



Auditor General

MANITOBA

Report to the Legislative Assembly

Investigations Report

Shellmouth Dam Compensation Program
City of Winnipeg: Sale of Vimy Arena
Municipal Development Corporations

Website Version



August 2021

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August 2021

Honourable Myrna Driedger
Speaker of the Legislative Assembly
Room 244, Legislative Building
450 Broadway
Winnipeg, Manitoba R3C 0V8

Dear Madam Speaker:

It is an honour to submit my report, titled *Investigations Report*, to be laid before Members of the Legislative Assembly in accordance with the provisions of Section 28(1) of *The Auditor General Act*.

Respectfully submitted,

Original Signed by:
Tyson Shtykalo

Tyson Shtykalo, CPA, CA
Auditor General

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Introduction

Citizens, civil servants, and Members of the Legislative Assembly bring concerns to our attention throughout the year. I value the perspectives of all these stakeholders. The information we receive can be used in different ways. For example, it may be helpful in an audit we are currently conducting, or help us identify entities and programs we may audit in the future. We may also undertake a more limited scope examination of the information, instead of conducting a full audit.

This volume includes the results of 3 limited scope examinations, which all stem from stakeholder concerns that came through our citizen concerns line. These are: *Shellmouth Dam Compensation Program*, *City of Winnipeg: Sale of Vimy Arena*, and *Municipal Development Corporations*.

When we undertake a limited scope examination, we may provide information to an entity in a management letter detailing preliminary findings, instead of issuing a public report. We issued 2 such management letters this year, one to the University College of the North regarding executive expenses, and another to 2 regional health authorities regarding oversight of specialized contracts.

Connecting with stakeholders is one of my priorities. In recent years, we have explored new ways of doing this. That has included launching Twitter, Facebook, and LinkedIn accounts, and re-developing our website with an emphasis on sharing information and engaging with stakeholders.

I encourage Manitobans to continue to contact our office and bring concerns to our attention through our Citizen Concerns line: 204.945.3351 or citizens.concerns@oag.mb.ca, and to visit our website (oag.mb.ca) for more information on our audits in progress, and what we can audit.

I would like to thank my staff for their diligence dealing with all the information we receive through our citizen concerns line. I would also like to thank my investigations team for their dedication and hard work in carrying out each of the reports in this volume.

Original Signed by:
Tyson Shtykalo

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Auditor General



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Department of Infrastructure: Shellmouth Dam Compensation Program



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Auditor General's comments

This report is a result of concerns received through our Citizen Concerns line regarding the administration of the Shellmouth Dam Compensation Program. We determined that compensation was not provided to landowners in a timely fashion and that key requirements of the regulation were not consistently followed by the Department of Infrastructure (the Department).

The program is intended to provide financial relief to landowners who have experienced artificial flood-related damages caused by the operation of the Shellmouth Dam on the Assiniboine River. During our examination we heard from Manitobans who experienced significant hardships waiting for compensation. Some landowners devoted hundreds of hours away from their business and personal lives to pursue their claims. Some waiting over 3,000 days from the time of flooding to receive compensation. This is not acceptable.

I am also concerned that officials did not always inspect flood damage, claims files were missing information, and there was a lack of communication to those affected by the flooding. Claimants should reasonably expect a compensation process that is clearly laid out, consistent, and timely.

Our report includes 5 recommendations to strengthen compensation processes.

I would like to thank the landowners and the officials from the Department we met with during our examination for their cooperation and assistance.



Tyson Shtykalo, CPA, CA
Auditor General

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Examination of Shellmouth Dam Compensation Program

Shellmouth Dam

Compensation Regulation:

Guides the compensation process for landowners experiencing artificial flood-related damage from the operation of the Shellmouth Dam.

By the numbers:

3 Number of floods
(2011, 2012, 2014)



275

Number of claimants

\$7.6 million

Compensation paid out

We received multiple allegations:

- Administration of the program not timely
- Aspects of program delivery not in compliance with regulation
- Communication with potential claimants insufficient and lack of public consultation.



What we found:

FINDING	CONSEQUENCE
Claims not processed in a timely manner	Claimants waited 1,392 to 3,230 days to receive compensation
Flood damage inspections not occurring in the presence of the claimant, contrary to the compensation regulation	Of the 275 claimants over 3 flood events, only 6 inspections were completed in compliance with the compensation regulation
Program eligibility and application process not clearly communicated to landowners	Some applicants missed out on appeals, and possibly eligible compensation

Adequate public consultation occurred when updating operational guidelines for the dam

Report includes **5** recommendations

What we examined - allegations/concerns

The allegations we examined involve whether the Shellmouth Dam Compensation Program was administered in a timely fashion and if key requirements in the regulation were consistently followed by the Department of Infrastructure (the Department). We also examined if communication was sufficient with potential claimants and if required public consultations had been completed in accordance with legislation.

What we concluded

We concluded that the administration of the Shellmouth Dam Compensation Regulation was not completed in a timely manner in accordance with the regulation. As well, we found insufficient communication with potential claimants regarding program eligibility. We did find the Department satisfied the requirement for public consultation concerning the operation of the Shellmouth Dam.

What we found

The program had significant delays and did not comply with regulations (SECTION 1). We reviewed if claims were processed in a timely fashion. We found the program had significant delays, with some claimants waited over 3,000 days for compensation following the artificial flood event.

We also reviewed if artificial flood damage was inspected in the presence of the claimant as required by the regulation. We found inspections were only completed in the presence of the claimant for 6 out of 93 applications in the 2011/12 program. We also found supporting evidence was not always obtained to verify applications and files contained inconsistent documentation to support claims. Claimants were not provided with information describing what their responsibilities were to document flood damage.

The Department did not sufficiently communicate program information to potential claimants (SECTION 2). We found the Department did not have a communication strategy targeting all potentially eligible claimants. We also found program eligibility was not clearly communicated to landowners. The lack of communication could lead to landowners potentially missing out on eligible compensation.

Adequate public consultation occurred (SECTION 3). We found that operating guidelines were approved with sufficient stakeholder consultation, the competing needs of stakeholders were identified and evaluated and water management plans were drafted and approved for areas downstream of Shellmouth Dam.

Our report contains 5 recommendations.

Response from Manitoba Infrastructure

We requested a response from officials of the Department of Infrastructure. They provided a summary, which is included below, and specific responses to each recommendation which are included in the **SUMMARY OF RECOMMENDATIONS** section of the report.

Manitoba Infrastructure (MI) would like to thank the Office of the Auditor General (OAG) for its examination of the Shellmouth Dam Compensation Program related to artificial flooding that occurred in 2011, 2012 and 2014.

As a department, we recognize the importance of proper and timely administration of the programs that we deliver to Manitobans. We have already made significant improvements to the administration of the most recent 2019 Fall Red River Floodway Compensation Program, which reflect many of the recommendations in your report. These improvements are examined further below.

Manitoba Infrastructure is committed to improving the delivery of the Shellmouth Dam Compensation Program and communication with our stakeholders to ensure that they are aware of the program scope, the type of compensation that may be provided, as well as the documentation requirements that will allow them to best support their claims.

In addition to agreeing with the recommendations in the report, the department is committed to reviewing the act and regulation to determine if amendments are required in order to better support prompt inspection, administration and payment of claims.

Program Improvements Already Underway/Implemented:

The Emergency Measures Organizations (EMO) of MI has implemented many of the improvements recommended by the OAG in the administration of most recent 2019 Fall Red River Floodway Compensation (RRFC) Program. These improvements include:

- The timely release of the artificial flood report which was published 29 days after the Red River Floodway operations were concluded.
- A media press release was utilized to advertise the compensation program and a website was established which contained an outline of the program, links to the flood report, required forms, and frequently asked questions.
- Claimants were notified by letter of their claim status after submitting their Intent to Claim form. If their claim was denied, the reason for denial was included in the letter.

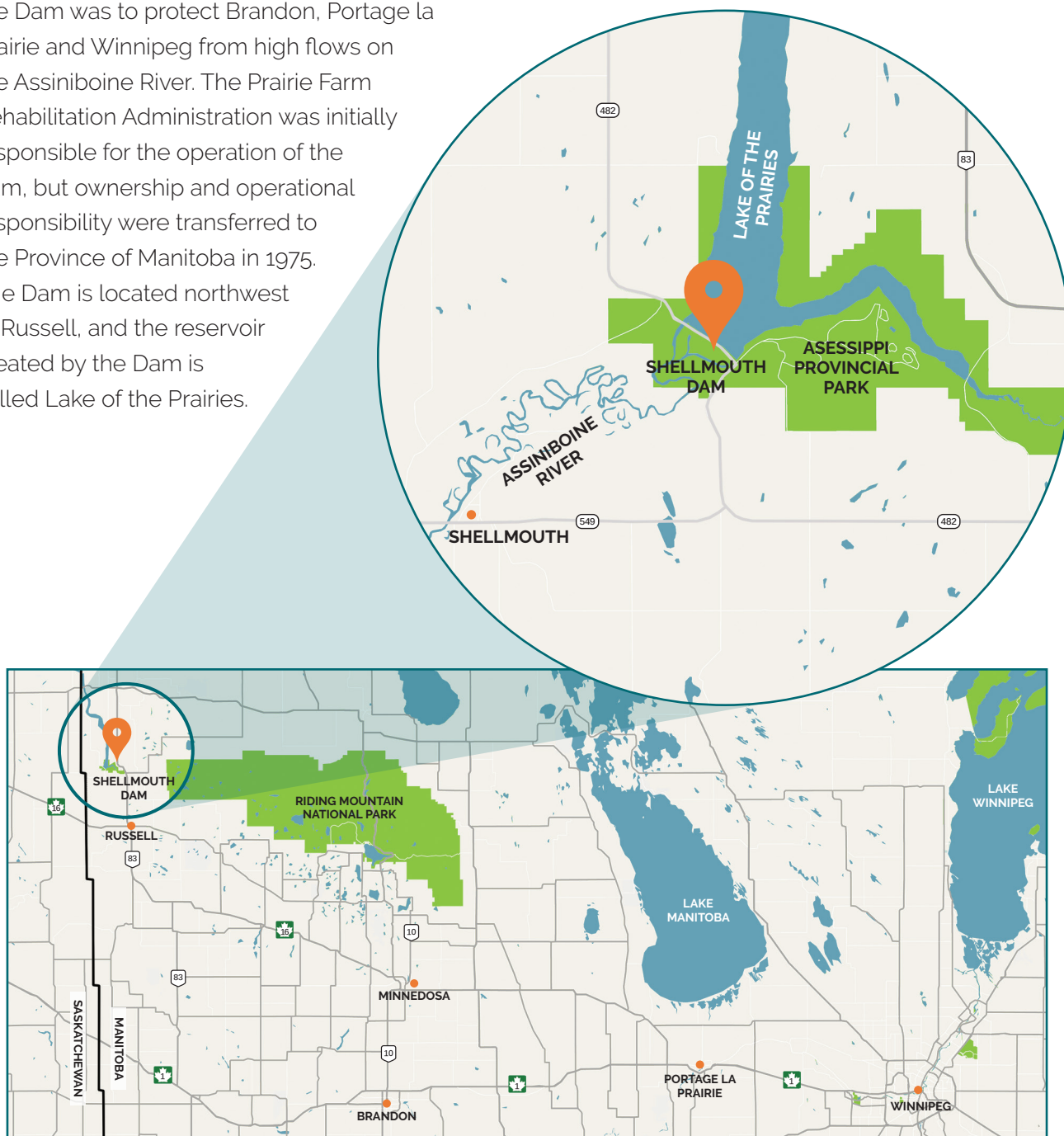
- In-person inspections began in December 2019, 2 months after the operation of the Red River Flooding by using the following strategies to align the type of impacts with the expertise and skill set of the adjusters:
 - Manitoba EMO utilized tendered outline agreements through the Insurance and Risk Management Branch of Manitoba Finance to hire private insurance adjusters to inspect and evaluate claims related to property damage and economic loss.
 - The Minister of Infrastructure established a Memorandum of Understanding with Manitoba Agricultural Services Corporation (MASC) to inspect and evaluate claims with agricultural losses.
- Manitoba EMO outlined the inspection requirements for both the insurance and MASC adjusters, and inspections included assessing all flood-related damages, including those caused by artificial flooding. The impacts caused by artificial flooding were then subsequently determined using hydrographs, survey data and other information that is well documented in the claims.
- Manitoba EMO assigned adjusters to undertake inspections as soon as the claim was accepted into the program and the Acknowledgment and Undertaking form was received. The average time from receipt of forms to inspection was approximately 30 days, dependent on claimant availability. All inspections took place in the presence of the claimant.
- The release of compensation statement packages began in August 2020 (approximately 9 months from program initiation and 6 months from application deadline). The compensation statements explained clearly what was and was not being compensation and why. The package also included the elevation maps, hydrographs and other visual supports so that the claimant could understand how the compensation amounts were derived.
- Compensation payments were issued as soon as the Compensation Acceptance and Release forms were received by Manitoba EMO.
- All compensation payments were dispersed by December 2020, except for those that have proceeded to appeal.
- Manitoba EMO provided all claimants with detailed appeal information, which was included with their Compensation Statement. Of the 16 claims under the Fall 2019 RRFC program, 4 claims have proceeded to appeal. These claims are currently awaiting scheduling by the Manitoba Disaster Assistance Appeal Board.

Again, on behalf of the department, thank you for the report and recommendations. MI is committed to continuous improvement in addressing artificial flooding and compensation for Manitobans.

Background

The Shellmouth Dam is one of a series of flood-related structures that were built throughout Manitoba after the disastrous flood of 1950. This flood resulted in an estimated 100,000 residents evacuated from their homes. Construction began in 1964 and was completed in 1972.

One of the principal reasons for constructing the Dam was to protect Brandon, Portage la Prairie and Winnipeg from high flows on the Assiniboine River. The Prairie Farm Rehabilitation Administration was initially responsible for the operation of the dam, but ownership and operational responsibility were transferred to the Province of Manitoba in 1975. The Dam is located northwest of Russell, and the reservoir created by the Dam is called Lake of the Prairies.



Agricultural property owners downstream of the reservoir have experienced repeated flooding from the operation of the Dam. The Dam holds back water during peak flows in spring along the Assiniboine River Valley. The water held back is released over a longer period of time. This can result in shifting the timeframe of the flooding later than what would have occurred without the artificial flooding (see **FIGURE 1**).

An example of what could occur with the operation of the Dam is a prolonging of the effects of a flood. When the Dam extends flooding into late spring, significant erosion can occur. Flooding later in the season also prevents producers from planting a crop in water soaked fields. Producers may be forced to leave the land out of production for an entire season.

In 2011, the Province proclaimed the Shellmouth Dam Compensation Regulation to address the effects of flooding due to the operation of the Shellmouth Dam and to provide some financial relief to claimants affected by the operations of the Dam. The regulation specifies that payments could be made under the Shellmouth Dam Compensation Program (the Compensation Program) if damages were due to artificial flooding. Artificial flooding is defined by legislation as occurring when the operation of a water control work causes water to rise to a level higher than it would have if the water control work was not in operation.

RELEVANT LEGISLATION

Water Resources Administration Act

Section 12 of the *Water Resources Administration Act* (the Act) outlines the eligibility criteria for landowners affected by artificial flooding to receive compensation.

