limites de la ville;
- 2 QUE l'article 55 de la *Loi sur la conservation du patrimoine* autorise les municipalités à prendre des arrêtés fixant des normes quant à la conservation, l'aménagement, la réimplantation, la démolition, la modification, la réparation ou le remplacement d'un bâtiment ou d'une construction, ou quant à toute combinaison de ces travaux;
- 3 QUE, en vertu de l'article 77 de la *Loi sur la conservation du patrimoine*, un agent du patrimoine ou une personne autorisée par le conseil a le droit de pénétrer à toute heure raisonnable sur un bien se trouvant dans les limites de la ville afin de procéder à toute inspection qui s'impose pour l'application d'un arrêté pris sous le régime de la *Loi*;
- 4 QUE, en vertu de l'article 83 de la *Loi sur la conservation du patrimoine*, un comité du patrimoine ou un inspecteur que nomme la ville peut donner les ordres suivants visant un aménagement réalisé en violation d'un arrêté pris sous le régime de la *Loi* ou des conditions imposées à l'égard de l'aménagement :
 - a) l'arrêt des travaux;
 - b) la modification des travaux de façon à remédier à la violation;
 - c) l'exécution des travaux nécessaires pour rétablir le terrain, le bâtiment ou la construction dans l'état où il se trouvait juste avant que ne soit exercée l'activité qui fait l'objet de l'ordre de cessation d'activités;
- 5 QUE, en vertu de l'article 90 de la *Loi sur la conservation du patrimoine*, quiconque contrevient à une disposition d'un arrêté pris sous son régime commet une infraction punissable sous le régime de la partie II de la *Loi sur la procédure applicable aux infractions provinciales* à titre d'infraction de la classe C,

À CES CAUSES, le conseil communal de The City of Saint John, en vertu des pouvoirs que lui confère la *Loi sur la conservation du patrimoine*, chapitre H-4.05 des Lois du Nouveau-Brunswick de 2010, édicte :

DÉFINITIONS ET INTERPRÉTATION

- 1(1) Les définitions qui suivent s'appliquent au présent arrêté.

« **accessoire** » Sert à qualifier ce qui revêt une importance moindre ou secondaire relativement à un bâtiment existant ou à une construction existante, visant notamment sa dimension, ses matériaux ou ses détails ou une combinaison de ces caractéristiques. (*subordinate*)

« **agent responsable de l'inscription** » L'agent immobilier qui est un Realtor® avec lequel le propriétaire d'un bien a conclu un contrat pour qu'il aide à inscrire le bien et fasse toutes les démarches connexes ultérieures. (*listing agent*)

« **ajout** » La modification de l'enveloppe d'un bâtiment existant ou d'une construction existante qui accroît la superficie au sol ou le profil de façon annexe et secondaire au bâtiment ou à la construction. (*addition*)

« **alignement de la rue** » La ligne séparative entre un lot et l'emprise d'une rue, d'un chemin, d'une route, d'une avenue, d'une ruelle, d'une impasse ou entre un lot et une servitude d'utilité privée, qui constitue d'une façon générale le point principal d'accès au bien sur lequel elle donne. (*street line*)

« **aménagement** » L'édification, la mise en place, le déplacement, l'enlèvement, la rénovation, la préservation, la restauration, la remise en état, la démolition, la modification, la réparation ou le remplacement de l'extérieur d'un bâtiment ou d'une construction, y compris notamment d'enseignes intérieures et extérieures, en tout ou en partie. (*development*)

« **analyse comparative du marché** » Le sommaire des prix, déterminés par un agent immobilier qui est un Realtor®, auxquels se sont vendus des biens similaires au bien en question qui sont situés dans le même secteur que celui-ci. (*Comparative Market Analysis*)

« **annexe** » Sert à qualifier ce qui se rapporte à un bâtiment existant ou à une construction existante à titre légèrement accessoire à ce bâtiment ou à cette construction. (*incidental*)

« **bâtiment accessoire** » Bâtiment annexe et secondaire par rapport à l'usage principal, au bâtiment principal ou à la construction principale situés sur le même lot, et qui est affecté exclusivement à cet usage. (*accessory building*)

« **comité** » Le comité du patrimoine constitué conformément à l'article 46 de la *Loi*. (*Board*)

« **Commission d'appel** » La Commission d'appel en matière d'évaluation et d'urbanisme du Nouveau-Brunswick. (*Appeal Board*)

« **Conseil** » Le maire et les conseillers de The City of Saint John. (*Council*)

« **conservation** » L'ensemble des actions ou processus qui visent à sauvegarder les éléments caractéristiques d'une ressource culturelle afin d'en préserver la valeur patrimoniale et d'en prolonger la vie physique. Il peut s'agir de « préservation », de « réhabilitation », de « restauration » ou d'une combinaison de ces actions ou processus. (*conservation*)

« **cour** » L'espace non bâti d'un lot sur lequel se trouve un bâtiment et qui est inoccupé et libre à partir du sol vers le haut. (*yard*)

« **cour avant** » Cour qui s'étend sur toute la largeur du lot entre l'alignement de la rue et un bâtiment ou une construction. (*yard, front*)

« **cour latérale** » Cour qui se trouve entre la limite latérale du lot et les parties du bâtiment ou de la construction les plus près de celle-ci et qui s'étend de l'alignement de la rue jusqu'à la limite arrière du lot. (*yard, side*)

« **dépendances** » Vise notamment les ajouts, les terrasses, les murs, les clôtures, les accessoires fixes d'éclairage et leurs supports, les marches, le revêtement du sol et les enseignes. (*appurtenances*)

« **édification sur terrain intercalaire** » Selon le cas :

- a) l'aménagement d'un ou de plusieurs terrains vagues;
- b) un ajout ou une modification à un bâtiment existant ou à une construction existante qui n'est pas annexe ou accessoire à ce bâtiment ou à cette construction. (*infill*)

« **éléments caractéristiques** » Vise notamment les matériaux, les formes, l'emplacement, les configurations spatiales et les connotations ou significations culturelles qui contribuent à la valeur patrimoniale d'un lieu historique et qui doivent être conservés afin de préserver cette valeur patrimoniale, telle qu'elle est définie dans l'énoncé d'importance afférent au lieu historique. (*character-defining elements*)

« **énoncé d'impact patrimonial** » Le document présenté, en la forme prévue à cet effet à l'annexe O, par l'architecte d'opération dans le cadre d'une demande de niveau 2. (*Heritage Impact Statement*)

« **énoncé d'importance** » Le document énonçant l'importance historique, culturelle ou architecturale d'un lieu historique, y compris la désignation de ses éléments caractéristiques, retenu par The City of Saint John. (*statement of significance*)

« **enveloppe** » L'ensemble des éléments d'un bâtiment constituant la paroi à l'épreuve des intempéries entre les espaces extérieurs et intérieurs, y compris notamment les fondations, les systèmes muraux extérieurs, les fenêtres, les portes et les toits. (*envelope*)

« **étude d'impact patrimonial** » Le document présenté, en la forme prévue à cet effet à l'annexe O, par l'architecte d'opération dans le cadre d'une demande de niveau 3. (*Heritage Impact Assessment*)

« **évaluation par les pairs** » L'évaluation par des tiers d'une demande de niveau 3 et de l'étude d'impact patrimonial s'y rapportant, effectuée sous contrat pour The City of Saint John et rédigée par un tiers architecte. (*Peer Review*)

« **façade** » La face extérieure d'un bâtiment ou d'une construction qui comprend les lucarnes, les pignons ou les toits qui font partie de ce plan ou qui font saillie sur celui-ci. (*façade*)

« **façade arrière** » Toute façade qui n'est pas une façade sur rue ou une façade latérale. (*façade, rear*)

« **façade latérale** » Toute façade donnant sur une cour latérale. (*façade, side*)

« **hauteur d'un bâtiment ou d'une construction** » La distance verticale mesurée à partir du sol au centre de la façade du bâtiment jusqu'au point le plus élevé du couronnement d'un toit-terrasse, entre les corniches et un faîtage, ou jusqu'au terrasson d'une toiture à la Mansard, ou à la hauteur moyenne entre la dalle et le faîtage d'un toit à deux versants, d'un toit à quatre versants ou d'un comble à la Mansard, à l'exclusion des constructions telles que les locaux d'ascenseur hors toit, les cheminées, les mitres de cheminée et les flèches de clocher. (*height of a building or structure*)

« **inscription** » Offre de vente visant un bâtiment ou une construction et le terrain qui s'y rapporte à laquelle un numéro du Service inter-agences® est attribué et qui est affichée à l'adresse realtor.ca ou sur le site d'un autre Service inter-agences®, ou par ces deux moyens. (*listing*)

« **intervention** » Toute action autre que la démolition ou la destruction qui entraîne un changement physique à un élément d'un lieu patrimonial. (*Intervention*)

« **intervention minimale** » L'approche la plus douce possible qui permet d'atteindre les objectifs fonctionnels fixés avec le minimum d'intervention physique. (*minimal intervention*)

« **lieu patrimonial** » Construction, bâtiment, groupe de bâtiments, arrondissement, paysage, paysage culturel, site archéologique ou autre lieu reconnu officiellement pour sa valeur patrimoniale. (*historic place*)

« **Loi** » La *Loi sur la conservation du patrimoine*, L.N.-B. 2010, ch. H-4.05, ensemble ses modifications successives adoptées par l'Assemblée législative du Nouveau-Brunswick. (*Act*)

« **marge de retrait** » La distance comprise entre l'alignement de la rue et la limite de construction avant d'un bâtiment principal ou d'une construction principale projetée jusqu'à la limite latérale du lot. (*setback*)

« **masse principale** » La superficie au sol d'un bâtiment reposant sur une fondation, à l'exclusion de la superficie des porches, des vérandas et des escaliers d'entrée. (*primary massing*)

« **matériau moderne** » Tout matériau non encore conçu ou offert en vue d'un usage courant à l'époque de la construction d'un bâtiment. (*contemporary materials*)

« **matériau traditionnel** » Tout matériau qui était d'usage courant à l'époque de la construction d'un bâtiment. (*traditional materials*)

« **modification** » Tout changement énoncé dans la définition du terme « modifier ». (*alteration*)

« **modification structurelle** » Tout changement apporté aux éléments portants d'un bâtiment tels que les murs portants ou de refend, les colonnes, les poutres, les solives, notamment, qui occasionne ou pourrait occasionner un changement des murs extérieurs ou de la toiture du bâtiment ou de la construction. (*structural alteration*)

« **modifier** » Le fait de changer de quelque façon que ce soit, structurellement ou de toute autre manière, tout ou partie de l'extérieur d'un bâtiment ou d'une construction; s'entend notamment du fait

de le restaurer, de le rénover, de le réparer ou de le construire, ou d'en changer de quelque façon que ce soit la conception esthétique. (*alter*)

« **non visible** » L'état des éléments suivants :

- a) une façade arrière;
- b) la partie d'une façade latérale qui s'étend au-delà d'un point situé au moins au double de la distance entre l'angle de la façade sur rue et la façade latérale du bâtiment avoisinant, tel que l'illustre le diagramme 1;
- c) les fenêtres, les portes ou les autres dépendances non caractéristiques situées entièrement ou principalement au-delà du point mentionné à l'alinéa b). (*non-visible*)

« **Normes et lignes directrices pour la conservation des lieux patrimoniaux au Canada** » Le document de référence publié par Parcs Canada en 2010 qui présente des directives axées sur les résultats pour la prise de décisions éclairées en ce qui a trait à la planification et à l'utilisation de lieux patrimoniaux, ainsi qu'aux interventions souhaitables dans ces lieux et à l'établissement d'un ensemble cohérent à l'échelle nationale de principes et de lignes directrices en matière de conservation. (*Standards and Guidelines for the Conservation of Historic Places in Canada*)

« **offre raisonnable** » Offre d'achat à l'égard d'un bien inscrit faite à un prix se situant à tout au plus 10 p. 100 du prix de vente indiqué dans l'inscription, ainsi qu'il est déterminé selon la moyenne de trois analyses comparatives du marché, et assortie de conditions générales. (*reasonable offer*)

« **ouverture dans la façade** » Toute pénétration des matériaux solides qui composent la façade du bâtiment, dont les baies de fenêtres, les portes et les arcades. La superficie consacrée aux ouvertures dans la façade se mesure par projection orthographique de l'élévation de la façade. (*façade opening*)

« **partie substantielle** » Partie correspondant à 25 p. 100 au moins du volume d'un bâtiment existant ou d'une construction existante ou de tout ou partie de ses façades sur rue. (*substantial portion*)

« **permis de patrimoine** » Permis en matière de patrimoine municipal délivré sous le régime du présent arrêté par le comité ou l'agent du patrimoine en vertu de la *Loi*. (*Heritage Permit*)

« **pilastre** » Le montant architectural qui est de forme rectangulaire et qui, par sa structure, est un pilier, mais qui, par son architecture, est considéré comme une colonne et dont habituellement le tiers de sa largeur maximale fait saillie sur le mur. (*pilaster*)

« **préservation** » L'action ou le processus visant à protéger, à entretenir ou à stabiliser les matériaux existants ainsi que les formes et l'intégrité existantes d'un lieu patrimonial ou d'une de ses composantes tout en en protégeant la valeur patrimoniale. (*preservation*)

« **propriétaire** » Le propriétaire inscrit d'un bien réel. (*owner*)

« **rapport ouvertures dans la façade/mur** » Le rapport entre la superficie de la façade consacrée aux baies de fenêtres et de portes et la superficie de la façade composée de matériaux opaques (murs). (*façade opening/wall ratio*)

« **Realtor®** » Vendeur d'immeubles agréé qui est membre en règle de la Saint John Real Estate Board et de L'Association canadienne de l'immeuble. (*Realtor®*)

« **réhabilitation** » L'action ou le processus visant à permettre un usage continu ou contemporain compatible du lieu patrimonial, ou de l'une de ses composantes, en effectuant des réparations, des modifications, des suppressions ou des ajouts, tout en protégeant la valeur patrimoniale du lieu. (*rehabilitation*)

« **ressource archéologique** » Lieu ou zone où il existe ou existait des éléments d'activités humaines trouvés *in situ*, sur, dans ou au-dessus du sol ou des terres immergées dont le recouvrement et l'interprétation peuvent se faire au moyen des méthodes archéologiques. (*archaeological resource*)

« **restauration** » L'action ou le processus qui vise à révéler, à faire retrouver ou à représenter fidèlement l'état d'un lieu patrimonial, ou d'une de ses composantes, comme il était à une période particulière de son histoire, tout en protégeant la valeur patrimoniale. (*restoration*)

« **sablage** » Technique de nettoyage des bâtiments ou constructions par usage de substances abrasives sous la pression de l'air ou de l'eau. (*sandblasting*)

« **secteur de conservation du patrimoine** » Aire de biens manifestement représentative d'un ensemble cohérent qui revêt une importance architecturale, historique ou culturelle, créée et définie par le présent arrêté pris sous le régime de la Loi. (*Heritage Conservation Area*)

« **Service inter-agences®** » Le service de base de données immobilière qui est exploité par un membre de la chambre immobilière et est une marque de commerce de L'Association canadienne de l'immeuble. (*Multiple Listing Service*)

« **sur rue** » Sert à qualifier la façade ou la partie d'une façade qui fait face à une emprise publique. (*street-facing*)

« **The City of Saint John** » Personne morale constituée par charte royale et confirmée et modifiée dans les lois de l'Assemblée législative du Nouveau-Brunswick. (*City of Saint John, The*)

« **valeur patrimoniale** » L'importance ou la signification esthétique, historique, scientifique, culturelle, sociale ou spirituelle pour les générations passées, actuelles ou futures qui, visant un lieu patrimonial, repose sur ses éléments caractéristiques tels que les matériaux, la forme, la conception, l'emplacement, les configurations spatiales, les usages et les connotations ou significations culturelles. (*heritage value*)

« **ville** » Le secteur géographique se trouvant dans les limites de la ville de Saint John, dans le comté de Saint John et la province du Nouveau-Brunswick. (*city*)

1(2) Pour l'application du présent arrêté et selon le contexte :

- a) le masculin ou le féminin s'appliquent, le cas échéant, aux personnes physiques de l'un ou l'autre sexe;
- b) le pluriel ou le singulier s'appliquent, le cas échéant, à l'unité ou à la pluralité.

1(3) Les sous-titres utilisés dans le présent arrêté n'en font pas partie, n'y figurant qu'à titre de repère ou d'information.

SECTEUR DE CONSERVATION DU PATRIMOINE ET CHAMP D'APPLICATION

2(1) a) Secteur de conservation du patrimoine de Trinity Royal

La section de la ville figurant à l'annexe A ci-jointe, laquelle fait partie intégrante du présent arrêté, est désignée secteur de conservation du patrimoine de Trinity Royal.

b) Secteur de conservation du patrimoine de la Ferme Quinton

La section de la ville composée des bâtiments, des constructions et des terrains connus sous le nom de Ferme Quinton et se trouvant au 1260, chemin Manawagonish, telle qu'elle figure à l'annexe B qui fait partie intégrante du présent arrêté, est désignée secteur de conservation du patrimoine de la Ferme Quinton.

c) Secteur de conservation du patrimoine de la rue Orange

La section de la ville composée des bâtiments, des constructions et des terrains donnant sur les deux côtés de la rue Orange, délimitée à l'est par la rue Crown, à l'ouest, par la rue Sydney, au nord, par la limite arrière de tous les terrains donnant sur la rue Orange, au sud, par la limite arrière de tous les terrains donnant sur la rue Orange et par tous les bâtiments d'angle des rues Carmarthen, Wentworth et Pitt dont la façade latérale donne sur la rue Orange, y compris les constructions sises au 114, rue Wentworth et au 116, rue Wentworth, telle qu'elle figure à l'annexe C qui fait partie intégrante du présent arrêté, est désignée secteur de conservation du patrimoine de la rue Orange.

d) Secteur de conservation du patrimoine de l'avenue Douglas

La section de la ville composée des bâtiments, de la construction et des terrains qui figurent et sont énumérés à l'annexe D qui fait partie intégrante du présent arrêté est désignée dans son ensemble secteur de conservation du patrimoine de l'avenue Douglas.

e) Secteur de conservation du patrimoine de Red Rose Tea

La section de la ville composée du bâtiment, de la construction et du terrain connu sous le nom de Red Rose Financial et se trouvant au 49, rue Mill (numéros de la CIGNB 38984 et 55065007),

occupée par le bâtiment connu sous le nom de Red Rose Tea Building, et seulement la partie du bien occupée par ce bâtiment telle qu'elle figure à l'annexe E qui fait partie intégrante du présent arrêté, est désignée secteur de conservation du patrimoine de Red Rose Tea.

f) Secteur de conservation du patrimoine de la rue King Est

La section de la ville composée des bâtiments, des constructions et des terrains donnant sur les deux côtés de la rue King Est, délimitée à l'est par la baie Courtenay, à l'ouest, par la rue Sydney, au nord, par la limite arrière de tous les terrains donnant sur la rue King Est, au sud, par la limite arrière de tous les terrains donnant sur la rue King Est et par tous les terrains d'angle des rues Sydney, Carmarthen, Wentworth, Pitt et Crown dont une façade latérale donne sur la rue King Est, telle qu'elle figure à l'annexe F qui fait partie intégrante du présent arrêté, est désignée secteur de conservation du patrimoine de la rue King Est.

g) Secteur de conservation du patrimoine de Brookville-Torryburn

La section de la ville composée des bâtiments, des constructions et des terrains se trouvant au 1107, chemin Rothesay et au 1020, chemin Rothesay, telle qu'elle figure à l'annexe G qui fait partie intégrante du présent arrêté, est désignée secteur de conservation du patrimoine de Brookville-Torryburn.

h) Secteur de conservation du patrimoine de la rue Princess

La section de la ville composée des bâtiments, des constructions et des terrains donnant sur les deux côtés de la rue Princess, délimitée à l'ouest par la rue Sydney, à l'est, par la rue Carmarthen, au nord, par la limite arrière de tous les terrains donnant sur la rue Princess, au sud, par la limite arrière de tous les terrains donnant sur la rue Princess et par tous les terrains d'angle donnant sur les rues Sydney et Carmarthen dont une façade latérale donne sur la rue Princess, y compris le terrain situé à l'angle nord-ouest de l'intersection des rues Sydney et Princess ainsi que le terrain sis au 80, rue Sydney, telle qu'elle figure à l'annexe H qui fait partie intégrante du présent arrêté, est désignée secteur de conservation du patrimoine de la rue Princess.

i) Secteur de conservation du patrimoine de l'avenue Lancaster

La section de la ville composée des bâtiments, des constructions et des terrains situés au 266, avenue Lancaster (NID 00033225), tels qu'ils figurent et sont énumérés à l'annexe I qui fait partie intégrante du présent arrêté, est désignée secteur de conservation du patrimoine de l'avenue Lancaster :

- 3, allée Dunnedin
- 5, allée Dunnedin
- 11, allée Dunnedin
- 16, allée Dunnedin

522, avenue Edward
532, avenue Edward
266, avenue Lancaster
2, ruelle Tipperary
3, ruelle Tipperary
5, ruelle Tipperary
6, ruelle Tipperary

j) Secteur de conservation du patrimoine de Brunswicker/Service du matériel

La section de la ville composée des bâtiments, des constructions et des terrains situés au 274, rue Sydney (NID 55153423), tels qu'ils figurent et sont énumérés à l'annexe J qui fait partie intégrante du présent arrêté, est désignée secteur de conservation du patrimoine de Brunswicker/Service du matériel.

2(2) Le présent arrêté s'applique aux secteurs de conservation du patrimoine créés au paragraphe (1).

ADMINISTRATION

3(1) Le comité exerce les fonctions que lui confère le présent arrêté.

3(2) Le comité peut déléguer à un agent du patrimoine l'autorité de délivrer des permis de patrimoine.

DOSSIERS DU COMITÉ

4(1) Le comité acquiert ou établit un registre de tous les bâtiments ou constructions situés dans les secteurs de conservation du patrimoine.

4(2) En vue d'éclairer le public sur les normes de conception esthétique applicables aux aménagements dans les secteurs de conservation du patrimoine, le comité tient le ou les dossiers contenant les dessins, photos et autres articles descriptifs ou graphiques des constructions, des styles d'architecture et des matériaux propres au secteur.

4(3) Ces registres et dossiers font partie des archives du comité.

PERMIS DE PATRIMOINE

5(1) Sous réserve du paragraphe (2), il est interdit de réaliser ou de faire réaliser un aménagement dans les secteurs de conservation du patrimoine sauf si les conditions suivantes sont réunies :

- a) l'aménagement est conforme aux normes prescrites aux articles 7 ou 8, selon le cas;
- b) un permis de patrimoine valide a été délivré en vertu du présent arrêté.

5(2) Aucun aménagement ne peut être réalisé sur la foi du permis de patrimoine tant que tout droit d'appel prévu par la *Loi* n'a pas été épuisé dans le cas précis ou que le délai fixé par la *Loi* pour son exercice n'est pas expiré.

5(3) Malgré l'alinéa (1)b), une personne n'est pas tenue d'exiger un permis de patrimoine à l'égard des aménagements suivants :

- a) les travaux d'entretien ou de réparation ordinaires effectués à des éléments d'un bâtiment, à l'exclusion de l'enlèvement ou du remplacement de ceux-ci, d'un changement apporté à la conception esthétique, aux matériaux, à la finition ou à l'aspect, de la réparation ou du rejointement de la brique, du sablage ou du lavage de la brique à la pression;
- b) la peinture appliquée en utilisant des couleurs qui ont déjà été approuvées dans un permis de patrimoine délivré antérieurement à l'égard du même aménagement;
- c) la construction d'un bâtiment accessoire non visible d'une superficie maximale au sol de 10 mètres carrés et d'une hauteur maximale de 3,2 mètres;
- d) des trous d'un diamètre maximal de 0,152 m effectués pour aménager une entrée de service;
- e) l'installation ou la fixation de matériel mécanique à l'arrière ou à un endroit non visible d'un bâtiment;
- f) le remplacement du matériau de couverture d'une toiture-terrasse, à l'exclusion du remplacement du matériau de couverture d'un toit à deux versants ou d'une toiture à la Mansard;
- g) l'aménagement paysager, y compris notamment les pavés d'allées piétonnes, à l'exclusion de la modification, de la construction ou de l'enlèvement de clôtures.

5(4) Malgré l'alinéa (1)b), une personne n'est pas tenue d'exiger un permis de patrimoine à l'égard des aménagements non visibles suivants, qui ne modifient pas les éléments caractéristiques :

- a) le remplacement d'une porte ou d'une fenêtre dans une ouverture déjà pratiquée, sans que l'ouverture ne soit agrandie ou réduite;
- b) la construction d'une terrasse, d'un escalier ordinaire ou d'un escalier de secours;
- c) la modification du bardage, à l'exclusion de la maçonnerie;
- d) la construction de clôtures.

5(5) Malgré l'alinéa (1)b), une personne n'est pas tenue d'exiger un permis de patrimoine à l'égard des aménagements de signalisation suivants :

- a) les affiches électorales;
- b) les affiches placées temporairement pour annoncer la mise en vente ou en location d'un bien ou d'une unité dans un secteur de conservation du patrimoine, étant entendu que les affiches de gestion immobilière ne sont pas visées par la dispense et nécessitent l'obtention d'un permis de patrimoine;
- c) la signalisation formelle et les avis publics affichés ou érigés en application des arrêtés de The City of Saint John et conformément à ceux-ci;
- d) les autocollants de fenêtre, à condition que la surface totale qu'ils occupent ne soit pas supérieure à 20 p. 100 de la fenêtre dans laquelle ils se trouvent ou que leur largeur ne dépasse pas 1 mètre, la plus petite de ces deux surfaces totales s'appliquant;
- e) une seule enseigne intérieure de fenêtre, illuminée d'un éclairage non intermittent d'une largeur maximale de 0,70 mètre et d'une hauteur maximale de 0,30 mètre.

DEMANDE DE PERMIS DE PATRIMOINE

6(1) La demande de permis de patrimoine est déposée auprès de l'agent du patrimoine.

6(2) L'agent du patrimoine examine dès sa réception chaque demande de permis de patrimoine, qui est considérée comme complète lorsqu'elle réunit les conditions suivantes :

- a) les renseignements qu'elle contient semblent suffisants pour que soit tranchée la conformité aux dispositions du présent arrêté;
- b) les renseignements qu'elle contient ont été examinés par un agent du patrimoine, qui les a jugés corrects à tous les égards importants;
- c) les droits de demande prescrits par le présent arrêté ont été versés intégralement.

6(3) La demande est présentée en la forme prescrite par le comité et est accompagnée de ce qui suit, le cas échéant :

- a) s'agissant d'un bâtiment existant ou d'une construction existante :
 - (i) un plan de situation qui indique les limites de la propriété et l'emplacement de l'aménagement proposé,

- (ii) des dessins en élévation, exécutés à l'échelle, indiquant la conception architecturale, les dimensions, les matériaux et la couleur de l'aménagement proposé,
 - (iii) des dessins, croquis ou photos « avant-après » indiquant tant la situation actuelle que la modification proposée;
- b) s'agissant d'un nouvel aménagement (édification sur terrain intercalaire), tous les documents nécessaires pour démontrer la compatibilité de l'aménagement avec le paysage de rue avoisinant, y compris notamment, le cas échéant :
 - (i) des plans de situation,
 - (ii) des coupes du bâtiment,
 - (iii) des détails d'architecture,
 - (iv) des spécifications et descriptions des matériaux qui seront utilisés,
 - (v) des dessins en élévation,
 - (vi) des plans d'étage;
- c) s'agissant d'une demande de démolition :
 - (i) des photos de chaque façade du bien;
 - (ii) une copie de l'énoncé d'importance afférent au bien, s'il existe un tel énoncé;
 - (iii) s'agissant d'une demande faite au titre des sous-alinéas 9(1)a)(i) ou (ii), des observations écrites détaillées énonçant l'argument du demandeur.

6(4) Le comité, ou l'agent du patrimoine, si ce dernier y est autorisé, délivre un permis de patrimoine si le projet d'aménagement est conforme aux normes prescrites aux articles 7, 8, ou 9, selon le cas.

6(5) Le comité peut refuser de délivrer un permis de patrimoine s'il estime que les plans d'aménagement et le devis descriptif accompagnant la demande sont incomplets ou démontrent que le projet de conservation ou d'aménagement, à l'exclusion des travaux de démolition, est incompatible avec les normes prescrites aux articles 7 ou 8, selon le cas.

6(6) Le permis de patrimoine est valide pour une période de deux ans à partir de la date de sa délivrance.

6(7) Sur demande du titulaire de permis présentée de la manière prescrite par le comité, ce dernier, ou l'agent du patrimoine, si ce dernier y est autorisé, renouvelle un permis de patrimoine pour une période maximale d'un an à partir de sa date d'expiration initiale, si l'aménagement est conforme aux conditions énoncées dans le présent arrêté.

6(8) Le permis de patrimoine ne peut être renouvelé qu'une seule fois.

6(9) Le comité, ou l'agent du patrimoine, si ce dernier y est autorisé, donne un avis écrit du renouvellement du permis de patrimoine à son titulaire.

6(10) Le permis de patrimoine qui est expiré est réputé révoqué.

NORMES RELATIVES À LA CONSERVATION DES BÂTIMENTS EXISTANTS

7 Dans les secteurs de conservation du patrimoine, tout aménagement, à l'exclusion des travaux de démolition et des nouveaux aménagements (édifications sur terrain intercalaire), doit respecter les normes prescrites dans les *Normes et lignes directrices pour la conservation des lieux patrimoniaux au Canada*.

NORMES RELATIVES AUX NOUVEAUX AMÉNAGEMENTS (ÉDIFICATIONS SUR TERRAIN INTERCALAIRE)

8(1) Sous réserve de l'article 8.1, dans les aires de conservation du patrimoine, tout aménagement, à l'exclusion des travaux de démolition, doit être conforme aux règlements suivants.

Les définitions qui suivent s'appliquent à l'article 9.

« bâtiments avoisinants ou constructions avoisinantes » Les bâtiments existants ou constructions existantes qui donnent sur le même côté de la ou des rues que l'aménagement et qui sont adjacents ou qui se trouvent à proximité immédiate de l'aménagement. (*neighbouring buildings or structures*)

« rapport de la cour latérale » Le rapport entre la largeur de la cour latérale mesurée à partir de la limite latérale du lot jusqu'aux parties du bâtiment ou de la construction qui sont le plus près de cette limite et la largeur totale du lot. (*side yard ratio*)

- a) Lorsque les marges de retrait des bâtiments avoisinants ou des constructions avoisinantes sont uniformes, la marge de retrait de l'aménagement doit être conforme à ces marges.
- b) Lorsque les marges de retrait des bâtiments avoisinants ou des constructions avoisinantes ne sont pas uniformes :

- (i) si la marge de retrait de l'un des bâtiments avoisinants ou de l'une des constructions avoisinantes est la même que celle du bâtiment ou de la construction qui y est adjacent ou qui se trouve à proximité immédiate, la marge de retrait de l'aménagement doit être conforme à celle-ci;
 - (ii) si la marge de retrait du bâtiment avoisinant ou de la construction avoisinante se trouvant de l'un ou l'autre côté de l'aménagement n'est pas la même que celle des bâtiments ou des constructions qui y sont adjacents ou qui se trouvent le plus près de l'aménagement, la marge de retrait de l'aménagement doit être conforme à celle de l'un ou l'autre de ces bâtiments avoisinants ou constructions avoisinantes;
 - (iii) dans le secteur de conservation du patrimoine de l'avenue Douglas, la marge de retrait applicable aux nouveaux aménagements intercalaires s'aligne avec le dernier bâtiment de la période historique (1853 à 1940) à avoir occupé l'emplacement, le comité ou l'agent du patrimoine pouvant permettre qu'une marge de retrait soit différente lorsqu'elle s'harmonise avec l'apparence et le rythme du paysage historique de la rue (arrêté 93-241).
- c) Le rapport de la cour latérale de chaque côté d'un aménagement doit être conforme au rapport de la cour latérale relatif de l'un ou l'autre des bâtiments avoisinants ou des constructions avoisinantes de façon à maintenir la configuration des espaces non bâtis et des espaces occupés.
- d) La hauteur d'un aménagement ne doit pas être inférieure à 80 p. 100 ou supérieure à 120 p. 100 de la hauteur moyenne des bâtiments existants, peu importe l'âge, situés des deux côtés de l'îlot dans lequel les nouveaux aménagements sont situés, exception faite de ce qui suit :
- (i) la hauteur additionnelle ne doit en aucun cas dépasser 140 p. 100 de la hauteur de tous les bâtiments situés des deux côtés de l'îlot dans lequel le projet d'aménagement est situé, étant entendu qu'aucun aménagement ne peut traverser une ligne verticale commençant à un point situé à 5 pieds (1,5 mètre) au-dessus de la bordure du côté opposé de la rue et projetant au-delà de l'extrémité de la corniche ou du parapet du toit qui est par ailleurs conforme à la hauteur maximale permise de 120 p. 100 de la hauteur calculée pour le projet d'aménagement;
 - (ii) si le projet d'aménagement est situé sur un terrain d'angle, la hauteur additionnelle établie entre 120 p. 100 et 140 p. 100 ne doit pas traverser la ligne définie à l'alinéa (i) établie à partir d'un point situé à 5 pieds (1,5 mètre) au-dessus de la bordure de l'une ou l'autre des rues.

- e) Le rapport hauteur/largeur des façades d'un aménagement ne peut varier de plus de 10 p. 100 de celui des façades des bâtiments existants construits avant 1915, non transformés par la suite, situés dans le même îlot que l'aménagement et donnant sur le même côté de la rue.
- f) Malgré le paragraphe e), lorsque le bâtiment proposé ou la construction proposée est trop large pour être conforme au rapport hauteur/largeur fixé au paragraphe e), le comité peut délivrer un permis de patrimoine à son égard si la parcelle de terrain est d'une largeur supérieure à la largeur moyenne des terrains à construire dans le même îlot, à condition que le promoteur divise esthétiquement la façade du bâtiment ou de la construction en coupes ou en baies conformes au rapport hauteur/largeur requis au moyen de pilastres ou d'autres techniques de conception esthétique.
- g) Le rapport ouvertures dans la façade/mur permis pour la façade d'un aménagement ne peut varier de plus de 10 p. 100 de celui des façades des bâtiments existants de même type ou conception esthétique construits avant 1915, non transformés par la suite, situés dans le même îlot que l'aménagement et donnant sur le même côté de la rue.
- h) Les dimensions des fenêtres d'un aménagement ne peuvent varier de plus de 10 p. 100 de celles des fenêtres des bâtiments existants de même type ou conception esthétique construits avant 1915, non transformés par la suite, situés dans le même îlot que l'aménagement et donnant sur le même côté de la rue.
- i) La direction, la pente et la disposition de la toiture ou des toitures d'un aménagement doivent être conformes à celles des bâtiments existants de même type ou conception esthétique construits avant 1915, non transformés par la suite, situés dans le même îlot que l'aménagement et donnant sur le même côté de la rue.
- j) La dimension, la forme et la proéminence d'un porche, du ressaut d'une entrée ou d'un encadrement de porte d'un aménagement sont semblables à celles des bâtiments existants de même type ou conception esthétique construits avant 1915, non transformés par la suite, situés dans le même îlot que l'aménagement et donnant sur le même côté de la rue.
- k) Les matériaux et la finition traditionnels des façades extérieures d'un aménagement doivent s'harmoniser avec ceux du ou des bâtiments existants de même type ou conception esthétique construits avant 1915, non transformés par la suite, situés dans le même îlot que l'aménagement et donnant sur le même côté de la rue. Le comité peut permettre l'utilisation de matériaux modernes quand leur apparence s'harmonise avec celle des matériaux et de la finition traditionnels.

