



Purdy's Wharf Tower One, 900 – 1959 Upper Water Street, P.O. Box 997
Halifax NS B3J 2X2 Canada tel: 902.420.3200 fax: 902.420.1417 stewartmckelvey.com

File Reference: SM44086.2

Robert G. Grant, Q.C.
Direct Dial: 902.420.3328
rgrant@stewartmckelvey.com

February 11, 2016

Via Electronic Mail

Dennis J. James, Q.C.
Patterson Law
10 Church Street
PO Box 1068
Truro, NS B2N 5B9

J. Gregory MacDonald, QC
Goodman MacDonald
47 Riverside Street
P.O. Box 697
New Glasgow, Nova Scotia
B2H 5G2

Dear Counsel:

Re: M07050 – Proposed Amalgamation – Municipality of the County of Pictou, Town of New Glasgow, Town of Pictou, and the Town of Stellarton (MB-15-05)

We write on behalf of the Applicants in response to your letter dated January 8, 2016 regarding the Town of Westville's proposed changes to the Pictou County Shared Services Authority ("PCSSA") Intermunicipal Services Agreement (the "Agreement"). In the letter, Westville proposes seven amendments to the Agreement which would purportedly enhance its representation in determining how resources for shared services are allocated (the "Proposed Amendments").

The Proposed Amendments are tantamount to providing Westville with a veto over decisions made by the PCSSA. If the Proposed Amendments were made, Westville and Trenton's representation would be enhanced far beyond its proportion of the total population of the participating municipal units.

The Applicants' position is that neither Westville nor Trenton would be disadvantaged should amalgamation be ordered by the Board and pre-amalgamation representation be maintained through the operation of law. The Agreement, as it currently exists, provides adequate protection of the interests of Westville and Trenton in contributing to and receiving shared municipal services. It is not logical to provide a small percentage of the population with a veto power over the actions of the PCSSA. This would afford Westville and Trenton greater powers than under the status quo.

The following table outlines more specifically each municipal unit's contribution relative to the operation of the PCSSA and their percentage of the County population.

| SUMMARY OF PCSSA COST-RECOVERIES FOR FISCAL YEAR-ENDED MARCH 31, 2015 AND 2011 Census Data for Pictou County | | | | | | | |
|--|---|------------------|---|---------------------|------------|------------|------------|
| | PICTOU COUNTY SOLID WASTE MANAGEMENT SYSTEM | | EAST RIVER ENVIRONMENTAL CONTROL CENTRE | | | | |
| | PCSWMS (User Pay) | Accounting (UA) | ERECC (User Pay) | Total \$ | % of Total | Population | % of Total |
| Pictou County | \$ 1,438,067 | \$ 53,357 | \$ 153,536 | \$ 1,644,960 | 34% | 21,745 | 48% |
| New Glasgow | 660,341 | 20,196 | 828,955 | 1,509,492 | 31% | 9,562 | 21% |
| Trenton | 180,532 | 4,037 | 149,278 | 333,847 | 7% | 2,616 | 6% |
| Stellarton | 309,402 | 9,302 | 404,203 | 722,907 | 15% | 4,485 | 10% |
| Westville | 259,690 | 4,949 | 153,841 | 418,480 | 9% | 3,798 | 8% |
| Pictou | 246,538 | 5,989 | | 252,527 | 5% | 3,434 | 8% |
| Sub-total municipal | 3,094,570 | 97,830 | 1,689,813 | 4,882,213 | 100% | 45,640 | 100% |
| Other | 1,762,451 | | 8,033 | 1,770,484 | | | |
| TOTAL | \$ 4,857,021 | \$ 97,830 | \$ 1,697,846 | \$ 6,652,697 | | | |

This information demonstrates that Westville and Trenton constitute a small proportion of the total population contributing to and receiving services from the PCSSA. Agreeing to the proposed amendment would provide Westville and Trenton with powers that are not consistent with their respective population.

For these reasons, the Applicants are not prepared to consent to the Proposed Amendments.

The Applicants' comments with respect to each of the Proposed Amendments are provided below.