Claims for artificial flood damage and economic loss

12.1(1) A person may claim compensation under section 12.2 if (a) artificial flooding has damaged the person's eligible property or caused the person to have an economic loss; and (b) the person meets any applicable eligibility requirements set out in the regulations.

Subsections 12.1(2), (4) and (5) state the limits on who may claim for compensation under subsection (1). The Act also outlines the role of the Emergency Measures Organization (EMO), general information on the application process, and the effect of compensation under other programs.

Regulation specific to the Shellmouth Dam

In 2011, the Province proclaimed *The Shellmouth Dam Regulation and The Shellmouth Dam Compensation Regulation* within The Act. The regulations outline the process to determine both when artificial flooding has occurred and the process to provide compensation for landowners following an artificial flood event directly related to the operation of the Shellmouth Dam.

The *Shellmouth Dam Compensation Regulation* provides information on general application procedures, deadlines, claimant's duties and compensation rules. Section 9 of the *Shellmouth Dam Compensation Regulation* provides details on the claims process.

Claim processing and inspection of damaged property

Applications for compensation are submitted to EMO. An EMO representative must:

- a. Promptly inspect the damaged property in the presence of the claimant.
- b. Obtain sufficient plans, surveys, schematics, photographs or video evidence to properly identify the damaged property, document visible damage, document temporary repairs and assess the value of the damage.
- c. Review with the claimant the preliminary estimate of the value of damage or loss and the schedule of loss.
- d. Obtain from the claimant any additional supporting documentation or information that may be required to proceed with the claim.

SHELLMOUTH DAM COMPENSATION PROGRAM

The Compensation Program is a statutory program under the Act and the *Shellmouth Dam Compensation Regulation* (the Compensation Regulation), which provides compensation only for loss or damage caused by artificial flooding resulting from the operation of the Shellmouth Dam. This program is distinct from other government programs such as the Disaster Financial Assistance program which covers naturally occurring flood events, this program only covers artificial flooding.

REPORT ON ARTIFICIAL FLOODING DUE TO OPERATION OF SHELLMOUTH DAM

The Minister of Infrastructure (the Minister) must issue an artificial flood report before the compensation process can begin. The report contains hydrologic analysis data compiled by the Department of Infrastructure's Hydrologic Forecasting Branch and a technical committee comprised of technical experts within Manitoba Infrastructure. Hydrologic analysis includes details of inflows and outflows from the Dam to assess the occurrence and extent of artificial flooding. Data is graphed to highlight the portion of the flood that is considered artificial. An example of one of the graphs is seen below.

Figure 1: Hydrograph illustrating a conceptual example of artificial flooding

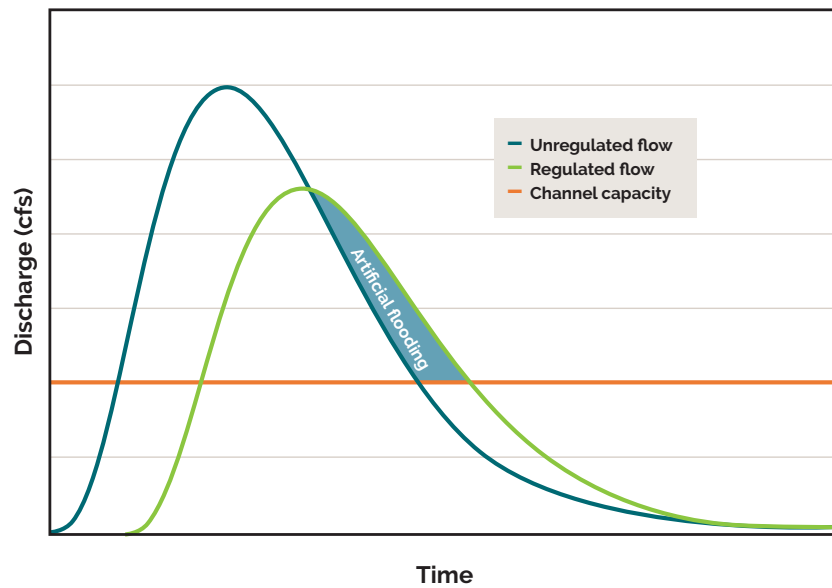


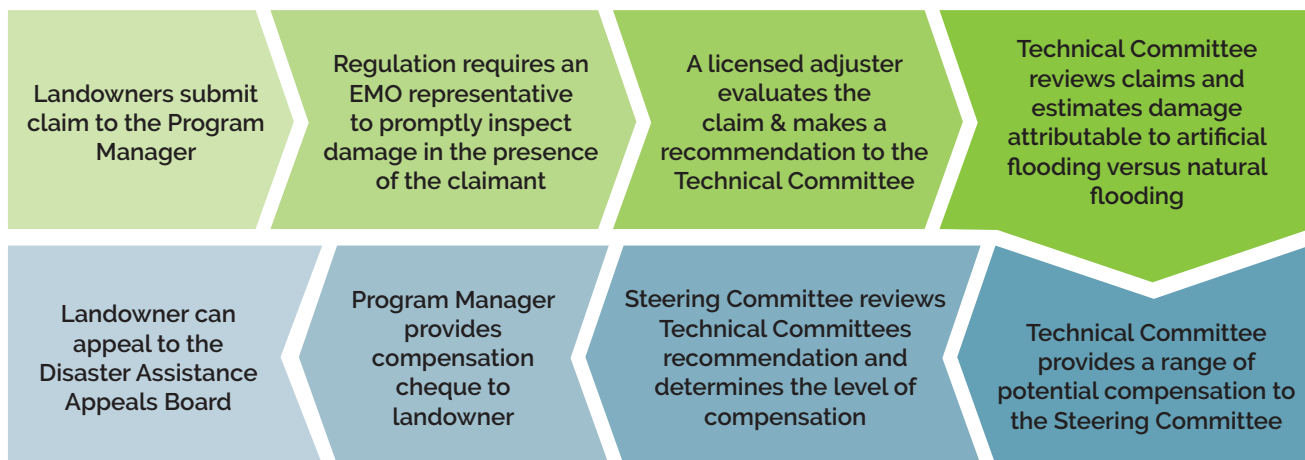
FIGURE 1 highlights the duration of artificial flooding, which is shaded in blue. The difference between regulated and unregulated water flows represent the artificial flooding amount. Since the adoption of the Compensation Regulation, the province has declared artificial flooding has occurred in the Assiniboine Valley and 2011, 2012 and 2014.

COMPENSATION CLAIMS PROCESS

When the Minister confirms artificial flooding occurred and issues the required public report, EMO makes a request to Treasury Board to secure funds to compensate the affected landowners. Following approval by Treasury Board, EMO issues a Request for Proposal to hire an independent licensed adjuster and a temporary Program Manager for each flood event. The Act requires "a qualified person or organization to assess the value of the damage or loss". EMO considered "a qualified person or organization" to be a licensed adjuster, with staff accredited by The Canadian Independent Adjusters' Association as Level 4 adjusters.

The Program Manager administers the Compensation Program and acts as the liaison between the landowners and the Steering Committee, which reviews available evidence and determines the level of compensation warranted. Landowners submit their claims with supporting evidence to the Program Manager. The Compensation Regulation requires that an EMO representative promptly inspect the damages and a licensed adjuster evaluate the claim. The adjuster reviews the claim and compiles documentation for the Technical Committee. The Technical Committee reviews all available information and provides a range of potential compensation amounts that would be appropriate for the claim. The Steering Committee then reviews the submission and determines the eligible compensation. The Steering Committee is made up of assistant deputy ministers from EMO, Department of Infrastructure and Manitoba Agriculture. If the claim is denied, the Act allows the claimant to submit an appeal to the Disaster Assistance Appeal Board. See **APPENDIX 1** for the full Shellmouth compensation process map.

COMPENSATION CLAIMS PROCESS DIAGRAM



PROGRAM ELIGIBILITY

Clearly defined eligibility criteria identifying the extent of damage that is attributable to the artificial portion of flooding is required for the administration of the compensation program. EMO determines if damages are eligible for compensation under the Compensation Regulation by analyzing what portion of the damage is directly attributable to the artificial portion of flooding. The definition of artificial flooding is defined in both the Act and the Compensation Regulation.

<i>Water Resources Administration Act</i>	<i>Shellmouth Dam Compensation Regulation</i>
Artificial flooding in relation to a given event, means flooding of a water body (a) that is caused by the operation of a designated water control work, or the operation of a designated water control work and one or more other water control works, and (b) whereby the water body exceeds its unregulated level at the time of the event.	Artificial flooding means artificial flooding of the Assiniboine River caused by the operation of the Shellmouth Dam.

Eligibility criteria for the Compensation Program is based on identifying damages that were directly attributable to the artificial portion of a flood event. Determining if damage is associated with the artificial portion of flooding can be difficult. Oversight of the program involves determining:

1. If any portion of a flood was deemed artificially caused by the operation of the Shellmouth Dam.
2. If damage had occurred.
3. If any portion of the damage was caused by the artificial portion of the flood.

Below is a scenario that illustrates the difficulty in identifying damage that is attributable to the artificial portion of a flood. In the example, we highlight the types of damage that were common in compensation claims we reviewed.

FLOOD SCENARIO

If the Assiniboine River Valley was in a flood stage for 20 days, but only 5 of the 20 days were directly attributable to artificial flooding, then the first 15 days would be considered natural flooding.

For this scenario the flooding resulted in erosion to agricultural fields. Erosion is a common side effect from flooding in the Assiniboine River Valley. Floodwaters can cause significant erosion channels across agricultural fields. As seen below erosion may prevent a producer from accessing portions of their land because farm equipment can no longer be moved on to the inside of an oxbow.

The Steering Committee must determine if the erosion occurred in the 5 days considered to be the artificial portion of the flood. Attributing the erosion to either the natural portion or the artificial portion of a flood is very challenging. Further complicating the matter, the extent and severity of erosion can be influenced by the timing of the flood. For example, when flooding occurs in early spring, the ground is frozen and erosion is significantly reduced in comparison to later in the season. The Dam reduces the peak flow of water from a flood but can extend the period later into the year when the ground is not frozen.



Photo: Western Producer

Objective, allegations/concerns, scope and approach

Objective

To determine the validity of key allegations regarding Provincial non-compliance with the *Shellmouth Dam Compensation Regulation*, lack of sufficient communication, and public consultation concerns.

Allegations/concerns

1. Concerns related to timeliness and compliance with legislation including inspections and lack of supporting evidence
 - The entire process for the program was not timely
 - Inspections did not occur in the presence of the claimant
 - Supporting evidence was not obtained to verify applications
2. Concerns that EMO did not sufficiently communicate program information
 - Eligibility was not clearly communicated to the public
 - Applicants were not made aware of the appeals process
3. Public consultation related concerns
 - Operating guidelines were approved without sufficient stakeholder consultation
 - Competing needs of persons affected by the water control structure have not been identified and evaluated
 - An approved watershed management plan has not been created

Scope and approach

We conducted our examination between December 2019 and March 2020. We examined the claims processes for the 2011, 2012 and 2014 flood events. Our examination was conducted in accordance with *The Auditor General Act*.

We undertook a preliminary review of all the allegations received and evaluated them based on significance, auditability and risk. We also gained an understanding of the context that exists within the Shellmouth Dam Compensation Program.

The examination included review and analysis of legislation, policies and practices, and correspondence. We reviewed 30 applications/files — 10 for each flood event for 2011, 2012, and 2014. We also conducted interviews with the Program Manager, departmental officials, staff, and landowners who are members of the Assiniboine Valley Producer Association. We did not analyze the appeal process.

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1 Program had significant delays and did not comply with regulations

The *Shellmouth Dam Compensation Regulation* (Compensation Regulation) outlines the processes to provide compensation for landowners following an artificial flood event directly related to the operation of the Shellmouth Dam. In this section, we discuss the following findings:

- The Shellmouth Dam Compensation Program (the Program) had significant delays
- Artificial flood damage was not inspected in the presence of the claimant
- Supporting evidence was not obtained to verify applications

1.1 Program had significant delays

We reviewed the Program's compensation process from the point of the flood to compensation being provided or rejected to applicants. We found delays throughout the entire process, resulting in some applicants waiting for compensation over 3,000 days from the end of a flood. The Compensation Regulation does not specify time period requirements and the Emergency Management Organization (EMO) did not establish timelines for each part of the process. See **APPENDIX 2** and **3** for a detailed breakout of the number of days for key milestones from the flood date to the end of the program.

The table below was created from our file review of 30 claims files and highlights the significant number of days from the flood to the final cheques. Below is an analysis of each key stage in the process.

Approx. # of days from flood to cheque date*	
Average # of days	2,087*
Highest	3,230*
Lowest	1,392*

* The number of days are approximate because flooding ended at different points depending on where the property lied in relation to the Dam.

ISSUING THE ARTIFICIAL FLOOD REPORT

Legislation requires the Minister of Infrastructure (the Minister) to issue an Artificial Flood Report if an artificial flood in the Assiniboine River Valley results in property damage. Technical experts from the Province determine if the Shellmouth Dam contributed to the flood and what proportion of the flood was considered artificial. When a report has been released that documents artificial flooding, a compensation program commences.

Artificial Flood Reports for both the 2011 and 2012 flood events were released simultaneously on January 28, 2013. As a result, the compensation program for the 2011 flood did not commence until more than a year and a half after the event occurred. Because so much time had passed, it was difficult for inspectors to review and document damages that occurred as a result of the flood. The artificial flood report for the 2014 event was released July 7, 2015 — about a year after the flood. We were told by Manitoba Infrastructure staff that compiling the data to produce the reports took considerable time and that the Department of Infrastructure had been working on finding a solution to speed up the process of issuing the artificial flood report. There is no deadline for the Minister to declare artificial flooding and issue the report. See **RECOMMENDATION 2** regarding timeliness.

APPROXIMATE LENGTH OF TIME FROM A FLOOD EVENT TO THE RELEASE OF AN ARTIFICIAL FLOOD REPORT

Flood event	Approximate length of time to issue the Artificial Flood Report
2011	1.5 years
2012	0.5 year*
2014	1 year*

**2012 and 2014 flood had 2 periods of artificial flooding. July 1, was used as an average date.*

HIRING ADJUSTING COMPANIES AND ADJUSTER'S SKILLSET

We were told by EMO staff that they had difficulty finding qualified companies to bid on the adjusting contract because there were very few companies that offer Level 4 adjusting services. According to EMO staff, the process to procure a qualified company to perform inspections significantly contributed to delays in administering the program.

The Shellmouth Dam regulation requires that whenever possible, the EMO must use licensed insurance adjusters to evaluate compensation claims. EMO interpreted the regulation as requiring a Level 4 insurance adjuster. A Level 4 adjuster has been employed as an insurance adjuster in an adjusting firm or general insurance company for a minimum of 5 years and completed the required courses from the Insurance Institute of Canada. The Province does not employ any Level 4 insurance adjusters, so EMO procured external contractors. EMO did not document the rationale for its decision to interpret the regulation as requiring a Level 4 insurance adjuster.