Lorsqu'il examine les projets en vue de déterminer la compatibilité des matériaux proposés avec les matériaux traditionnels, le comité doit notamment tenir compte des éléments suivants :

- le détail d'assemblage de la construction proposée et le degré auquel il s'harmonise à l'apparence des éléments d'origine;
- le profil en travers de l'aménagement proposé et le degré auquel il s'harmonise aux éléments d'origine;
- la finition et la texture de l'aménagement proposé et le degré auquel elles s'harmonisent aux éléments d'origine;
- lorsque le coût est un facteur, les coûts d'exploitation à long terme et du cycle de vie ainsi que les coûts d'énergie inévitables, la production de déchets, la création d'emploi et les retombées doivent être utilisés dans le calcul des coûts plutôt que le coût des investissements à court terme.

8(2) Dans le cas où aucune construction ni aucun bâtiment ne se trouve dans le même îlot que l'aménagement, les normes prévues au présent article sont réputées se rapporter à un bâtiment ou à une construction qui se trouve à proximité immédiate de l'aménagement.

8(3) Les normes prévues au présent article ne s'appliquent pas aux aménagements en milieu d'îlot qui ne donnent pas sur une rue.

8.1(1) L'article 8 ne s'applique pas à l'érection d'un bâtiment ou d'une partie de bâtiment sur une ou plusieurs parcelles de terrain désignées par les numéros d'identification (NID) 55178784, 55088595, 55184022, 55184014, 55184006, 55202923 et 00009522.

8.1(2) Tout bâtiment ou toute partie de bâtiment érigé sur une ou plusieurs parcelles de terrain indiquées au paragraphe (1) doit respecter les dispositions suivantes :

- a) toute marge de retrait d'une cour avant ne doit pas être supérieure à 3 mètres;
- b) la marge de retrait de la cour latérale ne doit pas être inférieure à 1 mètre ni supérieure à 2,5 mètres;
- c) la hauteur maximale est de 60 mètres et est articulée de parties inférieure, médiane et supérieure, ainsi que le montrent les plans joints à l'annexe 1, et le bâtiment doit inclure, à 15 mètres de hauteur (à 10 p. 100 près), une retranche d'au moins 1,5 mètre par rapport à la façade inférieure;
- d) les façades du bâtiment situé le long de la place King Sud et de la rue Sydney doivent être articulées de trois coupes verticales au moyen d'une baie centrale décalée qui s'harmonise avec les bâtiments adjacents situés le long de la place King Sud, l'aménagement des façades

sur rue du bâtiment devant comporter un détail d'architecture horizontal qui reflète l'élévation des lignes de corniches du bâtiment du Théâtre Impérial et du bâtiment Admiral Beatty;

- e) les baies de fenêtres pratiquées dans les façades des bâtiments doivent être conformes aux emplacements et aux proportions figurant dans les plans joints à l'annexe 1;
- f) le bâtiment doit avoir un toit-terrasse qui s'harmonise avec les bâtiments adjacents situés le long de la place King Sud;
- g) l'entrée au bâtiment donnant sur la façade de la place King Sud doit être composée de trois portes centrales à deux vantaux munies d'impostes et inclure un auvent, ainsi que le montrent les plans joints à l'annexe 1;
- h) à la base du bâtiment, les façades et les éléments extérieurs du bâtiment doivent être conçus de matériaux de grande qualité, y compris notamment de la pierre, des matériaux de maçonnerie ou du métal au fini en bronze obtenu par le traitement anodique, ou une combinaison de ces matériaux, tandis que des matières transformées modernes, y compris des panneaux architecturaux en béton manufacturé, peuvent servir à l'aménagement des façades au-dessus de la base à condition d'être de même apparence que les matériaux utilisés sur les façades de la base.

8.2(1) Malgré le paragraphe 8(1)d), s'agissant de tout aménagement réalisé sur une ou plusieurs des parcelles de terrain désignées par les numéros d'identification (NID) 00011130, 55102438, 55102446, 00018598 ou 55102453, la hauteur maximale permise de toute façade donnant sur la rue Canterbury est de 22,50 mètres et, malgré les alinéas 8(1)d)(i) et (ii), une hauteur supplémentaire de plus de 120 p. 100 doit être décalée d'au moins 2,29 mètres par rapport à toute limite de propriété donnant sur la rue Canterbury.

8.2(2) Malgré le paragraphe 8(1)d), s'agissant de tout aménagement réalisé sur une ou plusieurs des parcelles de terrain désignées par les numéros d'identification (NID) 00011130, 55102438, 55102446, 00018598 ou 55102453, la hauteur maximale permise de toute façade donnant sur la rue Grannan est de 25 mètres et les sous-alinéas 8(1)d)(i) et (ii) sont réputés ne s'appliquer à aucune façade donnant sur cette rue.

DÉMOLITION, ENLÈVEMENT OU DÉPLACEMENT

9(1) Il est interdit, dans un secteur de conservation du patrimoine, de démolir, d'enlever ou de déplacer un bâtiment ou une construction, en tout ou en grande partie, et nul permis de patrimoine visant un tel aménagement ne peut être délivré à cet égard tant que l'une des mesures suivantes n'aura pas été prise :

a) le comité a jugé que le bâtiment ou la construction n'a aucun bienfait d'intérêt public selon les critères suivants :

(i) il ne contribue pas à la valeur patrimoniale de son secteur de conservation du patrimoine et de la ville de par le caractère unique ou l'uniformité de son type, son style, ses matériaux de construction ou son mode de construction, ou de par une combinaison de ces caractéristiques,

(ii) il a perdu une si grande part de son intégrité pour ce qui est de son état, de ses matériaux, de sa conception et du savoir-faire de son artisan que sa remise en état ou sa conservation intégrée n'est plus une solution viable,

(iii) il s'agit d'un bâtiment accessoire qui est dangereux pour la sécurité du public du fait de son état de délabrement ou de son manque de solidité,

(iv) il s'agit d'un bâtiment accessoire construit il y a 40 ans tout au plus;

b) le propriétaire a conclu un contrat avec un agent immobilier qui est un Realtor® et, en application du paragraphe (3), a mis en vente le bâtiment ou la construction et le terrain connexe en les inscrivant auprès d'un Service inter-agences® et, n'ayant reçu aucune offre raisonnable, n'a pas signé une convention en vue de vendre le bien.

9(2) Le propriétaire qui fait une demande au titre de l'alinéa (1)a) consent à ce que l'agent du patrimoine affiche un avis public, établi en la forme figurant au diagramme 2 qui fait partie intégrante du présent arrêté, sur la façade sur rue du bien ou devant celle-ci pendant au moins 30 jours avant la date de l'examen de la demande par le comité.

9(3) Le propriétaire qui fait une demande au titre de l'alinéa (1)b) doit :

a) consentir à une durée d'inscription d'au moins 12 mois consécutifs en conformité avec toutes les conditions énoncées à l'article 10;

b) avant de conclure un contrat avec un Service inter-agences, donner au comité pour qu'il les examine trois copies intégrales des analyses comparatives du marché effectuées à l'égard du bien pour déterminer le prix courant maximal, ainsi que le prévoit l'article 11;

c) consentir à l'affichage sur le site Web de The City of Saint John d'un lien menant à l'inscription pendant la durée de l'inscription;

- d) consentir à ce que l'agent du patrimoine affiche sur la façade sur rue du bien ou devant celle-ci, pour la durée de l'inscription, un avis public établi en la forme figurant au diagramme 3 qui fait partie du présent arrêté.

9(4) L'inscription mentionnée à l'alinéa (1)b) doit être établie en la forme principalement utilisée par les agents immobiliers qui sont des Realtors® dans la ville et doit réunir les conditions suivantes :

- a) être faite auprès d'un agent immobilier qui est un Realtor®;
- b) être faite auprès du Service inter-agences®;
- c) respecter les règles et les règlements de la Saint John Real Estate Board relativement au Service inter-agences® ainsi que ses politiques concernant la présentation appropriée du bien aux fins de commercialisation;
- d) contenir au moins une photo représentant de manière claire et précise le bien mis en vente ainsi que ses éléments caractéristiques d'un lieu du patrimoine;
- e) préciser dans sa description du bien qu'il s'agit d'un bien patrimonial désigné et qu'elle est faite suivant une demande de permis de patrimoine pour démolition.

9(5) Pour l'application du présent arrêté, il est interdit de conclure un contrat de courtage exclusif auprès d'un agent immobilier qui est un Realtor®.

9(6) Malgré le paragraphe 6(6), un permis de patrimoine pour démolition est valide pour une période maximale de 180 jours à compter de la date de sa délivrance.

9(7) Malgré le paragraphe 6(7), sur demande écrite présentée à un agent du patrimoine, un permis de patrimoine pour démolition peut être renouvelé une seule fois pour une période supplémentaire maximale de 180 jours à compter de la date de son échéance.

9(8) Dès la délivrance d'un permis de patrimoine autorisant la démolition, l'enlèvement ou le déplacement de tout ou partie d'un bâtiment ou d'une construction conformément au présent article, le comité prend les mesures suivantes à ses propres frais :

- a) il fait publier un avis portant que l'approbation a été donnée pour la démolition, l'enlèvement ou le déplacement du bâtiment ou de la construction en question, indiquant la date de la délivrance du permis de patrimoine et soulignant le droit d'origine législative d'interjeter appel de sa décision, la publication se faisant

- (i) soit sur le site Web de la municipalité,

(ii) soit dans un journal à grand tirage destiné à la population de la ville;

b) il donne au ministre chargé de l'application de la *Loi* avis de la délivrance du permis de patrimoine.

9(9) Un bien ayant fait l'objet d'une demande de permis de patrimoine visant la démolition que le comité a rejetée ne peut faire l'objet d'une nouvelle demande de permis visant la démolition avant l'expiration d'une période d'au moins deux ans suivant la date du rejet précédent de la demande, à moins que la nouvelle demande ne soit sensiblement différente de la précédente.

Conditions applicables aux demandes assorties d'une inscription auprès du Service inter-agences®

10(1) Le propriétaire d'un bien qui, au cours de la période d'inscription du bien, accepte une offre d'achat visant le bien doit, dans les 10 jours ouvrables qui suivent, donner un avis écrit au comité de cette acceptation de l'offre et de la date de clôture prévue pour la vente du bien.

10(2) La demande de permis de patrimoine visant la démolition du bien est considérée comme révoquée après l'achèvement de la vente de ce bien mentionnée au paragraphe (1).

10(3) Au terme de la période d'inscription, le propriétaire doit :

- a) donner à l'agent du patrimoine la liste complète des offres raisonnables faites à l'égard du bien;
- b) donner au comité un avis écrit du fait que le bien n'a pas été vendu, le cas échéant.

10(4) Si le bien n'a pas été vendu, le comité peut refuser de délivrer un permis de patrimoine autorisant la démolition, l'enlèvement ou le déplacement d'un bâtiment ou d'une construction, en tout ou en grande partie, s'il estime qu'une ou plusieurs offres raisonnables ont été faites à l'égard du bien pendant la période d'inscription et ont été refusées.

Analyse comparative du marché

11 Les analyses comparatives du marché sont effectuées et fournies par l'agent responsable de l'inscription et par deux autres agents, chacun étant désigné Realtor® et étant affilié à une autre agence ou société que celle de l'agent responsable de l'inscription. Les trois analyses comparatives du marché servent à établir un prix moyen pour le bien en question qui correspond au prix courant maximal déterminé selon l'alinéa 9(3)b). Le comité, s'il estime après examen que les analyses obtenues sont insatisfaisantes, peut obtenir à ses propres frais, d'un autre agent désigné Realtor®, une quatrième analyse comparative du marché aux conditions énumérées ci-dessus.

Démolition illégale

12 Dans le cas où le comité ou l'agent du patrimoine considère qu'un bâtiment ou une construction a été démoli ou est en voie de l'être sans qu'un permis de patrimoine ait été délivré pour sa démolition et qu'un ordre est donné en vertu des paragraphes 83(2) et (3) de la *Loi*, le comité peut ordonner la reconstruction minutieuse de l'enveloppe et des accessoires externes du bâtiment ou de la construction et assortir cet ordre des conditions qu'il estime nécessaires.

SÉCURITÉ

13(1) Le présent arrêté n'a aucune incidence sur la démolition d'un bâtiment effectuée en application d'un avis donné en vertu des paragraphes 131(2), (3) ou 139(1) de la *Loi sur la gouvernance locale*, L.N.-B. 2017, ch. 18.

13(2) Le présent arrêté n'a aucune incidence sur la démolition d'un bâtiment effectuée en vertu des alinéas 137(1)b) ou c) ou du paragraphe 139(2) de la *Loi sur la gouvernance locale*, L.N.-B. 2017, ch. 18.

DROITS

14 Les droits de demande prescrits par le présent arrêté sont énumérés à l'annexe K.

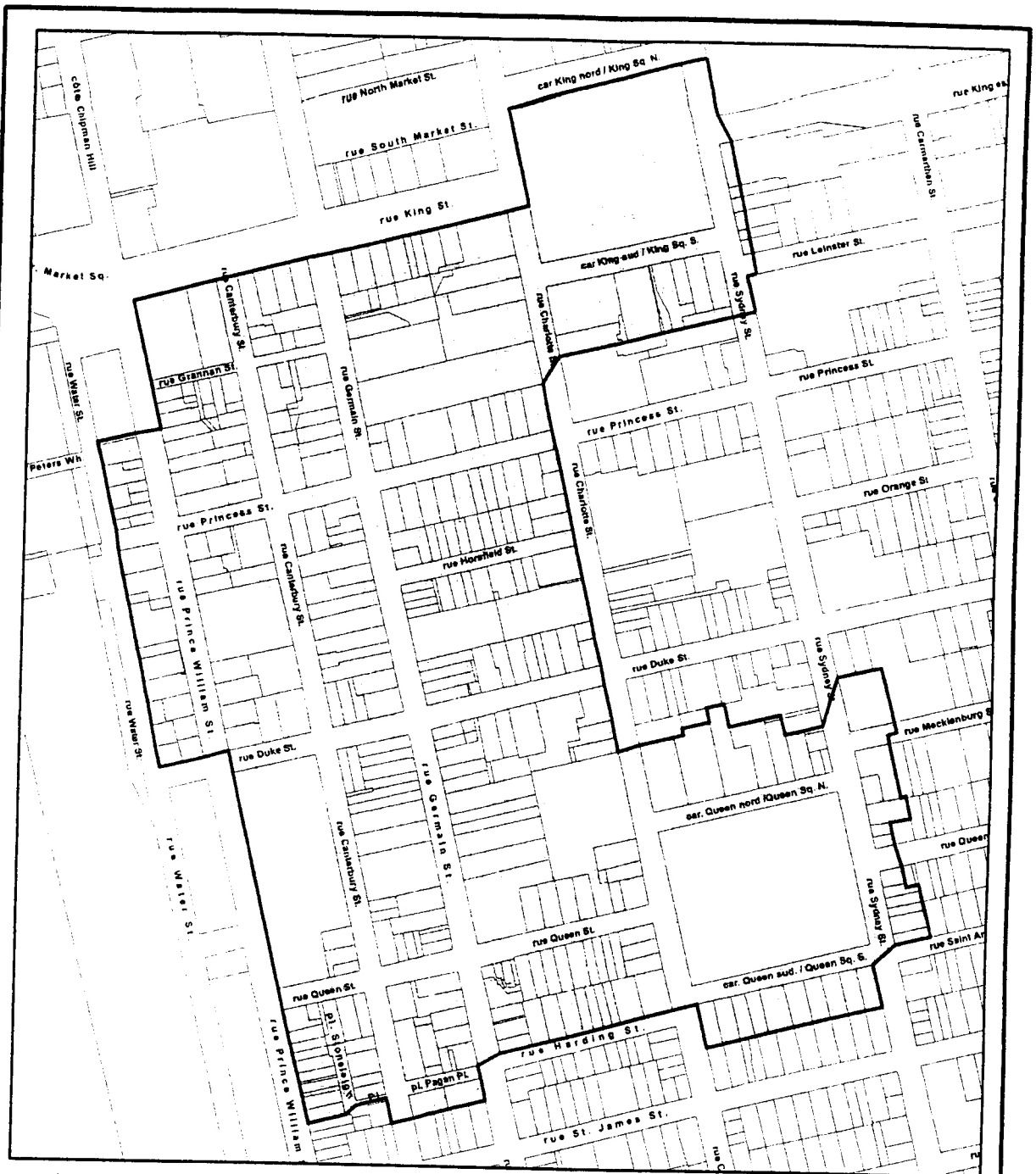
DISPOSITION TRANSITOIRE

15(1) L'arrêté de The City of Saint John intitulé *Les aires de conservation du patrimoine de Saint John*, soit l'arrêté n° HC-1, pris et édicté le _____ 20__, ensemble ses modifications, est abrogé à l'entrée en vigueur du présent arrêté.

15(2) Le présent arrêté entre en vigueur le _____ 20__.

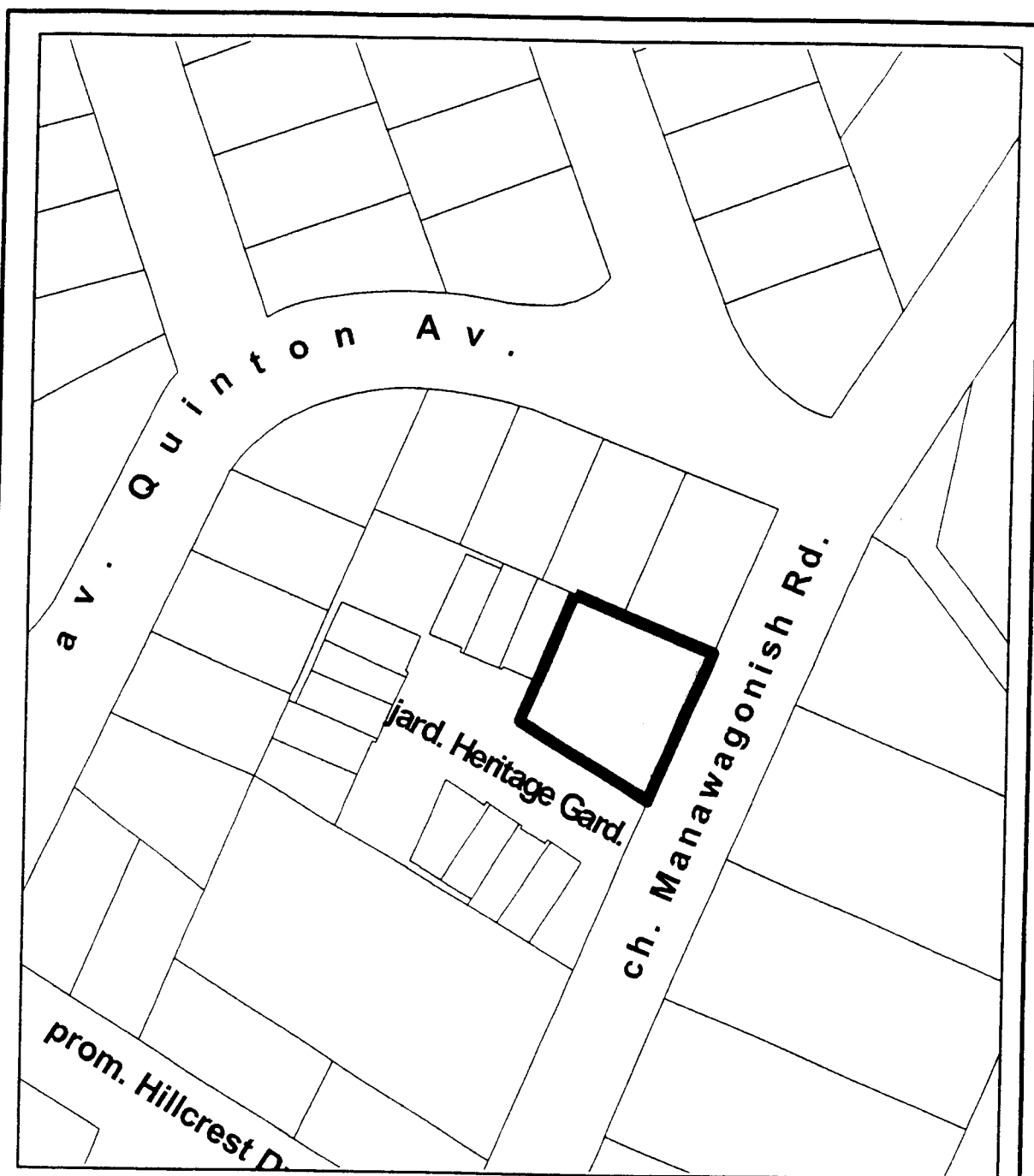
15(3) Les permis délivrés en vertu de l'article 8 de l'arrêté intitulé *Les aires de conservation du patrimoine de Saint John*, ensemble ses modifications, après le _____ 20__ sont réputés prorogés et continuer d'exister sous le régime du présent arrêté, sous réserve de toutes les conditions auxquelles serait assorti un permis délivré en vertu de l'article 7 du présent arrêté, sauf si le présent arrêté ne les requiert plus.

15(4) Les permis délivrés en vertu des articles 9 et 10 de l'arrêté intitulé *Les aires de conservation du patrimoine de Saint John*, ensemble ses modifications, après le _____ 20__ sont réputés prorogés et continuer d'exister sous le régime de l'arrêté en vertu duquel ils ont été délivrés.



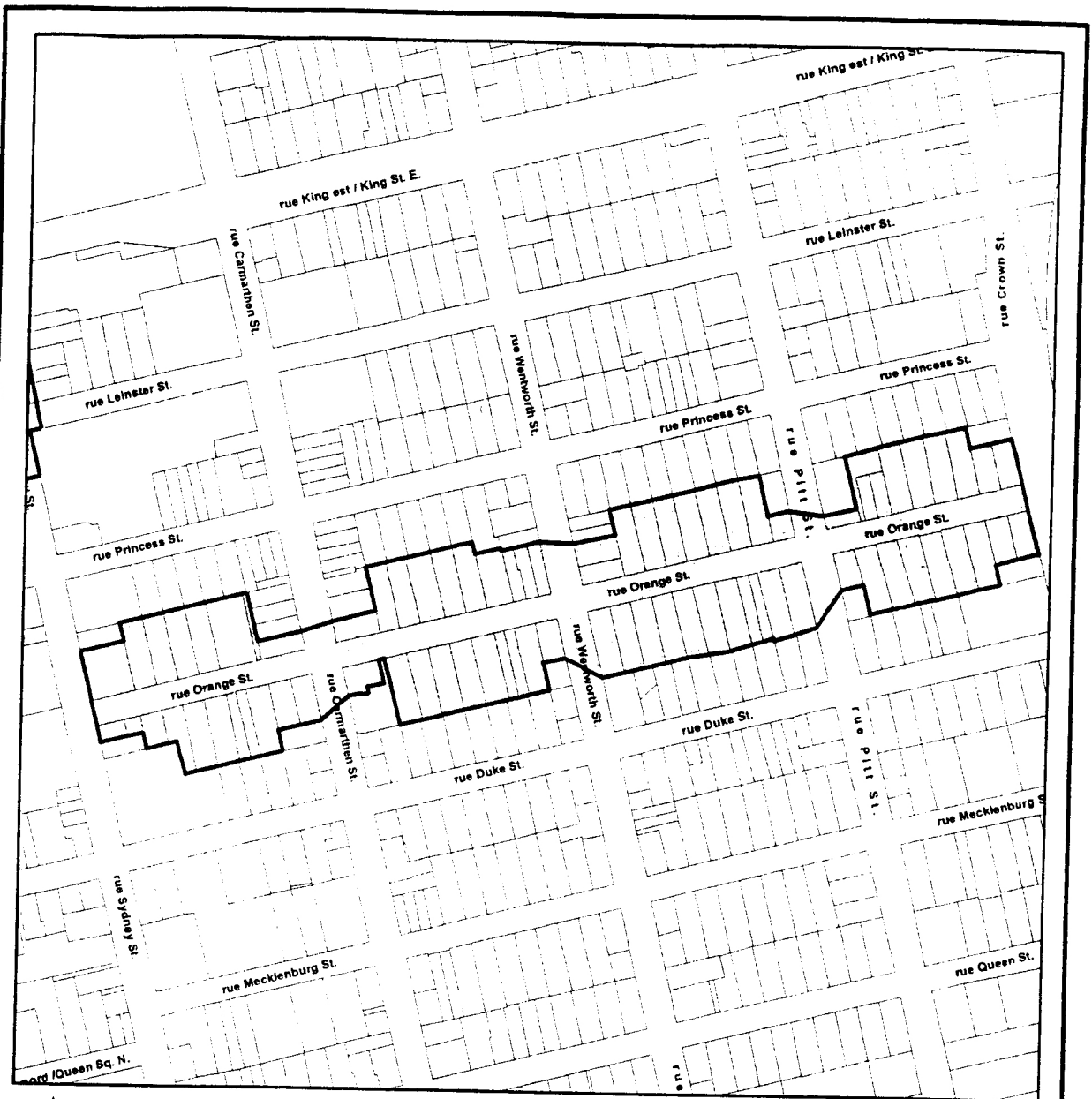
Annexe « A » - Secteur de conservation du patrimoine de Trinity Royal

Comprend les bâtiments, les constructions et les terrains situés dans les limites indiquées dans la présente annexe.



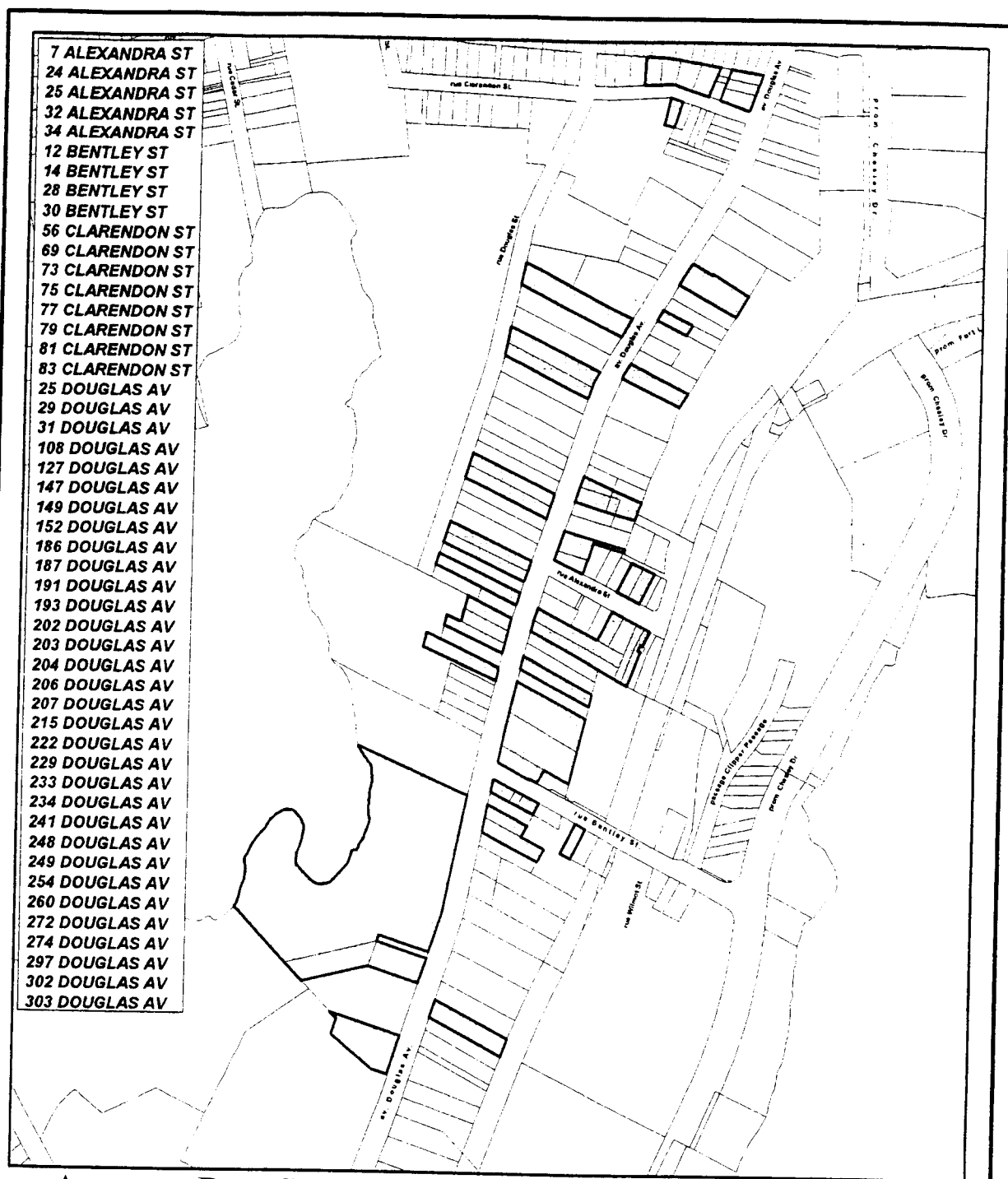
**Annexe « B » - Secteur de conservation du patrimoine de la
Ferme Quinton**

*Comprend les bâtiments, les constructions et les terrains situés au
1260, chemin Manawagonish.*



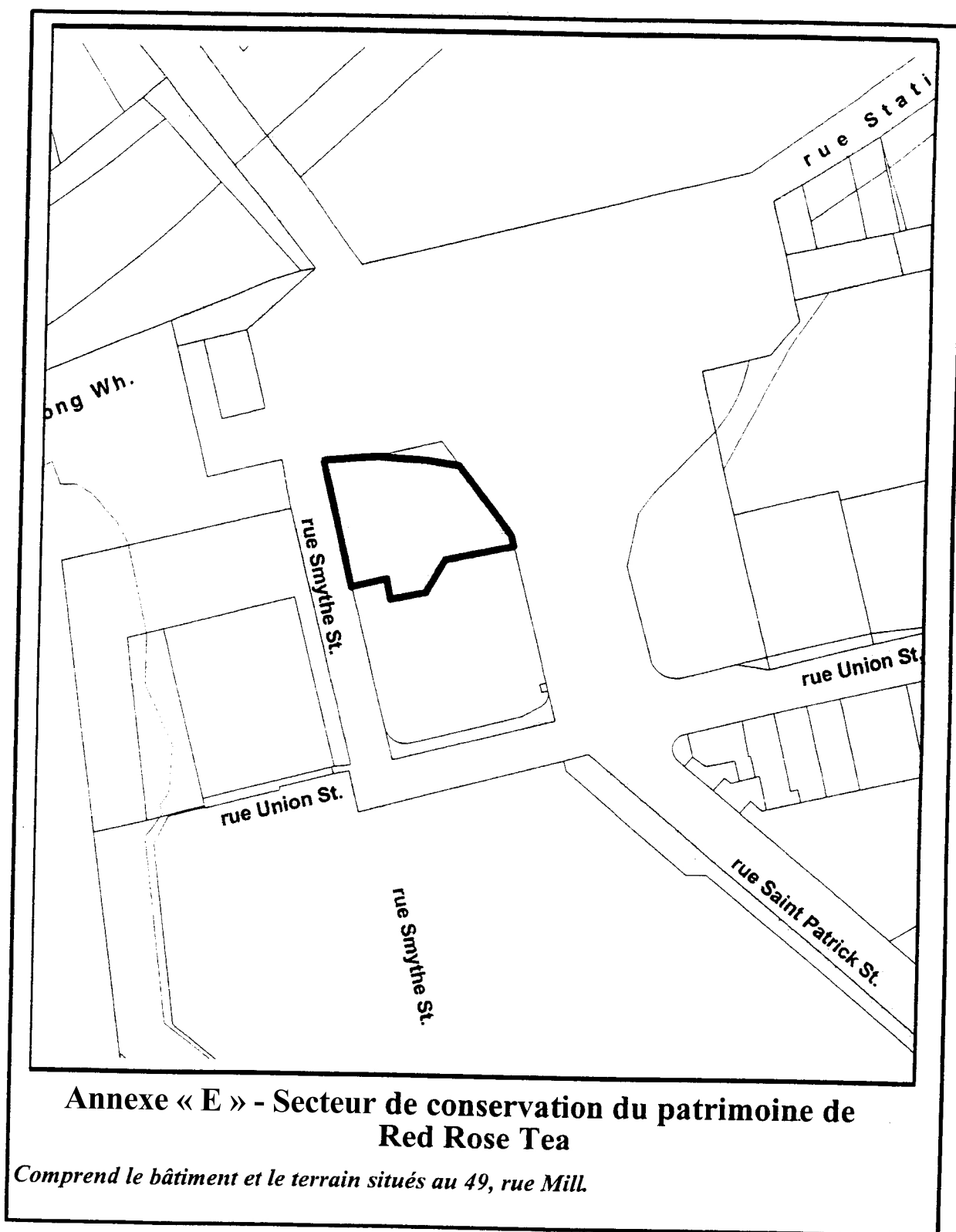
Annexe « C » - Secteur de conservation du patrimoine de la rue Orange

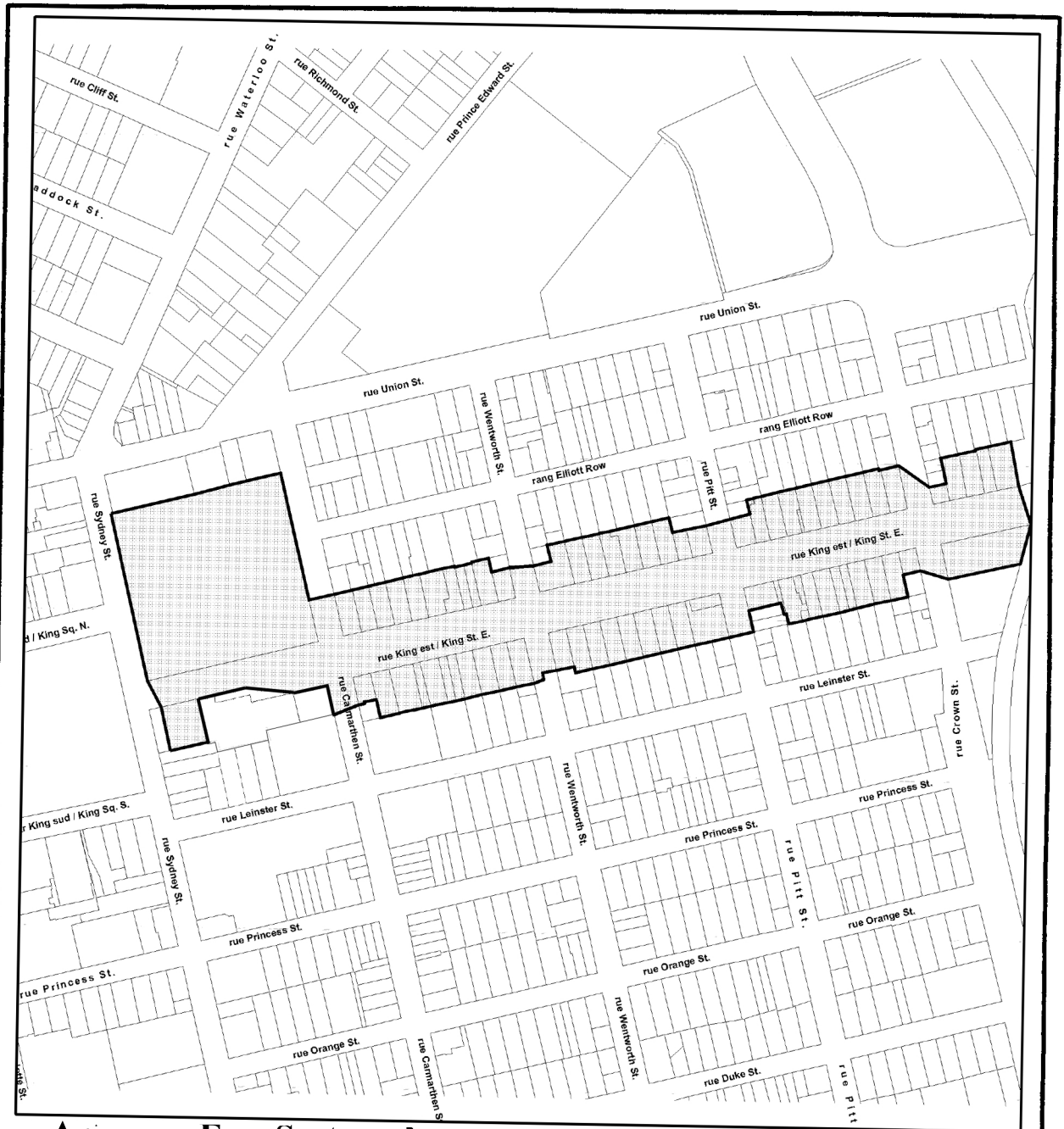
Comprend les bâtiments, les constructions et les terrains donnant sur la rue Orange, délimités à l'est par la rue Crown, à l'ouest, par la rue Sydney, au nord, par la limite arrière de tous les terrains donnant sur la rue Orange, au sud, par la limite arrière de tous les terrains donnant sur la rue Orange et par tous les bâtiments d'angle des rues Carmarthen, Wentworth et Pitt dont la façade latérale donne sur la rue Orange, y compris les deux bâtiments sis au 114, rue Wentworth et au 116, rue Wentworth.