1. Chief Operating Officer Model

Given the scale of the PCSSA and best municipal practises, the Applicants firmly take the position that a COO model is required for the efficient and effective administration of the PCSSA. In the absence of a Chief Operating Officer ("COO"), the predecessor organization of the Shared Services Authority struggled with several issues:

- Completing timely year-end financial reports;
- Operating under public sector procurement requirements;
- Providing sound policy advice to the Board of Directors grounded in the Guiding Principles of Inter-municipal Co-operation, Transparency, Responsiveness, Equity, Efficiency, Adaptiveness and Accountability as defined within section 6 of the Agreement; and
- Developing and maintaining important operational measures such as an Occupational Health and Safety plan.

The current COO also serves as a division manager which presents financial efficiencies to the municipal owners. The added benefit is that one person is the identified senior staff member charged with the overall performance of the PCSSA.

Pursuant to section 7(4) of the Agreement, the COO is charged with an "... overriding mandate for the delivery, encouragement, support, and promotion of cost effective and transparently accountable delivery of shared municipal services...". The Applicants contend that the COO provides the independence and sound guidance suggested by Westville relative to budgets, user pay allocations, service withdrawal and withdrawal from the Authority.

2. Unanimity among three municipal units for the adoption of / changes to the annual budget

Section 10(7) of the Agreement requires that the annual budget be proposed by the COO including... "...annual assessments for each Participating Municipal Unit". The Applicants state that this approach provides objective recommendations to the PCSSA.

Budget approvals are managed in accordance with sections 10(7) and 10(14), i.e. require approval via "special resolution". Special resolution is defined within the Agreement as "Participating Municipal Units responsible for not less than seventy-five (75) percent of financial contribution to the cost of the service or services...".

This approach was included within the reorganization and incorporation of the PCSSA in response to an attempt from past municipal leadership to institute non-user based changes to cost recovery within the predecessor organization without consulting the Municipality of the County of Pictou (the largest ratepayer).

In the opinion of the Applicants, the current-day approach to accountability for budget preparation (COO model), user pay requirements as the means of cost-recovery, adherence to the guiding principles included in the Constating Documents, in addition to the special resolution adoption requirements, effectively provides for the necessary checks and balances required to protect all stakeholders. As such the Applicants are not prepared to entertain this suggested change.

3. Attendance of each municipal unit to establish quorum

The Applicants are not prepared to amend the Agreement to include a requirement that each municipal unit must be present to establish quorum at a meeting of the PCSSA.

This is not normal parliamentary procedure, particularly for municipal organizations. The Agreement clearly provides that the Chair, in consultation with the COO, shall be responsible for the advance circulation of regular agenda items for meeting of the Board of Directors.

4. Additional Service may only be added with unanimous agreement

The Applicants believe that the current Agreement adequately addresses this concern.

The Guiding Principle of "Adaptiveness" states that the PCSSA "...shall support such optional services if the Board considers it appropriate to do so, provided non-users are not required to pay for such undertakings and the provision of such service do not materially undermine the delivery of existing services."

The Agreement contains multiple provisions and an appendix dealing with user pay. References include, without limitation, that the recovery of service costs shall ...“involve considerable good faith, good judgement and reasonable discretion with respect to both the recommendations of the COO and the approved allocations of the Board of Directors”.

Precedent already exists in that not all municipal units participate in the services of East River Environmental Control Centre. The Town of Pictou does not participate or pay for any of the related costs of this division.

With respect to new services, section 11(1) of the Agreement states ...“provided such services are at times delivered on a user pay/unit cost basis and in accordance with the Guiding Principles elsewhere described herein and provided that the delivery of such additional service does not materially undermine the provision of existing services to other Participating Municipal Units”.

5. Terms of withdraw from any service will be on the basis of a negotiated agreement

The Applicants state that section 11(2) of the Agreement satisfactorily addresses this issue.