Other programs administered by the Province of Manitoba and Manitoba Agricultural Services Corporation (MASC), such as the Disaster Financial Assistance program and Crop Insurance, do not require properties to be inspected by a Level 4 adjuster. MASC has internal staff with experience in agriculture that inspect damage for the Crop Insurance program. EMO uses internal staff who also have agricultural experience to inspect damages in administering the Disaster Financial Assistance program. These staff are not required to be Level 4 insurance adjusters.

We were told by claimants and EMO staff that having adjusters without agricultural experience contributed to poor relationships and time delays. Some claimants indicated that the insurance adjusters asked producers what a bale of hay was and suggested to one producer that they should send cattle into drowned canola fields to provide feed for their herd. Landowners told us that the lack of agricultural knowledge among adjusters eroded confidence in the program. In comparison, staff evaluating flood-related damages for the Department of Agriculture and MASC have agricultural expertise.

APPROXIMATE LENGTH OF TIME FROM A FLOOD EVENT TO THE PROVINCE FINALIZING A CONTRACT WITH AN ADJUSTING COMPANY

Flood event	Approximate length of time to hire an adjusting companies
2011	2.5 years
2012	1.5 years*
2014	2.5 years*

**2012 and 2014 flood had 2 periods of artificial flooding. July 1, was used as an average date.*



Recommendation 1

We recommend the Department of Infrastructure review existing policies and practices to determine what skills and experience level is required to perform inspections and claim evaluations. The results of the review should be documented.

PROMPT INSPECTIONS

The Compensation Regulation requires the "prompt" inspection of damaged property. We found EMO did not informally or formally define what constituted a prompt inspection. EMO officials indicated they were frustrated with the ability of the adjusting company to review damages and submit reports back to EMO in a timely fashion. The contract to perform adjusting services did not contain deadlines for completion. Without performance deadlines built into the contract it was difficult for EMO to work with the adjusting companies to complete work in a timely fashion.

In our review of claims files, we found no documented evidence of inspections. Out of 93 applications for the 2011/12 program, only 6 inspections were completed. Inspections were halted when an adjuster perceived a threat while conducting an inspection of damage in the presence of the claimant. The remainder of the 2011/12 applications did not receive a physical inspection of damage. Adjusters were again required to perform inspections for the 2014 program but, we found no documented evidence in the files that a prompt inspection of damage was completed. Other concerns were also noted regarding inspections (see the Inspection section below). See Recommendation 2 regarding prompt inspection concerns.

APPEALS PROCESS

As directed by the regulation, applicants have the option to appeal EMO decisions. The Compensation Program used the pre-existing Disaster Assistance Appeals Board (Board) to resolve appeals. The Board is independent of EMO and has the authority to review claims in order to evaluate if the claimant received the appropriate level of compensation for damages. The Board hears appeals from other assistance programs including the Disaster Financial Assistance (DFA) program. As noted in **SECTION 2**, the Board received 20 appeals for the 2011/2012 artificial flood program. The Board only scheduled hearings for 2 of the appeals submitted. The remainder of the appeals were not heard until the end of 2019. The Board is responsible for scheduling appeals.

We reviewed one file where an applicant submitted a notice of appeal based on a 2011/12 request that was rejected in late 2015, the appeal was submitted in early 2016. The hearing was scheduled for December 11, 2019—1,433 days after the notice of appeal was submitted, and almost 3,000 days from the end of the 2012 flood. Appeals for the 2014 program were resolved in early 2020. Although appeals are being resolved faster for 2014, it is still almost 6 years from the flood.

Impact to claimants

For claimants, the impact of the delays on artificial flood event compensation was profound. We spoke with landowners who told us they had over half their fields out of production for multiple years, while waiting for fields to dry or while repairing fields sufficiently to resume production. We also spoke with producers who were forced to sell land in order to keep their farms financially viable while waiting for compensation cheques from the Program. Producers also indicated that they were taking significant loans and negatively affecting their credit rating trying to keep their businesses going while waiting for compensation.



Photo: Ruth Bonneville / Winnipeg Free Press



Recommendation 2

We recommend the Department place time limits on all key parts of the process including:

- Artificial flood report to be completed and released
- Applicants to receive a decision letter on their Intent to Claim Form
- Inspections to be completed to satisfy the prompt inspection requirement
- For cheques to be issued if warranted

1.2 Artificial flood damage was not inspected in the presence of the claimant

When determining if a claim is eligible for compensation, EMO must first determine if damage has occurred. The Compensation Regulation requires an EMO staff member or a representative to physically inspect the damage with the claimant present during the inspection. This is important to determine if damage has occurred and to estimate the level of damage. For example, if fence posts are submerged for 15 days there could be damage such as rot, or parts might be knocked down from collisions with

debris while submerged. Other forms of documentation can also be used to determine damage. This includes pictures or videos taken by landowners immediately after damage occurred. If costs were incurred to repair damaged equipment or property, invoices should be submitted to receive additional compensation.

We reviewed 30 claims files and interviewed applicants and EMO officials, to determine if EMO was in compliance with the regulation. In our file review we found no evidence of an EMO staff member or a representative being present with claimants to inspect damages. Inspections were only completed in the presence of the claimant for 6 out of 93 applications in the 2011/12 program.

We were told by EMO staff that insurance adjusters working for adjusting companies perceived a physical threat from claimants when they were inspecting damages. Therefore, inspections for the 2011/12 flood were discontinued and landowners were informed they should come in to meet with EMO staff, and the adjusters, and also bring their own evidence. However we could not find sufficient documentation to determine if that happened. When we asked management, we were told the meetings were held in a restaurant or alternative location in a nearby community with the applicant, insurance adjuster and the program administrator. The insurance adjusters did not directly view damages.

EMO hired 2 new adjusting companies for 2014. In our file review we found no documentation in the claims files indicating that inspections occurred.

We asked EMO and were told that a physical inspection is not necessary. Inspections could not occur until the release of the artificial flood report. EMO felt that a physical inspection would provide no benefit because of the length of time that had passed since the flood event. A physical inspection would not allow EMO to determine if the damage had occurred or what portion of the damage resulted from artificial flooding versus natural flooding because the flood event had occurred years before a potential inspection. Officials believe hydrologic modelling was sufficient to determine the extent of artificial flooding. However, relying on hydrologic modelling does not provide sufficient documentation to prove that damage has occurred. For example, if damages such as debris left behind on land or extensive erosion is being claimed, documented evidence such as a physical inspection is necessary to determine if claims are legitimate. The physical inspection is not useful in determining if damages caused by the artificial portion of the flood but it is important in determining if claims are legitimate for certain types of damage.



Recommendation 3

We recommend EMO produce program guidelines which clearly state what inspectors should be required to document. If physical inspections are required, the files should contain the date inspections took place, if the complainant was present and the nature of the damage.

1.3 Supporting evidence was not always obtained to verify applications

Evidence is required under the regulation in order to verify claim damages. The regulation states an EMO representative must:

"obtain sufficient plans, surveys, schematics, photographs or video evidence to properly identify the damaged property, document visible damage, document temporary repairs and assess the value of the damage."

We reviewed 30 claims files to determine if appropriate evidence had been gathered and documented. We found files contained inconsistent documentation with some landowners providing significant photographic and invoice evidence to support claims. In contrast, other landowners provided only brief descriptions of damage with no video or photographic evidence. For example, if a producer used or rented heavy equipment to remove debris caused by the flood, invoices or a log book should be maintained and analyzed by EMO for evidence purposes. We noted that claimants were not provided with information describing what their responsibilities were to document flood damage. A checklist of what should have been included in a submission was not provided to potential claimants.

When damage has been confirmed, EMO must then determine if the damage was caused by the artificial portion of the flood. In order to do this, the Province used hydrologic modelling, aerial flood mapping, topographical maps and water flow meter data to identify the impact of the artificial portion of the flood. This data was used by the steering committee to determine if damages were associated with the artificial flood portion. Our file review found flood mapping was completed by the province and was present in all files reviewed.



Recommendation 4

We recommend EMO produce guidelines which clearly state what must be included in their files. This may include plans, surveys, schematics, photographs, videos, original invoices, descriptions/log books, etc.

2 The Department did not sufficiently communicate program information to potential claimants

During our interviews with landowners and EMO, it was clear there was an expectation gap. Landowners originally expected a comprehensive compensation program to "make them whole", whereas the department's process resulted in far more limited compensation. As this concern relates to communication we assessed the department's correspondence with potential claimants.

Substantial flooding occurred during 2011, 2012, and 2014 in the Shellmouth region. This was deemed to at least be in part artificial. The Department of Infrastructure (the Department) did not have a communication strategy for 2011 and 2012 which targeted all individuals/entities potentially eligible for compensation. For 2014 a targeted communication strategy was utilized.

We found:

- Insufficient targeted communication for the 2011/12 Shellmouth Dam Compensation Program.
- Program eligibility was not clearly communicated to landowners.
- Applicants were not informed that they could separately appeal the 2011 and 2012 floods.

2.1 Insufficient targeted communication for the 2011/12 Shellmouth Dam Compensation Program

Potential claimants told us that there was inadequate communication announcing the Compensation Program. We reviewed all communications about the program.

The Provincial news release announcing the Compensation Program contained a listing of other flood-related infrastructure spending underway by the Province. At the end of the news release there was a single paragraph announcing the creation of an artificial flood compensation program for the Shellmouth region. The press release was issued in November 2013, over 2 years after the 2011 flood. The Department placed an advertisement in several local newspapers along the Assiniboine River Valley. However, there was no process in place to identify likely potential claimants and no direct communication with these key stakeholders. Furthermore EMO did not provide a web portal detailing eligibility criteria and the process claimants should follow to submit a claim to the program.

In contrast to the 2011/12 announcement, for the 2014 artificial flood program, the Province issued a specific news release on July 10, 2015. It stated: "A compensation program will be developed in the coming months and affected producers will be contacted with those details." A letter was sent to potential claimants for the 2014 program based on their application for the 2011/12 program. The Program Manager was also invited to, and attended a meeting of landowners regarding the 2014 flood. This communication was a significant improvement in comparison to previous communications.

2.2 Program eligibility was not clearly communicated to landowners

A lack of communication between EMO and potential claimants on program eligibility and the application process led to landowners missing deadlines for compensation programs and potentially missing out on eligible compensation for damages. Landowners were not aware of the types of damage that could be part of the program and the process for applying for compensation.

In absence of information from the Department, some landowners received information from other sources such as Rural Municipalities (RM). We were told that one RM provided landowners with inaccurate information to only apply to the Shellmouth Dam Compensation Program. Landowners who followed this advice failed to submit applications to the DFA program on time and subsequently were unable to receive potential assistance for non-insurable damage from the DFA program. These landowners may have lost out on thousands of dollars of potential assistance for their losses.

This example highlights the importance of clear and sufficient information provided to potential claimants regarding their rights and responsibilities concerning the Shellmouth Dam Compensation Program.



Recommendation 5

We recommend that EMO produce and follow a communication strategy to ensure key stakeholders are aware of the Shellmouth Dam Compensation Program and how it operates. This should include what eligibility criteria is and what must be submitted to EMO. The communication strategy may include a website, a frequently asked question section, strategic use of media, directly contacting potential claimants, etc.

2.3 Applicants were not informed that they could separately appeal the 2011 and 2012 floods

Section 11 of the Compensation Regulation outlines the procedures for the appeal process. Appeals can be made to the Disaster Assistance Appeal Board. Manitoba Infrastructure's website provides basic information on how to submit an appeal and the processes used to evaluate the appeal.

For the 2011 and 2012 flood, EMO created a joint application process for landowners to submit claims simultaneously for the 2 flood events. The joint 2011/12 flood compensation program received 93 applications—each application claimed for damages sustained in both the 2011 and 2012 flood. When applications were reviewed, many 2011 applications were approved for some form of compensation. However, the 2012 applications were all denied compensation. We were told that the 2012 applications were declined because the natural portion of the flood would have been significant enough to kill all crops and be the primary cause of all damage. The artificial portion of the flood did not cause any further damage because crops were already damaged at that point.

When claimants received their decision letter from EMO, the letter explained what portion of the 2011 claim was approved and indicated that the 2012 portion of the claim was denied. Landowners had the ability to accept the 2011 payment and appeal the 2012 denial of compensation; however, this was not communicated to the applicants. Landowners were never informed they could separate the 2 claims in order to appeal the 2012 denial. As a result, only 20 of the 93 claimants submitted an appeal for the 2012 flood.

Appeal hearings for the 2012 Compensation Program were scheduled for dates in 2018 and 2019. When appeals were finally heard, the applicants were successful and awarded compensation. The Appeals Board set out the amount of compensation eligible for the 2012 flood claims that submitted an appeal. The Board noted in their decisions that the Province relied on computer modelling to estimate damages. The modelling was based on outdated technical data and without a physical inspection (which was required by the Shellmouth Dam compensation regulation), the Board relied on the eyewitness accounts and claimant evidence to award damages.

The remaining 73 claims that did not appeal the 2012 decision, did not have their claims reviewed to determine if they were now eligible for compensation. These claimants also did not receive a physical inspection of damages and the same reliance on outdated technical data was used to deny all of their 2012 claims. They were also not able to retroactively file an appeal because the regulation only provides for a 90 day window to submit an appeal after the claimant received a decision from EMO. However, we noted the Shellmouth Dam Compensation Regulation states that the Board has the option to extend the application deadline.

If full and complete information was provided to landowners, concerning the fact that the 2011 and 2012 appeals could be separated, it's reasonable to assume more applicants would have filed appeals and in the end would have been awarded compensation.

3 Adequate public consultation occurred

We received concerns the Province had not met its legislative requirements to identify stakeholders affected by the Shellmouth Dam and properly consult with stakeholder organizations to approve operating guidelines for the Dam.

We reviewed the guidelines and compared Manitoba Infrastructure practices versus key requirements. We found that:

- Operating guidelines were approved with sufficient stakeholder consultation.
- Competing needs of stakeholders were identified and evaluated.
- Water management plans were drafted and approved for areas downstream of Shellmouth Dam.

3.1 Operating guidelines were approved with sufficient stakeholder consultation

In Manitoba, water control structures have operating guidelines which dictate how the control structure can be used. Water control structures such as the Shellmouth Dam have a variety of stakeholders with sometimes opposing needs. For example, agricultural producers along the shores of the Assiniboine River downstream of the Shellmouth Dam prefer lower reservoir levels in the winter and spring to protect against flooding. Further downstream, agricultural producers are more concerned with managing drought and prefer higher reservoir levels to ensure consistent water supply throughout the summer and fall. Operating guidelines attempt to balance the at times opposing requirements for the water control structures. The guidelines dictate how high the reservoir can be maintained in spring and how much water can be moved through the Assiniboine River.

The Water Resources Administration Act requires public consultations before the Minister approves an operating guideline for a water control structure. The last time the operating guidelines went through a significant review and alterations was in 2009. We assessed if the province provided an opportunity for public consultation before approving an alteration to the Shellmouth Dam operating guidelines. We were provided with a letter from the Minister of Water Stewardship to stakeholders which discussed an information session held in February 2008 where the proposed guidelines were presented to the liaison committee. We concluded that public involvement was sought during the approval process for the operating guidelines.