Annexe « D » - Secteur de conservation du patrimoine de l'avenue Douglas

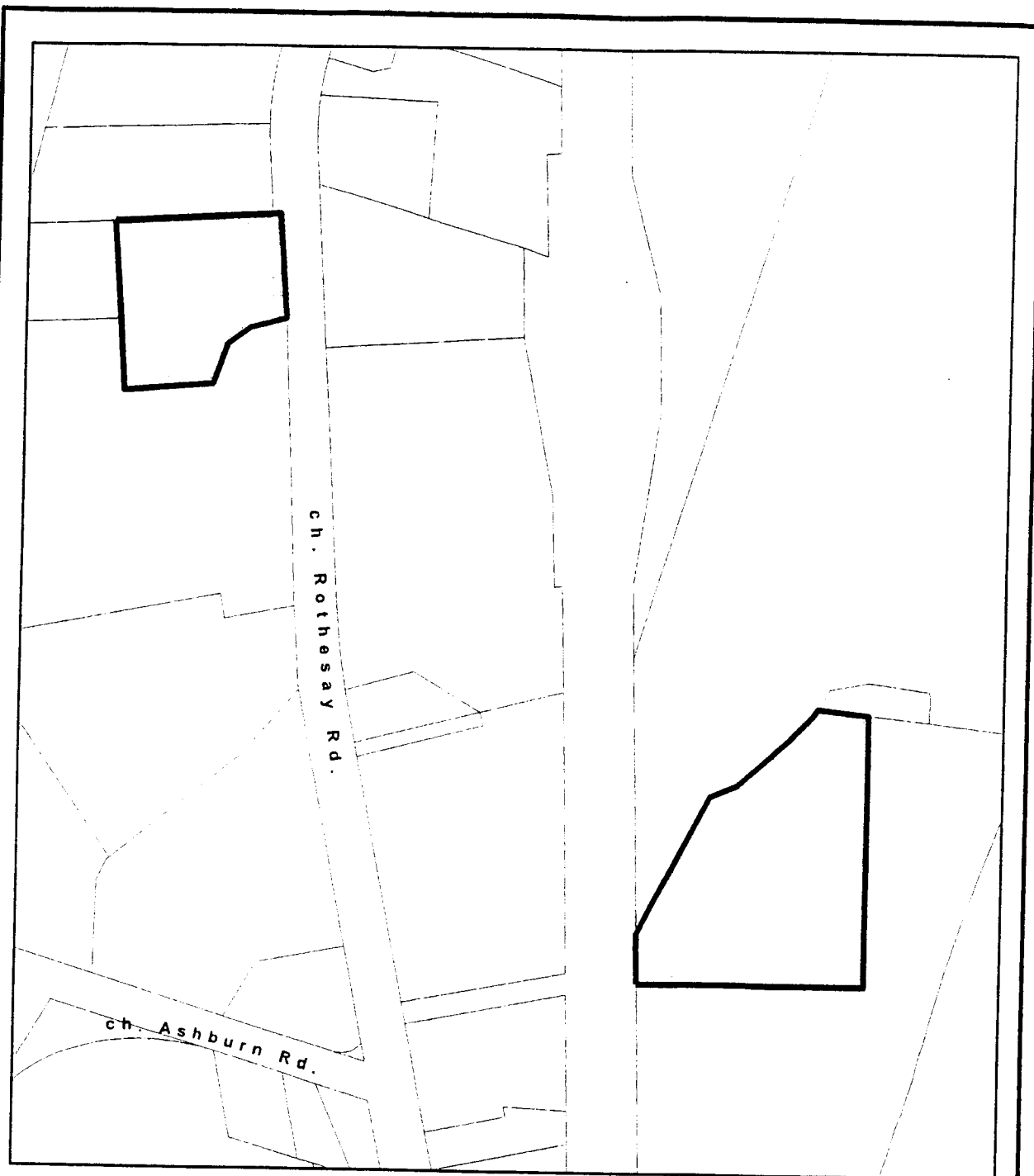
Comprend les bâtiments, les constructions et les terrains illustrés et énumérés dans la présente annexe.





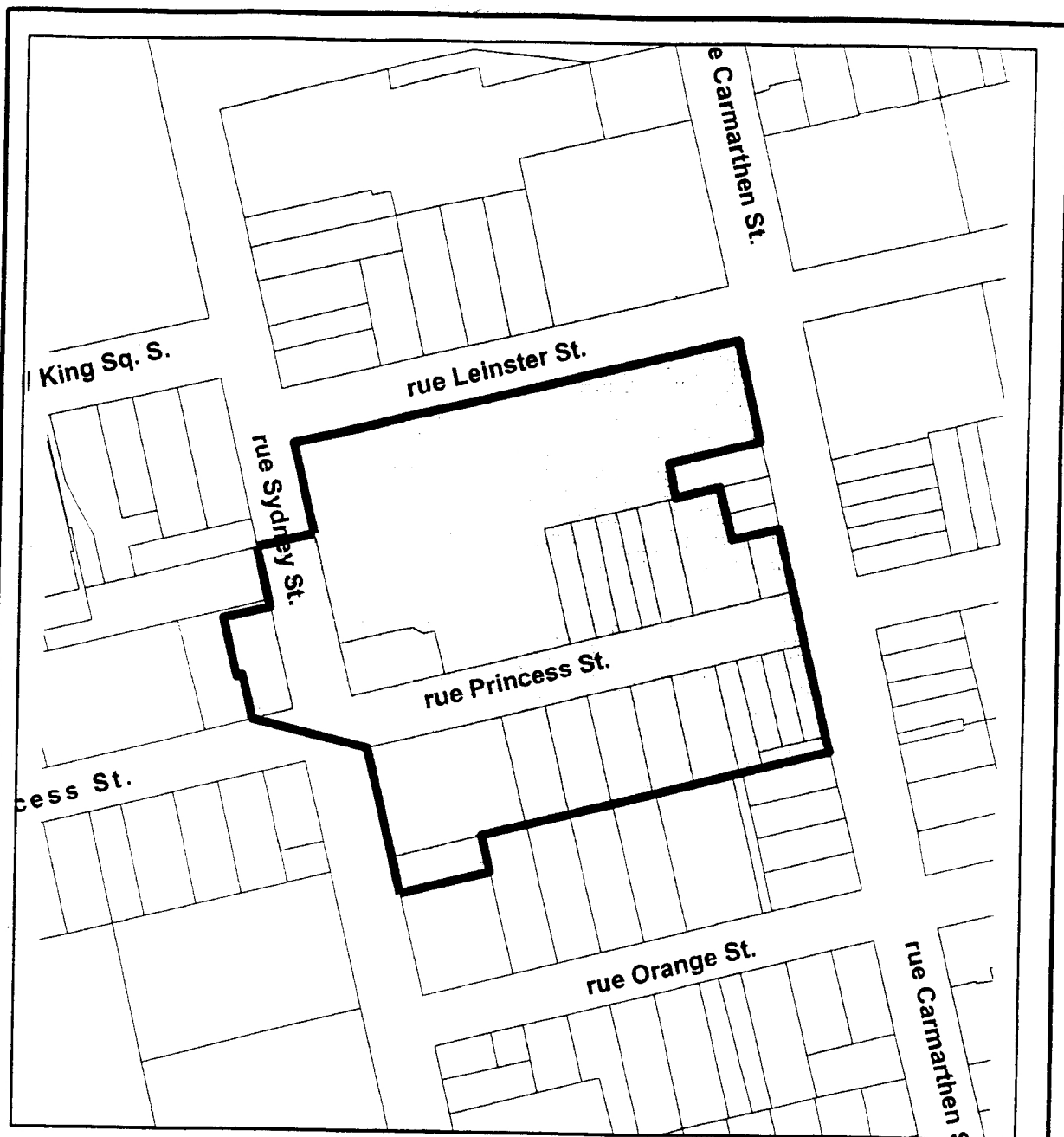
Annexe « F » - Secteur de conservation du patrimoine de la rue King Est

Comprend les bâtiments, les constructions et les terrains donnant sur les deux côtés de la rue King Est, délimités à l'est par la baie Courtenay, à l'ouest, par la rue Sydney, au nord, par la limite arrière de tous les terrains donnant sur la rue King Est, au sud, par la limite arrière de tous les terrains donnant sur la rue King Est et par tous les bâtiments d'angle des rues Sydney, Carmarthen, Wentworth, Pitt et Crown dont la façade latérale donne sur la rue King Est.



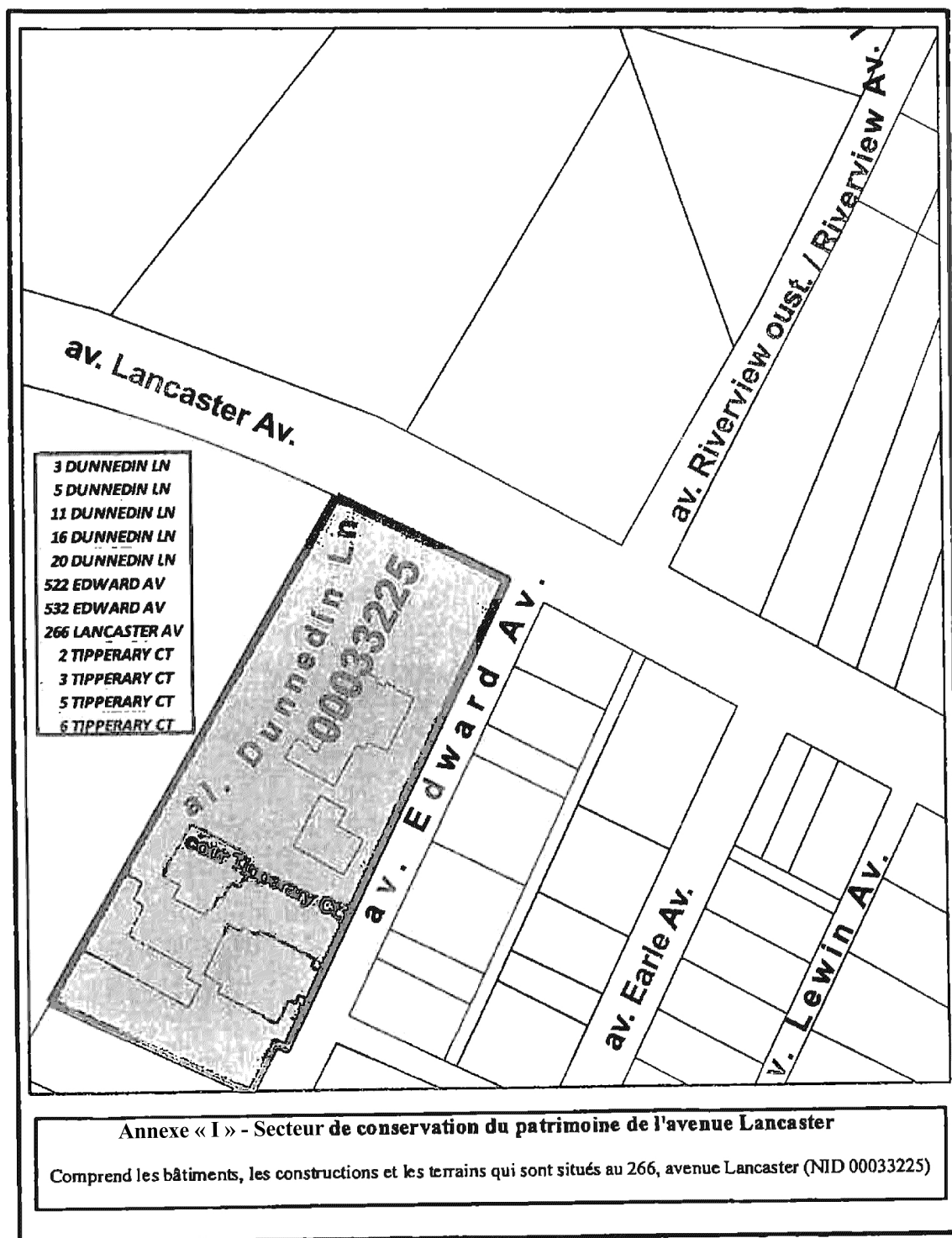
**Annexe « G » - Secteur de conservation du patrimoine de
Brookville-Torryburn**

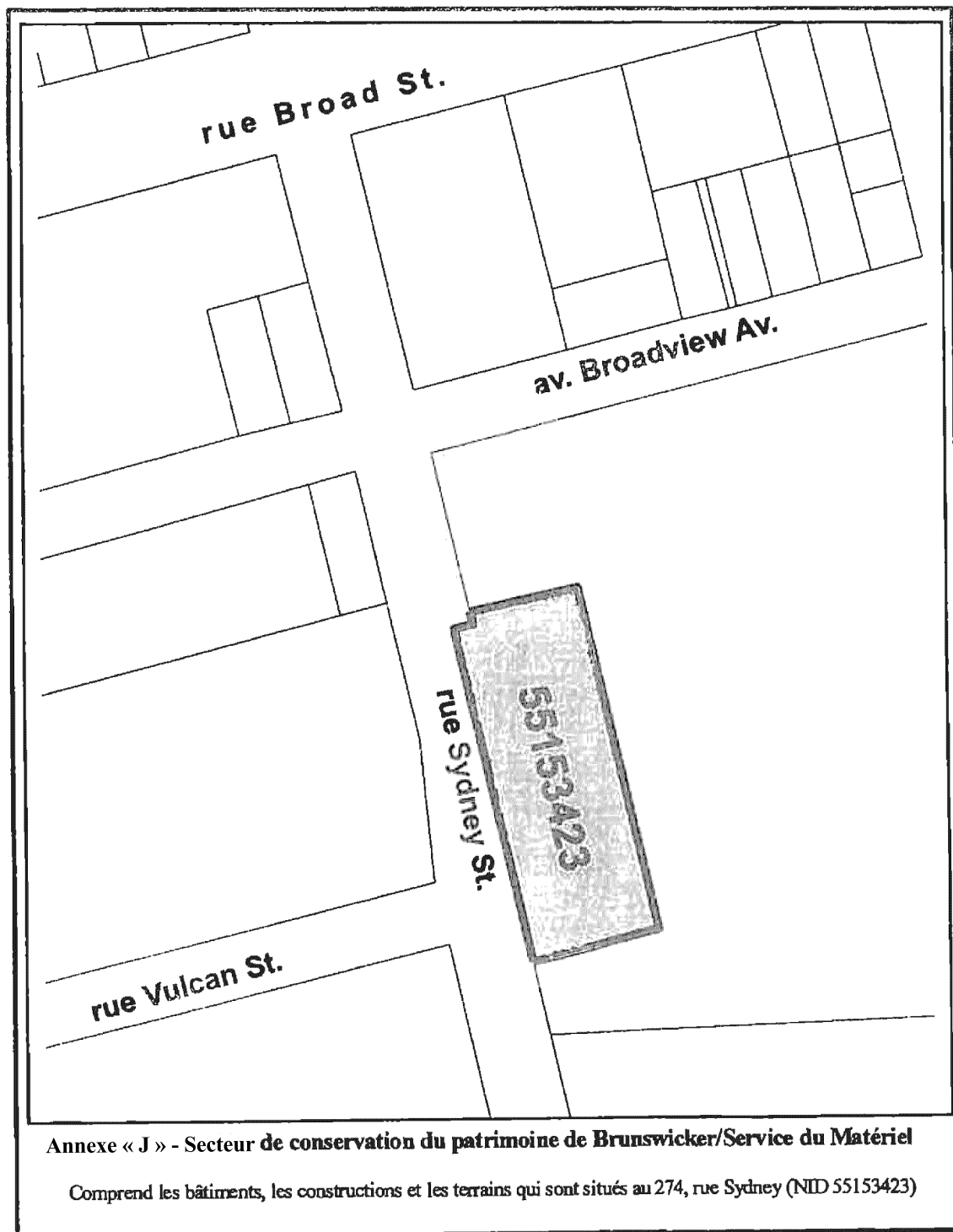
*Comprend les bâtiments, les constructions et les terrains situés au 1020, chemin Rothesay et
au 1107, chemin Rothesay.*



Annexe « H » - Secteur de conservation du patrimoine de la rue Princess

Comprend les bien-fonds, les constructions et les terrains donnant sur les deux côtés de la rue Princess, délimités à l'ouest par la rue Sydney, à l'est, par la rue Carmarthen, au nord, par la limite arrière de tous les terrains donnant sur la rue Princess, au sud, par la limite arrière de tous les terrains donnant sur la rue Princess et par tous les bâtiments d'angle des rues Sydney et Carmarthen dont la façade latérale donne sur la rue Princess ainsi que le terrain situé à l'angle nord-ouest de l'intersection des rues Sydney et Princess et le terrain sis au 80, rue Sydney.

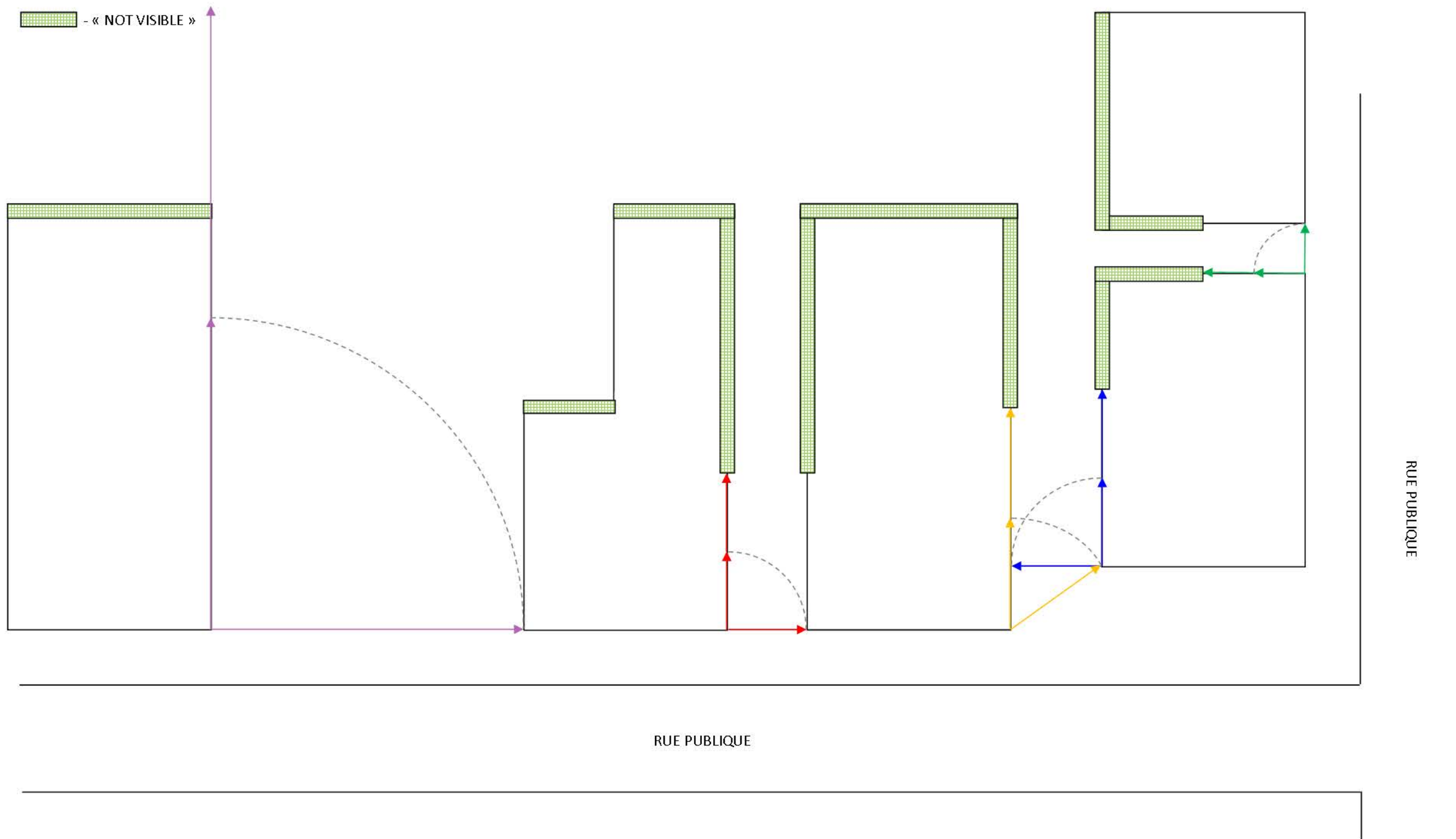


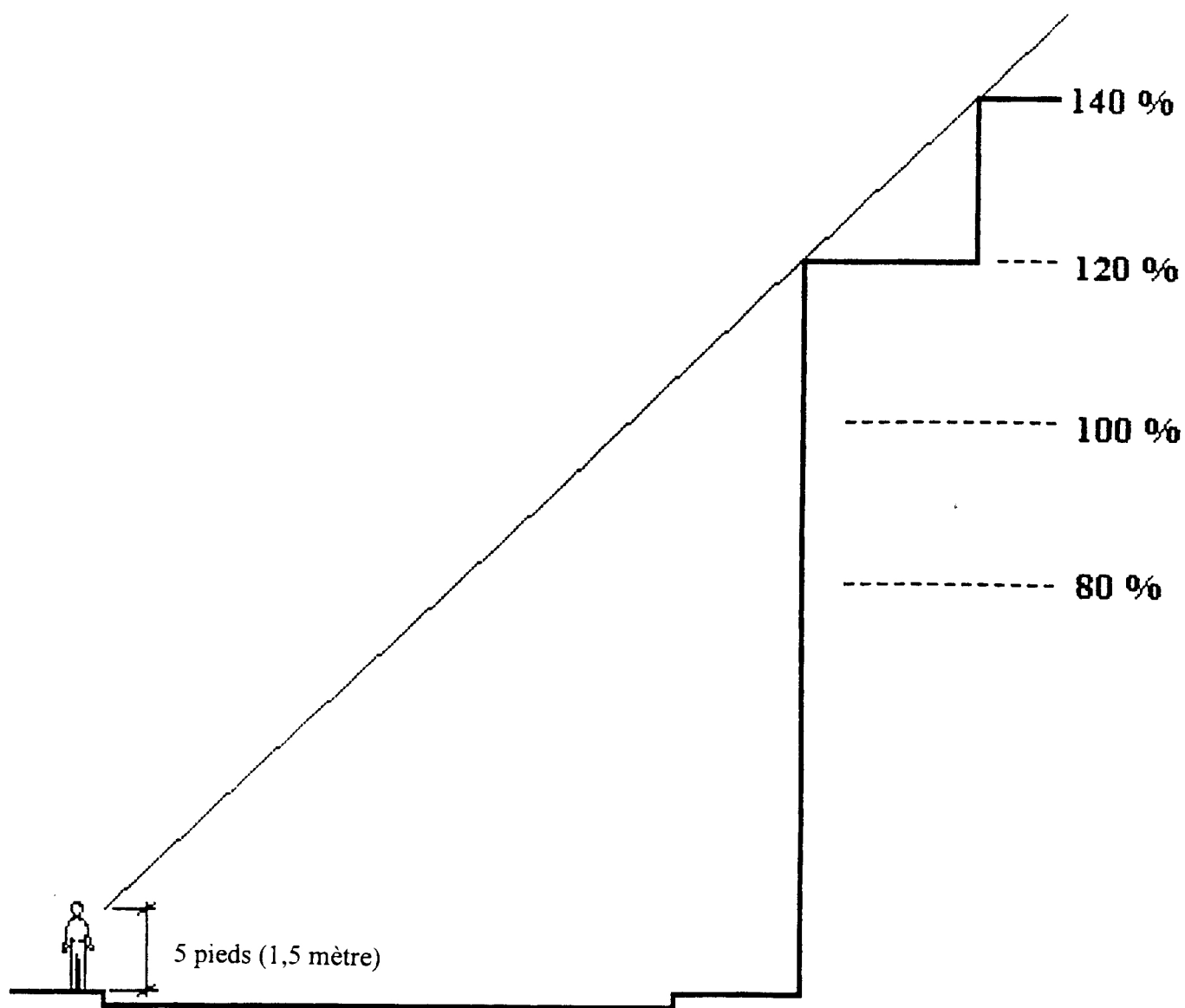


Annexe K – Droits

Les droits de demande mentionnés dans le présent arrêté sont les suivants :

| | |
|--|----------------|
| Aménagements comportant des travaux de démolition, d'enlèvement ou de déplacement visés à l'article 9. | 1 000 \$ |
| Autres aménagements | Gratuit |





**Diagramme 2: auteur d'une nouvelle construction
(édification sur terrain intercalaire)**

[Référence : Alinéa 8 (1)d]

Diagramme 3

Plot ANSI E (44" x 34")

HERITAGE PERMIT APPLICATION FOR DEMOLITION NO. YY-XXXX

Arial Bold, 160 pt.

100 EXAMPLE STREET—PID 12345678

Arial Bold, 120 pt.

Applicant has applied to the City of Saint John for permission to demolish all buildings and structures at the above noted address.

Arial, 100 pt.

NOTICE OF PUBLIC MEETING:

This application will be heard at a public meeting of the
Heritage Development Board:

**WEDNESDAY, DAY MONTH YEAR
5:30 PM, 10th FLOOR, CITY HALL**

**FURTHER INFORMATION MAY BE OBTAINED AT:
HERITAGE CONSERVATION, 10th FLOOR, CITY HALL, 506-658-2835**

Arial Bold, 90 pt.

Diagramme 4

Plot ANSI E (44" x 34")

HERITAGE PERMIT APPLICATION FOR DEMOLITION NO. YY-XXXX

Arial Bold, 160 pt.

100 EXAMPLE STREET—PID 12345678

Arial Bold, 120 pt.

Applicant has applied to the City of Saint John for permission to demolish all buildings and structures at the above noted address.

Arial, 100 pt.

End of Required **12** Month Listing Period: **Day Month Year**

Listing Agent, Realty Office

Phone Number

Email

Arial Bold, 90 pt.

FURTHER INFORMATION MAY BE OBTAINED AT:

HERITAGE CONSERVATION, 10th FLOOR, CITY HALL, 506-658-2835



HUGHES SURVEYS & CONSULTANTS INC.

NB LAND SURVEYORS, CONSULTING ENGINEERS

September 4, 2019

His Worship Mayor Don Darling and Members of Common Council
City of Saint John
PO Box 1971
Saint John NB E2L 4L1

Your Worship and Members of Common Council,

As a member of the local homebuilder's association and development community I have great interest in by-laws and amendments to them that affect the industry in this area. With respect to the proposed Heritage Conservation Areas By-law I would like to offer some general comments and a suggestion to make clearer the text in section 9 (1) (a) (iii).

The suggested revised wording to section 9 (1) (a) (iii) is as follows:

"(iii) the building or structure is a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength, which may be evidenced by a notice issued pursuant to section 14; or,"

For comparison the changes are shown here in red text italics.

"(iii) the building or structure *is an accessory building and* is a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength, *which may be evidenced by a notice issued pursuant to section 14*; or,"

For clarity any building that is a hazard to the safety of the public should be referenced, not just accessory buildings. For further clarity, later in the by-law section 14 references the *Local Governance Act* which clearly over-rides the Heritage Conservation Areas By-law therefore bringing a reference to it forward to section 9 clarifies the intent.

Of secondary concern is the extended mandatory timeframe a property must be listed in section 9 (3) (a) from six months to twelve months. Combined with other factors in the by-law this appears overly onerous. The Saint John Real Estate Board statistics indicate single family homes sell within two to four months of being listed in the Saint John area therefore the present six month mandatory timeframe appears appropriate.

With respect to general comments I would be remiss to not mention there are very positive amendments in the proposal. One example is the proposed flexibility in construction criteria for portions of a structure not visible to public view can save on costs. Any cost saving measure introduced now or in the future will encourage additional participants in the building industry to step up and embrace development within the heritage areas and beyond.

Respectfully submitted,
Hughes Surveys & Consultants Inc.

Richard Turner

From: Jamie Watson [<mailto:jlwatson@live.ca>]
Sent: September-05-19 3:52 PM
To: External - CommonClerk
Subject: Heritage By-Law Amendments

To Whom It May Concern,

I wish to express my support of the proposed Heritage By-Law Amendments. These have been carefully drafted following extensive research, public engagement, stakeholder consultation and work-shopping by staff and the members of the Heritage Development Board.

As a member of the Board, I have seen first-hand the care and attention given to the consideration of the proposed amendments to ensure that these changes strike the right balance of maintaining the remarkable historic fabric of Saint John and encouraging growth and investment in our Heritage Conservation Areas. This is no easy feat, but the process followed in developing the proposed by-law has ensured that the path forward is a principled one.

I wish to thank all those who contributed to the development of these proposed by-laws by sharing their time, interest and opinions. I am hopeful that, with the adoption of the proposed by-law, Saint John is able to move into a new era of heritage preservation that meets the needs of our citizens, our city and our great history.

Thank you,

Jamie Watson

September 3, 2019

Mayor & Council
City of Saint John

Subject: Proposed Amendments to the Heritage Conservation Areas By-Law

Dear Mayor Darling and Councilors:

We are writing today to inform you of a concern we have with the proposed changes to the Heritage Conservation Areas By-law. The proposed changes will disallow applications for Heritage designation for any properties outside designated Heritage Conservation areas. This is sad news for those wishing to protect their Heritage property and have access to Heritage Grants to improve / upgrade their properties. The single property designations have been allowed in the past but for some reason, the practice will be prohibited in the future.

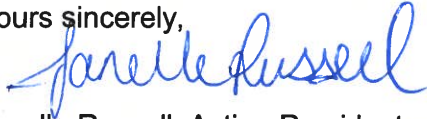
The positive effect of allowing an individual designation as a Heritage Property is the fact that such applicants are typically seeking the designation so that they can access the Heritage Grant Program. This incentive program is designed to encourage property owners to meet the spirit and intent of the Saint John Heritage Conservation Areas By-Law, as expressed in the National Standards for Conservation of Historic Places in Canada and Saint John's own series of Practical Conservation Guidelines. Heritage Grants are not construction subsidies; they are intended to assist owners to retain traditional materials and details of character-defining elements and, if necessary, replace them with new components, matching the original materials and profiles.

While many might feel that the incentives are very modest, we clearly understand that they have an important impact on the quality of the improved property, and ultimately yield a more valuable building which in turn attracts higher tax revenue for the City. This is because the ratio of expenditure is 25:75 meaning every dollar spent by the City attracts 3 additional dollars of spending by the proponent. It makes good business sense to extend this opportunity to owners of heritage properties wherever they may be located in the City. It is our contention at Heritage Saint John that it is worth supporting any citizen wanting to improve the city by conserving and enhancing older parts of our built environment. The individual designation provisions of the current By-law help make that happen, and therefore, we respectfully ask that this provision of the current By-law be protected and included in the revised version.

Some additional points to consider: 1. Individual designations have been granted in the past establishing precedence. 2. Staff has had nominal requests for additional applications so current administration pressure is negligible. 3. Upgrading of properties outside the designated areas may and could encourage adjacent property improvement. 4. Some members of the public are concerned about the attention the current designated areas receive while outliers are neglected. 5. Heritage tourism is one of Saint John's top assets/attractions.

We will attend the upcoming Council meeting on September 9 and to present our case for retention of the provision.

Yours sincerely,

A handwritten signature in blue ink that reads "Janelle Russell". The signature is fluid and cursive, with the first name "Janelle" and the last name "Russell" clearly distinguishable.

Janelle Russell, Acting President
Heritage Saint John
janellerussell@me.com

416-704-9348

**BY-LAW NUMBER L.G. 4-1
A BY-LAW RESPECTING THE
CLOSING OF ROADS, STREETS OR
HIGHWAYS IN
THE CITY OF SAINT JOHN**

**ARRÊTÉ N^o L.G. 4-1
ARRÊTÉ RELATIF A LA
FERMETURE DES CHEMINS, DES
RUES OU DES ROUTES DAN
THE CITY OF SAINT JOHN**

Be it enacted by the Common Council of The City of Saint John as follows:

Lors d'une réunion du conseil communal, The City of Saint John a décrété ce qui suit :

A By-law of The City of Saint John entitled, "A By-law Respecting The Closing of Roads, Streets or Highways in The City of Saint John", enacted on the eleventh day of March, A.D. 2019, is hereby amended by adding thereto Section 1, as follows:

Par les présentes, l'arrêté de The City of Saint John intitulé, « Arrêté relatif à la fermeture des chemins, des rues ou des routes dans The City of Saint John », décrété le 11 mars 2019, est modifié par l'article, comme suit :

1 The City of Saint John does hereby stop up and close permanently the following street:

1 Par les présentes, The City of Saint John barre et ferme de façon permanente la rue suivante :

MITCHELL STREET: All that portion of Mitchell Street, a public street in the City of Saint John, in the County of Saint John and Province of New Brunswick, comprising 1,689.2 square metres as shown on a Plan of Survey titled, "Plan of Survey Showing portion of Mitchell Street, City of Saint John, Saint John County, New Brunswick," prepared by Hughes Surveys & Consultants Inc. and dated July 31, 2019 attached hereto.