Section 11(2) of the Agreement states ...“any Participating Municipal Unit shall be entitled to request a curtailment of or withdrawal from any Shared Service being provided to it by Shared Services Authority. The manner and timing of such curtailment or withdrawal shall be negotiated between the Municipality and the Board of Directors, following the analysis and recommendation of the Chief Operating Officer.”

6. Terms of withdraw from the PCSSA will be on the basis of a negotiated agreement

The Applicants take the position that section 12 of the Agreement adequately addresses withdrawal from the Authority. Participating municipal units are provided the right to withdraw membership. The Applicants further point out that the member units are provided with the “right to arbitral protection” under section 13 of the Agreement in the event a dispute arises.

7. Any dissolution of services that Westville pays for will be on the basis of a negotiated agreement

In 2013 the PCSSA dissolved their Land Use and Planning Division. The division of assets flowed from a process developed and approved by the Board of Directors that was acceptable to all participating municipal units. The Applicants do not foresee the closure of divisions. However should this occur, it is assumed that Board would approve an approach that takes into account recommendations generated by the COO, past practise, and the Guiding Principles detailed within the Agreement.

Should a dispute occur in this regard, participating municipal units may refer such dispute to Arbitration under provision 13 of the Agreement.

The Applicants believe that the current Agreement adequately addresses this point.

8. Recent decision of the PCSSA to assume responsibility as the borrowing entity for the municipalities' collective contribution to the Aberdeen Hospital renovation project

The six participating municipal units (including Westville) executed an agreement on December 15, 2014 with the Pictou County Health Authority. This agreement commits the municipal units to funding 25% of the Project (referred to as "Project" hereafter). The municipal share of the Project totals \$6.8M.

Five of the six municipal units have executed a Deed Transfer Tax Trust Agreement. The Town of Westville is not party to this Agreement. One of the beneficiaries of the Trust is the Pictou County Health Authority or its successor. Monies are intended to flow from the Trust to fund the municipal share of the Project attributable to the five participating municipal units. More specifically the Trustees, which do not include Westville, have agreed to apply their pooled deed transfer tax collections, in excess of commitments previously made to other beneficiaries, to pay down their share of debt incurred with respect to the Project.

On June 1, 2015, the PCSSA, through special resolution, amended their Articles of Incorporation to include the authority to incur long-term debt. This amendment was intended and has since allowed the PCSSA to borrow \$6.8M for the Project. The Town of Westville participated in the duly called meeting to amend the PCSSA's Articles of Incorporation.

Pursuant to the requirements of the *Municipal Government Act*, the PCSSA issued a Temporary Borrowing Resolution on June 1, which was subsequently approved by the Minister of Municipal Affairs on September 17, 2015. As required by the Province, the Municipal owners of bodies incorporated through Intermunicipal Services Agreements (IMSAs) are required to guarantee any long-term borrowings undertaken by their IMSAs. The PCSSA is incorporated under an IMSA. In May and June of 2015 all six Pictou County municipal units executed duly passed Guarantee Resolutions specific to the PCSSA and the Project which were subsequently approved by the Minister of Municipal Affairs.

On May 31, 2015, the Town of Westville approved their guarantee resolution committing their municipal unit to repayment of their *pro rata* share of the debt incurred by the PCSSA with respect to the Project (see attached copy).

Outstanding details need to be addressed before the Project is complete and the temporary borrowing of the PCSSA is repaid through the issuance of long-term debt (a municipal debenture). The details include the Trustees of the Pictou County Deed Transfer Tax Trust and the Town of Westville finalizing how they intend to make their *pro rata* share of annual principal and interest payments associated with the Project debenture.

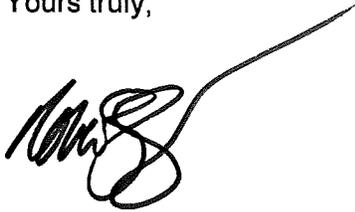
Conclusion

The Applicants do not agree to Proposed Amendments. These amendments would provide Westville with disproportionate power to effect decision making relative to its population and financial contribution. Moreover, many of the concerns expressed by Westville are addressed in provisions of the Agreement.