The Department of Infrastructure (the Department) also indicated they make small tweaks to operating the Dam from year to year. These changes are made based on advice from provincial hydrologists and from stakeholder input through the Shellmouth Dam liaison committee. The Province put together a stakeholder liaison committee with representation from a diverse group of stakeholders. The committee meets regularly to discuss the operation of the Dam. We were told alterations to the operations (within the guidelines) are constantly being refined as stakeholder concerns are brought forward or environmental conditions change. Regular communication occurred between stakeholders and the Province. The Department has determined these small changes do not require full public consultations.

Overall, we found the Department provided significant opportunity for stakeholders to provide input as operating guidelines were drafted and altered.

3.2 Competing needs of stakeholders were identified and evaluated

A legislative requirement for creating water control structure operating guidelines includes identifying relevant stakeholders and their requirements from the water control structure. The requirement is set out in the *Water Resources Administration Act*.

We reviewed if government had identified and documented the competing needs of groups affected by the Shellmouth Dam. We found the Department continues to update and document the stakeholder groups reliant on the Shellmouth Dam and their respective needs.

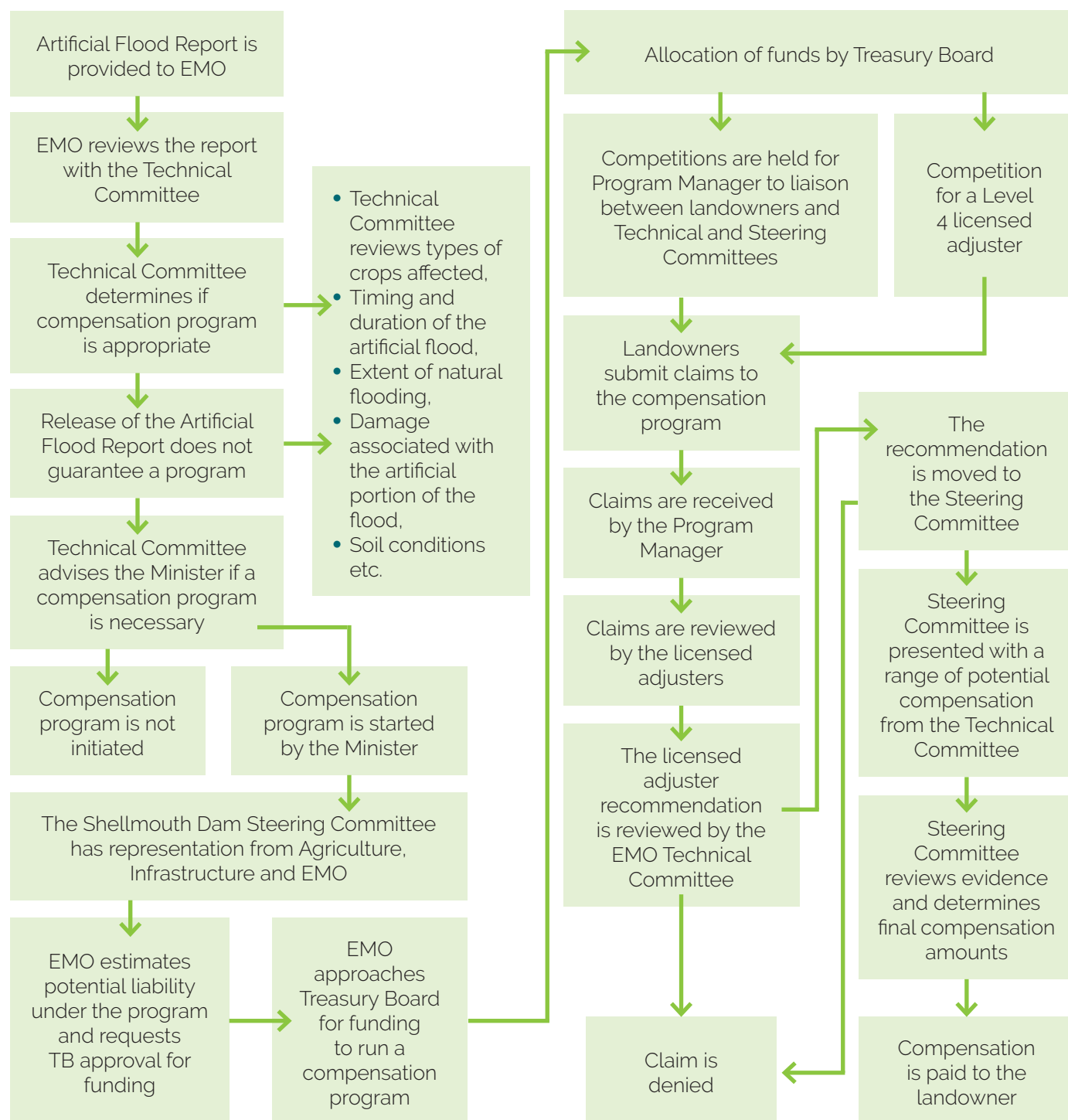
Legislation requires that this assessment is completed prior to the approval of operating guidelines. We were unable to determine if competing needs were documented at the time of the last guideline review. But, we did find numerous historical documents identifying stakeholders reliant on the water control structure. We also noted the stakeholder liaison committee contained a wide variety of interested parties affected by the water control structure. Therefore, we concluded the Department was aware of the competing needs reliant on the water control structure and was in the process of updating and further documenting the various stakeholders and their requirements.

3.3 Water management plans were drafted and approved for areas downstream of Shellmouth Dam

Integrated watershed management planning is required for each of the 14 watershed districts in Manitoba. The watershed management plan is a cooperative effort by watershed residents, government and other stakeholders to create a long term plan to manage land, water and related resources on a watershed basis. We reviewed if watershed management plans had been created for each watershed Downstream of the Shellmouth Dam. We found watershed management plans had been created and posted for downstream watershed districts including those affected by the Shellmouth Dam - Assiniboine-Bristal, Arrow Oak River and Central Assiniboine.

Appendix 1

Process map, Shellmouth Dam Compensation Program



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Appendix 2

Key milestone dates for the 2011/12 Shellmouth Dam Compensation Program

Key milestone	Date	Approximate number of days since the end of the 2011 flood
Approximate date of artificial flooding in 2011	July 1, 2011	NA
Approximate date of artificial flooding in 2012	July 1, 2012	NA
Simultaneous release of the 2011 and 2012 Artificial Flood Reports	January 28, 2013	577
Treasury Board approval to fund the competition program, including staffing costs.	October 29, 2013	851
Press release initiating the Shellmouth Dam Compensation Program	November 8, 2013	861
Contract signed between adjusting company and the Province	January 17, 2014	931
Province receiving the majority of compensation claims	January – February 2014	915 to 972
Number of days to receive compensation payment	May 27, 2015 – May 4, 2020	1,426 to 3,230

Key milestone dates for the 2014 Shellmouth Dam Compensation Program

Key milestone	Date	Approximate number of days since the end of the 2014 flood
Approximate date of artificial flooding in 2014	July 1, 2014	NA
Release of the 2014 Artificial Flood Reports	July 7, 2015	371
Treasury Board approval to fund the competition program, including staffing costs	September 15, 2015	441
Press release initiating the Shellmouth Dam Compensation Program	July 10, 2015	374
Contract signed between adjusting company and the Province	January 1, 2017	915
Province receiving the majority of compensation claims	November 2015 – January 2016	488 to 577
Number of days to receive compensation payment	April 4, 2018 – May 4, 2020	1,392 to 2,153

Appendix 3

Key milestone following the claimant submitting an application to the Shellmouth Dam Compensation Program

Key milestone	Average number of days from claims submission to key milestone
Average number of days from claimant submitting an application, to the completion of an adjuster report	740*
Average number of days from claimant submitting an application, to a compensation cheque provided to claimant	840

* The number of days are approximate because flooding ended at different points depending on where the property was located in relation to the Dam.

The numbers were compiled from our sample of 30 files representing the 3 flood events.

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Appendix 4

Key milestones in the appeal process

Shellmouth Dam Compensation Program	Average number of days from claimant submitting an appeal to the resolution of the appeal process and a check presented to the claimant
2011/12 Shellmouth Dam Compensation Program	1,370
2014 Shellmouth Dam Compensation Program	699

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Summary of recommendations and responses of officials

RECOMMENDATION 1

We recommend the Department of Infrastructure review existing policies and practices to determine what skills and experience level is required to perform inspections and claim evaluations. The results of the review should be documented.

Response of officials:

MI agrees with this recommendation and will undertake a review to determine what skills and experience level is required to perform inspections and claim evaluations under the Shellmouth Dam Compensation Program. The review will be undertaken in 2021/2022 and will consider the damages and impacts caused by artificial flooding related to the operation of the Shellmouth Dam, including the type of expertise required (e.g. agricultural, residential, etc.) to assess the impacts and the extent to which professional credentials are required. MI will undertake any necessary changes to legislation, regulation and policy to improve or adjust the inspection and claim evaluation approach.

RECOMMENDATION 2

We recommend the Department place time limits on all key parts of the process including:

- Artificial flood report to be completed and released
- Applicants to receive a decision letter on their Intent to Claim Form
- Inspections to be completed to satisfy the prompt inspection requirement
- For cheques to be issued if warranted

Response of officials:

MI agrees with this recommendation and will develop timelines for key program milestones and activities to ensure that the Shellmouth Dam Compensation Program delivery is timely and monitored, tracked and measured for performance to minimize impacts to claimants. This work will be undertaken in 2021/2022.

RECOMMENDATION 3

We recommend EMO produce program guidelines which clearly state what inspectors should be required to document. If physical inspections are required, the files should contain the date inspections took place, if the complainant was present and the nature of the damage.

Response of officials:

MI agrees with this recommendation and will develop an Inspector guidebook that outlines the role of the inspector, the inspection process, and the documentation requirements of the role (including photos). This will be undertaken and finalized in 2021/2022.

RECOMMENDATION 4

We recommend EMO produce guidelines which clearly state what must be included in their files. This may include plans, surveys, schematics, photographs, videos, original invoices, descriptions/log books, etc.

Response of officials:

MI agrees with this recommendation and will develop guidelines as noted above that establish claim documentation requirements. This will be undertaken and finalized in 2021/2022.

RECOMMENDATION 5

We recommend that EMO produce and follow a communication strategy to ensure key stakeholders are aware of the Shellmouth Dam Compensation Program and how it operates. This should include what eligibility criteria is and what must be submitted to EMO. The communication strategy may include a website, a frequently asked question section, strategic use of media, directly contacting potential claimants, etc.

Response of officials:

MI agrees with this recommendation and will develop a communication strategy to provide information on how the program operates and to ensure that key stakeholders are apprised of the program. This will include a website which provides information and explains program eligibility criteria, describes documentation requirements, as well as other critical program related information. The communication strategy and webpage will be undertaken in 2021/2022.

City of Winnipeg: Sale of Vimy Arena



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Auditor General's comments

This report is a result of concerns we received through our Citizen Concerns line regarding the sale of Vimy Arena. We determined the City of Winnipeg gave one group preferential treatment—including access to the property—and did not comply with internal policies on how surplus properties are to be sold. As a result, other interested parties did not have an equal opportunity to submit proposals for purchasing the property.

Vimy Arena was located on a desirable property along the banks of the Sturgeon Creek. The City should have followed a transparent process for the sale of this land, once city council identified the area for eventual disposal.

Ultimately, only one formal offer was presented to council to build a drug and alcohol rehabilitation and recovery centre on the property. If all interested parties had been treated the same and provided with an opportunity to submit formal proposals, Council could have reviewed each submission and decided which was best for the citizens of Winnipeg.

It is important to note that we did not examine the merits of potential options for the site, the business plans of the rehabilitation and recovery centre, or its operations. Our report focuses on allegations we received regarding the process surrounding the sale of Vimy Arena.

Our report includes 2 recommendations to strengthen the processes the City has for selling property.

I would like to thank officials we met with during our examination from the Department of Families, Manitoba Housing Corporation, the City of Winnipeg, and the City Auditor for their cooperation and assistance.



Tyson Shtykalo, CPA, CA
Auditor General

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City of Winnipeg: Sale of Vimy Arena

We received 2 allegations:

The process to market and sell Vimy Arena was not conducted through a public offering that reflected competitive bidding practices



The City of Winnipeg did not comply with its policies

What we examined:

- Whether the City sold Vimy Arena using a process that was transparent
- Whether the City provided full public access to obtain the best value for the citizens of Winnipeg



What we found:

The City gave one group preferential treatment, did not comply its guiding principles for sale of the Vimy arena, as is not able to demonstrate it received the best value for the property

- Interested parties did not have equal opportunity to submit proposals
- Mayor's office overruled City staff and provided one party with preferential information and site access
- City policy to determine best value not followed
- Other organizations not provided the option to submit formal proposals
- City inappropriately avoided an open and transparent sales

Report includes **2** recommendations

What we examined

We assessed if the City of Winnipeg was in compliance with the guiding principles of City policies and best practices in the sale of Vimy Arena.

What we concluded

We concluded that the City of Winnipeg did not follow internal policies in the process to sell Vimy Arena. The City should take steps to clarify and improve the process to sell surplus property and ensure Council has sufficient information to make informed decisions regarding surplus property.

What we found

Our report contains 2 recommendations. An overview of our major findings are as follows:

The City gave one group preferential treatment and did not comply with internal policies (SECTION 1).

The City policy dictating how surplus properties are to be sold was not followed. We concluded that the City gave the treatment centre preferential treatment. We found that:

- **Interested parties did not have an equal opportunity to submit proposals for purchasing Vimy Arena.** The Mayor's office provided the treatment centre with preferential access to the site and information about the property and process. Other interested parties were consistently told to wait until the property was listed.
- **The City is not able to demonstrate that it received the best value for the property.** The City did not follow the guiding principles in the Offers to Purchase City-Owned Property policy in selling the Vimy arena. The City did not conduct a transparent process with full public access and is unable to demonstrate that the best value for the citizens of Winnipeg was obtained.
- **Council was not provided with information critical for decision making.** Other organizations were not provided formal opportunities to review the arena and submit a formal proposal to council. Therefore, Councillors were unable to compare the Provinces offer to any other potential offer.

City inappropriately used exception policy to avoid an open and transparent sales process

(SECTION 2). We reviewed if the manner in which the City and Province initiated a government to government sale was in compliance with City policy requiring the offer to be unsolicited. After reviewing all available evidence, we concluded that the City had approached the Province to become involved to purchase the property on behalf of the treatment centre. The sale was not an unsolicited offer and therefore did not comply with City policy. We also found no documented rationale for using a government to government sale.

Response from the City of Winnipeg

General comments

The City's perspective on the transfer of Vimy Arena differs from the Auditor General, in that all existing Council policies were followed by the Public Service. Suggesting the Public Service should have followed certain sale prerequisites that were not required by Council policy is at best a recommendation that could be made to Council.

The Auditor General has identified recommendations to amend City policies as a result of a review of the Vimy Arena sale. Implementation of the audit recommendations, some of which are already in place, would not have materially changed the outcome of the sale transaction. All of the Auditor General's recommendations either represent minor modifications to City policy or require no action at all based on existing procedures in place.

Response from the Department of Families

Any advice or recommendations contained in the report that pertain to Manitoba Housing will be actioned. We accept the advice outlined in the Auditor General report.