RUE MITCHELL : Toute la partie de la Rue Mitchell, une rue publique dans The City of Saint John, comté de Saint John, dans la province du Nouveau-Brunswick, d'une superficie d'environ 1 689,2 mètres carrés comme le montre le plan d'arpentage intitulé « Plan d'arpentage indiquant une partie de la rue Mitchell, City of Saint John, comté de Saint John, Nouveau-Brunswick », préparé par Hughes Surveys & Consultants Inc. et daté du 31 juillet 2019, joint aux présentes.

IN WITNESS WHEREOF The City of Saint John has caused the Corporate Common Seal of the said City to be affixed to this by-law the *** day of ****, A.D. 2019 and signed by:

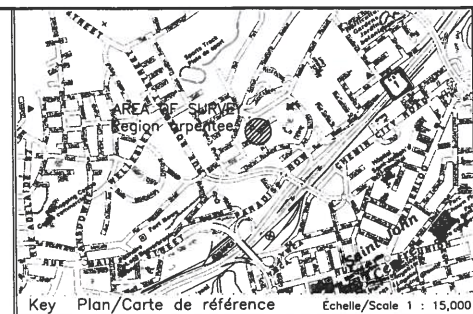
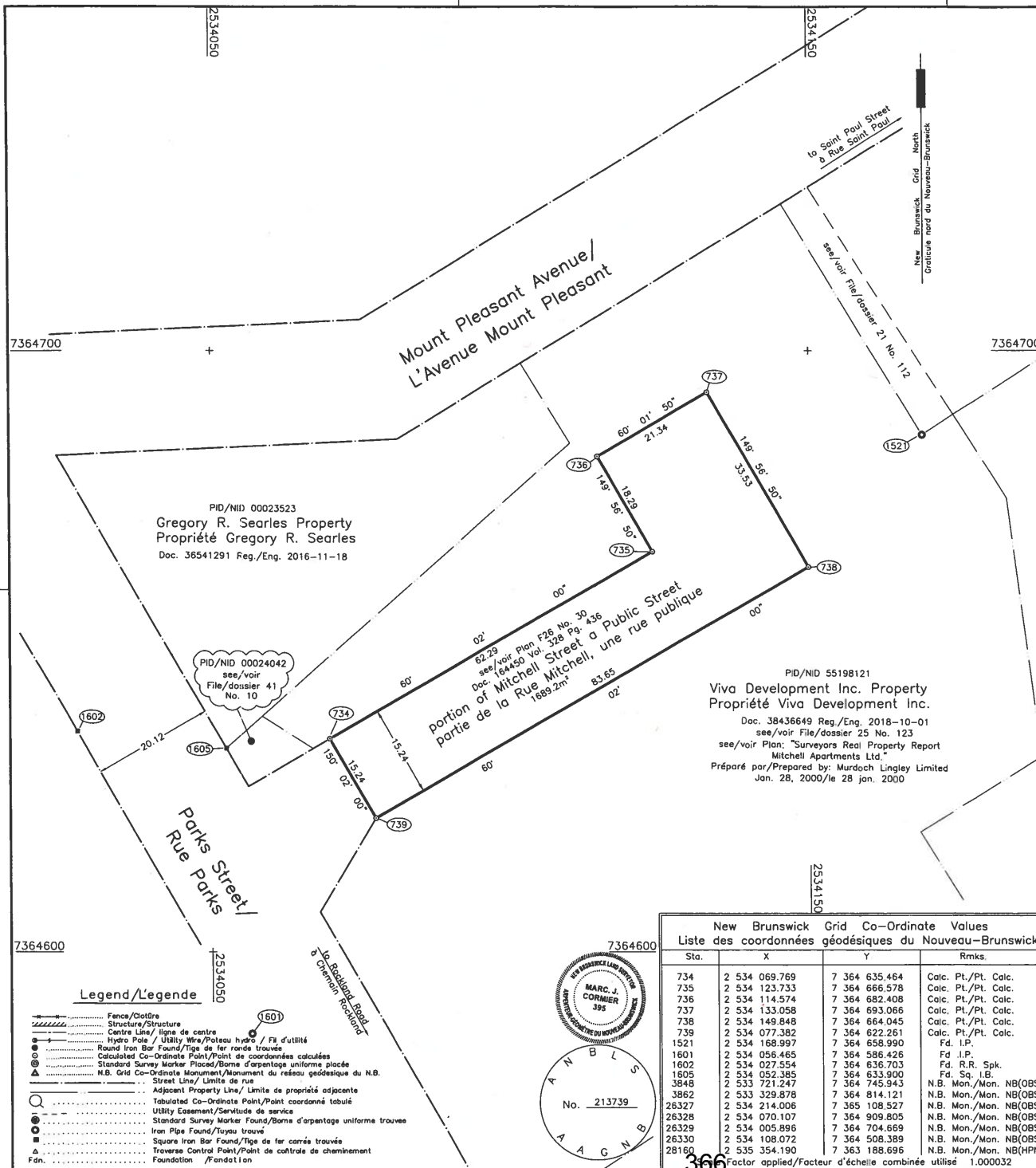
EN FOI DE QUOI, The City of Saint John a fait apposer son sceau communal sur le présent arrêté le ** ***** 2019, avec les signatures suivantes :

Mayor/Maire

Common Clerk/Greffier communal

First Reading -
Second Reading -
Third Reading -

Première lecture -
Deuxième lecture -
Troisième lecture -



Registration Data/Information d'enregistrement

Doc. 164450 Vol. 328 Pg. 436 Reg/Eng Nov/novembre 3, 1955
see/voir Plan F26 No. 30

Notes

- Directions are N. B. Grid azimuths derived from observations on N. B. Mon's. 28160.
(NAD83 CSRS HPN Values)
- Les orientations sont des azimuts du système géodésique du N.B. dérivés d'observations des monuments 28160.
(NAD83 CSRS Valeurs RHP)
- All distances are in metres, to convert to imperial equivalents divide by 0.3048.
- Les distances sont en mètres, Veuillez diviser les valeurs métriques par 0.3048 pour obtenir l'équivalence impériale.
- Area of survey outlined thus , peripheral information compiled from various sources.
- La région arpentée est montrée ainsi , l'information périphérique fut compilée de diverses sources.
- All document and plan references refer to Registry Office for Saint John County.
- Les références des documents et des plans sont du Bureau d'enregistrement du comté de Saint John.
- Field survey completed on Nov 27, 2008.
- L'arpentage sur le chantier fut complété le 27 novembre 2008.
- All computations performed and coordinates shown on this plan are based on New Brunswick Stereographic Double Projection and the NAD83(CSRS) Ellipsoid as realized by Service New Brunswick High Precision Network coordinate survey monuments.
- Les calculs et les coordonnées montrés sur ce plan sont basés sur la projection stéréographique double du Nouveau-Brunswick et l'ellipsoïde NAD83(CSRS) telles que déterminées par les coordonnées Réseau de Haute Précision des monuments de Services Nouveau-Brunswick.
- For reference plan see City of Saint John Survey Sheet No. 50 and Plan of Survey prepared by Hughes Surveys & Consultants Inc. dated March 18, 2009.
- Pour le plan de référence voyez la feuille d'arpentage de la Ville de Saint John No. 50 et le Plan d'Arpentage préparé par Hughes Surveys & Consultants Inc. daté le 18 mars, 2009.

Plan Of Survey/Plan d'Arpentage

Showing a portion of Mitchell Street,
Montrant une parties de Rue Mitchell,
City of Saint John,
Ville de Saint John,
Saint John County, New Brunswick.
Comte de Saint John, Nouveau-Brunswick.

Certified Correct/Certifié correct

HUGHES SURVEYS & CONSULTANTS INC.

Surveyed by/ July 31, 2019
Arpenté par le 31 juillet, 2019

Marc Cormier # 395 Date

New Brunswick Land Survey/Arpenteur-géomètre du Nouveau-Brunswick
8 0 8 16 24 32
1:400 metres

| Dwg. No./No. dess. | Disk No./No. disquette | Topos | Disk No./No. disquette |
|--------------------|------------------------|--------|------------------------|
| S08164L | 2008 | H08164 | 2008 |

Dwn. by/Dess. par BES Job No./No. dossier YB-164-R Rev. No./No. de rev. 1 Map Ref./Ref. de carte G/08-12C,SW(4)

**STREET CLOSING
MITCHELL STREET**

Public Notice is hereby given that the Common Council of The City of Saint John intends to consider amending "A By-law Respecting The Closing of Roads, Streets or Highways In The City of Saint John" at its regular meeting to be held on **Monday, September 9, 2019 at 6:30 p.m.** to permanently close the following street:

MITCHELL STREET: All that portion of Mitchell Street, a public street in the City of Saint John, in the County of Saint John and Province of New Brunswick, comprising 1,689.2 square metres as shown on a Plan of Survey titled, "Plan of Survey Showing portion of Mitchell Street, City of Saint John, Saint John County, New Brunswick," prepared by Hughes Surveys & Consultants Inc. and dated July 31, 2019 attached hereto.

(INSERT PLAN)

The proposed amendment and plan of the above described street may be inspected by any interested person at the office of the Common Clerk, City Hall, 15 Market Square, Saint John, N.B. between the hours of 8:30 a.m. and 4:30 p.m. Monday to Friday inclusive, holidays excepted.

Written objections to the proposed amendment may be delivered to Mr. Jonathan Taylor, Common Clerk at:

- i) 15 Market Square, 8th floor, City Hall;
- ii) P.O. Box 1971, Saint John, N.B., E2L 4L1; or
- iii) commonclerk@saintjohn.ca

If you require French services for a Common Council meeting, please contact the office of the Common Clerk at 658-2862.

**FERMETURE DE RUE
RUE MITCHELL**

Par les présentes, un avis public est donné par lequel le conseil communal de The City of Saint John indique son intention de modifier l'« Arrêté relatif à la fermeture des chemins, des rues ou des routes dans The City of Saint John » lors de la réunion ordinaire qui se tiendra le **lundi 9 septembre 2019 à 18 h 30** afin d'interrompre la circulation et de fermer la route suivante :

RUE MITCHELL : Toute la partie de la Rue Mitchell, une rue publique dans The City of Saint John, comté de Saint John, dans la province du Nouveau-Brunswick, d'une superficie d'environ 1 689,2 mètres carrés comme le montre le plan d'arpentage intitulé « Plan d'arpentage indiquant une partie de la rue Mitchell, City of Saint John, comté de Saint John, Nouveau-Brunswick », préparé par Hughes Surveys & Consultants Inc. et daté du 31 juillet 2019, joint aux présentes.

(INSÉRER LE PLAN)

Toute personne intéressée peut examiner le projet de modification et le plan de la rue décrite ci-dessus au bureau de la greffière communale à l'hôtel de ville au 15, Market Square, à Saint John, au Nouveau-Brunswick, entre 8 h 30 et 16 h 30 du lundi au vendredi, sauf les jours fériés.

Veuillez faire part de vos objections au projet de modification par écrit à l'attention de M. Jonathan Taylor, greffier communal, à l'une des coordonnées suivantes :

- i) 15 Market Square, 8^e étage, Hôtel de Ville;
- ii) C.P. 1971, Saint John (N.-B.) E2L 4L1;
- iii) commonclerk@saintjohn.ca

Si vous exigez des services en français pour une réunion du conseil communal, veuillez communiquer avec le bureau du greffier communal au 658-2862.

| | |
|----------------|--------------------|
| Received Date | September 06, 2019 |
| Meeting Date | September 09, 2019 |
| Open or Closed | Open Session |

Deputy Mayor McAlary and
Members of Common Council

Deputy Mayor and Councillors:

Subject: Meeting re: Sustaining Saint John

Background:

- Whereas, Sustaining Saint John a Three Part Plan was completed in part due to a joint meeting between the Greater Saint John Progressive Conservative caucus and Saint John Common Council. The meeting resulted in discussion between the tabling of the report and the final adoption with reservations of the plan and,
- Whereas, the plan was adopted with reservations so that the plan could be monitored for success and,
- Whereas, it is critical that the dialogue continue to ensure that not only Sustaining Saint John a Three Part Plan is maximized and results achieved over the next six months, but also to continue to work towards an equitable distribution of taxation through comprehensive property tax reform and,
- Whereas, it's critical to continue open and transparent communications on our progress between the provincial government and Saint John Council and that progress be reported regularly to citizens.

Motion:

I move that the Mayor be directed through the Common Clerk office, to formally request to the Regional Caucus Chair and Government House Leader that there be three meeting dates established, between the Greater Saint John Progressive Conservative caucus, the Premier and Common Council before the revaluation of the Sustaining Saint John plan, in March 2020.

Respectfully Submitted,

(Received via email)

Don Darling
Mayor
City of Saint John



COUNCIL REPORT

| | |
|--------------|---|
| M&C No. | 2019-221 |
| Report Date | August 28, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Growth and Community Development Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: Demolition of vacant, dilapidated and dangerous structures at 71 Goldsworthy Road (PID 00337931)

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|------------------------------|--|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Catherine Lowe</i> | <i>J Hamilton /A Poffenroth</i> | <i>John Collin</i> |

RECOMMENDATION

RESOLVED, that the structures located at 71 Goldsworthy Road, PID# 00337931, are to be demolished as they have become a hazard to the safety of the public by reason of dilapidation; and

BE IT FURTHER RESOLVED, that the buildings are to be demolished as they have become a hazard to the safety of the public by reason of unsoundness of structural strength; and

BE IT FURTHER RESOLVED, that one or more by-law enforcement officers appointed and designated under the Saint John Unsightly Premises and Dangerous Buildings and Structures By-law are hereby authorized to arrange for the demolition, in accordance with the applicable City purchasing policies.

EXECUTIVE SUMMARY

The purpose of this report is to advise Council that a Notice to Comply was issued under Part 13 of the *Local Governance Act* for the structures at 71 Goldsworthy Road. The hazardous conditions outlined in the Notice have not been remedied by the owners within the required time frame and staff is looking for authorization from Council to arrange the demolition of the buildings.

PREVIOUS RESOLUTION

N/A

REPORT

Inspections of the property at 71 Goldsworthy Road, PID# 00337931, have revealed that there are five structures on the premise; a single-storey mobile home, a mobile camping trailer, a two-storey wooden barn, a two-storey wooden shed, and a single-storey wooden shed that has collapsed. The property is currently assessed at \$30,000. Staff first became aware of the property's vacancy in May 2018 and began standard enforcement procedures. The property is located on the City's East side in a rural residential zone. The structures are a hazard to the safety of the public by reason of being open, by reason of being vacant, by reason of dilapidation and by reason of unsoundness of structural strength.

For the reasons described in the attached Inspection Report, a Notice to Comply was issued on June 28, 2019 and was posted to the mobile home the same day, as per section 132(3) of the *Local Governance Act* that outlines acceptable methods of service. The Certificate Regarding Title lists two individuals as the owners. The structures are considered to be abandoned. Attempts were made to contact the owners of the property and any other interested parties, however all attempts were unsuccessful. The Notice provided the owners with 30 days to remedy the conditions at the property. The owners did not file a formal appeal and did not take remedial action to comply with the requirements of the Notice. A compliance inspection was conducted on July 22, 2019, which revealed that the conditions that gave rise to the Notice have not changed since the Notice was issued.

Attached for Council's reference is the Notice to Comply that was issued and the affidavit attesting to service on the owners via posting of the building. Also included are photographs of the structures. The *Local Governance Act* indicates that where a Notice to Comply has been issued arising from a condition where a building has become a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength, the municipality may cause the building to be demolished. As required in the Act a report from an engineer is attached, forming part of the issued Notice to Comply, and provides the evidence to the structures' vacancy, dilapidation, unsoundness of structural strength and resulting hazard to the safety of the public. A copy of the letter advising of the Common Council Hearing date and affidavit is attached; it was posted to the building on August 20, 2019.

STRATEGIC ALIGNMENT

Enforcement of the *Saint John Unsightly Premises and Dangerous Buildings and Structures By-law* aligns with Council's Vibrant, Safe City priority.

SERVICE AND FINANCIAL OUTCOMES

As is written in the *Local Governance Act* that a municipality must commence in the proceedings of remedial action, approval of Common Council is required prior

to starting demolition activities at the property. Total cost of the demolition work is approximated at \$30,000 and will take approximately 8 weeks before it is complete. The demolition will be completed by City staff and equipment. The cost of the work will be billed to the property owner. If the bill is left unpaid, it will be submitted to the Province with a request for reimbursement.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

The City Solicitor's Office provided ownership verification by obtaining the Certificate Regarding Title for the property. Additionally, the City Solicitor's Office registered the Notice to Comply with Service New Brunswick's Land Registry.

ATTACHMENTS

Notice to Comply

Affidavit of Posting - Notice to Comply

Affidavit of Posting - Notice of Common Council Hearing Letter

Photos

FORM 4
NOTICE TO COMPLY – DANGEROUS OR
UNSIGHLTY PREMISES
(Local Governance Act, S.N.B., 2017, c.18, s 132(2))

Parcel identifier:

PID #00337931

Address: 71 Goldsworthy Road, Saint John, New Brunswick

Owner(s) or Occupier(s):

Name: Boyde, D. Lynn

Address: 71 Goldsworthy Road, Saint John, New Brunswick, E2J 4E1

Name: Boyde, Philip L.

Address: 71 Goldsworthy Road, Saint John, New Brunswick, E2J 4V1

Local government giving notice: The City of Saint John

By-law contravened: *Saint John Unsightly Premises and Dangerous Buildings and Structures By-Law*, By-law Number M-30 and amendments thereto (the “By-law”).

Provision(s) contravened: Subsections 6(1), 6(2) and 6(3) of the By-law.

Conditions(s) that exist: The premise is unsightly by permitting junk, rubbish, refuse and a dilapidated building to remain on the premise. The building has become a hazard to the safety of the public by reason of being vacant or unoccupied and has become a hazard to the safety of the public by reason of dilapidation and by reason of unsoundness of structural strength. The conditions of the building and premise are described in Schedule “A”, a true copy of the inspection report dated June 28, 2019 prepared by Catherine Lowe, EIT and reviewed and concurred in by Rachel Van Wart, P.Eng., By-law Enforcement Officers.

What must be done to correct the condition: The owner is to remedy the conditions by complying with the required remedial actions of the aforementioned inspection report and bring the building and premises into compliance with the aforesaid By-law.

In the event that the owner does not remedy the condition of the building and premises in the time prescribed by this Notice to Comply, the building may be demolished as the corrective action to address the hazard to the safety of the public and the premises may be cleaned up.

In the event of demolition, all debris and items on the premises will be disposed of as the corrective action to address the hazard to the safety of the public.

FORMULE 4
AVIS DE CONFORMITÉ – LIEUX
DANGEREUX
OU INESTHÉTIQUES
(Loi sur la gouvernance locale,
L.N.-B. 2017, ch. 18, par. 132(2))

Numéro d’identification de la parcelle :

NID : 00337931

Adresse : 71, rue Goldsworthy, Saint John, Nouveau-Brunswick

Propriétaire(s) ou occupant(s) :

Nom : Boyde, D. Lynn

Adresse : 71, rue Goldsworthy, Saint John, Nouveau-Brunswick, E2J 4E1

Nom : Boyde, Philip L.

Adresse : 71, rue Goldsworthy, Saint John, Nouveau-Brunswick, E2J 4V1

Gouvernement local signifiant l’avis : The City of Saint John

Arrêté enfreint : *Arrêté relatif aux lieux inesthétiques et aux bâtiments et constructions dangereux de Saint John*, Arrêté numéro M-30, ainsi que ses modifications ci-afférentes (l’ « Arrêté »).

Disposition(s) enfreinte(s) : Les paragraphes 6(1), 6(2) et paragraphe 6(3) de l’Arrêté.

Description de la (des) situation(s) : Les lieux sont inesthétiques en permettant la présence de ferraille, de détrit et le bâtiment délabré. Le bâtiment est devenu dangereuse pour la sécurité du public du fait de son inhabitation ou de son inoccupation et est devenu dangereuse pour la sécurité du public du fait de son délabrement et du fait de manque de solidité. Les conditions du bâtiment et des lieux sont décrites à l’annexe « A », une copie conforme du rapport d’inspection en date du 28 juin 2019 et préparé par Catherine Lowe, IS et révisé et en d’accorde avec par Rachel Van Wart, ing., agentes chargé de l’exécution des arrêtés du gouvernement local.

Ce qu’il y a lieu de faire pour y remédier : La propriétaire doit restaurer les conditions en se conformant aux recommandations du rapport d’inspection susmentionné et d’amener le bâtiment et les lieux en conformités avec l’Arrêté.

Dans l’éventualité que la propriétaire ne remédient pas le bâtiment et les lieux dans le temps prescrit par le présent avis de conformité, le bâtiment pourront être démolis comme mesure corrective compte tenu qu’il représente un danger pour la sécurité du public et les lieux pourront être nettoyés.

Dans l’éventualité de démolition, tous les débris et autres items sur les lieux seront disposés comme mesure corrective dans le but de remédier le danger pour la sécurité du public.

The aforementioned remedial actions relating to the demolition of the building and the disposal of debris and items on the premises do not include the carry-out clean-up, site rehabilitation, restoration of land, premises or personal property or other remedial action in order to control or reduce, eliminate the release, alter the manner of release or the release of any contaminant into or upon the environment or any part of the environment.

Date before which the condition must be corrected: ¹

- a) The demolition of the building, clean-up of the property and related remedies must be complete, or plans and permit applications for repair related remedies, must be submitted: within 30 days of being served with the Notice to Comply.
- b) The repair related remedies must be complete within 120 days of being served with the Notice to Comply.

Date for giving notice of appeal: Within 14 days of being served with the Notice to Comply.

Process to appeal: The owner may within 14 days after having been served with this Notice to Comply, send a Notice of Appeal by registered mail to the Common Clerk of The City of Saint John, City Hall – 8th Floor, 15 Market Square, Saint John, New Brunswick, E2L 4L1.

Potential penalty for not complying with notice within time set out in notice:² Subsection 11(1) of the By-law states that a person who fails to comply with the terms of a Notice to Comply given under section 7 of the said By-law, commits an offence that is punishable under Part 2 of the *Provincial Offences Procedure Act* as a category F offence.

Where an offence under subsection 11(1) continues for more than one day, the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues pursuant to subparagraph 11(3)(b)(i).

Local government's authority to undertake repairs or remedy:³ Paragraphs 12(1)(a), 12(1)(b) and 12(1)(c) of the By-law state that if an owner or occupier does not comply with a Notice to Comply given under section 7 within the time set out in the said Notice, the City may, cause the premises of that owner or occupier to be cleaned up or repaired, or cause the building or other structure of that owner or occupier to be repaired or demolished. Further, subsection 12(3) of the By-law states that the cost of carrying out such work, including any associated charge or fee, is chargeable to the owner or occupier and becomes a debt due to the City.

Les mesures correctives susmentionnées relativement à la démolition du bâtiment et la disposition des débris et autres items sur les lieux ne comprennent pas le nettoyage, la remise en état des lieux, des terrains ou des biens personnels ou toute autre mesure corrective dans le but de contrôler ou de réduire, d'éliminer le déversement, de modifier le mode de déversement ou le déversement d'un polluant dans ou sur l'environnement ou toute partie de l'environnement.

Délai imparti pour y remédier : ¹

- a) La démolition du bâtiment et le nettoyage des lieux doivent être complétés, ou à laquelle les plans et demande de permis pour les mesures des réparations, doivent être soumises, dans les 30 jours qui suivent la signification de l'avis de conformité.
- b) Les réparations reliées aux mesures doivent être complétées dans les 120 jours qui suivent la signification de l'avis de conformité.

Date limite pour donner l'avis d'appel : Dans les 14 jours qui suivent la notification de l'avis de conformité.

Processus d'appel : La propriétaire peut dans les 14 jours qui suivent la notification de l'avis de conformité, envoyé un avis d'appel par courrier recommandé à la greffière communale de la municipalité, à The City of Saint John, Édifice de l'hôtel de ville, 8^e étage, 15 Market Square, Saint John, Nouveau-Brunswick, E2L 4L1.

Peine possible en cas d'omission de se conformer aux exigences de l'avis dans le délai y imparti :² Le paragraphe 11(1) de l'Arrêté prévoit quiconque omet de se conformer aux exigences formulées dans un avis de conformité notifié aux termes de l'article 7 de ladite Arrêté, commet une infraction qui est punissable en vertu de la partie 2 de la *Loi sur la procédure applicable aux infractions provinciales* à titre d'infraction de la classe F.

Lorsqu'une infraction prévue au paragraphe 11(1) se poursuit pendant plus d'une journée, l'amende minimale qui peut être imposée est l'amende minimale prévue par la *Loi sur la procédure applicable aux infractions provinciales* pour une infraction de la classe F multipliée par le nombre de jours pendant lesquels l'infraction se poursuit conformément à l'alinéa 11(3)(b)(i).

Pouvoir du gouvernement local d'entreprendre des réparations ou de remédier à la situation :³ Conformément aux alinéas 12(1)(a), 12(1)(b) et 12(1)(c) de l'Arrêté, si un avis de conformité a été signifié aux termes de l'article 7 de ladite Arrêté et, que le propriétaire ou l'occupant ne se conforme pas à cet avis de conformité dans le délai imparti et tel qu'il est réputé confirmé ou tel qu'il est confirmé ou modifié par un comité du conseil ou par un juge en vertu le paragraphe 12(3) de ladite Arrêté, la municipalité peut faire nettoyer ou réparer les lieux de ce propriétaire ou de cet occupant ou de faire réparer ou démolir le bâtiment ou autre construction de ce propriétaire ou de cet occupant,

et les coûts afférents à l'exécution des ouvrages, y compris toute redevance ou tout droit connexe, sont mis à la charge du propriétaire ou de l'occupant et deviennent une créance de la municipalité.

Dated at Saint John the 25th day of June, 2019.

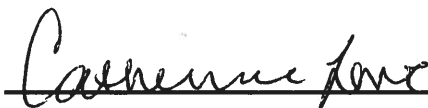
Fait à Saint John le ____ juin, 2019.

Local government: The City of Saint John

Gouvernement locale : The City of Saint John

Signature of the officer of the local government:

Signature du fonctionnaire du gouvernement local:



Contact information of the officer of the local government:

Coordonnées du fonctionnaire du gouvernement local :

Name: Catherine Lowe, EIT
Mailing address:

Nom : Catherine Lowe, IS
Adresse postale :

Growth and Community Development Services

Service de la Croissance et du Développement Communautaire

The City of Saint John
15 Market Square
City Hall Building, 10th Floor
P. O. Box 1971
Saint John, New Brunswick
E2L 4L1

The City of Saint John
15 Market Square
Édifice de l'hôtel de ville, 10^e étage
Case postale 1971
Saint John (Nouveau-Brunswick)
E2L 4L1

Telephone: (506) 658-2911
E-mail: catherine.lowe@saintjohn.ca
Fax: (506) 632-6199

Téléphone : (506) 658-2911
Adresse électronique : catherine.lowe@saintjohn.ca
Télécopieur : (506) 632-6199

Corporate seal of the local government



Sceau du gouvernement local

Notes:

1. All appropriate permits must be obtained and all relevant legislation must be complied with in the course of carrying out the required remedial action.
2. Payment of the fine does not alleviate the obligation to comply with the by-law, standard or notice.
3. Costs become a debt due to the local government and may be added to the joint local government and provincial Real Property Assessment and Tax Notice.

Notes :

1. Tous les permis prescrits doivent être obtenus et toute la législation pertinente doit être respectée pendant l'exécution des mesures de remédiation.
2. Le paiement de l'amende n'a pas pour effet d'annuler l'obligation de se conformer à l'arrêté, à la norme ou à l'avis.
3. Les coûts deviennent une créance du gouvernement local et peuvent être ajoutés à l'avis commun d'évaluation et d'impôt foncier des gouvernements local et provincial.

INSPECTION REPORT
Schedule "A"
71 Goldsworthy Road
Saint John, New Brunswick
PID# 00337931

Dated at Saint John,
this 28th day of
June 2019
Catherine Lowe
Standards Officer

Inspection Date: June 5, 2019 and June 27, 2019

Inspection Conducted by: Catherine Lowe, EIT & Rachel Van Wart, P.Eng.

Introduction

Inspections of the property at 71 Goldsworthy Road, PID# 00337931, have revealed that there are five Structures on the premise (the "Structures"); a single-storey mobile home (the "Mobile Home"), a mobile camping trailer (the "Trailer"), a two-storey wooden barn (the "Barn"), a two-storey wooden shed ("Shed 1"), and a single-storey wooden shed that has collapsed ("Shed 2"). Staff first became aware of the property's vacancy in May 2018 and began standard enforcement procedures. The property is located on the City's East side in a rural residential zone. The Structures are a hazard to the safety of the public by reason of being open, by reason of being vacant, by reason of dilapidation and by reason of unsoundness of structural strength.

Discussion

The Structures are not in compliance with the *Saint John Unsightly Premises and Dangerous Buildings and Structures By-law*, By-law Number M-30, and amendments thereto (the "By-law").

Unsightly Premise Conditions

Subsection 6(1) of the By-law states:

No person shall permit premises owned or occupied by him or her to be unsightly by permitting to remain on any part of such premises

- (a) any ashes, junk, rubbish or refuse,
 - (b) an accumulation of wood shavings, paper, sawdust or other residue of production or construction,
 - (c) a derelict vehicle, equipment, machinery or the body of any part of a vehicle equipment or machinery, or
 - (d) a dilapidated building.
1. There is an excessive accumulation of junk, rubbish, and refuse on the property. There are multiple piles of rusted scrap metal, discarded boards, and other broken or damaged materials on the property. Other items scattered around the property include, but are not limited to; tires, plastic piping and furniture, household furniture, a deep freezer, other discarded miscellaneous household items, a shopping cart, a broken temporary parking shelter, as well as other various loose and bagged garbage. The collection of junk expands into the wooded area to the left and to the rear of the property. The aforementioned accumulation of junk, rubbish, and refuse is unsightly.
 2. There are multiple dilapidated vehicles on the property as well. At the right front of the property, there is a rusted tractor that is missing the hood for the engine. At the rear of the property there is a yellow van and a grey van as well, both are rusted and do not appear to be in working condition. Located on the left side of the property is the bed half of a pickup truck.

3. Rusted machinery and equipment is scattered across the property. These items include, but are not limited to; a wood burning furnace, pieces of a lawn mower and pieces of a snow blower, a small flatbed trailer, and various other unidentifiable rusted metal objects. These aforementioned items cause the property to be unsightly.

Mobile Home

4. The Structures are dilapidated. The metal siding of the Mobile Home is rusted, damaged or missing in many locations. The wooden boards, which enclose the area beneath the Mobile Home, have fallen in many locations and expose building materials such as insulation and vapour barrier; this has caused the materials to deteriorate and rot. The lower sections of siding at the rear of the Mobile Home have been nearly entirely removed, which has exposed wooden members, insulation, and electrical wires of the rear wall of the Mobile Home. The wooden members are damaged and rotting, the insulation is destroyed, and the electrical wires are frayed and rusted. The main entrance to the Mobile Home consists of concrete stairs and a wooden landing. The stairs lack proper guards and handrails, and the paint on the landing is peeling. The overhang above the main entrance is sloped and rusted. The wooden stairs to the left side entrance are rotten and unsafe. The paint on the wooden door of the left entrance is peeling and the wood is deteriorated.

Barn

5. The red paint on the wooden Barn located on the left side of the property is weathered and peeling. The roof of the Barn is sagging and the roof covering is deteriorated. The fascia of the Barn is rotten and hanging in some locations. A section of the OSB wall panel on the right side of the Barn has been forcibly removed; this provides unrestricted access into the Barn. Damaged pieces of wall panel are stacked against the Barn while others lie on the ground near the opening in the wall. The metal framing members of this section of the wall are now exposed and rusted. The floorboards of this section of the Barn have also been removed, exposing rusted metal floor members. The front right door of the Barn is detached and is braced to the Barn with a wooden board. The left wall of the Barn is bulging.

Trailer

6. The front door of the Trailer on the right front side of the property is open. Loose and bagged garbage strewn throughout the Trailer can be seen through the open door. It can also be seen that the right rear corner of the Trailer is severely water damaged and sagging. There are tires on the roof of the Trailer, presumably to hold down the white tarp on the roof. The metal siding of the Trailer is beginning to rust in many locations and is discolored.

Shed 1

7. Shed 1 that is located on the right side of the property is dilapidated and unsound. Shed 1 is a two-storey wooden shed with asphalt shingles. Paint is peeling from the exterior walls, and the shingles are curling and are deteriorated. The front door of Shed 1 is crooked and sloped. It can be seen that the walls of Shed 1 are sagging as the siding and window frames are no longer straight. There is a gap in the front wall on the left side of the Shed. The right side of the front wall of the Shed is bulging.

Shed 2

8. Shed 2 at the rear of the property has collapsed entirely. The walls and roof lay in a heap on the ground. Wooden boards with exposed nails from the walls and roof are jutting out from beneath the collapsed roof. There is junk visible in the heap, some appears to have been stored in the shed while some appears to have been collected near the shed. There had been a blue tarp covering the roof of Shed 2 that is now entangled in the debris.

The aforementioned condition of the Structures on the property is unsightly.

Vacant and Unoccupied

Subsection 6(2) of the By-law states:

No person shall permit a building or other structure owned or occupied by the person to become a hazard to the safety of the public by reason of being vacant or unoccupied.

The Structures are a hazard to the safety of the public by reason of being vacant or unoccupied for the following reasons:

1. Buildings and structures in a dilapidated condition that are known to be vacant can attract vandalism, arson and criminal activity. The property's condition affects the quality of life of neighboring properties and negatively impacts property value of real estate in the area due to negative perceptions of unsafe and deteriorating conditions. The large volume of scrap metal and the many derelict vehicles on the property could attract vandalism and could be subject to theft. This is a hazard to the neighbors as their properties may also be subjected to trespassing and theft. Information obtained from Saint John Energy regarding the services at the property provides a strong indication of when the property may have been vacated. Saint John Energy confirmed that the power was disconnected in October 2018 and equipment was removed in February 2019. These services have not been reinstated to date.
2. There is a higher risk of a fire event occurring at the property since it is known to the public that the Structures are vacant. There is a neighboring single family home at 61 Goldsworthy Road and single family home with detached garage at 83 Goldsworthy Road. The garage at 83 Goldsworthy Road is in close proximity to the right property line of 71 Goldsworthy, and thus is near Shed 1. Should a fire start in Shed 1 it could potentially spread to the neighboring garage. The property is also surrounded by wooded area. If a fire event were to occur it could easily spread into the surrounding trees, endangering the neighboring homes as well as any wildlife in the area.
3. There is a concern for emergency personnel safety in the event of an emergency. If firefighters suspect there may be people inside the Structures, it would be reasonable to expect they may be required to enter them. They may also need to enter the Structures to fully extinguish the fire. The frame of the Mobile Home is rusted and the wooden members of the walls and floors that are visible at the rear are rotten. The roof of the Barn is sagging and appears to be leaking in some locations as the ceiling is discolored. The walls of Shed 1 are sagging and the entire structure is out of plumb, which indicated structural instability. These conditions pose a hazard to emergency personnel and anyone else in the Structures should an emergency event occur. The accumulation of junk across the property poses a tripping hazard, which would hinder the movements of personnel in the event of an emergency.

