



STAFF REPORT ACTION REQUIRED

Toronto Response to Proposed Revisions to Ontario Regulation 444/98 - Disposition of Real Property

Date:	February 2, 2016
To:	City-School Boards Advisory Committee
From:	Executive Director, Social Development, Finance and Administration
Wards:	All
Reference Number:	AFS#22589

SUMMARY

This report summarizes the City of Toronto and the Toronto school boards' response to recent provincial consultations on Ontario Regulation 444/98. The City and school boards generally agree with proposed reforms to the regulation; however they also agree that barriers to cooperation will persist in Toronto because the Province's proposed reforms do not address school capital funding, exemptions on fair market value pricing on surplus properties, or alternative funding tools to keep school boards "whole". The Province's Community Hubs Secretariat has encouraged the City-School Boards Advisory Committee to offer ideas for resolving these challenges.

RECOMMENDATIONS

The Executive Director, Social Development, Finance and Administration recommends that:

1. City Council request the Province of Ontario to report on the outcomes of 2015 stakeholder consultations on Ontario Regulation 444/98.
2. City Council request the Province of Ontario to implement the following reforms to Ontario Regulation 444/98 as soon as possible:
 - (i) to extend the preliminary circulation period to 180 days, inclusive of 90 days for expressions of interest and 90 days for formal offers;
 - (ii) to include ministerial approvals within the circulation period;

- (iii) to broaden the public sector circulation list to increase opportunities to acquire a surplus school property for public sector use;
 - (iv) to ensure that coterminous school boards continue to have priority access to acquire a viable surplus school property for use as a school.
- 3. City Council request the Province of Ontario to commence consultations on exemptions to fair market value pricing on surplus school properties and funding tools to keep school boards "whole", as described in *Community Hubs in Ontario: A Strategic Framework and Action Plan* and to include the City of Toronto and Toronto School Boards as stakeholders during these consultations.
- 4. City Council forward this report to the four School Boards operating in Toronto, and if approved, to the Government of Ontario.

Financial Impact

There are no financial implications resulting from the adoption of the recommendations in this report. The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

City Council has expressed a consistent position on Ontario Regulation 444/98 - *Disposition of Surplus Real Property* over three terms of Council and has requested the Province to revise the regulation in at least nine separate City Council decisions. In particular, the City has requested that the Province: (i) extend the 90 days' window to prepare a purchase offer on a property; (ii) lift the requirement for the City to pay Fair Market Value; and (iii) develop an alternate funding formula for school capital projects.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.GM26.28>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.GM32.25>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.MM41.38>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.MM51.38>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX43.34>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.TS1.3>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX4.4>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX9.15>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX9.14>

ISSUE BACKGROUND

Summary of Ontario Regulation 444/98:

Ontario's capital funding framework for schools requires school boards to rationalize their property portfolios and to finance their capital maintenance and growth projects in part by monetizing "surplus" property. Ontario Regulation 444/98 – *Disposition of Surplus Real Property*, under the *Education Act*, outlines a two-step process that school boards must follow to lease or sell surplus properties. The seller school board is first required to offer the property to a prioritized list of public sector entities for a period of 90 days. Coterminous school boards are given first preference, followed by a number of other public sector institutions, including the local municipality. Coterminous boards may offer to purchase the property at fair market value or the replacement value of the school, whichever is less. The other public entities may offer to purchase the property at fair market value only. If no formal offer is made or can be agreed upon within the prescribed timelines, then, with Ministerial approval, the seller board may advertise the property to the open market. Additional provisions in the Regulation provide further detail on this process.

Challenges for School Boards:

School boards in Toronto face intensifying capital maintenance and development challenges, in light of an ageing building stock and the need to respond to population growth and change. The Toronto District School Board (TDSB) faces the greatest capital funding pressures, and maintains the largest list of "surplus" school properties that may be slated for sale. Given the capital infrastructure needs of the board and the Ministry of Education's direction to the utilize proceeds of disposition to support major capital renewal requirements, TDSB is motivated to realize market value on every school sale. In contrast, the Toronto Catholic School Board (TCDSB) is pressured to respond to growing space needs within a costly real estate and construction market. The French language school boards, too, need to expand and to access flexible space in a challenging real estate market. Purchasing surplus school properties from TDSB at school replacement value price represents best value for TCDSB and the French language boards, but the poorest financial outcome for TDSB. Under these conditions in Toronto, the regulation and funding model have polarized the interests of the school boards, without directly obvious benefits for the taxpayer.

Challenges for the City:

When a school in Toronto is declared surplus and offered for sale, it is not uncommon for the City to have an interest in the property as a community asset. However, the City's interest to acquire surplus school properties is hindered by provisions of Ontario Regulation 444/98. The 90 days circulation period is an unrealistic window for the City to analyze interdivisional interests in a property and prepare a formal offer and seek relevant council authorizations. Moreover, the requirement to pay fair market value means that most school properties are priced out of the reach of City government.