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Background

Vimy Arena was constructed by the City of Winnipeg in 1972. The arena sits on a 3-acre parcel of land which also contains a stretch of green space along Sturgeon Creek at 255 Hamilton Avenue.

In 2010, the City undertook a review of City-owned arenas entitled *"The City's Role in the Provision of Arenas."* The report identified the condition of existing arena facilities and outlined the need to move towards a financially stable model for arenas by replacing end-of-life, single ice sheet facilities with new multi-ice sheet facilities. Vimy Arena, which is a single ice sheet facility, was classified as being in a "crisis response" category. Cost was estimated at \$1.93 million to maintain the facility at current conditions over the next 10 years.



Aerial shot of Vimy Arena. Photo: City of Winnipeg

Subsequently, Council in 2013 identified Vimy Arena and surrounding lands as surplus to the City's needs. Council directed that once the new Seven Oaks Arena was completed, a plan be produced for the sale of Vimy Arena. Seven Oaks opened in 2015 at which time the City began the process to dispose of the arena.

Although the City had not called for submissions to purchase the property, once the arena was identified as surplus in 2013 several interested parties, including non-profits, began approaching the City to inquire about obtaining the property. Interested parties were told to wait until the Arena was listed on the City's for sale webpage. The property was not put on the City's for sale webpage directly following the opening of the Seven Oaks Arena because City staff were required by a Council resolution to develop a plan for the sale of the site. According to City staff, the strategy was going to be developed and presented to council for approval with the expectation that the property would be put on the City's for sale webpage in accordance with City policy.

Representatives of an addiction treatment centre began meeting with the Mayor of Winnipeg as well as the Minister of Health and the Minister of Families.

At the end of 2016 and early 2017, the Mayor's office started discussions with representatives of the treatment centre to assist in the creation of an addiction treatment centre. The Mayor's office provided 2 potential City-owned properties that met the square footage requirements of the proposed treatment

centre and would be available for purchase in the near future. One of the 2 sites presented was Vimy Arena. Representatives of the treatment centre pursued Vimy Arena.

The Province also supported the initiative and provided the treatment centre with a letter indicating its support.

In partnership with the Mayor's office, the treatment centre identified Vimy Arena as the preferred location for the centre. The City transferred the property to the Province with plans to subsequently lease the property for \$1 to the treatment centre for 99 years. A groundbreaking ceremony was held August 2019.

RELEVANT CITY POLICIES AND PROCEDURES

In 2006, the City passed the *"Offers to Purchase City-Owned Property Policy."* The policy sets out principles for guiding the process of selling City-owned property including consideration of:

- Obtaining the best value for the citizens of Winnipeg
- Transparency and full public accountability
- Orderly development
- Support for specific Council mandates and initiatives

The policy formalized the standard practice of the Department to reject unsolicited offers in many cases. Formal written offers that are unsolicited may be acted upon if one of the following 4 conditions were met.

- Not developable, remnant property sold to an adjoining owner
- Property sought by a utility company or government agency
- Property associated with Council approved policies and programs
- Property associated with a land exchange for property sought by a City department

In order to further clarify the process, the City hired a consultant to develop more detailed policies and procedures. These policies and procedures were contained within the Real Estate Management Review (REMR) which was released in 2014. The REMR contains 17 recommendations based on a review of best practices in other similar municipalities. The recommendations are designed to provide guidance to staff involved in real estate transaction activities. The City Department of Planning Property and Development is currently in the process of implementing the recommendations. These recommendations were not implemented when Vimy Arena was being sold to the Province.

The City also requires that the Independence Fairness Commissioner review each real estate transaction for the purpose of ensuring that real estate transactions and management services are performed in a fair, transparent, and open manner. A consulting company conducts the review for the Independence Fairness Commissioner which is subsequently reviewed by the City Auditor.

The Fairness Commissioner conducted a review of the sale of Vimy Arena and noted 17 criteria had exceptions, while only 8 criteria were considered met. The review provided a complexity rating for the real estate transaction as high. Property Planning and Development's response to the Fairness

Commissioner's report included a caveat that a number of the criteria within the report were not applicable to this transaction. Management also stated that if full compliance was achieved the final outcome of the transaction would remain unchanged. The Fairness Commissioner's report is on the City's website.

PROVINCIAL INVOLVEMENT

The City requested that the Province become involved in the process to transfer control of Vimy Arena from the City to the treatment centre. Manitoba Housing and the Department of Intergovernmental Affairs were assigned to facilitate the transaction and subsequently lease the property to the treatment centre. See **SCHEDULE 1** for a timeline of events including key correspondence concerning the arena.

COMMUNITY AREA FUNDS

City staff recommended the sale of the surplus land at market value. Staff advised Council that the Province of Manitoba offered \$1 for the property. Council voted to accept the Provinces offer. The City used an independent appraiser who valued the building at \$1.43 million. According to *The Recreation, Leisure, and Libraries Facilities Policy*, any net proceeds from the property sales will be reinvested into recreational amenities within the community area where the property sale occurs. In order to comply with the intent of this provision, the City set aside \$1.43 million which was based on the independent appraisal of the arena. The funds were transferred to the recreation budget for the surrounding community adjacent to Vimy Arena.



Demolition of Vimy Arena to construct the treatment centre, Dec 2019. Photo: Storm The Castle Media



Construction of the treatment centre along the banks of the Sturgeon Creek October 2020. Photo: Ian McCausland

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Objective, allegations, scope and approach

Objective

To determine the validity of allegations received regarding noncompliance with City of Winnipeg (City) policies and best practices in the sale of Vimy Arena from the City to the Province of Manitoba (Province) and the subsequent lease to a non-profit organization.

Allegations

1. The process to market and sell the property was not conducted through a public offering that reflected competitive bidding practices.
 - 1.1 Some groups were not given an opportunity to submit proposals
 - 1.2 The City is not able to demonstrate that they received best value for sale of Vimy Arena
 - 1.3 Council was not properly informed before making the final decision
2. The City did not comply with its policies including exception policies.

Scope and approach

We examined file documentation from the Province and City concerning the transfer of ownership of Vimy Arena and subsequent lease to a treatment centre. We evaluated documentation to determine if the relevant policies, procedures and best practices were complied with by all parties. The examination included a review and analysis of policies and practices, records, minutes, and correspondence. The focus of the examination was on allegations we received. As this is a limited scope examination, the results should not be extrapolated to other city property sales/transfers.

We conducted our examination between March and October 2019. We primarily examined documentation from 2013 through September 2019. Our examination was conducted in accordance with *The Auditor General Act*.

- We did not examine the initial decision to declare Vimy Arena as surplus.
- We did not examine the merits of potential options for the Vimy Arena.
- We did not examine business plans, ongoing operations/management of the treatment centre.
- We did not examine the arrangement between the Province and the treatment centre.

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1 City gave one group preferential treatment and did not comply with policies

We concluded that the City of Winnipeg gave the treatment centre preferential treatment, and did not comply with City policies. We based this conclusion on the following findings:

- Interested parties did not have equal opportunity to submit proposals for purchasing Vimy Arena.
- The City is not able to demonstrate it received the best value for the property.
- Other organizations were not provided the option to submit formal proposals.
- City policy to determine best value not followed.

1.1 Interested parties did not have equal opportunity to submit proposals for purchasing Vimy Arena

In 2013, Council deemed Vimy Arena as surplus, but required 2 actions be taken before the property was formally listed as for sale. These 2 items were that a new arena be built and that staff develop a Property Disposition Strategy. City staff started the disposition strategy process by conducting due diligence procedures on the Vimy Arena. Due diligence procedures included having the facility evaluated by an accredited appraiser, identifying if other City departments could use any portion of the property, and looking for potential environmental, health and safety or zoning restrictions which could affect future development. The draft disposition strategy document recommended that the arena "be offered for sale on the open market in accordance with City policy." The initial procedures and findings were documented in the draft copy of the Property Disposition Strategy.

One day after individuals from the treatment centre and the Mayor's office met on February 28, 2017, an email was sent from the head of Property Planning and Development to the staff drafting the Property Disposition Strategy, informing them the document would be held from Council for 90 days. The Property Disposition Strategy document was held back from Council from March 1, 2017 onwards by declaring the 90-day hold, which was extended until January 2018. The City was not able to tell us who made the decision to place the initial hold or the extensions. This action effectively stopped the public tendering of the property. Had the property disposition strategy document been completed and sent to Council, the property could have been listed on the City's for sale webpage. We asked the Mayor's office if there was a connection between the timing of the meeting and the email. We were told that it was a coincidence. The draft Property Disposition Strategy document was never submitted to Council. See **SCHEDULE 1** for a timeline of events.

When the hold was placed on the Property Disposition Strategy report following the meeting between the Mayor and the treatment centre, the Director of Property, Planning and Development sent emails instructing staff to identify related sections of City policy for transferring land before going to tender. Staff followed up on this email and provided possible ways to directly provide the property to the Province without the required tendering process.

We reviewed City and Provincial documentation, and spoke with numerous City officials, representatives of the Mayor's office and the Province, but we could not identify who requested the hold. There was no documented rationale justifying withholding the Property Disposal Strategy from Council. City staff indicated the hold was placed to allow the Province time to determine if they would request the arena through a government to government sale. We noted that other non-profit organizations who expressed interest in the property were not provided with special arrangements in their pursuit of purchasing the arena.

In January 2018, Council voted to approve the sale of the property without being provided the Property Disposition Strategy document. Council was provided with a briefing document which provided information regarding the treatment centre's proposal for the arena. The briefing document noted one other potential interested party, the organization did not have an opportunity to submit a formal offer for Council's consideration.

PREFERENTIAL TREATMENT PROVIDED TO ONE PARTY

We found the Mayor's office provided the treatment centre with preferential information and site access including:

- Treatment centre had preferential access to City officials and Mayor's office.
- Mayor's office overruled City staff.
- Other non-profits told to wait for the arena, 7 months after sales process was stopped.
- Mayor's office provided one party with information on an exception clause used to avoid public tender.

Treatment centre had preferential access to City officials and Mayor's office

The Mayor's office and City officials had numerous formal and informal meetings with members of the treatment centre and their representatives in late 2016 through 2017. The Mayor and members of the treatment centre formally met 3 times between December 5, 2016 and October 30, 2017. We were also told by the Mayor's office that the Mayor's Chief of Staff regularly meet with treatment centre representatives during this time. The Director of Property, Planning and Development also had 3 to 4 phone calls and was part of email correspondence with the architect representing the treatment centre.

We found no evidence that other organizations approaching the City about the property were provided the same opportunities.

Mayor's office overruled City staff

On January 25, 2017, the architecture firm working with the treatment centre requested a site visit and information on the facility to make preliminary project assessments. These initial emails went unanswered by staff from the Planning, Property and Development Department. We reviewed correspondence from staff which stated that they did not answer the request as they thought the property would be declared surplus and marketed for sale. The Director of Property Planning and Development stepped in and informed staff that "at the Mayor's office request" the architecture firm would like access to the property. The director then instructed staff to arrange the site visit for the treatment centre representatives.

When the Mayor's office request was communicated to Property Planning and Development staff, a staff member asked if they should provide this information to "anyone who's interested in the building." The supervisor responded, "certainly if requested". However, we were told all parties previously interested in the building were provided with a standard response—to wait until the property is listed on the City's for sale webpage. We also noted that an interested party who approached the City shortly after this correspondence was told to wait until the property was placed on the City's for sale webpage. We found no evidence that the City provided or offered the same access or documentation about the property to any other organization.

We reviewed emails from City staff stating that "no particular group should be given access to the site to conduct an environmental site assessment." Staff questioned whether they were "providing an unfair advantage to a particular group". Staff were specifically concerned of this in light of historical questionable real estate transactions and frameworks that were created to address this (including the RETMF – Real Estate Transaction Management Framework).

We also found an email from the City Solicitor stating that Council approval for the sale will have to be obtained prior to gaining access to the site to conduct an Environmental Site Assessment.

City officials stated that information was provided to determine if the arena would be suitable for the treatment centre requirements. Other interested organizations were not provided with the same opportunity to review if the building would be desirable for their organization.

What is clear from the email chain is that City staff were uncomfortable allowing one particular group access to the property when other requests were denied. Allowing one particular group access clearly provided an advantage to obtaining the property. The architect even describes the information being requested as "invaluable". Staff were overruled by the Mayor's Office stepping in to provide access to the treatment centre representatives. As a result of the actions of the Mayor's Office, the City did not comply with internal policies and procedures.

Other non-profits told to wait for the arena, 7 months after sales process was stopped

Between 2013 (when the Vimy Arena was identified as surplus) and 2017 (when the arrangement with the treatment centre went public), other interested parties approached the City to inquire about obtaining the arena. City staff repeatedly told the interested parties the property would be placed on the City's for

sale webpage, at which time the parties would be able to receive further information about the property, and access the building and grounds to survey potential future use. City staff told us this approach was consistent with their common practices in selling surplus assets.

City staff told us when the Province requested the facility, all options to sell the property in an open and transparent manner were stopped pending the direct sale to the Province. However, even as late as October 13, 2017 the City responded to an interested non-profit organization, stating "no direction on the property has been taken, keep your eyes on the website". The City had been working to transfer the property to the treatment centre using a government to government sale process since at least March 3, 2017, 7 months prior.

Mayor's office provided one party with information on an exception clause used to avoid public tender

The City provided the treatment centre with information about an exception whereby the City could bypass the public tender process if the federal or provincial government submitted an unsolicited offer. See **SECTION 2** for further details.

The information provided by the Mayor's Chief of Staff was publicly available and accessible to any potential purchaser of the arena. However, City staff told us this is a seldom used exception to the typical sale process. We could not identify a similar circumstance where another level of government had made an unsolicited offer to the City for a property transfer for a parcel of land similar to Vimy only to immediately transfer the property to a third party.

We also reviewed requests from other interested parties for information regarding the potential purchase of Vimy Arena. As noted above, we found the other interested parties received no advantages in comparison to the treatment centre, which received numerous preferences.

We were told by City officials and the Mayor's Chief of Staff that other organizations were not informed that the Provincial or Federal government could request the property on their behalf to bypass the procurement process. The Mayor's office justified its actions by stating that no other organization asked the Mayor's office. We did find another organization which submitted a proposal to the Mayor's office directly. This organization was provided with a response from City administration, however, we found no indication the Mayor's office informed them they could contact another level of government to request the property on their behalf.

Details on sale process policy lacking

The City had a high-level policy regarding tendering, but it did not have a documented policy which laid out what a detailed transparent sale process should look like. Clearly stating that it is never permissible to share information with only one interested party would be useful. Further, best practice for the sale of assets (either real property or surplus materials) is for information to be shared publicly, in the same level of detail and in writing, to all interested parties at the same time. For example, the Government of Canada's *Directive on Disposal of Surplus Materials* requires that government "must ensure that as broad and as transparent an opportunity as possible is made available" to potential purchasers of surplus assets.

The Government of British Columbia's *Strategies to Receive Quality Submissions* guidance document states that vendors should submit questions in writing, and an addendum should be posted or distributed that includes both the question and answer to ensure all parties have equal access to information.

Openness and transparency is a crucial principle of a process to sell surplus assets in order to achieve the best value for taxpayers and to ensure the process is fair to all parties. When a potential bidder submits questions and receives information or documentation from government, both the question and answer should be made available to all potential bidders of surplus assets. These practices were not followed in the sale of the Vimy property.