Dilapidated and Structurally Unsound Building Conditions

Subsection 6(3) of the By-law states

No person shall permit a building or other structure owned or occupied by the person to become a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength.

The Structures are a hazard to the safety of the public by reason of dilapidation and by reason of unsoundness of structural strength for the following reasons:

Mobile Home

1. The Mobile Home is dilapidated and structurally unsound. The metal frame of the structure is rusted and deteriorated. The siding that enclosed the left side foundation area of the Mobile Home has fallen, exposing damaged vapour barrier and insulation. The left rear corner of the Mobile Home is damaged. The siding on either side of the corner is bowing away and the corner trim is bent at the center, allowing material such as wooden members, vapour barrier and other material to spill out of the walls of the Mobile Home. The siding on the rear lower half of the Mobile Home has fallen. This has caused material such as insulation to fall from the rear wall and has exposed wooden framing and structural members. The framing and structural members are rotten in many locations. One vertical deteriorated wooden framing member is jutting out from the Mobile Home at an approximate 45-degree angle. These conditions render the rear wall and floor of the Mobile Home structurally unsound, which is a hazard to anyone who may enter the Mobile Home. The siding that remains attached to the rear of the Mobile Home is bent away from the rear wall, exposing the sharp edges of the metal siding. There are also many exposed, rusted and deteriorated wires in the rear wall of the Mobile Home. Metal siding and electrical wires that have fallen from the rear of the Mobile Home now rest on the ground, covered with leaves. A rusted electrical pole and wires hang in the branches of a tree and the rear left side of the Mobile Home. These conditions are a hazard to the safety of the public by being a tripping hazard to anyone at the rear of the Mobile Home.
2. Through a window on the left front of the Mobile Home, it appears as though junk and household items have been strewn throughout the structure. There are two buckets pressed against the rear right window of the Mobile Home. In addition, the rear left window of the Mobile Home is open. This allows rain and other inclement weather to enter into the Mobile Home. Continued exposure to wet conditions will cause further deterioration to the interior of the Mobile Home. It does not appear as though the Mobile Home is suitable for habitation in its current condition.

Barn

3. The Barn is dilapidated. There is a section of fascia hanging from the right side of the Barn. The material covering the roof of the Barn is deteriorated. Anyone near the Barn could be harmed by falling debris. A section of the OSB wall panel on the right side of the Barn has been forcibly removed; due to this, it is now open to the public. The metal framing of this section of the wall is now exposed and rusted. A section of floorboard has also been removed from the Barn, exposing the rusted metal flooring members. There are items strewn throughout the interior of the Barn, likely due to vandalism. There is junk covering counter surfaces, wall shelves and all across the floor of the Barn. Gas cans, bottles of oil, and other products that may be dangerous can be seen through the front window of the Barn. These items create a tripping hazard and health hazard to anyone inside the Barn. The Barn appears to be structurally unsound. The roof of the Barn is sagging and the left side wall is bowing away from the Barn. There is also evidence of water damage on the ceiling at the rear of the Barn as the wooden members of the ceiling are discolored. Prolonged exposure to water can cause the wooden members to rot. The Barn is in danger of collapsing if these conditions are not remedied.

Trailer

4. The Trailer is open to the public as the front door is open; the door appears damaged and will not easily latch. Due to this, the Trailer is at an increased risk for vandalism. The Trailer is full of junk, as well as loose and bagged garbage. The rear right side of the ceiling is sagging and is significantly water damaged. Personal injury could occur if someone was in the Trailer and the ceiling collapsed.
5. Wild animals are also able to access the Trailer for shelter. Animals that have protected shelter can lead to overpopulation, which can have negative consequences

for the neighboring area. Animals can carry disease as well as do damage to buildings.

Shed 1

6. Shed 1 is dilapidated and structurally unsound. Wooden trim on the Shed and roof shingles are deteriorated, and could fall off the Shed if subjected to a strong wind. The Shed is leaning to the left. The siding on the front wall of the Shed is no longer straight and is sagging, indicating structural instability of the wall. The front door of the Shed is no longer properly fitted in the doorframe due to structural movement. Windows on the front and left side of the Shed are out of plumb. The roof of the Shed is sagging. There is a pile of junk and wooden debris to the left of the Shed that is partially leaning on the left and front walls. Shed 1 is structurally unsound and could collapse if it is left in this condition.

Shed 2

7. Shed 2 has collapsed. It now rests in a heap on the ground along with items that were inside and around the Shed. Wooden boards containing nails protrude from the pile in all directions. Shed 2 is located at the rear of the property, close to many large trees. The heap of the collapsed Shed and other material are covered by leaves, which partially conceals some of the debris. This is a dangerous tripping hazard for anyone attempting to manoeuvre through this section of the property, as it is difficult to avoid the debris.

The Property

8. The accumulation of derelict items on the property is a hazard to the safety of the public. The piles of junk are haphazardly stacked, with items protruding in all directions. Some items are now concealed in the tall grass at the front of the property and are not easily avoided. This condition creates a tripping hazard to anyone on the property. Many items are rusted and deteriorated. Being cut by a protruding item could have adverse health effects and would likely require hospital treatment for a tetanus shot.

Required Remedial Actions

The owner must comply with one of the two options stated below:

Option 1: Remedy the conditions of the Structures through all repair and remedial actions as follows:

1. The Structures must be completely repaired to remedy the above mentioned hazards to public safety while meeting the requirements of the *National Building Code of Canada (2010)* as well as all other applicable by-laws.
2. The Structures must be maintained, kept secure, and monitored on a routine basis while the property remains vacant or unoccupied.
3. A detailed plan must be submitted to the Growth and Community Development Services Department of the City of Saint John (the “Department”) for review and approval. The plan should also include a schedule for the work that is to be carried out. The repaired Structures must meet the *National Building Code of Canada (2010)* as well as other applicable codes.
4. The detailed plan, including schedules and any engineering reports, must be approved by the Department prior to commencing repair work.
5. A building permit must be obtained for any and all applicable work prior to commencing said work from the City of Saint John in order to comply with the

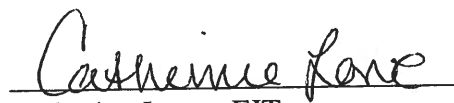
Saint John Building By-law, By-law Number C.P. 102 and amendments thereto (the “*Saint John Building By-law*”).

6. The premise must be cleared of all debris found on the property, including any and all rubbish that may be considered hazardous or unsightly. The debris from the premise must be disposed of at an approved solid waste disposal site, in accordance with all applicable by-laws, acts and regulations. Documented proof, that clearly demonstrates an approved solid waste disposal site was used for the disposal of debris, must be provided to the Department. The premise must comply with all applicable By-laws, Acts, Codes and Regulations.

Option 2: Demolition of the Structures and cleanup of all debris on the premise by complying with all the remedial actions as follows:


1. The Structures must be demolished to remove the hazard to the safety of the public by reason of dilapidation and by reason of being vacant or unoccupied.
2. A demolition permit must be obtained from the City of Saint John in order to comply with the *Saint John Building By-law*.
3. The premise must be cleared of the debris from the demolition and the lot must be made reasonably level with grade so as to not create a tripping or falling hazard. All debris must be disposed of at an approved solid waste disposal site, and in accordance with all applicable By-laws, Acts and Regulations. Documented proof, that clearly demonstrates an approved solid waste disposal site was used for the disposal of debris, must be provided to the Department.
4. All debris that is currently on the premise must be removed and disposed of at an approved solid waste disposal site, and in accordance with all applicable By-laws, Acts and Regulations. Documented proof, that clearly demonstrates an approved solid waste disposal site was used for the disposal of debris, must be provided to the Department.
5. The property must be in compliance with all applicable By-laws, Acts and Regulations.

Prepared by:


Catherine Lowe, EIT
Technical Services Officer
Growth and Community Development Services

June 28, 2019
Date

Reviewed by and concurred in by:


Rachel Van Wart, P.Eng.
Technical Services Officer
Growth and Community Development Services

JUNE 28 / 19
Date

CANADA
PROVINCE OF NEW BRUNSWICK
COUNTY OF SAINT JOHN

IN THE MATTER OF THE BUILDING THAT IS LOCATED AT

71 Goldsworthy Road, SAINT JOHN, N.B. (PID number 337931)

AFFIDAVIT OF SERVICE


I, Catherine Lowe, of Saint John, N.B., Make Oath And Say As Follows:

1. I am employed by The City of Saint John in its Growth and Community Development Services Department. I have personal knowledge of the matters herein deposed except where otherwise stated.

2. On June 28, 2019, at approximately 4:50pm, I posted a copy of the attached Notice to Comply, marked Exhibit "A" and Notice of Appeal, marked Exhibit "B" to the front door of the building that is located at

71 Goldsworthy Road, Saint John, N.B.

Sworn To before me at the
City of Saint John, N.B.,
on the 23 day of
July, 2019


RACHEL A VAN WART
COMMISSIONER OF OATHS
MY COMMISSION EXPIRES
DECEMBER 31ST, 2022

Catherine Lowe
Catherine Lowe

FORM 4
NOTICE TO COMPLY – DANGEROUS OR
UNSAFELY PREMISES
(Local Governance Act, S.N.B., 2017, c.18, s 132(2))

This is Exhibit "A"
Referred to in the Affidavit of

Parcel identifier:

PID #00337931

Address: 71 Goldsworthy Road, Saint John, New Brunswick

Owner(s) or Occupier(s):

Name: Boyde, D. Lynn

Address: 71 Goldsworthy Road, Saint John, New Brunswick, E2J 4E1

Name: Boyde, Philip L.

Address: 71 Goldsworthy Road, Saint John, New Brunswick, E2J 4V1

Local government giving notice: The City of Saint John

By-law contravened: Saint John Unsightly Premises and Dangerous Buildings and Structures By-Law, By-law Number M-30 and amendments thereto (the "By-law").

Provision(s) contravened: Subsections 6(1), 6(2) and 6(3) of the By-law.

Conditions(s) that exist: The premise is unsightly by permitting junk, rubbish, refuse and a dilapidated building to remain on the premise. The building has become a hazard to the safety of the public by reason of being vacant or unoccupied and has become a hazard to the safety of the public by reason of dilapidation and by reason of unsoundness of structural strength. The conditions of the building and premise are described in Schedule "A", a true copy of the inspection report dated June 28, 2019 prepared by Catherine Lowe, EIT and reviewed and concurred in by Rachel Van Wart, P.Eng., By-law Enforcement Officers.

What must be done to correct the condition: The owner is to remedy the conditions by complying with the required remedial actions of the aforementioned inspection report and bring the building and premises into compliance with the aforesaid By-law.

In the event that the owner does not remedy the condition of the building and premises in the time prescribed by this Notice to Comply, the building may be demolished as the corrective action to address the hazard to the safety of the public and the premises may be cleaned up.

In the event of demolition, all debris and items on the premises will be disposed of as the corrective action to address the hazard to the safety of the public.

FORMULE 4
AVIS DE CONFORMITÉ – LIEUX
DANGEREUX
OU INESTHÉTIQUES
(Loi sur la gouvernance locale,
L.N.-B. 2017, ch. 18, par. 132(2))

Numéro d'identification de la parcelle :

NID : 00337931

Adresse : 71, rue Goldsworthy, Saint John, Nouveau-Brunswick

Propriétaire(s) ou occupant(s) :

Nom : Boyde, D. Lynn

Adresse : 71, rue Goldsworthy, Saint John, Nouveau-Brunswick, E2J 4E1

Nom : Boyde, Philip L.

Adresse : 71, rue Goldsworthy, Saint John, Nouveau-Brunswick, E2J 4V1

Gouvernement local signifiant l'avis : The City of Saint John

Arrêté enfreint : Arrêté relatif aux lieux inesthétiques et aux bâtiments et constructions dangereux de Saint John, Arrêté numéro M-30, ainsi que ses modifications ci-afférentes (l' « Arrêté »).

Disposition(s) enfreinte(s) : Les paragraphes 6(1), 6(2) et paragraphe 6(3) de l'Arrêté.

Description de la (des) situation(s) : Les lieux sont inesthétiques en permettant la présence de ferraille, de débris et le bâtiment délabré. Le bâtiment est devenu dangereux pour la sécurité du public du fait de son inhabitation ou de son inoccupation et est devenu dangereux pour la sécurité du public du fait de son délabrement et du fait de manque de solidité. Les conditions du bâtiment et des lieux sont décrites à l'annexe « A », une copie conforme du rapport d'inspection en date du 28 juin 2019 et préparé par Catherine Lowe, IS et révisé et en d'accorde avec par Rachel Van Wart, ing., agentes chargé de l'exécution des arrêtés du gouvernement local.

Ce qu'il y a lieu de faire pour y remédier : La propriétaire doit restaurer les conditions en se conformant aux recommandations du rapport d'inspection susmentionné et d'amener le bâtiment et les lieux en conformité avec l'Arrêté.

Dans l'éventualité que la propriétaire ne remédient pas le bâtiment et les lieux dans le temps prescrit par le présent avis de conformité, le bâtiment pourront être démolis comme mesure corrective compte tenu qu'il représente un danger pour la sécurité du public et les lieux pourront être nettoyés.

Dans l'éventualité de démolition, tous les débris et autres items sur les lieux seront disposés comme mesure corrective dans le but de remédier le danger pour la sécurité du public.

The aforementioned remedial actions relating to the demolition of the building and the disposal of debris and items on the premises do not include the carry-out clean-up, site rehabilitation, restoration of land, premises or personal property or other remedial action in order to control or reduce, eliminate the release, alter the manner of release or the release of any contaminant into or upon the environment or any part of the environment.

Date before which the condition must be corrected: ¹

- a) The demolition of the building, clean-up of the property and related remedies must be complete, or plans and permit applications for repair related remedies, must be submitted: within 30 days of being served with the Notice to Comply.
- b) The repair related remedies must be complete within 120 days of being served with the Notice to Comply.

Date for giving notice of appeal: Within 14 days of being served with the Notice to Comply.

Process to appeal: The owner may within 14 days after having been served with this Notice to Comply, send a Notice of Appeal by registered mail to the Common Clerk of The City of Saint John, City Hall – 8th Floor, 15 Market Square, Saint John, New Brunswick, E2L 4L1.

Potential penalty for not complying with notice within time set out in notice: ² Subsection 11(1) of the By-law states that a person who fails to comply with the terms of a Notice to Comply given under section 7 of the said By-law, commits an offence that is punishable under Part 2 of the *Provincial Offences Procedure Act* as a category F offence.

Where an offence under subsection 11(1) continues for more than one day, the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues pursuant to subparagraph 11(3)(b)(i).

Local government's authority to undertake repairs or remedy: ³ Paragraphs 12(1)(a), 12(1)(b) and 12(1)(c) of the By-law state that if an owner or occupier does not comply with a Notice to Comply given under section 7 within the time set out in the said Notice, the City may, cause the premises of that owner or occupier to be cleaned up or repaired, or cause the building or other structure of that owner or occupier to be repaired or demolished. Further, subsection 12(3) of the By-law states that the cost of carrying out such work, including any associated charge or fee, is chargeable to the owner or occupier and becomes a debt due to the City.

Les mesures correctives susmentionnées relativement à la démolition du bâtiment et la disposition des débris et autres items sur les lieux ne comprennent pas le nettoyage, la remise en état des lieux, des terrains ou des biens personnels ou toute autre mesure corrective dans le but de contrôler ou de réduire, d'éliminer le déversement, de modifier le mode de déversement ou le déversement d'un polluant dans ou sur l'environnement ou toute partie de l'environnement.

Délai imparti pour y remédier : ¹

- a) La démolition du bâtiment et le nettoyage des lieux doivent être complétés, ou à laquelle les plans et demande de permis pour les mesures des réparations, doivent être soumises, dans les 30 jours qui suivent la signification de l'avis de conformité.
- b) Les réparations reliées aux mesures doivent être complétées dans les 120 jours qui suivent la signification de l'avis de conformité.

Date limite pour donner l'avis d'appel : Dans les 14 jours qui suivent la notification de l'avis de conformité.

Processus d'appel : La propriétaire peut dans les 14 jours qui suivent la notification de l'avis de conformité, envoyé un avis d'appel par courrier recommandé à la greffière communale de la municipalité, à The City of Saint John, Édifice de l'hôtel de ville, 8^e étage, 15 Market Square, Saint John, Nouveau-Brunswick, E2L 4L1.

Peine possible en cas d'omission de se conformer aux exigences de l'avis dans le délai y imparti : ² Le paragraphe 11(1) de l'Arrêté prévoit quiconque omet de se conformer aux exigences formulées dans un avis de conformité notifié aux termes de l'article 7 de ladite Arrêté, commet une infraction qui est punissable en vertu de la partie 2 de la *Loi sur la procédure applicable aux infractions provinciales* à titre d'infraction de la classe F.

Lorsqu'une infraction prévue au paragraphe 11(1) se poursuit pendant plus d'une journée, l'amende minimale qui peut être imposée est l'amende minimale prévue par la *Loi sur la procédure applicable aux infractions provinciales* pour une infraction de la classe F multipliée par le nombre de jours pendant lesquels l'infraction se poursuit conformément à l'alinéa 11(3)b)i).

Pouvoir du gouvernement local d'entreprendre des réparations ou de remédier à la situation : ³ Conformément aux alinéas 12(1)a), 12(1)b) et 12(1)c) de l'Arrêté, si un avis de conformité a été signifié aux termes de l'article 7 de ladite Arrêté et, que le propriétaire ou l'occupant ne se conforme pas à cet avis de conformité dans le délai imparti et tel qu'il est réputé confirmé ou tel qu'il est confirmé ou modifié par un comité du conseil ou par un juge en vertu le paragraphe 12(3) de ladite Arrêté, la municipalité peut faire nettoyer ou réparer les lieux de ce propriétaire ou de cet occupant ou de faire réparer ou démolir le bâtiment ou autre construction de ce propriétaire ou de cet occupant,

et les coûts afférents à l'exécution des ouvrages, y compris toute redevance ou tout droit connexe, sont mis à la charge du propriétaire ou de l'occupant et deviennent une créance de la municipalité.

Dated at Saint John the 28th day of June, 2019.

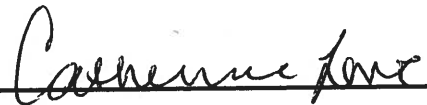
Fait à Saint John le ____ juin, 2019.

Local government: The City of Saint John

Gouvernement locale : The City of Saint John

Signature of the officer of the local government:

Signature du fonctionnaire du gouvernement local:



Contact information of the officer of the local government:

Coordonnées du fonctionnaire du gouvernement local :

Name: Catherine Lowe, EIT
Mailing address:

Nom : Catherine Lowe, IS
Adresse postale :

Growth and Community Development Services

Service de la Croissance et du Développement
Communautaire

The City of Saint John
15 Market Square
City Hall Building, 10th Floor
P. O. Box 1971
Saint John, New Brunswick
E2L 4L1

The City of Saint John
15 Market Square
Édifice de l'hôtel de ville, 10^e étage
Case postale 1971
Saint John (Nouveau-Brunswick)
E2L 4L1

Telephone: (506) 658-2911
E-mail: catherine.lowe@saintjohn.ca
Fax: (506) 632-6199

Téléphone : (506) 658-2911
Adresse électronique : catherine.lowe@saintjohn.ca
Télécopieur : (506) 632-6199

Corporate seal of the local government

Sceau du gouvernement local



Notes:

1. All appropriate permits must be obtained and all relevant legislation must be complied with in the course of carrying out the required remedial action.
2. Payment of the fine does not alleviate the obligation to comply with the by-law, standard or notice.
3. Costs become a debt due to the local government and may be added to the joint local government and provincial Real Property Assessment and Tax Notice.

Notes :

1. Tous les permis prescrits doivent être obtenus et toute la législation pertinente doit être respectée pendant l'exécution des mesures de remédiation.
2. Le paiement de l'amende n'a pas pour effet d'annuler l'obligation de se conformer à l'arrêté, à la norme ou à l'avis.
3. Les coûts deviennent une créance du gouvernement local et peuvent être ajoutés à l'avis commun d'évaluation et d'impôt foncier des gouvernements local et provincial.

INSPECTION REPORT
Schedule "A"
71 Goldsworthy Road
Saint John, New Brunswick
PID# 00337931

Dated at Saint John,
this 28th day of
June 2019.
Catherine Lowe
Standards Officer

Inspection Date: June 5, 2019 and June 27, 2019

Inspection Conducted by: Catherine Lowe, EIT & Rachel Van Wart, P.Eng.

Introduction

Inspections of the property at 71 Goldsworthy Road, PID# 00337931, have revealed that there are five Structures on the premise (the "Structures"); a single-storey mobile home (the "Mobile Home"), a mobile camping trailer (the "Trailer"), a two-storey wooden barn (the "Barn"), a two-storey wooden shed ("Shed 1"), and a single-storey wooden shed that has collapsed ("Shed 2"). Staff first became aware of the property's vacancy in May 2018 and began standard enforcement procedures. The property is located on the City's East side in a rural residential zone. The Structures are a hazard to the safety of the public by reason of being open, by reason of being vacant, by reason of dilapidation and by reason of unsoundness of structural strength.

Discussion

The Structures are not in compliance with the *Saint John Unsightly Premises and Dangerous Buildings and Structures By-law*, By-law Number M-30, and amendments thereto (the "By-law").

Unsightly Premise Conditions

Subsection 6(1) of the By-law states:

No person shall permit premises owned or occupied by him or her to be unsightly by permitting to remain on any part of such premises

- (a) any ashes, junk, rubbish or refuse,
- (b) an accumulation of wood shavings, paper, sawdust or other residue of production or construction,
- (c) a derelict vehicle, equipment, machinery or the body of any part of a vehicle equipment or machinery, or
- (d) a dilapidated building.

1. There is an excessive accumulation of junk, rubbish, and refuse on the property. There are multiple piles of rusted scrap metal, discarded boards, and other broken or damaged materials on the property. Other items scattered around the property include, but are not limited to; tires, plastic piping and furniture, household furniture, a deep freezer, other discarded miscellaneous household items, a shopping cart, a broken temporary parking shelter, as well as other various loose and bagged garbage. The collection of junk expands into the wooded area to the left and to the rear of the property. The aforementioned accumulation of junk, rubbish, and refuse is unsightly.
2. There are multiple dilapidated vehicles on the property as well. At the right front of the property, there is a rusted tractor that is missing the hood for the engine. At the rear of the property there is a yellow van and a grey van as well, both are rusted and do not appear to be in working condition. Located on the left side of the property is the bed half of a pickup truck.

3. Rusted machinery and equipment is scattered across the property. These items include, but are not limited to; a wood burning furnace, pieces of a lawn mower and pieces of a snow blower, a small flatbed trailer, and various other unidentifiable rusted metal objects. These aforementioned items cause the property to be unsightly.

Mobile Home

4. The Structures are dilapidated. The metal siding of the Mobile Home is rusted, damaged or missing in many locations. The wooden boards, which enclose the area beneath the Mobile Home, have fallen in many locations and expose building materials such as insulation and vapour barrier; this has caused the materials to deteriorate and rot. The lower sections of siding at the rear of the Mobile Home have been nearly entirely removed, which has exposed wooden members, insulation, and electrical wires of the rear wall of the Mobile Home. The wooden members are damaged and rotting, the insulation is destroyed, and the electrical wires are frayed and rusted. The main entrance to the Mobile Home consists of concrete stairs and a wooden landing. The stairs lack proper guards and handrails, and the paint on the landing is peeling. The overhang above the main entrance is sloped and rusted. The wooden stairs to the left side entrance are rotten and unsafe. The paint on the wooden door of the left entrance is peeling and the wood is deteriorated.

Barn

5. The red paint on the wooden Barn located on the left side of the property is weathered and peeling. The roof of the Barn is sagging and the roof covering is deteriorated. The fascia of the Barn is rotten and hanging in some locations. A section of the OSB wall panel on the right side of the Barn has been forcibly removed; this provides unrestricted access into the Barn. Damaged pieces of wall panel are stacked against the Barn while others lie on the ground near the opening in the wall. The metal framing members of this section of the wall are now exposed and rusted. The floorboards of this section of the Barn have also been removed, exposing rusted metal floor members. The front right door of the Barn is detached and is braced to the Barn with a wooden board. The left wall of the Barn is bulging.

Trailer

6. The front door of the Trailer on the right front side of the property is open. Loose and bagged garbage strewn throughout the Trailer can be seen through the open door. It can also be seen that the right rear corner of the Trailer is severely water damaged and sagging. There are tires on the roof of the Trailer, presumably to hold down the white tarp on the roof. The metal siding of the Trailer is beginning to rust in many locations and is discolored.

Shed 1

7. Shed 1 that is located on the right side of the property is dilapidated and unsound. Shed 1 is a two-storey wooden shed with asphalt shingles. Paint is peeling from the exterior walls, and the shingles are curling and are deteriorated. The front door of Shed 1 is crooked and sloped. It can be seen that the walls of Shed 1 are sagging as the siding and window frames are no longer straight. There is a gap in the front wall on the left side of the Shed. The right side of the front wall of the Shed is bulging.

Shed 2

8. Shed 2 at the rear of the property has collapsed entirely. The walls and roof lay in a heap on the ground. Wooden boards with exposed nails from the walls and roof are jutting out from beneath the collapsed roof. There is junk visible in the heap, some appears to have been stored in the shed while some appears to have been collected near the shed. There had been a blue tarp covering the roof of Shed 2 that is now entangled in the debris.

The aforementioned condition of the Structures on the property is unsightly.

Vacant and Unoccupied

Subsection 6(2) of the By-law states:

No person shall permit a building or other structure owned or occupied by the person to become a hazard to the safety of the public by reason of being vacant or unoccupied.

The Structures are a hazard to the safety of the public by reason of being vacant or unoccupied for the following reasons:

1. Buildings and structures in a dilapidated condition that are known to be vacant can attract vandalism, arson and criminal activity. The property's condition affects the quality of life of neighboring properties and negatively impacts property value of real estate in the area due to negative perceptions of unsafe and deteriorating conditions. The large volume of scrap metal and the many derelict vehicles on the property could attract vandalism and could be subject to theft. This is a hazard to the neighbors as their properties may also be subjected to trespassing and theft. Information obtained from Saint John Energy regarding the services at the property provides a strong indication of when the property may have been vacated. Saint John Energy confirmed that the power was disconnected in October 2018 and equipment was removed in February 2019. These services have not been reinstated to date.
2. There is a higher risk of a fire event occurring at the property since it is known to the public that the Structures are vacant. There is a neighboring single family home at 61 Goldsworthy Road and single family home with detached garage at 83 Goldsworthy Road. The garage at 83 Goldsworthy Road is in close proximity to the right property line of 71 Goldsworthy, and thus is near Shed 1. Should a fire start in Shed 1 it could potentially spread to the neighboring garage. The property is also surrounded by wooded area. If a fire event were to occur it could easily spread into the surrounding trees, endangering the neighboring homes as well as any wildlife in the area.
3. There is a concern for emergency personnel safety in the event of an emergency. If firefighters suspect there may be people inside the Structures, it would be reasonable to expect they may be required to enter them. They may also need to enter the Structures to fully extinguish the fire. The frame of the Mobile Home is rusted and the wooden members of the walls and floors that are visible at the rear are rotten. The roof of the Barn is sagging and appears to be leaking in some locations as the ceiling is discolored. The walls of Shed 1 are sagging and the entire structure is out of plumb, which indicated structural instability. These conditions pose a hazard to emergency personnel and anyone else in the Structures should an emergency event occur. The accumulation of junk across the property poses a tripping hazard, which would hinder the movements of personnel in the event of an emergency.

Dilapidated and Structurally Unsound Building Conditions

Subsection 6(3) of the By-law states

No person shall permit a building or other structure owned or occupied by the person to become a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength.

The Structures are a hazard to the safety of the public by reason of dilapidation and by reason of unsoundness of structural strength for the following reasons:

Mobile Home

1. The Mobile Home is dilapidated and structurally unsound. The metal frame of the structure is rusted and deteriorated. The siding that enclosed the left side foundation area of the Mobile Home has fallen, exposing damaged vapour barrier and insulation. The left rear corner of the Mobile Home is damaged. The siding on either side of the corner is bowing away and the corner trim is bent at the center, allowing material such as wooden members, vapour barrier and other material to spill out of the walls of the Mobile Home. The siding on the rear lower half of the Mobile Home has fallen. This has caused material such as insulation to fall from the rear wall and has exposed wooden framing and structural members. The framing and structural members are rotten in many locations. One vertical deteriorated wooden framing member is jutting out from the Mobile Home at an approximate 45-degree angle. These conditions render the rear wall and floor of the Mobile Home structurally unsound, which is a hazard to anyone who may enter the Mobile Home. The siding that remains attached to the rear of the Mobile Home is bent away from the rear wall, exposing the sharp edges of the metal siding. There are also many exposed, rusted and deteriorated wires in the rear wall of the Mobile Home. Metal siding and electrical wires that have fallen from the rear of the Mobile Home now rest on the ground, covered with leaves. A rusted electrical pole and wires hang in the branches of a tree and the rear left side of the Mobile Home. These conditions are a hazard to the safety of the public by being a tripping hazard to anyone at the rear of the Mobile Home.
2. Through a window on the left front of the Mobile Home, it appears as though junk and household items have been strewn throughout the structure. There are two buckets pressed against the rear right window of the Mobile Home. In addition, the rear left window of the Mobile Home is open. This allows rain and other inclement weather to enter into the Mobile Home. Continued exposure to wet conditions will cause further deterioration to the interior of the Mobile Home. It does not appear as though the Mobile Home is suitable for habitation in its current condition.

Barn

3. The Barn is dilapidated. There is a section of fascia hanging from the right side of the Barn. The material covering the roof of the Barn is deteriorated. Anyone near the Barn could be harmed by falling debris. A section of the OSB wall panel on the right side of the Barn has been forcibly removed; due to this, it is now open to the public. The metal framing of this section of the wall is now exposed and rusted. A section of floorboard has also been removed from the Barn, exposing the rusted metal flooring members. There are items strewn throughout the interior of the Barn, likely due to vandalism. There is junk covering counter surfaces, wall shelves and all across the floor of the Barn. Gas cans, bottles of oil, and other products that may be dangerous can be seen through the front window of the Barn. These items create a tripping hazard and health hazard to anyone inside the Barn. The Barn appears to be structurally unsound. The roof of the Barn is sagging and the left side wall is bowing away from the Barn. There is also evidence of water damage on the ceiling at the rear of the Barn as the wooden members of the ceiling are discolored. Prolonged exposure to water can cause the wooden members to rot. The Barn is in danger of collapsing if these conditions are not remedied.

Trailer

4. The Trailer is open to the public as the front door is open; the door appears damaged and will not easily latch. Due to this, the Trailer is at an increased risk for vandalism. The Trailer is full of junk, as well as loose and bagged garbage. The rear right side of the ceiling is sagging and is significantly water damaged. Personal injury could occur if someone was in the Trailer and the ceiling collapsed.
5. Wild animals are also able to access the Trailer for shelter. Animals that have protected shelter can lead to overpopulation, which can have negative consequences

for the neighboring area. Animals can carry disease as well as do damage to buildings.

Shed 1

6. Shed 1 is dilapidated and structurally unsound. Wooden trim on the Shed and roof shingles are deteriorated, and could fall off the Shed if subjected to a strong wind. The Shed is leaning to the left. The siding on the front wall of the Shed is no longer straight and is sagging, indicating structural instability of the wall. The front door of the Shed is no longer properly fitted in the doorframe due to structural movement. Windows on the front and left side of the Shed are out of plumb. The roof of the Shed is sagging. There is a pile of junk and wooden debris to the left of the Shed that is partially leaning on the left and front walls. Shed 1 is structurally unsound and could collapse if it is left in this condition.

Shed 2

7. Shed 2 has collapsed. It now rests in a heap on the ground along with items that were inside and around the Shed. Wooden boards containing nails protrude from the pile in all directions. Shed 2 is located at the rear of the property, close to many large trees. The heap of the collapsed Shed and other material are covered by leaves, which partially conceals some of the debris. This is a dangerous tripping hazard for anyone attempting to manoeuvre through this section of the property, as it is difficult to avoid the debris.

The Property

8. The accumulation of derelict items on the property is a hazard to the safety of the public. The piles of junk are haphazardly stacked, with items protruding in all directions. Some items are now concealed in the tall grass at the front of the property and are not easily avoided. This condition creates a tripping hazard to anyone on the property. Many items are rusted and deteriorated. Being cut by a protruding item could have adverse health effects and would likely require hospital treatment for a tetanus shot.

Required Remedial Actions

The owner must comply with one of the two options stated below:

Option 1: Remedy the conditions of the Structures through all repair and remedial actions as follows:

1. The Structures must be completely repaired to remedy the above mentioned hazards to public safety while meeting the requirements of the *National Building Code of Canada (2010)* as well as all other applicable by-laws.
2. The Structures must be maintained, kept secure, and monitored on a routine basis while the property remains vacant or unoccupied.
3. A detailed plan must be submitted to the Growth and Community Development Services Department of the City of Saint John (the "Department") for review and approval. The plan should also include a schedule for the work that is to be carried out. The repaired Structures must meet the *National Building Code of Canada (2010)* as well as other applicable codes.
4. The detailed plan, including schedules and any engineering reports, must be approved by the Department prior to commencing repair work.
5. A building permit must be obtained for any and all applicable work prior to commencing said work from the City of Saint John in order to comply with the

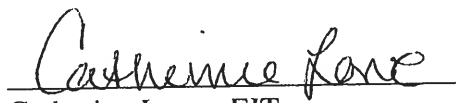
Saint John Building By-law, By-law Number C.P. 102 and amendments thereto (the "*Saint John Building By-law*").

6. The premise must be cleared of all debris found on the property, including any and all rubbish that may be considered hazardous or unsightly. The debris from the premise must be disposed of at an approved solid waste disposal site, in accordance with all applicable by-laws, acts and regulations. Documented proof, that clearly demonstrates an approved solid waste disposal site was used for the disposal of debris, must be provided to the Department. The premise must comply with all applicable By-laws, Acts, Codes and Regulations.

Option 2: Demolition of the Structures and cleanup of all debris on the premise by complying with all the remedial actions as follows:

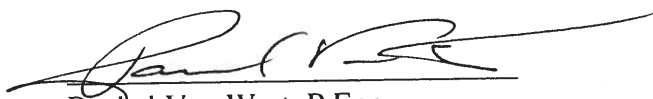
1. The Structures must be demolished to remove the hazard to the safety of the public by reason of dilapidation and by reason of being vacant or unoccupied.
2. A demolition permit must be obtained from the City of Saint John in order to comply with the *Saint John Building By-law*.
3. The premise must be cleared of the debris from the demolition and the lot must be made reasonably level with grade so as to not create a tripping or falling hazard. All debris must be disposed of at an approved solid waste disposal site, and in accordance with all applicable By-laws, Acts and Regulations. Documented proof, that clearly demonstrates an approved solid waste disposal site was used for the disposal of debris, must be provided to the Department.
4. All debris that is currently on the premise must be removed and disposed of at an approved solid waste disposal site, and in accordance with all applicable By-laws, Acts and Regulations. Documented proof, that clearly demonstrates an approved solid waste disposal site was used for the disposal of debris, must be provided to the Department.
5. The property must be in compliance with all applicable By-laws, Acts and Regulations.