Community Hubs Action Plan:

In August 2015, the Premier's Community Hub Framework Advisory Group recommended amendments to Ontario Regulation 444/98 to help retain public ownership of surplus school properties in the form of community hubs. The recommendations were consistent with City's perspective on the regulation. The most significant recommendation was to create exemptions on the fair market value pricing requirement while using alternate funding tools to keep school boards "whole".

Ministry of Education Consultations on Ontario Regulation 444/98:

In late 2015, the Ministry of Education conducted consultations on four proposed reforms to Ontario Regulation 444/98, partly in response to the Community Hubs Report.

The ministry's consultation guide is available at

<http://www.ontariocanada.com/registry/showAttachment.do?postingId=20302&attachmentId=29952>.

The City of Toronto and Toronto school boards separately participated in the consultations. Toronto was the only municipality that met with ministry staff. The Deputy City Manager of Cluster A and executive leadership from Social Development, Finance and Administration; Children's Services; Parks, Forestry and Recreation and City Planning represented the City's interests in schools as community assets.

Four Proposed Reforms:

Four reforms were considered during the consultation:

- (i) extending the circulation timeframe to 180 days;
- (ii) expanding the circulation list to include: District Social Services Administration Boards/Consolidated Municipal Service Managers, Public Health Boards, Local Health Integration Networks and Children's Mental Health Centres;
- (iii) clarifying that "only licensed child care providers and providers of publicly-funded early years programs" are eligible to lease surplus school property prior to the formal circulation to the public sector; and
- (iv) limiting site severance applications, to ensure that school properties remain viable as schools during public sector circulation.

Exemptions to fair market value pricing on properties sold to the public sector and the use alternate funding tools to keep school boards "whole" were not considered. A separate, Government of Ontario-wide process is being planned for 2016 to review these issues. The work will be conducted through the Community Hubs Secretariat of Cabinet Office. The Community Hubs Secretariat has expressed interest in receiving advice from the City-School Boards Advisory Committee on solutions to these issues.

COMMENTS:

City and School Boards' Responses to Proposed Reforms

1. **Extension of circulation period from 90 days to 180 days:** The City has been requesting this change for a number of years. The school boards could also support an extension if it does not delay or put into jeopardy the capital projects process and if it applies to the ministry approvals process as well as to the public sector bidders. TDSB, for example, recommends a 2-part circulation process involving 90 days for expressions of interest, followed by 90 days for formal offers and negotiations. TDSB notes that in cases where ministry approval is required to support an expression of interest from another school board, the province would need to confirm support within the first 90 days. The City also encourages a streamlined ministry approvals process for inter-board transactions. Ministry delays increase costs for the boards and other potential buyers, including the City, and create disruption and confusion in local communities.
2. **Additional public sector entities on the circulation list:** The City supports increased opportunities for the public sector to acquire surplus school properties. The City does not have an interest in changing the priority sequence of the list, which gives coterminous boards the first opportunity to purchase the property. Retaining school as schools, where needed, is the best community outcome from the City's perspective. The school boards also support this reform if the expanded lists are maintained and managed by the ministry. The school boards accept the priority sequence of the list, provided that properties purchased at school replacement value are subsequently used as schools and not re-sold for a higher value.
3. **Clarification that only "licensed child care providers and providers of publicly-funded early year's programs" are eligible to lease surplus property prior to circulation:** The City and the School Boards support this clarification.
4. **To prevent site severances that would render properties unsuitable for future use as schools during the circulation to coterminous boards:** This proposal is intended to help retain school properties within the public school system where there is a need. The City and school boards accept this public policy goal but note that it competes with the ministry's funding directive for school boards to monetize surplus properties at the best value. The City would not encourage minimum site sizes for school properties in an urban setting as complex as Toronto. City Planning has offered to work with the ministry to identify approaches to help support the intent of the proposal, such as an internal review process. The City also notes that a ministry review would not fetter municipalities' statutory authority under the *Planning Act* to regulate division of land. The Minister of Education is not authorized to approve or limit property severances.

CONCLUSION:

The City and the Toronto school boards are generally supportive of the Ministry of Education's proposed reforms to Ontario Regulation 444/98. There is also agreement that the proposed reforms are insufficient to shift the polarized financial interests of the parties, because the underlying school capital funding mechanisms and market value pricing issues are not addressed through the proposed reforms. The City-School Boards Advisory Committee was established in part to help identify alternate funding strategies and joint venture partnerships for major capital projects, in order to relieve the pressure on boards to sell school properties out of public ownership. The timing is appropriate now for the Committee to develop "Made in Toronto" options, in preparation for further consultations in 2016.

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