Recommendation 1

We recommend that the City of Winnipeg produce a policy which states procedures and controls over the sale of surplus land and buildings from the time the property is identified as surplus to the disposition. This policy should include:

- a. Requirements for transparency when dealing with interested parties. For example, questions and answers should be made in writing and available to all parties publicly.
- b. That access to the property (if made available) should be made available to all parties.
- c. That it is never permissible to share non-public information with only one interested party.
- d. Processes for government to government transactions.

1.2 The City is not able to demonstrate it received the best value for the property

There are several City policies that dictate how surplus property should be sold or transferred. These policies only provide high-level guidance on how the City can and should proceed with disposal of assets such as Vimy Arena. One of the key documents that pertains to the sale of surplus assets is the *Offers to purchase City-Owned Property – 2006*.

The Offers to Purchase City-Owned Property outlines how surplus property should be marketed and sold. The policy contains guiding principles for the sale of City-owned property including:

1. *Obtaining the best value for the citizens of Winnipeg. In most cases this can be deemed as the best initial price. In some cases, plans for the property may result in higher future tax revenue or improvements to the general economy or social environment of the City.*
2. *Transparent and full public access. In general, property sold by the City of Winnipeg should be well advertised and available for the general public to submit offers. Public offering of a property should be the default process.*

Vimy Arena was never placed on the City's for sale webpage. Thereby, non-profit organizations, private corporations, and other levels of government were never provided with an opportunity to submit proposals to the City for the use of the property. The City responded that it did not follow this policy as an exception clause allowed for skipping the tendering process. We did not agree with their assessment. See **SECTION 2** for further details.

The City did not follow the guiding principles for sale of the Vimy arena. The City did not conduct a transparent process with full public access and is unable to demonstrate that the best value for the citizens of Winnipeg was obtained.

1.3 Other organizations were not provided the option to submit formal proposals

Councillors review proposals for surplus property and determine which ones provide the best value to the City of Winnipeg. In most cases, this would be the best price; however, Council may also consider other factors, such as social or environmental matters. Because the property was not put on the City's for sale website, interested organizations were unable to provide formal offers to the City. Council was only provided with the proposal from the Province to purchase the arena for a dollar.

On January 8, 2018 the Standing Policy Committee on Property and Development, Heritage and Downtown Development was provided with a report from City staff informing Councillors that another non-profit organization had approached the City with interest in acquiring the Vimy Arena. The report noted the "Offers to Purchase City-Owned Property policy does not include a provision to sell property directly to non-profit organizations" as a result, the non-profit organization was instructed to "monitor website for available property." This organization was not provided the opportunity to physically inspect the building, receive further documentation concerning the condition of the property or provided with the opportunity to submit a formal proposal.

In January 2018, the public was provided the opportunity to submit opinions on the pending sale of the arena. Individuals and non-profit organizations made presentations to Council outlining their frustrations that they were not able to submit proposals for the arena.

Because other organizations were not provided with the same opportunity to review the arena and submit a formal proposal to Council, Councillors were unable to compare the Province's offer to any other potential offers. Different groups could present their bids if there was a transparent process, with full public access. These bids could be reviewed by Council, which could then determine which offer provides the best value to the citizens of Winnipeg.



Recommendation 2

The City should review practices to ensure Council has complete information in order to determine the best value for the citizens of Winnipeg when disposing of surplus property. When exceptions to City policies are utilized, the rationale and related details (i.e. context, other interested parties, etc.) should be documented and provided to Council before voting.

1.4 City policy to determine best value not followed

The City of Winnipeg had Vimy Arena appraised by an accredited external appraiser who provided a valuation of the property at \$1.43 million in 2017. The Province provided the City with a formal written offer for the property for \$1 with the condition that the property be provided to the treatment centre for 99 years at an annual rent of \$1.

We reviewed the *City Policy on the Sale/Lease of City Lands to Non-profit Organizations* 1990 which specifically discusses and discourages the City from providing property below market rates to non-profit organizations. The policy states:

"the most reasonable solution is to deal with the real estate aspect on a standard market value or economic lease basis and allow nonprofit organizations to apply for any capital contribution subsidy etc. through a grant application process. This mechanism would eliminate an ad hoc process for awarding concessions to organizations through property transfers and would bring these organizations request for any concessions into competition with all other arts, recreation, cultural groups, etc. who rely upon and compete for funding through a grant process. A thorough assessment of the benefits to be derived, the satisfaction of eligibility criteria and the appropriateness of any grants could be best measured with this process and it would eliminate the administration's involvement in participating and at times promoting projects with subsidy arrangements."

The above policy predicted the conflicts that arose as the City provided Vimy Arena to one organization when other organizations and recreation groups were interested in submitting proposals to the City to secure the property.

The perception of preferential treatment could have been avoided if the City adhered to its policies and procedures by conducting an open and transparent process allowing for proposals to purchase the arena. Council could have selected the proposal that provided the best value to the citizens of Winnipeg. If Council chose to provide further support to the treatment centre they could have encouraged them to apply for a grant to offset the costs of the property.

2 City inappropriately used exception policy to avoid an open and transparent sales process

The City's *Offers to purchase City-Owned Property – 2006* policy (noted above in **SECTION 1.2**) only allows for unsolicited offers if 1 of 4 criteria are met. These 4 include that the property was:

- Sought by a utility company or government agency.
- Associated with Council approved policies and programs.
- Associated with a land exchange for property sought by a City department.
- Not developable, remnant property sold to an adjoining owner.

In order to bypass the requirement to put the property on the City's for sale website, the property was sold using a clause in the policy allowing for the City to accept an unsolicited offer if the property is sought by a utility company or government agent. This offer does not need to be accepted and would still need to be passed by a two-thirds vote of Council.

We reviewed if the manner in which the City and Province initiated a government to government sale was in compliance with City policy requiring the offer to be unsolicited. We reviewed how the property was first shared with the treatment center and how the decision was made to transfer the property using the government to government sale exception. We also examined if the rationale was documented.

We identified the following concerns in how the property was sold from the City to the Province and subsequently leased to the treatment centre:

- City was not in compliance with its policy when it initiated a government-to-government sale.
- The City pursued a government-to-government sale.
- Unsolicited offer to purchase.
- No documented rationale for using a government-to-government sale.

City was not in compliance with its policy when it initiated a government-to-government sale

At the end of 2016 and into 2017, the Mayor's office began working with treatment centre representatives to determine how the City could potentially provide property to assist them. The Mayor's office identified 2 City-owned properties that could potentially be adapted into a drug treatment and recovery centre. Over the following weeks, the treatment centre began pursuing the Vimy Arena as the future home for a recovery centre.

City staff identified 3 potential methods for providing Vimy Arena to the treatment centre that would comply with City policy:

- First, place the property on the City's for sale website, which was recommended by City staff.
- Second, using the 1990 *City Policy on the Sale/Lease of City Lands to Non-Profit Organizations*.

The policy allows the City to respond to non-profit organizations requesting to use or purchase City-

owned property. The policy sets out eligibility criteria for the organization. Following consultation with legal services, City staff believed the interested party would not meet eligibility criteria under this policy because the policy demands that the organization must provide reasonable access to all Winnipeg residents without discrimination. The treatment centre is being designed for men dealing with substance abuse issues only. Therefore, City officials believed this policy would not be eligible for transferring the property to the not for profit.

- The third option involved transferring the land using the 2006 *Offers to Purchase City-Owned Property* policy, which contains a clause allowing the City to bypass the transparent sales process with full public access. There are 4 methods to direct transfer surplus property, one of which is if the property is sought by a utility company or government agency. This is a seldom used clause that allows a utility or other level of government to request to purchase a City-owned property outside of the usual open and transparent process. It's important to note that the policy does not require the City to sell the property to the requesting utility or other level of government. It still requires a Council decision to proceed with the offer.

The City pursued a government-to-government sale

On March 1, 2017, one day after the Mayor met with representatives from the treatment centre, a 90-day hold was placed on the property disposition strategy, which prevented the property from being added to the City's for sale website. On March 3, 2 days after the hold was initially placed on the strategy, the Director of Property Planning and Development requested the City's legal counsel and City staff "pull the relevant sections on policy related to securing of the land before going to tender." He also requested the City's legal counsel provide the relevant language they "would like to hear from the Province to successfully partner on an initiative around the arena." At this point in the process we found no correspondence from the Province requesting a government to government sale of the arena.

The City maintains that the request from the Province was made in a letter drafted by Minister of Families Scott Fielding and Minister of Health, Seniors and Active Living Kelvin Goertzen on March 31, 2017. The Letter was drafted 28 days after City staff began identifying how to secure land before going to tender. The letter was addressed to the treatment centre representatives. It expressed non-financial support of the vision and objectives outlined in the business plan for the treatment centre. The letter notes that the ministers are hopeful the City would make any appropriate surplus land or facilities available for the treatment centre. There is no mention of Vimy Arena in this letter.

City policy restricts the City to only act on formal written offers. The Province did not provide a written offer to the City to purchase Vimy Arena until a letter dated October 27, 2017 addressed to the City Chief Administrative Officer, nearly 8 months after the City started pursuing the government-to-government sale.

Unsolicited offer to purchase

In order to comply with the City's *Offers to Purchase City-Owned Property* policy, a government-to-government sale must be unsolicited. An unsolicited offer is one that is not asked for or requested. Therefore, in order to comply with the policy, the Province must approach the City to propose a government-to-government sale.

We inquired as to who initiated the sale and we were provided with 4 different answers. We asked the Mayor's office, City staff, the former City CAO, and Provincial officials:

1. The Mayor's office stated representatives of the treatment centre communicated with both the Mayor's office and Ministers in the Provincial Government. The Mayor's office stated it was likely that representatives of the treatment centre requested the government to government sale.
2. City staff stated the Province approached the City but had no documented evidence. City staff provided the March 31, 2017 letter from the Minister of Families and Minister of Health, Seniors and Active Living. The letter does not mention the "Province" looking to secure and/or provide property for the treatment center.
3. The former City CAO stated that the City approached the Province which was not in compliance with City policy for an unsolicited offer.
4. The Province stated that the City had approached the Province to become involved in the land transfer. Provincial briefing notes also state that "the City of Winnipeg is seeking the Province's interest in acquiring the property in a government to government exchange."

Based on our review of available evidence, we concluded that the Province did not approach the City with an unsolicited offer to purchase Vimy arena. Therefore, the City is not in compliance with the *Offers to purchase City-Owned Property* policy.

No documented rationale for using a government-to-government transfer/sale

By using a government-to-government sale/transfer, a transparent process was bypassed. After speaking with numerous City and Provincial staff and the Mayor's office, and reviewing documentation from both the City and Province, we were unable to find documented rationale that provided sufficient justification for bypassing the transparent procurement process.

In our examination we found the Province and City had different interpretations of why a government-to-government transfer was the chosen method to dispose of the property.

City officials told us the Province requested the property through a government-to-government transfer. However, Provincial officials indicated that they became involved when the City asked for their assistance in facilitating a transfer of the arena to the not for profit. We reviewed a Provincial briefing note which stated "the City is required to offer the surplus property, through an open process, which would not guarantee the Foundation (the treatment centre) would be the successful recipient." This is the only documented purpose we found for avoiding a transparent sales process with full public access.

Schedule 1

Timeline of events – Vimy Arena transaction	
Date	Event
December 6, 2006	<i>Offers to Purchase City-Owned Property</i> policy adopted by Council.
February 27, 2013	Council declares Vimy Arena surplus to its needs. Planning, Property and Development (PPD) department required to develop a property disposition strategy, when the Seven Oaks Arena was ready for public use.
September 2015	Seven Oaks Arena officially opens for public use; thereby allowing for the sale of Vimy Arena.
December 5, 2016	Mayor Brian Bowman meets with treatment centre representatives.
December 16, 2016	Mayor's office requests a list of potential buildings that meet the treatment centre requirement.
February 14, 2017	City Administration arrange to let the treatment centre representatives into Vimy Arena after direct instruction from the Mayor's office overriding objections of City staff.
February 28, 2017	Mayor Brian Bowman meets with treatment centre representatives.
March 1, 2017	Property disposal strategy report placed on hold for 90 days.
March 3, 2017	Director of Property Planning and Development requests relevant sections on policy related to securing land before going to tender. Also asks for what the City would like to hear from the Province to partner on the arena.
March 31, 2017	Letter from the Minister of Families and Minister of Health, Seniors and Active Living to treatment centre representatives expressing non-financial support for the project.
April 24, 2017	Letter from the former City CAO to Deputy Minister of Municipal Relations confirming the Province is interested in partnering with the treatment centre representatives to acquire the Vimy Arena.
August 9, 2017	Letter from the Deputy Minister Municipal Relations to the former City CAO. The letter identifies a Provincial point person to lead further discussions regarding the treatment centre.

October 13, 2017	Local area non-profit organization contacts City about obtaining Vimy Arena. The City response to wait until the property is on the surplus property list.
October 27, 2017	Letter from MHRC to the City – acknowledge MHRC's intention to purchase 255 Hamilton.
October 30, 2017	Mayor Brian Bowman meets with treatment centre representatives.
November 24, 2017	An external accredited appraiser values the Vimy Arena for \$1.43 million.
December 21, 2017	The Province provides the City with an offer to purchase the arena for \$1.
January 8, 2018	Standing Policy Committee on Property and Development, Heritage and Downtown Development recommend the bureaucracy waive the December 6, 2006 policy and approve the sale of the Vimy Arena for \$1.
January 17, 2018	EPC approves the sale of the arena to MHRC for one dollar.
January 25, 2018	City of Winnipeg approved the sale to the Province for the purchase price of \$1.
August 24 2019	Ground breaking ceremony for the treatment centre.

Summary of recommendations and responses of officials

RECOMMENDATION 1

We recommend that the City of Winnipeg produce a policy which states procedures and controls over the sale of surplus land and buildings from the time the property is identified as surplus to the disposition. This policy should include:

- a. Requirements for transparency when dealing with interested parties. For example, questions and answers should be made in writing and available to all parties publicly.

Response of officials:

This recommendation is already in place when selling land through Request for Proposals but not applicable for direct sales authorized through the 2006 "Offers to Purchase City-owned Property" policy. The Public Service is authorized to directly negotiate with certain purchasers in accordance with Council policy.

- b. That access to the property (if made available) should be made available to all parties.

Response of officials:

This recommendation is currently part of the Public Service's standard operating procedure, but we will recommend to Council its inclusion into Council approved policy.

- c. That it is never permissible to share non-public information with only one interested party.

Response of officials:

This is currently part of the Public Service's standard operating procedure, but we will recommend to Council its inclusion into Council approved policy. Offer to Purchase contracts include information that can be publicly shared (asbestos report, floor plan, environmental site assessments, etc.).

- d. Processes for government to government transactions.

Response of officials:

The Public Service will recommend augmenting existing Council policy for Council consideration to highlight that government requests are prioritized and require governments demonstrate the need to exercise a direct sale option. It is inappropriate to suggest that public tendering must precede a government transfer as expediency is critical to government project success. Prioritized governmental transfers is consistent with existing Federal, Provincial and Crown Agency real estate policy; eliminating the City's direct sale policy would certainly put the City's ability to acquire government property at risk (i.e. direct sales would not be reciprocated).