Prepared by:


Catherine Lowe, EIT
Technical Services Officer
Growth and Community Development Services

June 28, 2019
Date

Reviewed by and concurred in by:


Rachel Van Wart, P.Eng.
Technical Services Officer
Growth and Community Development Services

JUNE 28 / 19
Date

Schedule "A"
FORM 1
NOTICE OF APPEAL

This is Exhibit "B"
Referred to in the Affidavit of
Catherine Lowe
Sworn before me at the City of
Saint John, New Brunswick
the 23 day of July, 2019
Rachel Van
Commissioner of Oaths

Annexe « A »
FORMULE 1
AVIS D'APPEL

File No.: _____

N° du dossier : _____

BETWEEN :

ENTRE :

_____,
Appellant(s),
- and -

_____,
Appellant(s),
- et -

THE CITY OF SAINT JOHN,

THE CITY OF SAINT JOHN,

Respondent.

Intimée.

Parcel Identifier : PID #

Numéro d'identification de la parcelle : # NID

Parcel Address: _____

Adresse de la parcelle : _____

Owner(s) or Occupier(s):

Propriétaire(s) ou occupant(s) :

Name: _____

Nom : _____

Address: _____

Adresse : _____

Telephone: _____

Téléphone: _____

Name: _____

Nom : _____

Address: _____

Adresse : _____

Telephone: _____

Téléphone: _____

The above named appellant(s) is (are) not satisfied with the terms and conditions set out in:

L'appelant ou les appelants susnommé(s) n'accepte(nt) pas les modalités ou les conditions qui sont énoncés dans :

(a) a Notice that was given under section 7 of the *Saint John Unsightly Premises and Dangerous Buildings and Structures By-Law*; or

(a) un AVIS qui a été donné en vertu de l'article 7 de l'*Arrêté relatif aux lieux inesthétiques et aux bâtiments et constructions dangereux dans The City of Saint John*; ou

(b) an Order that was issued under section 25 of the *Saint John Minimum Property Standards By-Law*;

(b) une ORDONNANCE qui a été émise en vertu de l'article 25 de l'*Arrêté concernant les normes minimales régissant les résidences de Saint John*

and therefore appeals to the *Saint John Substandard Properties Appeal Committee*.

et fait ainsi appel devant le *Comité des appels sur les résidences non conformes aux normes de Saint John*.

The appellant's grounds for this appeal are as follows (set out the grounds clearly but briefly):

Les motifs d'appel de l'appelant(s) dans le présent appel sont les suivants (énoncer les motifs de façon

claire et concise) :

| | |
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| | |
|--|-------------------------------|
| Dated at _____ the _____ day of _____, 20____. | Fait à _____ le _____ 20____. |
|--|-------------------------------|

Signature of owner or occupier

Signature du propriétaire ou de l'occupant

The appellant(s) intends to proceed in the English [] or French [] language (Please check the appropriate box).

L'appelant a ou les appelants ont l'intention d'utiliser la langue française [] ou anglaise [] (Veuillez cocher la case appropriée).

*Please forward your Notice of Appeal by registered mail to the Common Clerk within **fourteen (14) days** after having been given the Notice or Order at the following address:*

*Veillez faire parvenir votre AVIS D'APPEL par courrier recommandé au greffier communal dans les **quatorze (14) jours** qui suivent la notification de l'AVIS ou de l'ORDONNANCE à l'adresse suivante :*

Common Clerk's Office
15 Market Square, City Hall Building, 8th Floor
P. O. Box 1971
Saint John, New Brunswick
E2L 4L1

Bureau du greffier communal
15 Market Square, Édifice de l'hôtel de ville, 8^e étage
Case postale 1971
Saint John (Nouveau-Brunswick)
E2L 4L1

Telephone: 506-658-2862
Facsimile: 506-674-4214

Téléphone : 506-658-2862
Facsimilé : 506-674-4214

Notes:

Notes :

1. A Notice or Order that is not appealed within **fourteen (14) days** after having been given or issued shall be deemed to be confirmed.

1. Un AVIS ou une ORDONNANCE dont il n'est pas interjeté appel dans les **quatorze (14) jours** qui suivent la notification de l'AVIS ou l'émission de l'ORDONNANCE est réputé confirmé.

2. On an appeal, the *Saint John Substandard Properties Appeal Committee* shall hold a hearing into the matter at which the owner(s) or occupier(s) bringing the appeal has (have) a right to be heard and may be represented by counsel.

2. Lors d'un appel, le *Comité des appels sur les résidences non conformes aux normes de Saint John* doit tenir, sur le point en litige, une audience au cours de laquelle le(s) propriétaire(s) ou l'occupant ou les occupants qui interjette(nt) appel a (ont) le droit d'être entendu(s) et peut (peuvent) se faire représenter par un avocat.

3. On an appeal, the *Saint John Substandard Properties Appeal Committee* may confirm, modify or rescind the Notice or Order, or extend the time for complying with the Notice or Order.

3. Lors d'un appel, le *Comité des appels sur les résidences non conformes aux normes de Saint John* peut confirmer, modifier ou annuler l'AVIS ou l'ORDONNANCE ou proroger le délai pour s'y conformer.

4. The *Saint John Substandard Properties Appeal Committee* shall provide a copy of its decision to the owner(s) or occupier(s) of the premises, building or structure who brought the appeal within **fourteen (14) days** after making its decision.

4. Le *Comité des appels sur les résidences non conformes aux normes de Saint John* doit fournir une copie de sa décision au(x) propriétaire(s) ou à l'occupant ou aux occupants des lieux, du bâtiment ou de la construction qui lui a (ont) interjeté appel dans les **quatorze (14) jours** suivant la date à laquelle il a rendu

sa décision.

5. The owner(s) or occupier(s) who is provided with a copy of a decision from the *Saint John Substandard Properties Appeal Committee* regarding a Notice, may appeal the decision to a judge of The Court of Queen's Bench of New Brunswick within ***fourteen (14) days*** after the copy of the decision was provided to the owner(s) or occupier(s) on the grounds that (a) the procedure required to be followed by the by-law was not followed, or (b) the decision is unreasonable.

5. Le(s) propriétaire(s) ou l'occupant ou les occupants à qui une copie d'une décision a été fournie par le *Comité des appels sur les résidences non conformes aux normes de Saint John* concernant un AVIS peut (peuvent), dans les ***quatorze (14) jours*** qui suivent, interjeter appel de la décision devant un juge de la Cour du Banc de la Reine du Nouveau-Brunswick au motif que (a) la démarche à suivre en vertu de l'arrêté n'a pas été suivie, ou (b) la décision est déraisonnable.

CANADA
PROVINCE OF NEW BRUNSWICK
COUNTY OF SAINT JOHN

IN THE MATTER OF THE BUILDING THAT IS LOCATED AT

71 Goldsworthy Rd, SAINT JOHN, N.B. (PID number 00337931)

AFFIDAVIT OF SERVICE

I, Jordan McKinley, of Saint John, N.B., Make Oath And Say As Follows:

1. I am employed by The City of Saint John in its Growth and Community Development Services Department. I have personal knowledge of the matters herein deposed except where otherwise stated.
2. On August 20, 2019, at approximately 15:30, I posted a copy of the attached Notice of Common Council Hearing, marked Exhibit "A" to the front door of the building that is located at 71 Goldsworthy Rd., Saint John, N.B.

Sworn To before me at the
City of Saint John, N.B.,
on the 21 day of
August, 2019

Chris McKiel
CHRISTOPHER D MCKIEL
COMMISSIONER OF OATHS
MY COMMISSION EXPIRES
DECEMBER 31ST, 2019

Jordan McKinley
Jordan McKinley



The City of Saint John

**Permitting & Inspection / Service des inspections et de l'application
By-Law Enforcement / Service d'Application des Arrêtés Municipaux**

**Phone / Tél: (506) 658-2911
Fax / Téléc: (506) 632-6199**

August 15, 2019

Case Number: 18-0224

REGISTERED MAIL

Philip & Lynn Boyde
71 Goldsworthy Rd
Saint John, NB
E2J 4V1

This is Exhibit "A"
Referred to in the Affidavit of
Jordan McKinley
Sworn before me at the City of
Saint John, New Brunswick
the 21 day of August 2019
Chris McKay
Commissioner of Oaths

NOTICE OF COMMON COUNCIL HEARING

Dear Sir/Madam:

Re: 71 Goldsworthy Rd, PID # 00337931
Dangerous and Vacant Building Program

On June 28, 2019, a Notice to Comply was issued for the above mentioned property which required remedial action to bring the building and premises into compliance with the *Saint John Unsightly Premises and Dangerous Buildings and Structures By-law*. The Notice to Comply was posted on the said property on June 28, 2019.

The fourteen (14) days appeal period has now expired. Therefore, a compliance inspection was carried out on August 2, 2019. The property was not in compliance with the aforesaid By-law at the time of the inspection, therefore City Staff will be attending the Common Council meeting scheduled on September 9, 2019 at 6:00 p.m. to recommend that the building be demolished because it has become a hazard to the safety of the public by reason of dilapidation or by reason of unsoundness of structural strength. Please be advised that at this meeting, you can present evidence that the building is not dilapidated or structurally unsound; however, note that this meeting will be your only opportunity to do so.

If you have any questions, don't hesitate to contact me at (506) 658-2911.

Regards,


Catherine Lowe, EIT
By-Law Enforcement/Standards Officer

cc: Mortgage, National Bank of Canada



SAINT JOHN

P.O. Box 1971
Saint John, NB
Canada E2L 4L1

C.P. 1971
Saint John, N.-B.
Canada E2L 4L1

www.saintjohn.ca



71 Goldsworthy Road,
Saint John, New Brunswick
PID# 00337931



71 Goldsworthy Road,
Saint John, New Brunswick
PID# 00337931



71 Goldsworthy Road,
Saint John, New Brunswick
PID# 00337931



71 Goldsworthy Road,
Saint John, New Brunswick
PID# 00337931



71 Goldsworthy Road,
Saint John, ⁴⁰⁰New Brunswick
PID# 00337931



71 Goldsworthy Road,
Saint John, ⁴⁰¹New Brunswick
PID# 00337931



71 Goldsworthy Road,
Saint John, ⁴⁰²New Brunswick
PID# 00337931



71 Goldsworthy Road,
Saint John, New Brunswick
403
PID# 00337931



71 Goldsworthy Road,
Saint John, ⁴⁰⁴New Brunswick
PID# 00337931



COUNCIL REPORT

| | |
|--------------|--------------------|
| M&C No. | 2019-033 |
| Report Date | September 05, 2019 |
| Meeting Date | May 09, 2016 |
| Service Area | Corporate Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: Nominating Committee Appointments

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|------------------------|-------------------------|--------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>R. Evans</i> | <i>J. Taylor</i> | <i>J. Collins</i> |

RECOMMENDATION

That Common Council appoint 2 Councillors to the Nominating Committee.

REPORT

The Nominating Committee currently has 2 vacancies due to the terms of Councillor David Merrithew and Councillor Gary Sullivan expiring on July 30, 2019.

There are a number of ABCs with vacancies and therefore it is recommended that Council appoint two new members to Nominating Committee as soon as possible.

The following Council members have completed terms on the Nominating Committee:

David Merrithew – May 30, 2016 to May 30, 2017

Shirley McAlary – May 30, 2016 to May 30, 2017

Ray Strowbridge – May 30, 2017 to May 30, 2018

Donna Reardon – May 30, 2017 to May 30, 2018

Gary Sullivan – July 30, 2018 to July 30, 2019

David Merrithew – July 30, 2018 to July 30, 2019

COUNCIL REPORT

| | |
|--------------|---|
| M&C No. | M&C 2019-224 |
| Report Date | September 03, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Transportation and Environment Services |

His Worship Mayor Don Darling and Members of Common Council

SUBJECT: Safer School Zones

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|----------------------------|----------------------------------|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Tim O'Reilly</i> | <i>Michael Hugenholtz</i> | <i>John Collin</i> |

RECOMMENDATION

Your City Manager recommends Common Council receive and file this report.

EXECUTIVE SUMMARY

This report is to updated Common Council and the public on two topics:

1. a recent change to the Provincial Motor Vehicle Act related to school zone speed limits, and
2. implementation of the 2019 Safer School Zones Program.

PREVIOUS RESOLUTION

N/A

REPORT

The Province of New Brunswick has recently amended its Motor Vehicle Act resulting in the default speed limit in most school zones in City limits reducing from 50 KM/H to 30 KM/H. Most elementary and middle schools in Saint John have at least one school zone on surrounding City streets. These school zones are communicated to motorists via fluorescent yellow-green "School Zone" and "School Zone End" signs. The limits of each of these zones are also defined in the City's Traffic By-Law. Speed limits in school zones are in effect 7:30 AM until 4:00 PM on school days.

This new 30 KM/H default school zone speed limit is not in effect in a few locations within City limits. Zones with posted school zone speed limit signs of 40 KM/H are in place on some City streets. The zone for Loch Lomond School on Loch Lomond Road is set by the province because this is a Provincial Highway.

The 40 KM/H zones on some City streets were recommended by staff and supported by Common Council through by-law amendments in recent years when the default speed limit was 50 KM/H. City staff intend to return to Council following the Province approving the City's consolidated Traffic By-Law to recommend these 40 KM/H zones be reduced to the new 30 KM/H default.

City staff believe this change to a 30 KM/H default speed limit is not well-known in the community and therefore generating some heightened public awareness is warranted as we start a new school year.

City staff would like to commend the Province for making recent changes to the Motor Vehicle Act to help make school zones safer. A number of years ago the fine that could be issued for speeding in a school zone doubled; the ultimate motivator to discourage speeding in school zones. The Province's recent change to the 30 KM/H default speed limit is also expected to improve safety for walking school children. As highlighted in MoveSJ's Pedestrian Strategy, slower vehicle speeds allow more time for motorists to react to crossing school children, reduces the distance required to stop a vehicle, and reduces collision severity. Standardized changes to the Motor Vehicle Act also reduce the need for the City to manage site-specific issues through individual by-law changes.

Safer School Zones Program Update

As has been consistent for the previous 5 years, the City is once again in 2019 improving the safety of streets around individual elementary and middle schools (Lakewood and Samuel-de-Champlain) as part of the Safer School Zones Program. In both cases, a crosswalk with signals as well as driver speed feedback signs are being installed. The school zone speed limits during school times would be 30 KM/H.

The below table is an updated summary of the entire program including completed or planned year of implementation:

| School | Highest Classification of Street in Area | Year of Implementation |
|-------------------------|---|-------------------------------|
| Bayside | Arterial (Bayside Drive) | 2014✓ |
| Bayview | Arterial (Loch Lomond Road) | 2014✓ |
| Prince Charles | Arterial (Union Street) | 2014✓ |
| Centennial | Collector (Millidge Avenue) | 2015✓ |
| Champlain Heights | Collector (Champlain Drive) | 2015✓ |
| Forest Hills School | Collector (Westmorland Road) | 2015✓ |
| Hazen White St. Francis | Collector (Sandy Point Road) | 2016✓ |

| | | |
|-----------------------|-------------------------------|---------------------------------|
| St. Rose and Barnhill | Collector (Manawagonish) | 2016✓ |
| Seaside Park | Collector (Fundy Drive) | 2017✓ |
| M. Gerald Teed | Collector (Daniel Avenue) | 2018✓ |
| Princess Elizabeth | Collector (Cranston Avenue) | 2018✓ |
| Samuel-de-Champlain | Collector (Ragged Point Road) | 2019 |
| Lakewood | Local (Lakeview Drive) | 2019 |
| Loch Lomond | Local (Evergreen) | 2020 |
| Devine Mercy | Local (Clarendon Street) | 2020 |
| Islandview | Local (Ridge Row) | 2021 |
| Millidgeville North | Collector (Woodward Avenue) | 2021 |
| New South End School | TBD | TBD |
| Beaconsfield | Collector (Fundy Drive) | TBD (Capital investment needed) |

Update on Overall 2019 Traffic Safety and Improvement Projects

Staff also intend to return to Council in the coming weeks to provide an overall summary of traffic safety and improvement projects completed in 2019 in addition to the two Safer School Zone projects described in this report.

STRATEGIC ALIGNMENT

This report aligns with Council's priority of progressing a Vibrant, Safe City, particularly for active transportation modes. This report also aligns with the City's Transportation Plan (MoveSJ).

SERVICE AND FINANCIAL OUTCOMES

Service outcomes are described previously in this report.

Dedicated funding for the Safer School Zones Program is provided in the City's Pedestrian & Traffic Management Service operating budget, approximately \$30,000 for each.

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

Each school is consulted as part of their Safer School Zone project.

The City's Communications Department will issue a public advisory about the reduced 30 KM/H default school zone speed limit.

The Saint John Police Force has been advised of the lower default speed limit.

COUNCIL REPORT

| | |
|--------------|--------------------|
| M&C No. | 2019-232 |
| Report Date | September 03, 2019 |
| Meeting Date | September 09, 2019 |
| Service Area | Corporate Services |

His Worship Mayor Don Darling and Members of Common Council

***SUBJECT: Treatment of Letters/Documents address to Common Council:
Proposed Procedural Bylaw Amendment***

OPEN OR CLOSED SESSION

This matter is to be discussed in open session of Common Council.

AUTHORIZATION

| | | |
|-------------------------------|-------------------------|---------------------------|
| Primary Author | Commissioner/Dept. Head | City Manager |
| <i>Jonathan Taylor</i> | | <i>John Collin</i> |

RECOMMENDATION

That Council direct the City Manager to prepare the following amendment to Council's procedural bylaw:

"In the event that the Common Clerk determines that correspondence and any associated material addressed to Common Council and delivered to his/her office, should be distributed to members of Council in advance of the distribution of the Council agenda kit, then in such case no member of Council shall disclose either the existence, the substance, or a copy of such correspondence and/or material prior to the Council agenda kit in which it/they will be included, being made available to the public pursuant to s.8..."

EXECUTIVE SUMMARY

In response to the July 29, 2019 referral to the City Manager respecting letters/documents addressed to Mayor and Council, the City Solicitor has prepared draft language for an amendment to Council's procedural bylaw which would prohibit Council members from disclosing correspondence and associated materials, addressed to Council and delivered to the Clerk's office for inclusion on an agenda, prior to the Council agenda package being made available to the public.

PREVIOUS RESOLUTION

Council resolution of July 29, 2019:

“RESOLVED that the item *Letters/Documents Addressed to Mayor and Council* be referred to the City Manager for guidance.”

REPORT

At its July 29, 2019 meeting, Council discussed the Deputy Mayor’s agenda submission regarding letters and/or documents addressed to Members of Common Council being discussed, or being made available to the public via social media, prior to the item appearing on a Council agenda.

As background, a letter from Minister Carr regarding the Sustaining Saint John report was sent to the Common Clerk’s office via email on July 17th. The Clerk’s office forwarded the email and letter to Council members advising that it would be added to Council’s July 29th agenda. The letter was subsequently shared online by a Council member prior to the agenda being published.

At the July 29th Council meeting that the procedural bylaw does not contain specific provisions which address the issue of making agenda materials public prior to the release of the Council agenda kit. Council subsequently referred the matter to the City Manager for report and recommendation.

It is staff’s view that an amendment to Council’s procedural bylaw would effectively address this matter and provide clarity to both Council and staff in the future.

The City Solicitor prepared the following draft procedural bylaw amendment for Council’s consideration:

“In the event that the common clerk determines that correspondence and any associated material addressed to Common Council and delivered to his/her office, should be distributed to members of Council in advance of the distribution of the Council agenda package, then in such case no member of Council shall disclose either the existence, the substance, or a copy of such correspondence and/or material prior to the Council agenda package in which it/they will be included, being available to the public pursuant to s.8...”

Should Council wish to proceed with the amendment, staff will prepare the amendment and submit it to a future Council agenda.

STRATEGIC ALIGNMENT

SERVICE AND FINANCIAL OUTCOMES

N/A

INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS

City Manager and City Solicitor

ATTACHMENTS

N/A



623 Lancaster Avenue
Saint John, NB E2M 2M3
Phone/Fax: 506-672-6504

August 1, 2019

Zoël Breau, Community Leader and Jim Kokocki, Board Chair
L'Arche Saint John
623 Lancaster Avenue
Saint John, New Brunswick
E2M 2M3

Dear Friends:

We are pleased to invite you to our Celebration and Fundraising Dinner to be held on September 14th, 2019 at Thistle-St. Andrews Curling Club (*49 Dufferin Ave, Saint John*) at 5:30pm.

2019 has seen significant change for L'Arche in Saint John and further abroad. We've been pleased to welcome Zoël Breau as Community Leader, a 40-year veteran of L'Arche with extensive national and international experience. All of us were saddened when our founder Jean Vanier passed away in May. Many of you were able to join us at the Cathedral of the Immaculate Conception for our ecumenical memorial service. Also, in 2019 we have had established the first endowment fund to support the needs of our local community in perpetuity. Our first fund is established in our board chairs' family name as the Kokocki Family Foundation. This endowment fund resides within the L'Arche Canada Foundation portfolio.

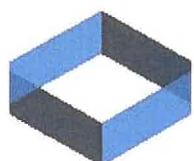
Our September dinner will be an important gathering to hear more about these developments, and to support our fundraising needs.

Please find attached a pdf poster providing further details on our dinner. Tickets can be purchased for \$85 each by visiting Creative Connections at 95 Prince William Street Monday through Friday between 9:30am and 3:30pm, or by emailing Moira Wilson at wilsonmoira4@gmail.com or phoning Wayne Cooper at (506) 636-0615. A tax receipt of \$45 is optionally available with the purchase of your \$85 ticket.

Thank you for your continued support of L'Arche in Saint John.

Zoël and Jim

www.larchesaintjohn.org



SAINT JOHN REGION

THE CHAMBER

CHAMPIONS FOR BUSINESS

Celebrate with us on September 22nd!

Please join us September 22nd from 7-10pm for our 200th anniversary gala! Celebrate and network with Canadian Chamber of Commerce AGM delegates from across the country, along with members & businesses from our region. Enjoy local entertainment as well as an extraordinary Maritime inspired cuisine! Early bird tickets now available for \$125, for further details and to register click the graphic below!



Celebrating 200 years strong in Saint John!

Join us for a Gala Gathering on
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Delta Hotels by Marriott Saint John
Maritime inspired cuisine and mixer **\$125**

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200 YEARS STRONG



JOIN US FOR OUR CAMPAIGN KICK-OFF LUNCH

SEPT 18, 2019

DELTA BRUNSWICK

12:00–1:30PM



United Way
Saint John, Kings
& Charlotte

TICKETS: \$50

TABLE OF 10: \$500

R.S.V.P. (506)658-1212
gina@unitedwaysaintjohn.com

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August 29, 2019

Mayor and Common Council
City of Saint John
PO Box 1971
Saint John, NB
E2L 4L1

Mayor Darling, Deputy Mayor and Councillors:

Subject: Annual General Meeting – Pension Board of Trustees

As mandated in article 2.5(e) of the City of Saint John Shared Risk Plan Declaration of Trust, the Annual General Meeting of the Board of Trustees will be held on Wednesday, September 25, 2019 at 1:00 p.m. in the 8th Floor Boardroom of City Hall.

Please confirm attendance and the name of the individual who will be attending on behalf of the Mayor and Common Council by Wednesday, September 18, 2019 by responding to Kelly Tibbits at the Common Clerks Office, email kelly.tibbits@saintjohn.ca.

Fred Slipp
Chair
City of Saint John Shared Risk Plan

August 26, 2019

Common Council
City of Saint John
8th Floor City Hall
15 Market Square
Saint John, NB
E2L 1E8

Re: Possible violations of Bylaw LG-5 and Local Governance Act by Councillor David Hickey

On Friday, July 23, 2019, Ward 3 Councillor David Hickey may have usurped Council's authority in requesting City Manager John Collin to have an electronic calendar removed from the City of Saint John website at www.saintjohn.ca, pending establishment of a policy concerning the posting of community events. If so, Councillor Hickey violated the Code of Conduct for Elected Representatives (see additional letter asking for a legal opinion of Bylaw LG-5 by the City Solicitor) and the Local Governance Act.

Article 5.1 of the Code of Conduct for Elected Representatives, unanimously adopted by Common Council on July 8, 2019, states clearly that decision-making authority lies with Council, and not any individual member and further that "no member shall, unless authorized by Council, attempt to bind the City of Saint John or give direction to employees". In addition, Article 5.3 states that **only Council as a whole and no single Member including the Mayor has the authority to direct staff...** unless specifically authorized by Council". Councillor Hickey had a duty to wait until the regularly scheduled meeting of September 9, 2019 to introduce a motion to ask council as a whole to make a request of this nature to the City Manager. Instead, it appears as if Mr. Hickey may have deliberately created a false sense of urgency because of his own personal objections to the showing of a controversial movie at Saint John High School and applied political pressure on the city's senior manager. If so, this was both inappropriate and unbecoming of the office that he holds.

The City Manager's acceding to such a request without approval of Common Council as a whole also needs to be addressed, as politicizing the role of City Manager jeopardizes our entire system of local government. Mr. Collin does not work for Mr. Hickey. He works for ALL citizens of Saint John. We deserve to know on whose authority Mr. Collin acted in ordering the removal of the events calendar from the city's website and why it was done with such urgency. I look forward to receiving the results of an appropriate review of this matter in the interests of openness and transparency of city government.

If Councillor Hickey did pressure or even request that the City Manager remove the events calendar for any reason, he must be reprimanded for violating the Code of Conduct. Likewise, if he did so because he objected to the *Unplanned* movie event posting, he again violated the Code of Conduct and owes an apology to organizers of the event, citizens who may have had an interest in attending the event and, indeed, to the organizers of all other events who lost their opportunity to promote their own community show, meeting, performance etc. because of this unwarranted action.

Failure to take appropriate action on this matter, especially in light of Council's failure to censure or otherwise reprimand Mayor Don Darling and Councillor David Merrithew for earlier violations of this by-law, will firmly establish that this body has no desire to conduct itself in a professional, ethical manner.

Yours sincerely;

Douglas James

August 26, 2019

Common Council
City of Saint John
8th Floor City Hall
15 Market Square
Saint John, NB
E2L 1E8

Re: Request for legal opinion of Bylaw-LG-5, Code of Conduct for Elected Representatives

As the City Solicitor has the authority and responsibility under the Local Governance Act to examine and provide Common Council with opinions on the validity and enforceability of municipal by-laws, I am requesting a review of by-law LG-5, the Code of Conduct for Elected Representatives to determine whether Deputy-Mayor Shirley McAlary was correct in stating publicly that: “the code of conduct is really a useless document because there’s nothing in there that gives us any authority to do anything against another member of council.” (See Telegraph-Journal, August 21, 2019).

The Deputy-Mayor’s comment is difficult to comprehend given that Article 11.1 of the Code of Conduct for Elected Representatives, which this council unanimously adopted on July 8, 2019, states:

Should a Member of Council breach any of the principles outlined in this Code of Conduct Bylaws, the possible courses of action that are available to Council include but are not limited to:

- (a) Reprimand;**
- (b) Expulsion of Member from a meeting of Council or Council committee;**
- (c) An apology by the Member of Council to the impacted individual(s), Council and or the general public;**
- (d) Removal of the Member from the Council Committee and/or bodies;**
- (e) The Offences and Penalties contained in the Local Governance Act that apply to Members of Council who violate the Disclosure of Conflict of Interest provisions of the Act;**
- (f) Other penalties and sanctions contained in relevant federal or provincial legislation.**

In anticipation that the City Solicitor will advise Common Council that Article 11.1 does indeed provide it with the appropriate authority to reprimand the Mayor and fellow members of council for violations of By-law LG-5, the Code of Conduct for Elected Representatives, I am re-submitting the two letters received by Common Council on August 19, 2019, which it filed with no action.

I again respectfully ask that Common Council introduce and adopt a motion of censure against the Mayor for his deplorable behaviour on social media on July 30, 2019, in contradiction of Article 8.7 of the Code of Conduct, and reprimand Councillor David Merrithew for his disrespect of citizens as demonstrated during the same exchange on the Mayor’s Facebook page on that date. (See my previous letters for further details). I believe Common Council also has a duty to ask Mr. Darling to issue a public apology to Mr. Randall Goodwin, members of the Saint John Citizens Coalition and citizens in general for his abhorrent behaviour, which led to the spread of hatred and the threat of physical violence in our community. (Note Article 11.1c above).

On the other hand, should the City Solicitor determine that Bylaw-LG5 is, as Ms. McAlary claims, a “useless document because there’s nothing in there that gives us any authority to do anything against another member of council”, I respectfully request that Bylaw-LG5 be revoked, reviewed, re-written and re-introduced, *this time with wording that reflects proper due diligence*.

Citizens of Saint John have a right to know that their Mayor and members of Common Council intend to do more than just pay lip service to ethics, but truly share a common basis of acceptable conduct, and are willing and able to appropriately reprimand or otherwise hold to account any among you who stray from the basic principles of courtesy, integrity and justice that you have sworn to uphold as trusted public officials.

I look forward to your response.

Yours sincerely;

Douglas James

Enc. 2 letters dated August 13, 2019; screenshot of FB exchange July 30, 2019

August 13, 2019

Common Council
City of Saint John
8th Floor City Hall
15 Market Square
Saint John, NB
E2L 1E8

Re: Request for adoption of a motion of censure against Mayor Don Darling

On July 8, 2019, Saint John Common Council unanimously adopted a Code of Conduct for Elected Representatives. Subsequently, I was informed by the Minister of Local Government that this body has a responsibility to “police itself”, when it comes to the behaviour of the Mayor and individual councillors.

Censure is a common law concept that may be used by a local government body that wishes to distance itself from an elected official due to that official’s unacceptable conduct (e.g. bullying; rude comments; disrespectful behaviour). Therefore, I am requesting that Common Council adopt a motion of censure against Mayor Don Darling for his recent deplorable and unacceptable conduct on social media, which represents an unmitigated violation of Article 8.7 of the Code of Conduct, which states that, “Members of Council shall not engage in or encourage bullying, flaming, or shaming of any other social media users. These types of interactions on social media misplace the focus of interaction on attacking individuals rather than engaging in constructive discussion or debate. This manner of communication is inconsistent with the Code of Conduct and **unbecoming of the office that members hold.**”

Mayor Darling sparked an inflammatory exchange on his ‘personal’ Facebook page (his primary means of communication with citizens on matters of public policy) on July 30, 2019, after the earlier submission of a respectful letter to Common Council from the Saint John Citizens Coalition, which asked for a review of the Mayor’s involvement with GrowSJ, due to concerns that his personal political initiative might mislead citizens into believing that his comments, public events etc., reflected the views of Council and even the corporation of the City of Saint John.

Rather than wait for the City Manager to review the matter and report back to Council as instructed, Mr. Darling chose to pre-empt the process and respond publicly on his Facebook page. His preamble served to incite his social media power base against the Saint John Citizens Coalition and the signee of the letter, Mr. Randall Goodwin. Here is but a brief sample of the disgusting exchange that ensued:

Linnae Olmstead: “Randall Goodwin is **an idiot**. I had to block him during the Jellybean Houses discussion because he was **irrational, aggressive**, and quite frankly, **barely literate**! No way he wrote that letter himself, because his spelling and grammar skills are negligible. Carry on as you

are, Mayor- pay no heed to **this quack!!**”

Daryl F.: “I remember **this tool** back in the old YMCA days he was a [REDACTED] with a big mouth back then and **a bully** who shot off his mouth until someone put him in his place.”

Julie Garnett: “OMG, that guy really is a **nut job!!**”

Rosey Goodman: “**Small minded twits...**”

Eric Robichaud: “He’s a piece of work. **I’d gladly slap his teeth down his throat.**”

Threats of physical violence are repugnant enough, but when the Mayor allows them to be communicated in a social media environment over which he has full control, one must question not only his personal values, but also his judgement. These and other posts of a similar nature, (I have attached a screenshot of the entire Facebook exchange for the public record), cast a long, dark shadow across our city, and the Mayor’s willingness to publish and disseminate such comments is a black mark on Saint John’s reputation as a welcoming and inclusive community.

Because Mr. Darling himself was monitoring the posts in real-time and administers the Facebook page himself, he is 100 per cent responsible for ensuring that any such exchange on social media adheres to the standards of common decency, let alone the Code of Conduct for Elected Representatives. Whether he choreographed the stage show within the confines of City Hall or not, he has left the public with the distinct impression that the Mayor of Saint John approves of the hateful comments that were published and shared widely across social media, with no apparent concern for their impact on an identifiable group and its members, the community at large, the office of Mayor or the reputation of the City of Saint John. Indeed, he began the exchange with the words “As your Mayor...”. What could be clearer than that?

Furthermore, while allowing the comments to be posted and to remain posted on his Facebook page despite their vile nature, the Mayor has blocked Mr. Goodwin, myself and others from engaging with him or responding to others on the same platform to help them better understand the role of citizens in a democracy. Indeed, during the exchange, while allowing dozens of scurrilous comments to be posted, Mr. Darling attacked and then banned the one person who was defending Mr. Goodwin, serving at that point to further inflame an already explosive social media drama that he himself had set in motion, “as your Mayor”.

Consequently, we are restricted from fully defending ourselves from the many personal attacks from Mr. Darling and his fan club that appear on the Mayor’s primary venue for engagement with citizens on matters of public interest. This, despite the Mayor’s oft repeated claim that he values diversity of opinion. His censorship is not only unfair; it is repugnant. Thus, this letter, in this forum.

When he was compelled to remove the city’s corporate logo from the GrowSJ Facebook page and website, the Mayor plead ignorance of trademark legislation, which is hardly worthy of

comment given his background in sales and marketing. Given that concerns over the incitement of hatred on the Internet, and on Facebook in particular, have received national and international attention in recent months, Mayor Darling can no longer use ignorance as an excuse. He has repeatedly stated that he has remained true to his values since the day he was elected. We now have a much better idea of what those values are, do we not?

Should you agree with the values exhibited in the hateful exchange on the Mayor's Facebook page, then do nothing. Right-thinking voters will judge you accordingly. However, given that Common Council unanimously approved the Code of Conduct for Elected Representatives, I expect all members will want to hold the Mayor to account and publicly distance yourselves from such disgraceful behaviour, lest you leave citizens with the impression that this conduct is acceptable to you personally and to this body as a whole. While it may otherwise be a cliché, here, on this occasion, your silence will speak volumes.

Further to your motion of censure, I suggest Mr. Darling owes Mr. Goodwin and the Saint John Citizens Coalition and its members an unreserved apology for his reprehensible behaviour. That apology should be extended to all citizens of Saint John and be published prominently on the same Facebook page where the exchange of July 30, 2019 has been allowed to rot for days on end. It would also be prudent for the Mayor to assure all citizens that there will be no repeat of his unacceptable social media behaviour so long as he remains in office. I would also recommend that he open this communications channel to ALL citizens or shut it down altogether. It may be his 'personal' Facebook page, but when he speaks "As your Mayor...", it belongs to us all.