February 11, 201
Page 6

Amendments to the Agreement are not required prior to the Amalgamation. As stated in our letter dated November 14, 2015, pre-amalgamation voting rights will be maintained by operation of law in the event that Amalgamation is ordered by the Board.

Yours truly,

A handwritten signature in black ink, appearing to read 'RGG', with a long, sweeping horizontal line extending to the right from the end of the signature.

Robert G. Grant

RGG/JDW/amp

c. Client

TOWN OF WESTVILLE
GUARANTEE RESOLUTION

\$565,835

Pictou County Shared Services Authority

WHEREAS the Pictou County Shared Services Authority was incorporated on April 1, 2010 pursuant to Section 60 of the Municipal Government Act;

AND WHEREAS the Authority has determined to borrow the aggregate principal amount of Six Million Eight Hundred Thousand Dollars (\$6,800,000) for the purpose of contributing to a Hospital and has applied to the Town of Westville for its guarantee;

AND WHEREAS the Authority has requested the Town of Westville, a municipality that executed the instrument of incorporation of the Pictou County Shared Services Authority, to guarantee the said borrowing;

AND WHEREAS Section 88 of the Municipal Government Act, provides that no guarantee of a borrowing by a municipality shall have effect unless the Minister has approved of the proposed borrowing or debenture and of the proposed guarantee;

BE IT THEREFORE RESOLVED

THAT the Town of Westville does hereby approve the borrowing of Six Million Eight Hundred Thousand Dollars (\$6,800,000) for the purpose set out above;

THAT subject to the approval of the Minister of Municipal Affairs of the borrowing by the Authority and the approval of the Minister of Municipal Affairs of the guarantee, the Town unconditionally guarantee repayment of Five Hundred Sixty-Five Thousand Eight Hundred Thirty-Five Dollars (\$565,835) of the principal and interest of the borrowing of Six Million Eight Hundred Thousand Dollars (\$6,800,000) for the purpose set out above;

APPROVED
~~AS TO ABOVE~~

ED

THAT upon the issue of the Temporary Borrowing Resolution, the Mayor and Clerk of the Town do sign the guarantee attached to the Temporary Borrowing Resolution of the Pictou County Shared Services Authority and affix hereto the corporate seal of the Town.

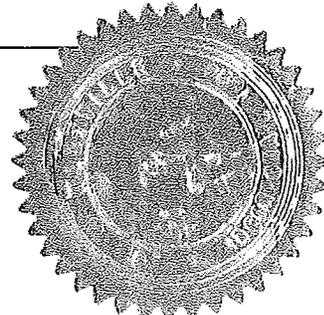
| |
|--|
| Department of Municipal Affairs |
| Recommended for approval of the Minister |
| <i>Aneloude</i> Deputy Minister |
| APPROVED this <u>17</u> day of <u>Sept</u> 20 <u>15</u> |
| <i>[Signature]</i> Minister of Department of Municipal Affairs |
| For DMA Use Only |

THIS IS TO CERTIFY that the foregoing is a true copy of a resolution duly passed at a duly called meeting of the Council of the Town of Westville held on the 31st day of May 2015.

GIVEN under the hands of the Mayor and the Clerk and under the Seal of the Town this 31st day of May 2015.

[Signature]
Mayor

[Signature]
Clerk



Guarantee of Aberdeen Related Debt

2011 Census Data - Pictou County (by Municipal unit)

| | Total | | <u>\$ 6,800,000</u> |
|-------------------------------|---------------|---------------|---------------------|
| Town of New Glasgow | 9,562 | 20.9% | 1,424,569 |
| Town of Pictou | 3,437 | 7.5% | 512,052 |
| Town of Stellarton | 4,485 | 9.8% | 668,186 |
| Town of Trenton | 2,616 | 5.7% | 389,738 |
| Town of Westville | 3,798 | 8.3% | 565,835 |
| Municipality of Pictou County | 21,745 | 47.6% | 3,239,621 |
| Totals | <u>45,643</u> | <u>100.0%</u> | <u>\$ 6,800,000</u> |