RECOMMENDATION 2

The City should review practices to ensure Council has complete information in order to determine the best value for the citizens of Winnipeg when disposing of surplus property. When exceptions to City policies are utilized, the rationale and related details (i.e. context, other interested parties, etc.) should be documented and provided to Council before voting.

Response of officials:

The "Directive for Complete Reporting" implemented through the Real Estate Transaction Management Framework already requires full disclosure to Council. Council establishes policy and has identified the approved instances to complete direct sales; the policy will be augmented as noted in response to Recommendation (d) above.

Department of Municipal Relations: Municipal Development Corporations



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Auditor General's comments

This report is a result of calls to our Citizen Concerns line regarding the lack of oversight and information available on municipal economic development corporations.

We determined that municipalities were not receiving sufficient financial information from their development corporations. Without this information, it is difficult for municipal councils to manage these development corporations. We also determined that information about the revenues and expenditures of development corporations was largely not available to the public.

In speaking to municipal councillors and development corporation board members, we found many did not understand their responsibilities in terms of governing and ensuring accountability of development corporations. We also found the Province did not provide sufficient guidance or follow ups to ensure municipalities were able to appropriately manage their development corporations, and to ensure principles such as transparency and accountability were followed.

We made 5 recommendations for the province to improve the management framework municipalities should follow, and to ensure the public has reasonable, barrier-free access to key information on development corporations.

I would like to thank everyone who took the time to share their perspectives during the course of the examination.



Tyson Shtykalo, CPA, CA
Auditor General

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Examination of Municipal Development Corporations

Municipal Development Corporations:

Controlled by councils to pursue economic development



Typical annual budgets under
\$200,000

We received multiple allegations:

- Municipal Development Corporations not transparent to the public when it comes to primary activities, expenditures, and revenues
- Boards pursuing economic development goals independent of councils



What we found:

Province not providing municipal councils with sufficient information to manage development corporations

Activities, revenues, and expenditures of Municipal Development Corporations largely not available to the public

Governing multiplicities financial statements inadequate

Overall, Province pursuing a hands-off approach to managing municipal governments

Report includes **5** recommendations

What we examined

We assessed whether municipal councils were receiving sufficient information to properly manage their municipal development corporations and if the public has sufficient barrier-free access to basic information regarding activities, revenues and expenditures of the corporations.

What we concluded

We concluded that municipal councils are not receiving sufficient information to manage their municipal development corporations. We also found that information about the activities, revenues and expenditures of development corporations were largely not available to the public. Our report contains 5 recommendations.

What we found

Information about development corporations' primary expenditures and revenues are not consistently made available to governing councils (SECTION 1). We reviewed what documentation is available for municipal councils concerning their development corporations. We found financial documentation was inconsistently provided to councils. Documentation that was available was often unaudited and annual reports were rarely produced.

Development corporations provide limited public information regarding their activities, expenditures and revenues (SECTION 2). We looked at whether development corporations were making key documentation available for the public to understand the corporations' activities. We found board meeting minutes, financial statements, and the municipal consolidated financial statements were not consistently available to the public or did not contain sufficient detail to identify revenues and expenditures of the development corporation. Eight of the 15 municipalities in our sample had not completed their annual financial statement on time which is required by legislation. We also found 4 of the municipalities in our sample did not post financial statements on their website.

Councils not providing direction to development corporation (SECTION 3). We looked at whether municipal councils were providing strategic direction and regularly monitoring progress towards development corporations meeting identified goals. We found councils and municipal staff largely took a hands-off approach in managing development corporations. Only one municipality in our sample of 15 annually reviewed a strategic plan for their development corporation.

Unclear management and governance structure for development corporations (SECTION 4). Development corporations are owned by municipalities and should be accountable to the local government they serve. We found municipal staff, councillors and development corporation board members had differing opinions on their roles and responsibilities in managing the development corporation.

Background

The Province of Manitoba encourages communities to have an economic development strategy or plan in place in order to identify and initiate solutions to build healthy and economically viable communities. Municipalities have pursued economic development through a variety of models including creating Community Development Corporations (CDCs), Regional Development Corporations (RDCs), stand-alone corporations, and internal boards and committees responsible for economic development. In this report we are using the term development corporations to refer to the various forms of corporations created by, and managed by municipal councils in Manitoba.

We contacted 133 of the 137 municipalities in Manitoba. Two municipalities were scoped out of our sample due to their size and 2 municipalities did not return our phone calls. We found significant variations in how municipalities pursued economic development. For example:

- 62 municipalities have active CDCs.
- 7 municipalities created corporations for economic development that were not classified as CDCs.
- 28 municipalities pursued economic development internally through committees, boards or directly hiring Economic Development Officers (EDOs).
- The remaining 36 municipalities did not actively pursue economic development or handled it on an ad hoc basis with internal staff.

The costs associated with economic development varied widely between municipalities. We asked Municipal chief administrative officers (CAOs) what initiatives were classified as economic development activities in their annual budgets. Some of the projects identified as economic development activities include:

- Weed control
- Beaver control
- Mosquito abatement
- Zoning officer and bylaw enforcement officers' salary
- Construction for municipal services in new developments
- Grants to encourage new home construction
- Initiatives to attract healthcare professionals to a community
- Facilitating industrial development



Our office did not attempt to define economic development as each municipality has different economic development needs and priorities. For example, we contacted communities actively pursuing international companies to build multimillion-dollar factories in their jurisdictions. In contrast, other municipalities focused on beautifying the community.

What is a Community Development Corporation?

One of the most common methods municipalities use to pursue economic development in Manitoba is through a CDC. The Province of Manitoba's Community Development Corporation manual defines a CDC as an incorporated legal entity that works towards the creation and implementation of a community economic development strategy for a municipality, indigenous community or other defined area. CDCs can represent portions of a municipality, an entire municipality or a larger region. The primary role of a CDC is to promote the community with a view to achieving the objectives set out in the economic development strategy.

CDCs can have a variety of roles but their primary function is to foster social and economic development. CDCs can undertake initiatives to:

- Organize community development.
- Create and retain jobs.
- Stabilize or increase the local population base.
- Take advantage of opportunities for small enterprise development.
- Mobilize community resources to solve issues facing the community.
- Engage in community capital building.
- Reinvest profits into the local economy.

ACCOUNTABILITY

Municipal development corporations should represent the interests of the community at large and have the support of their respective municipal councils. The municipal council should take a leadership role to drive the development of a community economic development vision with a strategic plan containing focused objectives and strategies to reach the desired future. Councils appoint board members to guide the development corporation activities, but ultimate control still belongs to the municipal councils.

PROVINCIAL RESPONSIBILITY

The Province has taken an increasingly hands-off approach to municipal development corporations. The Department of Growth, Enterprise and Trade told us that in the past the Province had a number of regional economic support workers to assist CDCs. The economic support workers attended board meetings and trained CDC staff, board members and municipal councils. These positions were reclassified over time after internal changes in the Department of Agriculture beginning in 2012. The last position was re-classified in 2016, when responsibility for CDCs was moved from the former Department of Agriculture, Food and Rural Development (Agriculture) to the Department of Growth, Enterprise and Trade.

At the time of our examination, legislation governing CDCs was the responsibility of the Rural Development and Northern Economic branch of Department of Growth, Enterprise and Trade. Responsibility for the legislation subsequently transferred to the Department of Finance. The legislation requires ministerial approval to set up a CDC, restricts CDCs from overlapping in a geographic area, and provides limited guidance to distributing profits and assets of a corporation. Agriculture also produced a series of handbooks for municipal councils and CDC boards to provide guidance in understanding the principles and goals of community economic development. The handbooks are intended to support decision-makers to choose and implement effective strategies to support economic development. Department of Growth, Enterprise and Trade staff told us that the documents are largely out of date and need updating.

Other relevant legislation includes *The Municipal Act* which governs accounting practices for municipalities and municipal controlled entities such as development corporations. *The Municipal Act* is the responsibility of The Department of Municipal Relations.

FUNDING FOR MUNICIPAL DEVELOPMENT CORPORATIONS

CDCs operate as nonprofit organizations but can own for-profit companies. In the past CDCs could receive funding from provincial grant programs. We were told that there has been no direct provincial funding for CDCs in the last 5 to 6 years. Today funding for municipal development corporations, including CDCs, is made up from a variety of sources including:

- Interest on loans or capital
- Revenue from CDC leasing property
- Profits from CDC controlled companies
- Fee-for-service contracts
- Direct grants from municipalities
- Donations from corporate or individual sponsors.

Municipal development corporation budgets are modest, with larger corporations in Manitoba having budgets in the range of \$200,000 annually. More commonly, corporations have budgets under \$50,000 and may have a part-time employee coordinating economic development.



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Objective, scope and approach, criteria

Objective

To determine if municipal councils have sufficient information to provide oversight of development corporations including CDCs.

Scope and approach

We examined the flow of information between councils and the boards of development corporations to determine if councils receive sufficient information to manage the corporations. We also examined if sufficient information was available to the public to identify the corporation's expenditures, revenues and activities.

We conducted our examination between February and November 2018. We primarily examined processes in place between January 2016 and November 2018. Our examination was conducted in accordance with *The Auditor General Act*.

The examination included review and analysis of legislation, policies and practices, information systems, records, minutes, and correspondence. We contacted 133 of the 137 municipalities in Manitoba to identify their primary method of pursuing economic development. We sampled 15 municipalities for a more in-depth review, as follows:

- 12 municipalities with a development corporation.
- 3 municipalities that pursued economic development through internal committees.

Criteria

To determine whether municipal councils receive sufficient information to provide oversight of municipal development corporations, we used the following criteria:

- 1.1 A detailed breakdown of the development corporation's primary expenditures and revenues are listed in financial statements or other documentation made available to governing councils.
- 1.2 Development corporations' primary activities, expenditures and revenues are available to the public on an annual basis.
- 1.3 Development corporations have documented economic development goals that are reviewed by the governing councils, and are made available to the public.
- 1.4 Development corporations' shareholders are clearly identified and updated in the articles of incorporation and annual returns of information to the Companies Office.

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1 Information about development corporations' primary expenditures and revenues are not consistently made available to governing councils

In order for councils to provide reasonable oversight of development corporations, accurate financial documentation, including the corporation's primary revenues and expenditures, should be available to councils.

We looked to see if key pieces of financial documentation are available to councils such as:

- Development corporation audited financial statements.
- Unaudited financial statements that include the corporations' revenues and expenditures.
- Development corporation annual reports.

After interviewing staff and elected officials from our sample of 15 municipalities, we found that financial documentation was inconsistently provided to municipal councils. The documentation that was available to councils was often unaudited. The lack of financial documentation hinders the ability of councils to make informed decisions regarding economic development and development corporations.

In this section we identified the following concerns with regards to financial information being made available to governing councils:

- Only half of development corporations produced financial statements that complied with legislation.
- Development corporations seldom produce Annual Reports.
- We were unable to conclude if councils were receiving development corporation financial documentation.

ONLY HALF OF DEVELOPMENT CORPORATIONS PRODUCED FINANCIAL STATEMENTS THAT COMPLIED WITH LEGISLATION

At the time of our examination, municipalities providing a loan or grant to an organization totaling \$5,000 or more were required by *The Municipal Act* to have the organization's financial statements examined by an auditor. This portion of *The Municipal Act* was repealed through, *The Red Tape Reduction and Government Efficiency Act*, 2018. The legislative change came into force July 1, 2019.

Of the 12 development corporations in our sample, we found only 6 corporations were examined by an auditor. The remaining 6 corporations produced a range of documentation, from an unaudited QuickBooks printout to no documentation at all. Having reliable financial information about a

development corporation is necessary to assist council in providing appropriate direction to the corporation.

The Red Tape Reduction and Government Efficiency Act, 2018 removes the legislated requirement for external municipal entities (such as municipal development corporations) to prepare annual audited financial statements. Councils may still choose to request development corporations produce audited financial statements, but it is no longer a legislated requirement.

By not requiring audited financial statements, it is questionable what information will be provided to council. The finding of our examination highlights that even with a legislated requirement to produce audited financial statements, councils are still not consistently receiving the important information needed to provide guidance and direction to development corporations. The information within a financial statement is vital for council to provide the appropriate direction and provide oversight of how taxpayer dollars are spent.



Recommendation 1

We recommend the Department of Municipal Relations work collaboratively with municipalities to identify the financial documentation that councils should receive from development corporations. This should also include a process to ensure the financial information is provided to councils.

DEVELOPMENT CORPORATIONS SELDOM PRODUCE ANNUAL REPORTS

An annual report provides councillors and the public with important information to understand the activities and evaluate the performance of a municipal development corporation. Annual reports provide key information that assists stakeholders to make informed decisions.

In our sample of 12 development corporations, we found only 3 produced an annual report describing the financial position, past successes and future priorities of the organization. Producing an annual report was not dependent on the size of the organization. We found larger development corporations with budgets over \$200,000 annually that were not producing an annual report.

UNABLE TO CONCLUDE IF COUNCILS WERE RECEIVING DEVELOPMENT CORPORATION FINANCIAL DOCUMENTATION OF ANY TYPE

We reviewed if development corporations were providing financial documentation to councils on a regular basis. We found councillors and CAOs largely could not remember if they had received financial documentation annually. Councils have a variety of responsibilities of which development corporations are only a small portion.

We reviewed council meeting minutes from January 2017 through October 2018 for each municipality in our sample. We were unable to determine what information was being provided to council concerning development corporations. We found minutes did not provide sufficient detail regarding documentation submitted to council.

Summarized findings chart		
Information available for Council	Yes	No
Development corporation producing audited financial statements	6 corporations examined by an auditor	6 corporations not examined by an auditor
Development corporation produces an annual report	3 development corporations	9 development corporations
Financial information provided to councils	Unable to determine	Unable to determine

2 Development corporations provide limited public information regarding their activities, expenditures and revenues

A benefit of having a municipal development corporation is to encourage and build community engagement in economic development activities. In order to achieve this goal, the corporation must provide details surrounding its activities, expenditures and revenues. These details allow the public to have a firm understanding of what the corporation hopes to achieve, and how it is working towards the social and economic development of a community.

We found development corporations' primary revenues and expenditures are generally unavailable to the public or challenging to obtain. However, we did find the primary activities of development corporations were often available through social media, newspaper articles and website postings.

We were told by several CAOs that development corporations can engage in negotiations and activities that require confidentiality. Similar to other government entities, a municipal development corporation may have cause to protect and maintain confidentiality concerning its business activities. For example, if the development corporation was working with a large company to open a new operation in the municipality, all discussions would remain confidential. Finding the correct balance of when information should remain confidential, while alternatively providing the public and council with sufficient information regarding a development corporation's activity, is a challenge faced by all government entities.

To determine if the public could reasonably access information concerning the primary activities, expenditures and revenues for each corporation, we reviewed publicly available documentation for each development corporation in our sample. We also reviewed municipal consolidated financial statements for each municipality in our sample to identify if development corporation revenues and expenditures could be identified.

In this section, we identify the following concerns with regards to development corporation information that is made available to the public.