While Mr. Darling ponders his future course of action, Common Council has a duty to restore the integrity of the office of the Mayor and the good reputation of the City of Saint John in the minds of right-thinking people everywhere. A clear commitment to cherished democratic values is required. It is inconceivable to me, that anyone would expect sustainable population growth in a city in which citizen engagement is described by the Mayor as an unwelcome distraction rather than an essential ingredient in a healthy democracy. Democracy requires that people actively participate in the political process. Citizens who are fulfilling their civic duty by holding government to account between elections should not, and must not, be disparaged *for* doing so, or be discouraged *from* doing so. I trust this Council agrees, and I very much look forward to your public response to the serious concerns expressed in this letter.

Yours sincerely;

Douglas James
Citizen and taxpayer

Enc. July 30, 2019 Full Facebook Screenshots Exchange

cc: Hon. Jeff Carr, Minister of Local Government; Andrea Anderson-Mason, Attorney General

August 13, 2019

Common Council
City of Saint John
8th Floor City Hall
15 Market Square
Saint John, NB
E2L 1E8

Re: Request for reprimand of Councillor David Merrithew

On July 8, 2019, this body unanimously adopted a Code of Conduct for Elected Representatives. Subsequently, I have been informed by the Minister of Local Government that Saint John Common Council must “police itself” when it comes to the behaviour of the Mayor and individual councillors.

Therefore, I am requesting that this body publicly reprimand Councillor David Merrithew for failing to adhere to one of the key values enshrined in the Code of Conduct, which states that: “Members of Council shall treat every person, including other Members of Council, City employees **and the public with dignity and respect.**”

On July 30, 2019, as part of a hateful exchange on the Mayor’s ‘personal’ webpage, Mr. Merrithew posted the following disparaging comment in reference to Mr. Randall Goodwin and the Saint John Citizens Coalition: **“This guy and his small group of cronies are not creditable. They say they will run in the next election. God forbid. Just key board courage.”**

While Mr. Merrithew is entitled to his opinion, he has failed to uphold his promise to treat the public with dignity and respect. Insulting and belittling citizens who may wish to exercise their democratic right to seek public office only serves to discourage people from participating in the democratic process. We need more engagement, not less.

As for Councillor Merrithew’s insulting reference to ‘keyboard courage’, I will remind him and all councillors that passionately written words have changed history. Again, mocking and disparaging citizens because they choose to express their political views and help educate others on matters of public interest through their written commentary, can hardly be described as dignified and respectful conduct.

Mr. Merrithew’s comment violates Article 8.1 of the Code of Conduct, which states that “Members of Council shall use communication tools, such as newsletters, websites **and social media in a responsible and respectful manner.**” Mr. Merrithew also failed to adhere to Article 8.4 which states that “Members of Council are encouraged to identify when views expressed are theirs alone and not official City of Saint John communication”, and Article 8.6 which declares that “Members of Council shall not use communication tools and social media to engage in criticism of other Members of Council, the City staff **or the general public**”.

Consequently, it is my duty as a citizen, to hold Councillor Merrithew and this entire body to account. Any failure to publicly reprimand your colleague for his unwarranted bad behaviour will reflect poorly on your judgement and on your values and will greatly diminish your authority as an elected body.

Yours sincerely;

Douglas James
Citizen and taxpayer

Enc. July 30, 2019 Full Facebook Screenshots Exchange

cc: Hon. Jeff Carr, Minister of Local Government; Andrea Anderson-Mason, Attorney General



Facebook post by Don Darling, dated 6 hrs ago. The post discusses the challenges of being Mayor and the importance of communication. It includes a list of 12 points regarding the Mayor's role and a link to a PDF document titled "Randell Goodwin letter.pdf". The post has 59 comments and 3 shares.

Don Darling
6 hrs

In today's world, it very difficult to effectively communicate, in terms of context, accuracy and facts. I've often said that social media, can be wonderfully ugly.

As your Mayor, if done my best to engage in a variety of ways, both traditional (in person, by phone, email, public events, etc) and using social media channels available.

My objective from day one and remains today, to have Saint John be the best place in Canada to live work and play. A place where citizens are proud of where they live and are invested in their community and it's future. Every minute of the day I'm reminded of my oath of office and do my best to serve the 67,000 people of this city and want our region of Greater Saint John, to grow and thrive.

Dealing with issues like this today, are a complete distraction from developing a sustainable path forward for the city. I urge you all to demand more of those, who engage in the city's future. That includes elected officials, the business community and citizens.

Over the last number of months, a Facebook group and a very small number of members of that group (4) have decided that I am singularly responsible for 60 years of challenges. This has resulted in frequent personal and slanderous attacks. Some would say, that's what I signed up for. No it's not. I have no problem with fact based, rational and solution based discussions. Those are rarely present.

It should also be known, that the group has declared publicly that they will be running a slate of candidates in the next election. That's fine too, however the constant attacks of the Mayor's office, should be looked at through two lenses. Are the attacks warranted, valid, factual. Secondly, why is the group not being honest with the public about their intentions and offering detailed solutions and not telling us what we already know.

Now, to the point. Here's a letter that was sent to council by Randell Goodwin and I will answer in bullet form.

I'll remind you of my earlier statement, I wanted to be your Mayor, to make a difference in our community and do meaningful work. Any suggestion that I have not acted in the best interest of the community is I suppose a right of the author, however a view that I outright reject.

Being your Mayor is the most meaningful work I have ever done, the most difficult and I continue to keep my two promises made on the first day of the campaign. 1) that living my values and principles, will be my daily guide. post. 2) that I will not make promises, that I can't keep.

Thank you for your time and especially if you've read to the end.

Answers to the questions in the letter.

1) Growjs is not a private initiative, it's brand that was created during my campaign and it's sole purpose is to present a vision for a growing and thriving Saint John. I do not and have not benefited personally in any fashion.

2) Yes at times, I require these tools to stay connected to the community.

3) No

4) Yes, my one employee would help on occasion.

5) Myself and some outside help on occasion for content creation.

6) Myself and support on occasion.

7) Myself and support on occasion.

8) Myself, my one staff member and volunteers on occasion.

9) I didn't appreciate that use of the city logo by the Mayor would be deemed inappropriate and any use of the logo has been stopped.

10) I would need to consult with a lawyer and have no plans to do so. The city manager can decide if taxpayers money should be expenses.

11) I own the website and paid for this registration with my own money.

12) A privacy statement will be added.

13) Free space has been donated by business owners who care about the city. All other expenses have been paid for by me personally, including photocopies of budget documents, handed out at the event.

With this in mind, we believe the citizens of Saint John has the right to know the following:

1. We understand Growjs is physically located in the Mayor's City Hall office. If, who is Mr. Darling permitted to use premises that are designated for official business and reported to be stolen for a private initiative?
2. Is the Mayor using any city owned/leased equipment, computer etc, to write and/or spend money, print, office, video etc, concerning Growjs?
3. Is any city owned/leased equipment (i.e. computers, cellphones, furnishings etc, being used by anyone working on Mr. Darling's personal behalf?
4. Do any city employees currently work in any aspect of Growjs? Have any done so in the past?
5. Who administers the Growjs Facebook page?
6. Who prepares and sends the Growjs newsletter to subscribers?
7. Who designs video and other graphics used in Growjs sponsored presentations?
8. Who sends Mr. Darling in organizing City Budgets and Bills and other events that may glorify the purpose of his private brand?
9. What authority does Mr. Darling have to use the City of Saint John's corporate image on his Facebook page, website, inclusion in Budgets and Bills and any other promotional material? Who gave him this authority and why?
10. Is the number "Growjs" not itself a trademark violation that confuses the public, given that the City of Saint John owns the rights to similar monikers such as Planit, Jovet and ...

DRIVE.GOOGL.COM
Randell Goodwin letter.pdf

59 Comments 3 Shares

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Cotleen Biddiscombe Don, you are the best Mayor that Saint John has ever had. how you do it, while putting up with bs from these "people" is beyond me. please don't let them get to you, although it must be very difficult, please continue to be you and keep doing the ... See More

Like Reply 5h

Linda Baxter replied 1 Reply 5 hrs

Donna Briggs Don, wow, someone has their knickers in knot about growjs. seems like someone feels threatened by your initiative and oh, wonder how long it took them to format the questions?

Like Reply 5h Edited

Tara-Lynn Coopers replied 3 Replies 4 mins

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People You May Know: Gino Adriano Pascon Add Friend Remove; Deb Ellis (Deb Dykeman Brigen) Add Friend Remove

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Facebook post by Don Darling (https://www.facebook.com/dondarling/) with 12 comments and 15 likes. The post discusses the challenges of being Mayor of Saint John and the importance of listening to the community.

Comments:

- Colleen Biddiscombe Don, you are the best Mayor that Saint John has ever had... how you do it, while putting up with bs from these "people" is beyond me... please don't let them get to you, although it must be very difficult, please continue to be you and keep doing the wonderful job that you have been doing since you became Mayor. Saint John needs you... I personally can't stand seeing posts from this particular person, or his "group"... and I know I'm not alone when I say this. Take care.
Like Reply 5h
- Linda Baxter Me too Colleen...
Like Reply 5h
- Donna Briggs Don, wow, someone has their knickers in knot about grows... seems like someone feels threatened by your initiative and drive. Wonder how long it took them to format the questions?
Like Reply 5h Edited
- Terra-Lynn Coggan replied · 3 Replies · 5 mins
- Kathy Jackson Anyone with that many questions has way too much time on their hands. If they are that intrusive with this non-issue, I suggest they get off their keyboard and busy their fingers by offering to help you with Growd, instead of interrogative criticism. That way, they will get all their questions answered (and shut them up) and give them something to do (until some other pet peeve catches their fancy) other than bothering you and taking your time away from the really important things that matter to the people who elected you (which might not be this guy).
Like Reply 5h
- Donna Briggs well stated
Like Reply 4h
- Darlene Hershey Seriously, well as a citizen of Saint John that person is not speaking for me Don Darling and secondly sometimes you just have to look at where things come from if you get my drift!
Like Reply 5h
- Debbi Knopp Mr. Goodwin is constantly complaining about things in SJ. I wonder why he stays here? Being a relative newcomer (2007) I love it here.
Like Reply 5h Edited
- Linda Baxter Exactly, why DOES he live in SJ, if he has a problem with EVERYTHING... I'd like to see Randy do the job that Don has been doing... if he thinks he can do any better why didn't he run for Mayor. I guess because he knows he'd never get elected.
Like Reply 5h

Friend Requests:

- Maura Konepore Confirm Delete

People You May Know:

- Gino Adriano Pascon Add Friend Remove
- Deb Ellis (Deb Dykeman) Add Friend Remove

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- Started New Job at City of Saint John May 24, 2018
- Married Patti Darling January 30, 2011

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Facebook post by Don Darling with comments and sidebars.

Colleen Biddiscombe Linda Baxter ... I agree 100%
Like Reply 5h

Darlene Hersey Debbi Knopp glad you said that.
Like Reply 2h

Write a reply...

Stephanie Delaney Turner there is a reason GrowSJ can't be part of your official duties as Mayor? It's a marketing strategy that I, as a tax payer, would support! I don't see any reason why an elected official should not be able to use the tools/channels at their disposal for the good of the community.
Like Reply 5h

Grant Totten Stephanie Delaney Turner seconded!
Like Reply 5h

Kayla Dawne I agree! I wish GrowSJ and initiative within SJ to make it better? How would that not be under the umbrella of the Mayor and his staff? It's for the benefit of SJ, and from what I can tell it's purpose is to have a positive impact, so what's the issue?
Also, from his answers it reminds me of being a teacher, spending countless hours finding ways to engage and make lessons better, often at my own personal expense. I can't imagine being criticised for going above and beyond in my job. From what I can see, Don Darling does nothing but go above and beyond!
Like Reply 3h

Don Darling Stephanie Delaney Turner there is no reason. The challenge is that the Mayor's office budget doesn't include adequate support to effectively communicate. This efforts needs to be seen as necessary and a critical success factor for the city. 95% of social media efforts are mine alone and often difficult to keep up with. Thanks big = win big.
Like Reply 13m

Write a reply...

Dave S Hodgson Well you know we have our differences but you need to look at the source of that letter and realize what/who you are dealing with. You want get rationale. Not sure what you did to him personally but he has been after you from day one lol. I think he blamed you for the Kennedy assassination
Like Reply 5h

Tom McGraw Dave S Hodgson ... I thot it was the Great Saint John Fire
Like Reply 4h

Write a reply...

Facebook post by Don Darling with comments and sidebars.

Grant Totten It's ridiculously frustrating that you have to take time to respond to this nonsense. We're with you! Illegitim non carborundum.
Like Reply 5h

Mark Burnett Randall is getting a big eye roll from this guy right here.
Like Reply 5h

Linnæe Olmstead Randall Goodwin is an idiot. I had to block him during the Jellybean Houses discussion because he was irrational, aggressive, and quite frankly, barely literate. No way he wrote that letter himself, because his spelling and grammar skills are negligible. Carry on as you are, Mayor- pay no heed to this quack!
Like Reply 5h Edited

Dave S Hodgson That's a given lol
Like Reply 4h

Lynaya Astephien Linnæe Olmstead there's no way Randall wrote that letter. Funny how the real person never attached his name.
Like Reply 2h

Write a reply...

Julie Garnett OMG, that guy really is a nut job!
Like Reply 4h

Norman McFarlane Keep up the good work Don you can't please everyone and this one does not deserve a reply keep on moving forward
Like Reply 4h

Chuck Healy These types of attacks are exactly why our city is slow to move in a progressive fashion. And what is the Saint John citizens coalition? Who belongs to it? Sounds like a group that wants keep SJ in the past.
Like Reply 4h

Ashley Burnett The fact that you take the time to answer questions from ALL citizens shows your character. Even though his incessant questions are ridiculous, you still took the time which shows the kind of mayor you are. From here on out, I'd ignore him. He's trying to distract you from the real issues.
Like Reply 4h

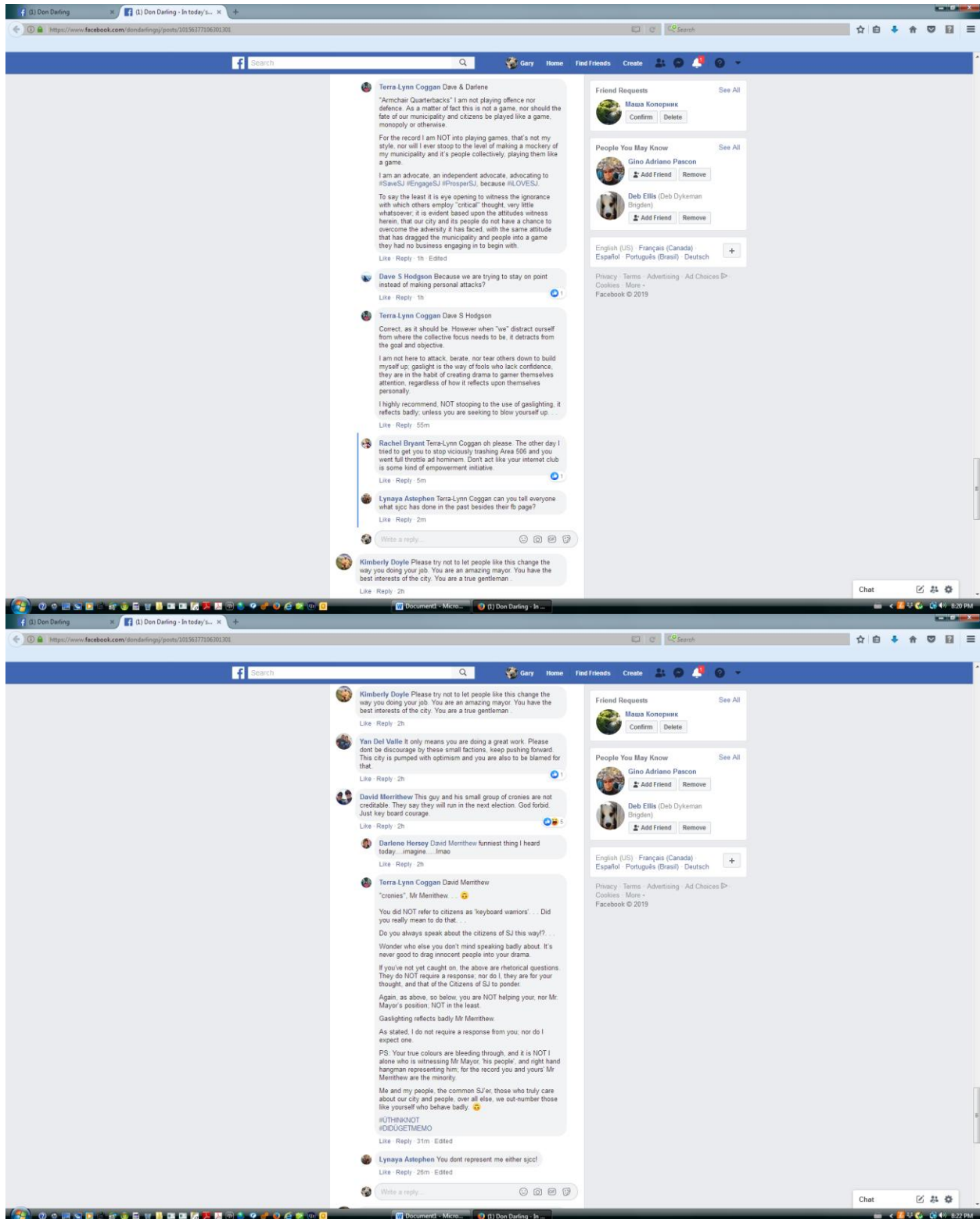
Mark Crandall Don, You are the best mayor we ever had since Elsie Wayne...
Like Reply 4h

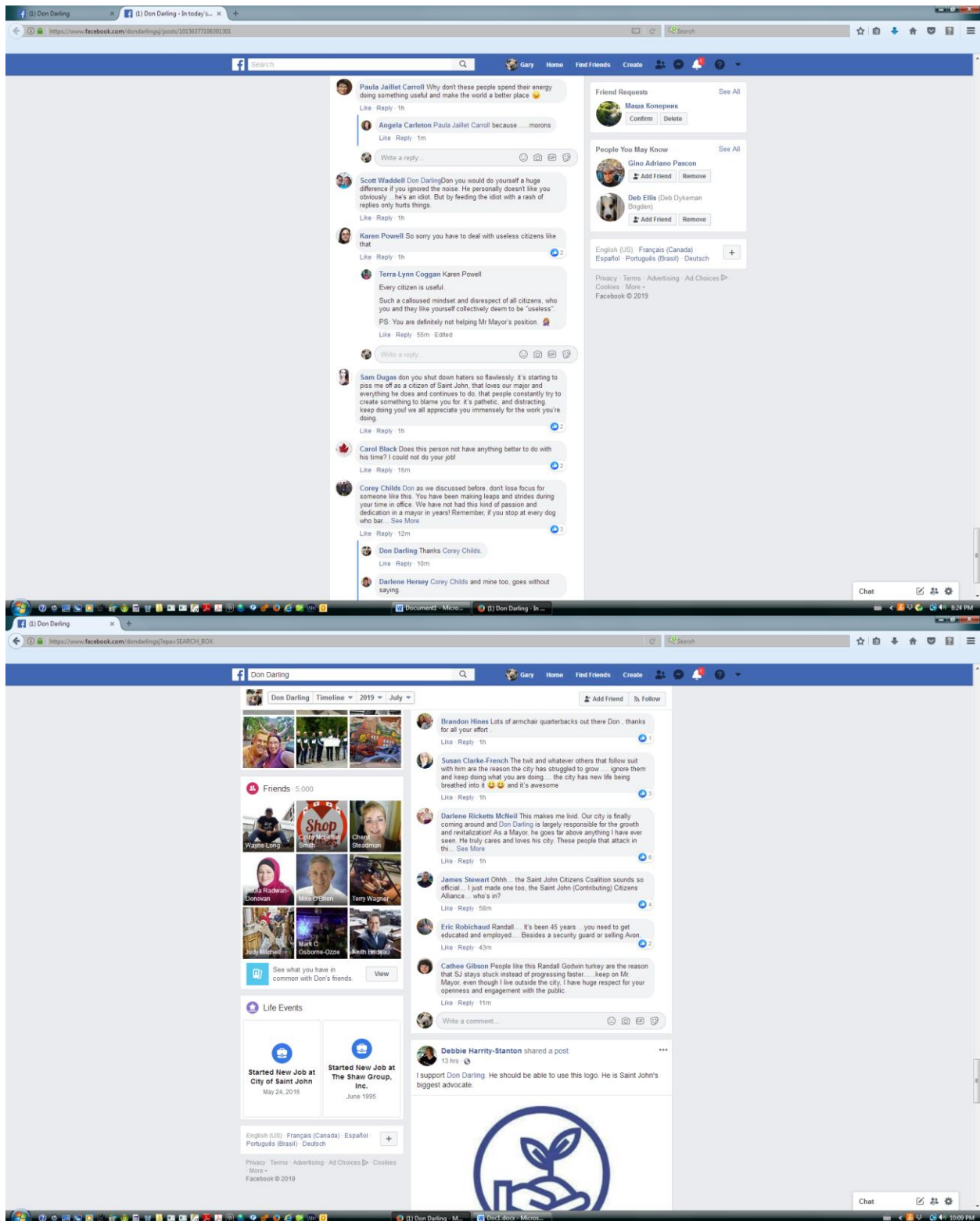
Ken Murphy Randall... move ff
Like Reply 4h

Facebook post by Don Darling with comments and replies. The post discusses various topics related to the Saint John's Local Council (SJLC) and the role of its members. Comments include:

- Bob McVicar Goodwin is bad news. Not credible. Don't lose focus.
- Judy Mitchell This is so sad that someone is so intent on sidelining our growth that he would use our valuable resources for something like this. Pitiful, distracting and unproductive... SAD day for our city.
- Kayla Dawne Don Darling is Saint John's Leslie Knope a la Parks and Recreation: committed to making his city better in any way he can, even when a few ungrateful citizens find every way to undermine him.
- Lisa Walker As you stated, having to deal with these types of slanderous attacks takes you away from the things you are truly passionate about which is making this city even better than it already is. I do applaud your ability to provide a well thought out, factual, public response to this nonsense. Keep up the good work Don!
- Rosey Goodman Small minded twits.
- Terra-Lynn Coggan Rosey Goodman You are NOT helping Mr. Mayor's Case. Not in the least.
- Lori Nell Ring Never doubt yourself or your intentions. I believe in all that you do and thank you for it as the majority of people in Saint John do. Those who have no vision can not see.
- Terra-Lynn Coggan Four members... To be transparent, no one from SJCC is attacking you, moreover your attack upon SJCC and it's reps, and lack of respect for due process is highly questionable. Was due process NOT discussed in last night's common council agenda... No one is seeking to smear your name, nor to beat you down to build themselves and their platform up, in all sincerity, if you continue to conduct yourself in the way you are choosing to do you do not need to worry about concerned citizens, you'll have no issues tarnishing your name and reputation. We are well aware that the issues SJ has faced over the last 2.5 decades has little to do with the actions of one individual alone, rather a collective failure to understand and implement the running of SJ as a nonprofit, which is how municipalities are structured to function. I like you as a person, however you have much to learn to assist you in your personal and professional development.
- Lynaya Astephon You are part of spc right?
- Terra-Lynn Coggan My involvement with any citizens advocacy group is irrelevant, however in the spirit of transparency, I have no issues disclosing that I am a member of SJCC, as I am of many advocacy groups and organizations. What is the point you are attempting to make?
- Darlene Hersey Terra-Lynn Coggan is there four members or should that be for members... anyways the letter references taxpayers. If you are part of this group, none of you represent me the taxpayer and I have nothing but total respect for Don Darling. So, maybe you should reference your members only. Gotta love armchair quarterback.
- Dave S Hodgson Wall "Randall" attacks him (and others) personally on a daily basis. That part is transparent.
- Terra-Lynn Coggan Dave & Dafene "Armchair Quarterbacks" I am not playing offence nor defence. As a matter of fact this is not a game, nor should the fate of our municipality and citizens be played like a game, monopoly or otherwise. For the record I am NOT into playing games, that's not my style, nor will I ever stoop to the level of making a mockery of my municipality and it's people collectively, playing them like a game. I am an advocate, an independent advocate, advocating to #SaveSJ #EngageSJ #ImproveSJ, because #ILOVESJ. To say the least it is eye opening to witness the ignorance with which others employ "critical" thought, very little

The right sidebar shows friend requests and people you may know, including Gino Adriano Pascon and Deb Ellis (Deb Dykeman).





Don Darling Timeline 2019 July

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Started New Job at City of Saint John May 24, 2016

Married Patti Darling January 30, 2011

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Cathie Gibson People like this Randall Godwin Turkey are the reason that SJ stays stuck instead of progressing faster... keep on Mr Mayor, even though I live outside the city, I have huge respect for your openness and engagement with the public.

Like Reply 21h

Hide 13 Replies

Terra-Lynn Coggan Cathie Gibson

It is NOT citizens like this Randall Godwin Turkey who are the issue. When you look at the facts and figures it is evident it is NOT the citizens who are the issue.

However when you devote more time to beating your citizens down as opposed to building the municipality up it retract and distracts from where the focus should be.

I don't know what's going on between the two, I do not care to know. What I do know is that this Mayor and Council are sinking our municipality and citizens to a whole new low, which is definitely NOT helping their position for re-election.

The people are protected from decent of their elected officials, if this behaviour continues the citizens will be lobbying to remove the offending individuals from their elected office prior to the completion of term.

#TRUStory

Like Reply 12h

Matt Payne Yes it is... bunch of shortighted crybabies... the more the scc post, the more ridiculous they look... most people on social media are making fun of them and supporting the mayor so think about that.

Like Reply 11h

Terra-Lynn Coggan Matt Payne

Do you always speak about the citizens of SJ like you are... See More

Like Reply 11h

Lynaya Astephen Terra-Lynn Coggan and how will scc remove the elected officials before their term ends? You've yet to answer my question from yesterday. What has the scc done in the past besides running a fb page?

Like Reply 11h

Terra-Lynn Coggan Lynaya Astephen

What did I tell you yesterday when you posed the same demands upon me?

My response remains consistently the same.

I am not doing your dirty work for you.

Leave me and my name out of your and Don's drama!

Like Reply 11h Edited

Don Darling Timeline 2019 July

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Darlene Hersey Terra-Lynn Coggan wah wah wah

Like Reply 11h

Darlene Hersey Terra-Lynn Coggan trust me, Don Darling has more support than your group could even imagine gaming.

Like Reply 11h

Darlene Hersey Terra-Lynn Coggan you keep commenting we the citizens, YOUR group does not nor will ever speak for me the "citizen" so please reference what your group wants!! personally want Don Darling as mayor as do the large majority of people in Saint John. Have you not read all the "in support of" comments or are you too focused on your agenda.

Like Reply 11h

Lynaya Astephen I think Terra-Lynn blocked me. So I guess I won't be getting answer.

Like Reply 9h

Cathie Gibson I do not for a second think that Don is creating drama, he is being transparent, effective and making choices your group does not approve of. Your group seems to bring the bullshit and he has a right to defend himself.

Like Reply 9h

Darlene Hersey Lynaya Astephen I think she blocked me too, I will miss all her snare rhetoric.

Like Reply 9h Edited

Matt Payne Terra-Lynn Coggan you always come back with the same remark regardless of what someone opposing you posts and here, I tell you, Yes, that's how I speak about fellow Saint Johners who are leading a personal vendetta and a poisoned agenda against... See More

Like Reply 1h

Mandy Oling You are the mayor's supporters? That explains it all, bullies and cowards. Saint John and her people deserve far better than the bad behaviour represented in this post alone.

Like Reply 56m Edited

Write a reply...

Donald Smith Saint John, the land that time forgot. No wonder people are moving away.

Like Reply 14h

Phil Comeau Don Darling, Do not let a few poison apples in our community get you down. You have a great vision. Majority of our community have that same vision. I've never seen a mayor care more about his city then you in a long time. Your transparency will also...

Like Reply 14h

Don Darling Timeline 2019 July

Phil Comeau Don Darling. Do not let a few poison apples in our community get you down. You have a great vision. Majority of our community have that same vision. I've never seen a mayor care more about his city then you in a long time. Your transparency will also be your guiding light. As I said before, don't change a thing. Keep doing what you're doing. You have my support and the support of so many others. Again, keep focus. You're doing great!

Like Reply 11h

Tara Morrell Randall Goodwin is just another obnoxious old man that's stuck in the past and the only people that he has in his corner are just another couple of old men shaking their fists at those dam kids. We have your back.

Like Reply 11h Edited

Terra-Lynn Coggan For those who are not familiar with recall legislation, it is in place in jurisdictions around the world and provides for voter to formally petition to have a elected official removed from office for decent, which Mr. Mayor's unethical and unacceptable. See More

Like Reply 11h

Darlene Hersey Terra-Lynn Coggan good luck removing Don Darling. You win first prize for funnest post today. rolflmao

Like Reply 11h

Darlene Hersey

1st PRIZE

Like Reply 11h

View 9 more replies

Samantha Greenwood-Gardner Don Darling as I'm on mat leave until next June and have some time on my hands I would love to volunteer for whatever you need help with!

Like Reply 10h

Ryan N Kate fitness

Like Reply 10h

Terra-Lynn Coggan Ryan N Kate

For those who are not familiar with recall legislation, it is in

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Don Darling In today's news...

Don Darling Timeline 2019 July

Terra-Lynn Coggan For those who are not familiar with recall legislation, it is in place in jurisdictions around the world and provides for voter to formally petition to have a elected official removed from office for decent, which Mr. Mayor's unethical and unacceptable behaviour herein constitutes substantial grounds for removal.

In addition to the aforementioned there are a great number of citizens who are genuinely concerned about Mr. Mayor and his state of emotional well-being.

I've said it before I will say it again. I like Don as a person, however over the course of his elected appointment and more so recently it is evident that he is placing more focus upon creating drama to garner Sympathizers than he is to the appropriate management of the municipality.

How can the people expect Mr Mayor to do the job he promised to do as Mayor if he continues to distract himself with the drama he is creating and retract from all the good he could do if his priorities aligned with his campaign promises.

Like Reply 1d

Hide 11 Replies

Darlene Hersey Terra-Lynn Coggan good luck removing Don Darling. You win first prize for funnest post today. rolflmao

Like Reply 1d

Darlene Hersey

1st PRIZE

Like Reply 1d

Terra-Lynn Coggan Mr Mayor,

You and your sympathizers seriously are not helping the your position speaking about the citizens of SJ as you are while condoning and acting unethically.

Our municipality and citizens deserve far more and expects better then what we are witnessing herein.

The citizens will speak and have their say in a meaningful way if this unethical and highly questionable behaviour continues.

Mr Mayor please reconsider the shame you are bring upon yourself, the municipality, and our citizens by acting as you are, you are NOT helping your position, nor are you increasing the citizens confidence in you.

It is obvious you are in need of stress leave. I recommend you take some time to identify your priorities and place the focus

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It is obvious you are in need of stress leave. I recommend you take some time to identify your priorities and place the focus where it needs to be, before you destroy yourself and our municipality further then what the mismanagement of the last 25 decades has already succeeded in achieving.

I know you want what's best for the municipality, however you can not expect to achieve it by detracting yourself and focus from where it is required most.

Mr Mayor, I appeal to you and Council to employ better judgment and immediately cease and desist making a mockery of yourself, our municipality and citizens, collectively.

Like Reply 1d

Tara Morrell Cuto

Like Reply 1d

Terra-Lynn Coggan A reply to Mayor Don Darling's answers to 13 questions from the Saint John Citizens Coalition

Mayor Don Darling today responded publicly to 13 questions posed by the Saint John Citizens Coalition with regards GrowSJ. We list below the original questions, Mr. Darling's responses and our replies.

#1 We understand GrowSJ is physically located in the Mayor's City Hall office. If so, why is Mr. Darling permitted to use premises that are designated for official business and supported by tax dollars for a private initiative?

Mr. Darling's response "GrowSJ is not a private initiative. It's a brand that was created during my campaign and its sole purpose is to present a vision for a growing and thriving Saint John. I do not and have not benefitted personally in any fashion."

SJCC reply: In an email dated July 22, 2019, Mr. Patrick Beamish, Strategic Advisor to the Mayor, stated that GrowSJ is "the Mayor's entity" and is "not affiliated with the City of Saint John". He described the GrowSJ web presence and events as being "the personal property of Mayor Don Darling". If it is not a public initiative, it must therefore be a private initiative. Mr. Beamish also confirmed that Mr. Darling is running this personal entity out of the Mayor's office.

Article 7.1 of the Code of Conduct for Elected Representatives states that "No members of council shall make use of or permit the use of any City premises, other than for carrying out the business of the local government".

I repeat the question that Mr. Darling has failed to answer. Why is the Mayor permitted to use premises that are designated for official business and supported by tax dollars for a private initiative? I trust that this time, he will reply with the openness and transparency that he so often demands of others.

#2 Is the Mayor using any city-owned/leased cellphone, computer etc. to write and/or record tweets, posts, selfies, videos etc. concerning GrowSJ?

Mr. Darling's response: Yes, at times I require these tools to stay connected to the community.

Like Reply 1d

Terra-Lynn Coggan SJCC reply:

Article 7.1 of the Code of Conduct for Elected Representatives states that "No members of council shall make use of or permit the use of any City resources (computers, networks, websites, social media) other than for carrying out the business of the local government". Mr. Darling has acknowledged that he uses city-owned/leased property for promoting GrowSJ, an entity that has been described as having nothing to do with the City of Saint John.

#3 Is any city-owned/leased equipment i.e. computers, cellphones, furnishings etc. being used by anyone working on Mr. Darling's personal behalf?

Mr. Darling's response: No.

SJCC reply: We'll let this one pass.

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Like Reply 1d

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Terra-Lynn Coggan SJCC reply

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Mr. Darling's response: No.

SJCC reply: We'll let this one pass.

#4 Do any city employees currently work on any aspect of GrowSJ? Have any done so in the past?

Mr. Darling's response: Yes, my one employee would help on occasion.

SJCC reply: Presumably, that one employee is Mr. Patrick Beamish, as he is the one who responded to my email about GrowSJ. The follow-up question is whether Mr. Beamish is a paid city employee. If so, Article 7.1 of the Code of Conduct would apply, given his own admission that GrowSJ has "nothing to do with the City of Saint John". This article prohibits the use of city staff other than for the carrying out the business of local government.

Another follow-up question is now required and that is whether any summer student hired by the City of Saint John is or has been working on GrowSJ, specifically preparing graphics and other material for presentation at Budgets and Beers or any other events. If so, this would be another violation of article 7.1.

#5 Who administers the GrowSJ Facebook page?

Mr. Darling's response: Myself and some outside help on occasion for content creation.

SJCC reply: If any of this work is done in the Mayor's City Hall office, it is also in violation of Article 7.1 of the Code of Conduct.

Like Reply 10

Terra-Lynn Coggan #6 Who prepares and sends the GrowSJ newsletter to subscribers?

Mr. Darling's response: Myself and support on occasion.

SJCC reply: Follow-up question: What support? Are any city staff used for this purpose on or off city premises? Do they use any city-owned/leased equipment? If so, this is in violation of Article 7.1 of the Code of Conduct.

#7 Who designs slides and other graphics used in GrowSJ sponsored presentations?

Mr. Darling's response: Myself and support on occasion.

SJCC reply: Same as the reply to answer #6 above.

#8 Who assists Mr. Darling in organizing City Budgets and Beers and any other events that may fall under the purview of his private brand?

Mr. Darling's response: Myself, my one staff member and volunteers on occasion.

SJCC reply: Is the one staff member Mr. Patrick Beamish or someone else? Does the City pay their salary while working on your private brand initiative? If so, this is in violation of Article 7.1 of the Code of Conduct.

#9 What authority does Mr. Darling have to use the City of Saint John's corporate image on his Facebook page, website, invitations to Budgets and Beers and any other promotional material? Who gave him this authority and why?

Mr. Darling's response: I didn't appreciate that use of the city logo by the Mayor would be deemed inappropriate and any use of the logo has been stopped.

SJCC reply: Ignorance of the law is no excuse, especially given that this issue was dealt with by Common Council previously. Using the city-owned property for a personal initiative was a violation of the Code of Conduct and of trademark legislation. Follow-up question: Why did the city manager or another appropriate city employee not inform the Mayor that use of the corporate logo was not permitted?

#10 Is the moniker GrowSJ not itself a trademark violation that confuses the public, given that the City of Saint John owns the rights to similar monikers such as PlanSJ, ZoneSJ and MoveSJ?

Mr. Darling's response: I would need to consult with a lawyer and have no plans to do so. The City Manager can decide if taxpayers' money should be expenses.

SJCC reply: The Mayor apparently plans to continue using the moniker GrowSJ even though he is aware of the possible confusion this causes within the community. He doesn't seem to care. The corporation of the City of Saint John has a responsibility to protect its brand, in all forms. The Mayor's last sentence in the above answer is nonsensical and irrelevant.

#11 Why is all information on ownership of www.growsj.ca redacted? Who registered the website? Who owns the website?

Mr. Darling's response: I own the website and paid for this registration with my own money.

Friend Requests See All

Masa Konepne Confirm Delete

Suggested Groups See All

Saint John Daily News 4,189 members + Join Group

the JOSHUA & GROW Joshua Group's For The Kids Online Auctions 1,916 members + Join Group

English (US) Français (Canada) Español Português (Brasil) Deutsch +

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Chat

Don Darling - In today's... x

https://www.facebook.com/dondarling/posts/10156377106301301

Search

Gary Home Find Friends Create

Terra-Lynn Coggan #6 Who prepares and sends the GrowSJ newsletter to subscribers?

Mr. Darling's response: Myself and support on occasion.

SJCC reply: Follow-up question: What support? Are any city staff used for this purpose on or off city premises? Do they use any city-owned/leased equipment? If so, this is in violation of Article 7.1 of the Code of Conduct.

#7 Who designs slides and other graphics used in GrowSJ sponsored presentations?

Mr. Darling's response: Myself and support on occasion.

SJCC reply: Same as the reply to answer #6 above.

#8 Who assists Mr. Darling in organizing City Budgets and Beers and any other events that may fall under the purview of his private brand?

Mr. Darling's response: Myself, my one staff member and volunteers on occasion.

SJCC reply: Is the one staff member Mr. Patrick Beamish or someone else? Does the City pay their salary while working on your private brand initiative? If so, this is in violation of Article 7.1 of the Code of Conduct.

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Friend Requests See All

Masa Konepne Confirm Delete

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Saint John Daily News 4,189 members + Join Group

the JOSHUA & GROW Joshua Group's For The Kids Online Auctions 1,916 members + Join Group

English (US) Français (Canada) Español Português (Brasil) Deutsch +

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Chat

Don Darling - In today's news...

https://www.facebook.com/dondarling/posts/10156377196303801

SEARCH

111 Why is all information on ownership of www.growSJ life redacted? Who registered the website? Who owns the website?

Mr. Darling's response: I own the website and paid for this registration with my own money.

SJCC reply: Mr. Darling fails to explain why the information is redacted or kept private. It is, of course, his right to do so given that GrowSJ is a private initiative. However, this hardly fits in with his repeated calls for openness and transparency from others.

112 Why is there no privacy policy on the website, given that it requests personal information in order to subscribe to a GrowSJ newsletter?

Mr. Darling's response: A privacy statement will be added.

SJCC reply: Please ensure that an email is sent to all subscribers to date asking them to confirm that they wish to continue subscribing and providing them with an unsubscribe option.

113 What, if any, free space has been donated to the Mayor for Budgets and Deers or any other GrowSJ sponsored event? Has the Mayor accepted any other donations related to the activities of GrowSJ?

Mr. Darling's response: Free space has been donated by business owners who care about the city. All other expenses have been paid by me personally, including photocopies of budget documents handed out at the event.

SJCC reply: Article 6.1 of the Code of Conduct states that "A member of council shall not accept any fees, gifts, gratuities or other benefit that could reasonably be seen to influence any decision made by him / her in the carrying out of his / her functions as a Member of Council". One would expect that Mr. Darling would declare a conflict of interest should any matters come before council in the future related to any of these business owners' including UbiStation and BMO, not withstanding the fact that article 6.2 does not prohibit "rewards, gifts or benefits not connected with the performance or duties of office".

In summary, Mr. Darling has removed the trademarked corporate logo from his personal webpage and Facebook page, and he has assured us that he will post a privacy policy on his website that serves only to garner email addresses from newsletter subscribers. There are many other answers in which he has ignored the question entirely or danced around the issue. In other cases, if he has used city property and possibly city staff on his personal initiative as he appears to indicate, this is a very serious violation of the Code of Conduct for Elected Representatives. He must be held to account by Common Council and anything and everything to do with the Mayor's personal initiative known as GrowSJ must be removed from City Hall.

Sincerely,
Concerned Citizens of the City of Saint John

Like Reply 1d Edited

Darlene Ricketts McNeil Terra-Lynn Coggan Who is creating the drama here??? Take a look in the mirror!

Friend Requests

Masa Konepene

Confirm Delete

Suggested Groups

Saint John Daily News

4,189 members

+ Join Group

the JOSHUA

Joshua Group's For The Kids Online Auctions

1,316 members

+ Join Group

English (US) Français (Canada) Español Português (Brasil) Deutsch

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Don Darling

Don Darling Timeline · 2019 · July

Add Friend Follow

Friends 5,000

See what you have in common with Don's friends

Life Events

Started New Job at City of Saint John

May 24, 2018

Married Patti Darling

January 30, 2011

English (US) Français (Canada) Español Português (Brasil) Deutsch

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Terra-Lynn Coggan Ryan N Kate

For those who are not familiar with recall legislation, it is in place in jurisdictions around the world and provides for voter to formally petition to have an elected official removed from office for decent, which Mr. Mayor's unethical and unacceptable behaviour herein constitutes substantial grounds for removal.

In addition to the aforementioned there are a great number of citizens who are genuinely concerned about Mr. Mayor and his state of emotional well-being.

I've said it before I will say it again, I like Don as a person, however over the course of his elected appointment and more so recently it is evident that he is placing more focus upon creating drama to garner sympathizers than he is to the appropriate management of the municipality.

How can the people expect Mr. Mayor to do the job he promised to do as Mayor if he continues to distract himself with the drama he is creating and retract from all the good he could do if his priorities aligned with his campaign promises.

Like Reply 10h

Terra-Lynn Coggan The problem is, these arrogant self-serving politicians are too used to sheep following blindly behind them.

They not only put down citizens who stand up and speak out, they do so in a demeaning fashion in order to rile up others against us. It is the antithesis of democracy and exactly how people get dragged down the path to totalitarianism, one step at a time.

Matthew's comment is a clear violation of the Code of Conduct and he should be ashamed of himself. As for his diminishing of those with keyboard courage, I will remind this tin pot politician that the greatest achievements of humankind have come from a pen or a keyboard.

Sincerely,
Concerned Citizens of the City of Saint John

Like Reply 9h

Tara Morelli I think he means that you are the mess.

Like Reply 5h

Mandy Oling Tara Morelli

Your skeletons are escaping 🙄

Like Reply 55m

Write a reply...

Jarrod Theriault Your job as mayor comes with a lot of criticism and not every decision you will make will be the best decision for everybody and even though you inherited issues that has plagued this city over the last several years, you can only be accountable for it... See More

Like Reply 9h

Facebook profile page for Don Darling, showing a timeline of posts and comments. The profile includes a cover photo, a profile picture, and a bio. The timeline shows posts from friends and family, including a post from Jarrod Theriault about a job as mayor, a post from Terra-Lynn Coggan Jarrod Theriault about a decision, and a post from Darlene Hersey Jarrod Theriault about a decision. The page also shows a list of friends and a section for life events.

Don Darling Timeline 2019 July

2019 June 10, 2019

Went to Saint John High School

Lives in Saint John, New Brunswick

From Fredericton, New Brunswick

Married to Patti Darling

Joined May 2007

Photos

Friends 5,000

Life Events

Started New Job at City of Saint John May 24, 2018

Married Patti Darling January 30, 2011

English (US) Français (Canada) Español Portuguese (Brazil) Deutsch

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Jarrod Theriault Your job as mayor comes with a lot of criticism and not every decision you will make will be the best decision for everybody, and even though you inherited issues that has plagued this city over the last several years, you can only be accountable for th... See More

Like Reply 9h

Terra-Lynn Coggan Jarrod Theriault Obviously not the best decision, if citizens are objecting.

Like Reply 9h

Jarrod Theriault There are always going to be citizens who will object to different topics or decisions. I object at times over different matters that others may not. That's the society we live in and I respect that freedom. You cannot satisfy 100% of the people 100% of the time and that's the burden of being a public official. Our views may differ but are simply subjective. I also respect that but in the end, it's going to be the ability to move past differences of opinions and find even ground to be able to reach compromise and work together. That's what will save Saint John.

Like Reply 9h

Terra-Lynn Coggan Jarrod Theriault (HereHere!!)

Like Reply See Translation 9h

Darlene Hersey Jarrod Theriault It is okay to not agree and I am betting you do it respectfully though and not with a hidden agenda that the SJCC appears to have.

Like Reply 9h

Mandy Oling Darlene Hersey Hidden agenda, at least SJCC agenda is transparent and accountable. There is no shame in holding elected officials to account, that is what diplomacy is about. However, diplomacy is severely lacking by the mayor and his 'supporters'.

Like Reply 53m

Write a reply...

Terra-Lynn Coggan Andrea Anderson-Mason, Should Saint John City Council not be addressing this matter collectively during City Council? As opposed to upon the Mayor's personal Facebook... What happened to Ethics and Due Process? What happened to democracy? Does this questionable and unethical behaviour constitute grounds for the citizens of Saint John, New Brunswick to petition to remove all individuals involved from their elected position for decent, ie. Don Darling & David Menzies.

Shawn Verner why are you tagging that MLA in this post?

Like Reply 5h

Andrea Anderson-Mason Shawn Verner because SJ is in my riding too! And I do believe we need to have open and full disclosure communications.

Like Reply 2h

Shawn Verner this whole thing is ridiculous and a waste of time.

Like Reply 2h

Leanne Anderson Shawn Verner 100%

Like Reply 1h

Write a reply...

Terra-Lynn Coggan Shirley McAlary Is this appropriate behaviour, are you and council aware of this unethical and questionable behaviour?

Like Reply 5h

Don Darling I believe in balanced discussion and in fact really appreciate a diversity of perspective. I believe you've seen an example with Terra Lynn of a lack of balance and relentless posting. These are my personal social media pages and I retain the right to block certain abusers. In total there are well over 10,000 followers on my social feeds and I've blocked maybe 5 real accounts. I'm now blocking Terra Lynn. Like any constituent, she'll be able to write, email or call any member of council. Thank you.

Like Reply 5h

Hide 11 Replies

Shawn Verner is she a real account/person? Or another one of those ones created to just argue nonsense

Like Reply 5h

Mike Morrison Wow. That person really fell off their rocker. I wish them well. A quick look at her FB profile and a few links to the SJCC is a cross between disheartening and downright scary. For the record, the SJCC DOES NOT represent this citizen of SJ.

Like Reply 5h

Don Darling Shawn Verner real

Like Reply 5h

Shawn Verner Don Darling that's scary.

Like Reply 4h

Facebook profile page for Don Darling. The page shows a timeline of posts, a list of friends, and a section for life events. The posts include comments and replies from various users, such as Darlene Hersey, Abby Coggan, and RobLeger N Kelly Williston. The page also features a sidebar with suggested groups and friend requests.

Don Darling Timeline 2019 July

Friends 5,000

Life Events

- Started New Job at City of Saint John May 24, 2018
- Married Patti Darling January 30, 2011

Posts:

- Darlene Hersey** She blocked me because I kept telling her they do not speak for me. I have a big enough mouth to speak for myself. lol. The name rhetoric being posted was unreal... have you all seen this craziness?
https://www.facebook.com/_jpermalink/2473713519358735/
Like Reply 2h
- Darlene Hersey** More craziness
https://www.facebook.com/_jpermalink/247320276077478/
Like Reply 2h
- Darlene Hersey** Don Darling good for you!
Like Reply 2h
- Shawn Verner** this whole thing is a complete waste of time and takes away from bigger issues
Like Reply 2h
- Kimberly Doyle** Don Darling good
Like Reply 1h
- Mandy Qing** Don Darling
You've blocked Ms Coggan and proceed to bash and slander her good name and honourable reputation
You pulled Ms Coggan into a situation that she has no part of and make accusations against her. The citizens are seeing your true colours. You lack diplomacy and integrity.
Andrea Anderson-Mason, Shirley McAlary
Like Reply 50m
- Abby Coggan** Don Darling
Why steal my moms intellectual property and pull her into your drama. What are you hoping to achieve. The only damage you are doing is to yourself. You are a low life liberal, bully and coward. What is done and said in the dark will come to the light of knowledge
Like Reply 33m
- RobLeger N Kelly Williston** Terra-Lynn Coggan, you appear to have a lot of time and a lot of energy. You could do a lot of good for this city if you focused on something other than a witch hunt. I had some great advice many years ago. If you're not part of the solution, you're part of the problem. Maybe there's a better way to funnel your passion for our city.
Like Reply 3h
- Abby Coggan** RobLeger N Kelly Williston
The mayor pulled you mom into his drama and blocked her out

Friend Requests

- Mawa Konepue
Confirm Delete

Suggested Groups

- Saint John Daily News
4,189 members
Join Group
- the JOSHUA
Joshua Group's For The Kids Online Auctions
1,916 members
Join Group

Comments:

- Abby Coggan** RobLeger N Kelly Williston
The mayor pulled my mom into his drama and blocked her while he and his trolls speak badly about her so she can not defend herself. You are a bunch of classless cowards and clowns. The city will be far better off without the likes the mayor and his supporters destroying and beating down the citizens. There are far more who will be happy to see this Cayola crew gone for good. Hopefully in advance of the election
Like Reply 17h
- Lynaya Astephen** Abby Coggan I asked her a question and instead of answering me she blocked me. Tell your mother I am still waiting for my answer
Like Reply 14h
- Darlene Hersey** Abby Coggan seriously your mom blocked us who had questions for her, so double standard eh. She pulled herself into her own drama with the numerous comments she made yesterday. If she is going to dish it out, she needs to expect it back from those who do not agree with her. Part of life.
Like Reply 5h Edited
- Darlene Hersey** Abby Coggan hmmm, I support Don so you have called me classless, a clown... and your post makes you what with all the name calling... classless, a clown, childish... just asking
Like Reply 5h
- Don Darling** Let's move on everyone
Like Reply 5h
- David E** Remember this tool back in the old YMCA days he was a mouth until someone put him in his place Don Darling don't pay attention to this fool as he is all mouth till someone calls him out on his part. You are doing a great job and this tool is looking to get a rise out of you cause he is a nobody who means nothing to anybody but himself
Like Reply 38m

1) Don Darling

https://www.facebook.com/dondarling/

Don Darling

Timeline 2019 July

Abby Coggan RobLeger N Kelly Williston

The mayor pulled my mom into his drama and blocked her while he and his trolls speak badly about her so she can not defend herself. You are a bunch of classless cowards and clowns. The city will be far better off without the lies the mayor and his supporters are destroying and beating down the citizens. There are far more who will be happy to see this Croyda crew gone for good. Hopefully in advance of the election.

Like Reply 28m

Write a reply...

Write a comment...

Debbie Harrity-Stanton shared a post

Yesterday at 8:30 AM

I support Don Darling. He should be able to use this logo. He is Saint John's biggest advocate.

See what you have in common with Don's friends.

Life Events

Started New Job at City of Saint John May 24, 2016

Married Patti Darling January 30, 2011

English (US) Français (Canada) Español Portuguese (Brazil) Deutsch

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Janice Purdy Yesterday at 7:43 AM

1) Don Darling

https://www.facebook.com/groups/110148963248902/

Saint John Citizens Coalition

Public group

About

Discussion

Chats

Announcements

Members

Events

Videos

Photos

Files

Group Insights

Moderate Group

Group Quality

Search this group

Shortcuts

Serenade of the Sea... 1

Symphony of the Sea... 1

Chillers of the Carib... 2

Arthem of the Seas Ma... 1

Saint John Citizens Coa... 1

Saint John Talk of the T... 1

Fredrickton News site 13

wholesale motorcycl... 7

Royal Caribbean Cr... 25+

Saint John NB Co... 25+

Saint John NB Sen... 25+

Shippottin Canada... 4

CoastGuardCanada... 2

See more

Announcements

Douglas James Admin 4 hrs Add Topics

Saint John Common Council: Paying Lip Service to Ethics?

Today, Mayor Don Darling responded to 13 questions about GrowSJ, which were included in a letter sent to Common Council by the Saint John Citizens Coalition. I will deal with those in my next post later today or tomorrow. First, however, I will reply to the Mayor's general 'declaration of war' against citizens that he has posted on his Facebook page as a lead-in to his responses.

Once again, rather than accept responsibility for his mistakes, Don Darling has defended his abhorrent behaviour and called on his fan base to reach out and love him. In doing so, he has violated the city's new Code of Conduct for Elected Representatives no fewer than six times. That's just in the preamble to his responses, where further violations are likely to be found.

Rather than face up to his shortcomings as Mayor, Mr. Darling believes it is perfectly acceptable in a democracy to pick on citizens and turn others against a citizens group that is serving the best interests of everyone by acting as a watchdog in demanding accountability, openness and transparency in municipal government activities. This is itself a violation of the Code of Conduct for Elected Representatives which clearly states as a value, that 'Members of Council shall treat... the public with dignity and respect'. Putting down a citizens group, whether it has one member or 620 members, is hardly treating members of the public with 'dignity and respect' nor does it comply with the need to behave in a manner that 'Demonstrate(s) a high level of integrity and professionalism when representing the local government and in dealing with members of the broader community'. Indeed, Mr. Darling's attitude shows nothing but disdain and contempt for the community.

Furthermore, by naming one specific group and trying to publicly humiliate its members on a personal Facebook page where key members of that group have been blocked from participating, Mr. Darling is violating article 3.6 of the Code of Conduct which prohibits bullying.

Indeed, Mr. Darling violates other sections of the Code of Conduct dealing with social media. Article 8.1 states that 'Members of Council shall use communication tools, such as newsletters, websites and social media in a responsible and respectful manner'. Mr. Darling is doing just the opposite.

Article 8.6 states that 'Members of Council shall not use communication tools and social media to engage in criticism of other Members of Council, the City staff or the general public'. He clearly failed to read that section before publicly criticizing the Saint John Citizens Coalition.

Furthermore, Article 8.7 states that, 'Members of Council shall not engage in or encourage bullying, flaming, or shaming of any other social media users. These types of interactions on social media misplace the focus of interaction on attacking individuals rather than engaging in constructive discussion or debate. This manner of communication is inconsistent with the Code of Conduct and unbecoming of the office that Members hold'.

CATEGORIZE POSTS

+ Create Topic

Add topics to posts to help group members find the information they're interested in.

ENTER NAME OR EMAIL ADDRESS

MEMBERS

You have 5 new members this week. Write a post to welcome them.

DESCRIPTION

Welcome to the new Saint John Citizens Coalition Facebook group! See More

GROUP TYPE

General

LOCATION

Saint John, New Brunswick

This location is set based on your group's name

RECENT GROUP FILES

GrowSJ with Photos.pdf Updated last Thursday

Letter to Council GrowSJ July 24, 201... Updated last Thursday

See More

CREATE NEW GROUPS

Groups make it easier than ever to share with friends, family and teammates.

Create Group

RECENT GROUP PHOTOS

See All

John, New Brunswick

10 ON

SAINT JOHN

seest Little City in 1

Eric Robichaud

Cheryl Power

Mary Kleemann

Stan Shinko

Roy Menezes

Nan Grozman

Amy Alexander

Greg Bursey

Kate Worden-Letch

Nideric Keith

Kevin Farrer

Nan Rosenberg

Samantha Shea

Ki-Sweet Heeb

Bob Hoening

Bue Cams

Robb Baar

Nan Swanner

DL McGrath 7h

Romeo Peguero

Jessica Carbone

Douglas James 34m

GROUP CONVERSATIONS

Paul, Andrea, John, 3...

MORE CONTACTS (17)

Adam Byrne

Facebook page for Saint John Citizens Coalition. The page shows a post by Terra-Lynn Coggan dated July 27 at 10:37 AM, discussing the behavior of Mayor Don Darling and the Coalition's stance on ethics. The post includes a photo of a waterfront area and a video titled "Area 506". The page also features a sidebar with navigation links, a list of group members, and a "Suggested Groups" section.

Facebook page for Saint John Citizens Coalition. The page shows a post by Douglas James dated 3 hours ago, replying to Mayor Don Darling's answers to 13 questions from the Saint John Citizens Coalition. The post includes a photo of a waterfront area and a video titled "Area 506". The page also features a sidebar with navigation links, a list of group members, and a "Suggested Groups" section.

Saint John Citizens Coalition

Saint John Citizens Coalition
Public group

About
Discussion
Chats
Announcements
Members
Events
Videos
Photos
Files
Group Insights
Moderate Group
Group Quality

Search this group

Shortcuts
Serenade of the Sea...
Symphony of the Se...
Chillers of the Caribb...
Anthem of the Seas Ma...
Saint John Citizens Coa...
Saint John Talk of the T...
Fredericton News site...
wholesale motorcycl...
Royal Caribbean Cr...
Saint John NB Co...
Saint John NB Sen...
Shipspotting Canada...
CoastGuardCanada...
See more

Roy Menezes likes your photo...
a few seconds ago

Douglas James
Admin · 3 hrs · Add Topics

A reply to Mayor Don Darling's answers to 13 questions from the Saint John Citizens Coalition

Mayor Don Darling today responded publicly to 13 questions posed by the Saint John Citizens Coalition with regards GrowSJ. We list below the original questions, Mr. Darling's responses and our replies.

#1 We understand GrowSJ is physically located in the Mayor's City Hall office. If so, why is Mr. Darling permitted to use premises that are designated for official business and supported by tax dollars for a private initiative?

Mr. Darling's response: "GrowSJ is not a private initiative. It's a brand that was created during my campaign and its sole purpose is to present a vision for a growing and thriving Saint John. I do not and have not benefitted personally in any fashion."

SJCC reply: In an email dated July 22, 2019, Mr. Patrick Beamish, Strategic Advisor to the Mayor, stated that GrowSJ is "the Mayor's entity" and is "not affiliated with the City of Saint John". He described the GrowSJ web presence and events as being "the personal property of Mayor Don Darling". It is not a public initiative. It must therefore be a private initiative. Mr. Beamish also confirmed that Mr. Darling is running this personal entity out of the Mayor's office.

Article 7.1 of the Code of Conduct for Elected Representatives states that "No members of council shall make use of or permit the use of any City premises... other than for carrying out the business of the local government".

I repeat the question that Mr. Darling has failed to answer: Why is the Mayor permitted to use premises that are designated for official business and supported by tax dollars for a private initiative? I trust that this time, he will reply with the openness and transparency that he so often demands of others.

#2. Is the Mayor using any city-owned/leased cellphone, computer etc. to write and/or record tweets, posts, selfies, videos etc. concerning GrowSJ?

Mr. Darling's response: Yes, at times I require these tools to stay connected to the community.

SJCC reply: Article 7.1 of the Code of Conduct for Elected Representatives states that "No members of council shall make use of or permit the use of any City resources (computers, networks, websites, social media) other than for carrying out the business of the local government". Mr. Darling has acknowledged that he uses city-owned/leased property for promoting GrowSJ, an entity that has been described as having nothing to do with the City of Saint John.

#3 Is any city-owned/leased equipment i.e. computers, cellphones, furnishings etc. being used by anyone working on Mr. Darling's personal behalf?

CREATE NEW GROUPS
Groups make it easier than ever to share with friends, family and teammates.
Create Group

RECENT GROUP PHOTOS
See All

Suggested Groups
See All

WARNING
RANTING AHEAD
Ask, rant and debate New Brunswick (sensitive ve...
219 members
Join Group

Saint John Babble 'n' Bitch
165 members
Join Group

Brandon Love
Became friends with Matt Kaleno, Ala-Lepilampi and 16 others.
Magician, Speaker, & Author at Brandon Love Magic and Creat...
Past: North-Hamilton Community Health Centre

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Eric Robichaud

Saint John Citizens Coalition

Saint John Citizens Coalition
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Anthem of the Seas Ma...
Saint John Citizens Coa...
Saint John Talk of the T...
Fredericton News site...
wholesale motorcycl...
Royal Caribbean Cr...
Saint John NB Co...
Saint John NB Sen...
Shipspotting Canada...
CoastGuardCanada...
See more

GrowSJ, an entity that has been described as having nothing to do with the City of Saint John.

#3 Is any city-owned/leased equipment i.e. computers, cellphones, furnishings etc. being used by anyone working on Mr. Darling's personal behalf?

Mr. Darling's response: No.

SJCC reply: We'll let this one pass.

#4 Do any city employees currently work on any aspect of GrowSJ? Have any done so in the past?

Mr. Darling's response: Yes, my one employee would help on occasion.

SJCC reply: Presumably, that one employee is Mr. Patrick Beamish, as he is the one who responded to my email about GrowSJ. The follow-up question is whether Mr. Beamish is a paid city employee. If so, Article 7.1 of the Code of Conduct would apply, given his own admission that GrowSJ has "nothing to do with the City of Saint John". This article prohibits the use of city staff other than for the carrying out of the business of local government.

Another follow-up question is now required and that is whether any summer student hired by the City of Saint John is or has been working on GrowSJ, specifically preparing graphics and other material for presentation at Budgets and Beers or any other events. If so, this would be another violation of article 7.1.

#6 Who administers the GrowSJ Facebook page?

Mr. Darling's response: Myself and some outside help on occasion for content creation.

SJCC reply: If any of this work is done in the Mayor's City Hall office, it is also in violation of Article 7.1 of the Code of Conduct.

#6 Who prepares and sends the GrowSJ newsletter to subscribers?

Mr. Darling's response: Myself and support on occasion.

SJCC reply: Follow-up question: What support? Are any city staff used for this purpose on or off city premises? Do they use any city owned/leased equipment? If so, this is in violation of Article 7.1 of the Code of Conduct.

#7 Who designs slides and other graphics used in GrowSJ sponsored presentations?

Mr. Darling's response: Myself and support on occasion.

SJCC reply: Same as the reply to answer #6 above.

#8 Who assists Mr. Darling in organizing City Budgets and Beers and any other events that may fall under the purview of his private brand?

Mr. Darling's response: Myself, my one staff member and volunteers on occasion.

SJCC reply: Is the one staff member Mr. Patrick Beamish or someone else? Does the City pay their salary while working on your private brand initiative? If so, this is in violation of Article 7.1 of the Code of Conduct.

#9 What authority does Mr. Darling have to use the City of Saint John's corporate image on his Facebook page, website, invitations to Budgets and Beers and any other promotional material? Who gave him this authority and why?

CREATE NEW GROUPS
Groups make it easier than ever to share with friends, family and teammates.
Create Group

RECENT GROUP PHOTOS
See All

Suggested Groups
See All

WARNING
RANTING AHEAD
Ask, rant and debate New Brunswick (sensitive ve...
219 members
Join Group

Saint John Babble 'n' Bitch
165 members
Join Group

Kevin Farrer
1 follow
Became friends with Bridget M Johnston and 2 other people
1 mutual friend David Glaspy

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Eric Robichaud

Facebook interface showing the Saint John Citizens Coalition group page. The page includes a navigation menu on the left, a main content area with posts and comments, and a right sidebar with member lists and suggested groups. The top navigation bar shows the group name and search options. The main content area displays a post by Mr. Darling's response, followed by a discussion thread with comments from users like Terra-Lynn Coggan and Douglas James. The right sidebar lists members and suggests groups like 'Saint John Babble 'n' Bitch' and 'Warning Ranting Ahead'.

Saint John Citizens Coalition
Public group

About
Discussion
Chats
Announcements
Members
Events
Videos
Photos
Files
Group Insights
Moderate Group
Group Quality

Mr. Darling's response: I don't appreciate that use of the city logo by the Mayor would be deemed inappropriate and any use of the logo has been stopped.

SJCC reply: Ignorance of the law is no excuse, especially given that this issue was dealt with by Common Council previously. Using the city-owned property for a personal initiative was a violation of the Code of Conduct and of trademark legislation. Follow-up question: Why did the city manager or another appropriate city employee not inform the Mayor that use of the corporate logo was not permitted?

#10 Is the moniker GrowSJ not itself a trademark violation that confuses the public, given that the City of Saint John owns the rights to similar monikers such as PlanSJ, ZoneSJ and MoveSJ?

Mr. Darling's response: I would need to consult with a lawyer and have no plans to do so. The City Manager can decide if taxpayers' money should be expenses.

SJCC reply: The Mayor apparently plans to continue using the moniker GrowSJ even though he is aware of the possible confusion this causes within the community. He doesn't seem to care. The corporation of the City of Saint John has a responsibility to protect its brand, in all forms. The Mayor's last sentence in the above answer is nonsensical and irrelevant.

#11 Why is all information on ownership of www.growsj.ca redacted? Who registered the website? Who owns the website?

Mr. Darling's response: I own the website and paid for this registration with my own money.

SJCC reply: Mr. Darling fails to explain why the information is redacted or kept private. It is, of course, his right to do so given that GrowSJ is a private initiative. However, this hardly fits in with his repeated calls for openness and transparency from others.

#12 Why is there no privacy policy on the website, given that it requests personal information in order to subscribe to a GrowSJ newsletter?

Mr. Darling's response: A privacy statement will be added.

SJCC reply: Please ensure that an email is sent to all subscribers to date asking them to confirm that they wish to continue subscribing and providing them with an unsubscribe option.

#13 What, if any, free space has been donated to the Mayor for Budgets and Beers or any other GrowSJ sponsored event? Has the Mayor accepted any other donations related to the activities of GrowSJ?

Mr. Darling's response: Free space has been donated by business owners who care about the city. All other expenses have been paid by me personally, including photocopies of budget documents handed out at the event.

SJCC reply: Article 6.1 of the Code of Conduct states that "A member of council shall not accept any fees, gifts, gratuities or other benefit that could reasonably be seen to influence any decision made by him / her in the carrying out of his / her functions as a Member of Council." One would expect that Mr. Darling would declare a conflict of interest should any matters come before council in the future related to any of these "business owners" including UStation and BMO, notwithstanding the fact that article 6.2 does not prohibit "rewards, gifts or benefits not connected with the performance or duties of office."

In summary, Mr. Darling has removed the trademarked corporate logo from his personal webpage and Facebook page, and he has assured us that he will post a privacy policy on his website that serves only to garner email addresses from newsletter subscribers. There are many other answers in which he has ignored the question entirely or danced around the issue. In other cases, if he has used city property and possibly city staff on his personal initiative as he appears to indicate, this is a very serious violation of the Code of Conduct for Elected Representatives. He must be held to account by Common Council and anything and everything to do with the Mayor's personal initiative known as GrowSJ must be removed from City Hall.

2 2 Comments

Terra-Lynn Coggan ★ More to come from MAYOR'S BEHAVIOR BADLY

Did you read the comments on the thread...

I CANNOT BELIEVE THEY ARE OPENLY SPEAKING ABOUT THE CITIZENS THIS WAY...

WOW

<https://www.facebook.com/56253.../posts/10156377106301301...>

Like Reply 3h

Douglas James LOL. We all know the Mayor huggers. He can do no wrong. A code of conduct exists for a reason. The reason has never been clearer. When citizens believe politicians should just act as they wish with no accountability, we are one breath away from a totalitarian regime. Those same people will be the first to run and hide.

Like Reply 3h

Terra-Lynn Coggan ★ Rising Star 3 hrs · Add Topics

My response...

Four members...

To be transparent, no one from SJCC is attacking you, moreover your attack upon SJCC and it's reps, and lack of respect for due process is

LOCATION
Saint John, New Brunswick
This location is set based on your group's name

RECENT GROUP FILES
GrowSJ with Photos.pdf
Updated last Thursday
Letter to Council GrowSJ July 24, 201...
Updated last Thursday
See More

CREATE NEW GROUPS
Groups make it easier than ever to share with friends, family and teammates.
Create Group

RECENT GROUP PHOTOS
See All
John, New Brunswick
10 ON
LAWYER THE LAW
Saint John City in
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165 members
Join Group

Suggested Groups
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August 26, 2019

Common Council
City of Saint John
8th Floor City Hall
15 Market Square
Saint John, NB
E2L 1E8

Re: Policy for use of events calendar

I am shocked and appalled by the notion that any member of city council can arbitrarily decide that a public event in the City of Saint John is “unacceptable” and, therefore, should not be listed on the community events calendar at www.saintjohn.ca.

Councillor Hickey has every right to ask during a regular meeting of Common Council for a policy for governing the events calendar. However, he has no right to expect that policy to include restrictions on any individual or group, solely because he disagrees with the event or what they otherwise stand for or believe in. Censorship of this nature is abhorrent in a free society and a clear violation of the right to free expression enjoyed by all Canadians.

For the record, I am pro-choice. I also believe strongly that Mr. Hickey and others had every right to protest the showing of this movie. However, that does not give this councillor or this council the right to take away the rights of others. That is called totalitarianism, not democracy.

Should council and/or staff develop a policy on the use of the events calendar, it must include a provision that any and all individuals and/or groups in society are free to post their notices without exception. In other words, it must adhere to basic human rights and the Charter of Rights and Freedoms. Failing this, the calendar must be permanently removed from the city’s website.

Yours sincerely;

Douglas James

To: Mayor and Council of the City of Saint John

Cc: City Manager

Re: Transportation Priorities



Your Worship and Council,

My numerous inquiries and proposals for improved transit service have been dismissed and ignored by Saint John Transit for the last 15 years.

Repeated refusals to comply with the *Right to Information and Protection of Privacy Act* infer that Saint John Transit considers itself above the law. This is not surprising from the publicly funded entity whose primary purpose is to directly service the public but has no customer service policy.

Council's failure to address the illegal actions of Saint John Transit is indicative of the closed door, back room dealings of the "old boys' club decision making strategy" that has driven this city to bankruptcy.

Acknowledgement is the first step to recovery.

Respectfully,

Mary Ellen Carpenter

41 Crown St. #207
Saint John, NB. E2L 0E2
(506) 899-0519