- Development corporation board minutes are not publicly posted.
- Council discussions of development corporations was not recorded in meeting minutes.
- Development corporation financial statements or financial documentation is not posted to the municipal development corporation website.
- Municipal consolidated financial statements do not identify development corporations' revenues or expenditures.
- Municipal audited financial statements not completed on time in accordance with legislation.
- Municipal audited financial statements not publicly posted on the municipal websites.
- Annual reports are rarely produced by development corporations.
- Public postings of activities through websites, social media, and traditional media sources was available.

DEVELOPMENT CORPORATION BOARD MINUTES NOT PUBLICLY POSTED

We reviewed development corporations' websites (if available) and municipal websites to identify if development corporation board minutes were available to the public. We found that only one development corporation in our sample publicly posted the board meeting minutes. Of the remaining 11 corporations, 2 indicated they would possibly provide a copy of the board meeting minutes upon request, but they would most likely be redacted. The remaining 9 corporations indicated they would provide meeting minutes upon request.

COUNCIL DISCUSSIONS OF DEVELOPMENT CORPORATIONS WAS NOT RECORDED IN MEETING MINUTES

We reviewed council meeting minutes from January 2017 through October 2018 to determine what information councils were discussing and receiving concerning development corporations. We found that meeting minutes were not sufficiently detailed to identify if development corporation issues were discussed. We could also not determine if councils were receiving sufficient updates or documentation concerning their development corporations. Meeting minutes did not identify documentation provided to council during council meetings.

Municipal councils are required to record meeting minutes. *The Municipal Act* requires that the "minutes of every council meeting are made without note or comment". There is no specific requirement to list documents that were submitted in a council meeting or provide detailed comments on the nature and topics discussed within a meeting.

Three municipalities indicated they generally discussed development corporation issues at the subcommittee level. No meeting minutes were recorded for council subcommittee meetings. We also were told by one of the municipalities that development corporation issues were discussed at informal council dinner meetings. We were advised that meeting minutes were not recorded for council dinner meetings.

The public does have the option of attending council meetings in person. Some municipalities even webcast or video record council meetings. However, several municipal CAOs indicated that development corporation issues were often discussed in-camera due to potential confidential information being discussed. For example, if the development corporation was working with a large company to open a new operation in the municipality, all discussions would remain confidential. One CAO repeated that when attracting new business to their community "loose lips sink ships". This needs to be balanced with the public's ability to understand the municipal corporations' primary activities revenues and expenditures.

DEVELOPMENT CORPORATION FINANCIAL STATEMENTS OR FINANCIAL DOCUMENTATION IS NOT POSTED TO THE MUNICIPAL DEVELOPMENT CORPORATION WEBSITE

We found development corporations are not publicly posting their financial documentation including financial statements. Three corporations in our sample would not release financial documentation to the public or would consider releasing portions of available documentation. The remaining 9 corporation said they would consider releasing financial documentation to the public upon request or at the development corporation annual general meeting. None of the development corporations in our sample posted their financial statements to the corporate or municipal website.

MUNICIPAL CONSOLIDATED FINANCIAL STATEMENTS DO NOT IDENTIFY DEVELOPMENT CORPORATIONS' REVENUES OR EXPENDITURES

We reviewed the municipal consolidated financial statements for each municipality in our sample and found only one identified revenues and expenditures of their development corporation. Requiring municipalities to separate out development corporation revenues and expenditures in municipal consolidated financial statements would provide both council and the public with access to key financial information about the development corporation.

We asked the 12 municipalities in our sample if they had included their economic development corporations in their consolidated audited financial statements. Three of the municipalities indicated the municipal development corporation was not included in the consolidated statements. Of the remaining 9 municipalities, we were only able to specifically identify figures from one of the development corporations. In this example, the figures associated with the development corporation were identified but not by the name of the corporation. The financial statement identified the figures as a "Controlled Entity" making it difficult for the public to associate the figures with the development corporation.

The remaining 8 municipalities stated municipal development corporation figures were included in the consolidated fund, but we were unable to identify financial documentation specific to the development corporation.



Recommendation 2

We recommend the Department of Municipal Relations identify information the public should receive concerning municipal controlled organizations. This should include a requirement for municipalities to clearly identify revenues and expenditures of controlled organizations either in the municipal consolidated financial statement or in an alternative publicly available document.

MUNICIPAL AUDITED FINANCIAL STATEMENTS NOT COMPLETED ON TIME IN ACCORDANCE WITH LEGISLATION

We reviewed whether municipal audited financial statements were completed on time in accordance with legislation. *The Municipal Act* requires that municipal audited financial statements be submitted to council no later than June 30 in the year following the fiscal year for which the audit is prepared. Our examination was conducted in October and November of 2018. The 2017 audited financial statements should have been made available to council by June 30, 2018. We found that at the time of our examination, 8 of the 15 municipalities in our sample had not completed their 2017 audits.

MUNICIPAL AUDITED FINANCIAL STATEMENTS NOT PUBLICLY POSTED ON THE MUNICIPAL WEBSITES

We found that 4 municipalities in our sample did not post the audited financial statement to the municipal website. Municipalities should be posting key documentation such as audited financial statements to their municipal website immediately after the auditor's report is tabled at a regular council meeting. Requiring municipalities to post audited financial statements to the municipal website works towards providing barrier free availability of key documentation concerning how tax dollars are being spent.



Recommendation 3

We recommend the Department of Municipal Relations post municipal annual financial statements and financial information of controlled organizations to the department's website. We also recommend the department require municipalities to post municipal financial statements and financial information of controlled organizations to the municipal website when the audit reports are tabled.

ANNUAL REPORTS ARE RARELY PRODUCED BY DEVELOPMENT CORPORATIONS

Only 3 development corporations in our sample produced an annual report. One of the 3 corporations indicated they would not provide the annual report to the public. The remaining 2 corporations made the annual report available at the corporation's AGM but did not post the document online.

The provincial handbook for community economic development highlights the importance of municipal development corporations reporting on their impact to the community. This allows the organization and council to judge the effectiveness of the corporation's initiatives. A regular review process should be documented in an annual report.

Annual reports allow the public to identify the primary activities and achievements of development corporations. This would assist with providing the public with information on how tax dollars are spent on community development.



PUBLIC POSTINGS OF ACTIVITIES THROUGH WEBSITES, SOCIAL MEDIA, AND TRADITIONAL MEDIA SOURCES WAS AVAILABLE

Municipal officials informed us that development corporations were publicizing their primary activities and successes through social media, websites and traditional media sources.

Development corporations and the municipalities used a variety of means to communicate primary activities of the corporation. For example, Twitter, Facebook and communicating with local media were used to promote the successful initiatives of the corporation. We did not verify whether these posts were accurate or a complete listing of all activities.

Summarized findings chart		
Information available for the public	Yes	No
Development corporation board minutes publicly posted	1 corporation publicly posted board meeting minutes	11 corporations did not publicly post minutes
Development corporation financial statements publicly posted	0 publicly posted financial statements	12 municipalities did not post financial statements publicly
Municipal consolidated financial statements clearly identify revenues and expenditures of development corporations	1 municipality consolidated financial statement identified revenues and expenditures of the development corporation	We could not identify revenues and expenditures in 11 municipal consolidated financial statements
Municipal audited financial statements completed on time in accordance with legislation	7 municipalities had completed financial statements at the time of our examination.	8 municipalities had not completed financial statements on time accordance with legislation
Municipal audited financial statements publicly posted on the municipal websites	11 municipalities had posted audited financial statements	4 municipalities were not posting audited financial statements to the municipal website
Development Corporation annual reports publicly posted	0 annual reports publicly posted	Only 3 corporations produced an annual report. None were publicly posted.

3 Councils not providing direction to development corporations

The provincial handbooks on community economic development for municipal councils and community development corporations establish that municipal councils should take a leadership role to drive the development of a community economic development vision, as well as a strategic plan with clear, focused objectives and strategies, to reach the desired future. Without a strategic plan the community will lack clear priorities for economic development. The handbooks note that successful community economic development is strongly associated with having a clear mandate to encourage development issues within the community. The strategic plan should be a living document that forms the basis of annual work plans and periodic evaluation of staff, boards and programs.

In this section, we identify the following concerns with regards to councils not providing direction to development corporations.

- Municipal staff and elected officials largely take a hands-off approach in managing development corporations.
- Municipal councils are not consistently establishing or reviewing goals to guide development corporations on an annual basis.

MUNICIPAL STAFF AND ELECTED OFFICIALS LARGELY TAKE A HANDS-OFF APPROACH IN MANAGING DEVELOPMENT CORPORATIONS

We interviewed staff from development corporations, municipalities and elected officials to identify if councils were providing strategic direction and regularly monitoring progress towards meeting identified goals for economic development.

Many elected officials we spoke to did not believe it was their role to provide formal direction to their respective development corporation. Only one council annually reviewed the strategic plan of their development corporation. Seven municipalities in our sample did not provide a strategic plan or annual goal setting, and the remaining municipalities either relied on historic strategic plans or relied on the councillors appointed to the development corporation board to provide informal direction.

MUNICIPAL COUNCILS NOT CONSISTENTLY ESTABLISHING OR REVIEWING GOALS TO GUIDE DEVELOPMENT CORPORATIONS ON AN ANNUAL BASIS

Councils should support the development of a strategic plan and participate in setting annual performance goals for development corporations. This would allow municipalities to determine if the development corporation is using funds provided by the municipality for the intended purposes and assist in evaluating progress towards implementing the strategic plan. Only one municipality in our sample had a strategic plan that was annually reviewed.

Strategic planning and annual goal setting should also be publicly available. This would allow taxpayers to see how the corporation and municipality is using their resources to achieve the stated goals. Publicly available goal setting would also promote accountability for both the development corporation and municipality.



Recommendation 4

We recommend that the Department of Municipal Relations, work with municipalities to ensure councils:

- Create strategic plans to achieve municipal economic development, the plans should be created collaboratively between the council and development corporation.
- Councils have annual goals to guide the activities of their development corporation in working towards implementing their strategic plan.

The department should work with municipalities to identify a risk-based threshold when municipal development corporations are required to produce both the strategic plan and annual goal setting. When applicable, the department should require that both the strategic plan and annual goals be made publicly available via the internet and are annually reviewed by council.

4 Unclear management and governance structure for development corporations

Municipal councils and development corporation boards should have a clear understanding of their responsibilities in managing and providing direction for development corporations. The handbook for community economic development corporations notes that development corporations are owned by local municipalities and councils, and should be accountable to local government they serve. We looked at whether development corporation representatives, municipal staff and councils have a clear understanding of development corporations' governance structure.

In this section we note the following concerns:

- Many councils, municipal staff and development corporation representatives disagree who has ultimate responsibility for the corporations.
- The majority of development corporation articles of incorporation did not identify shareholders.

MANY COUNCILS, MUNICIPAL STAFF AND DEVELOPMENT CORPORATION REPRESENTATIVES DISAGREE WHO HAS ULTIMATE RESPONSIBILITY FOR THE CORPORATIONS

We were told by staff of the Department of Growth, Enterprise and Trade that problems have occurred in development corporations when councils and development corporation board members disagree as to who has ultimate responsibility for the corporation and its initiatives. We also heard from development corporation board members who felt that councils were interfering by micromanaging the corporation's

activities. Several municipalities in our sample had experienced periods when the relationship between the board of the development corporation and council had broken down to the point where the board was acting independent of council's wishes. Toxic relationships between the 2 parties have led to councils ending annual grants to development corporations and even lawsuits. The Department of Municipal Relations should clearly define the governance structure for development corporation boards, staff and governing councils to assist the corporation in meeting its objectives.

THE MAJORITY OF DEVELOPMENT CORPORATION ARTICLES OF INCORPORATION DID NOT IDENTIFY SHAREHOLDERS

All corporations in Manitoba are required to submit annual returns of information to the Manitoba Companies Office. The annual returns form has fields for the corporation to provide basic information including the name of the corporation, directors and shareholders.

We reviewed 64 economic development corporation files at the Manitoba Companies Office and found 48 of the corporations did not identify shareholders in their annual returns. The remaining 16 files identified shareholders as the municipal councils responsible for the development corporation or historic development corporations that listed individual community members as shareholders. The historic development corporations date back to the 1960s where individuals could be listed as corporation shareholders. The Province will no longer approve a new CDC with individuals listed as shareholders.

Staff at the Companies Office told us that submitting the annual return is required but there is no requirement to indicate CDC shareholders. Of the 48 corporations that did not identify shareholders most simply put "not applicable" in the shareholders field.

Municipal development corporation shareholders should be clearly identified. In order to avoid conflict between the corporation's board and governing municipal council, the articles of incorporation should identify the governing municipality as the sole shareholders for the corporation. To that end, development corporations need to acknowledge governing municipalities as the corporation's shareholders.



Recommendation 5

We recommend the Department of Municipal Relations provide clear guidance to municipalities and municipal development corporation boards as to who has ultimate control and authority for development corporations. The provincial guidance documents for development corporations should clarify the governance structure for municipal corporations for both corporate boards and municipal councils.

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Summary of recommendations and responses of officials

RECOMMENDATION 1

We recommend the Department of Municipal Relations work collaboratively with municipalities to identify the financial documentation that councils should receive from development corporations. This should also include a process to ensure the financial information is provided to councils.

Response of officials:

The department agrees with the recommendation that the department should identify the financial documentation that councils should receive from development corporations. Improving governance, transparency and accountability is a high priority. The department will prepare a guide in 2021/22 for municipalities identifying specific financial documentation that they should receive from development corporations, and clarifying that this financial information should be received and reviewed by municipal councils. The department will collaborate with municipal stakeholder organizations in the development of the guide, and municipal officials will have ongoing access to the guide as a reference and source of consistent advice.

RECOMMENDATION 2

We recommend the Department of Municipal Relations identify information the public should receive concerning municipal controlled organizations. This should include a requirement for municipalities to clearly identify revenues and expenditures of controlled organizations either in the municipal consolidated financial statement or in an alternative publicly available document.

Response of officials:

The department agrees with the recommendation, and will develop a guide for municipalities in 2021/22 that will:

- outline best practices for promoting financial transparency in municipal development corporations;
- identify any requirements that exist under legislation for making such information publicly available.

Municipal officials will have ongoing access to the guide as a reference and source of consistent advice.

RECOMMENDATION 3

We recommend the Department of Municipal Relations post municipal annual financial statements and financial information of controlled organizations to the department's website. We also recommend the department require municipalities to post municipal financial statements and financial information of controlled organizations to the municipal website when the audit reports are tabled.

Response of officials:

The department disagrees with the recommendation that the department should post municipal financial statements on its website. Individual municipal financial statements are fundamentally municipal information, and the relationship with the public for individual statements, their contents, and accountability and responsibility for that information lies directly with municipal governments and their elected officials. The Department of Municipal Relations via its website already provides financial information about all municipalities for the public through the department's statistical publications at an aggregate level.

The department disagrees with the recommendation that municipalities should be required to post financial information on their website. Section 194 of *The Municipal Act* requires municipalities to give public notice that the audited annual financial statements are available for inspection by any person at the municipal office during regular business hours. The use of a municipal website for posting audited financial statements is currently not a requirement in provincial legislation, although municipalities may choose to use this communication tool (e.g., website) as a service to their residents.

The department is not planning to introduce new regulatory requirements for municipalities' communication processes with their constituents about audited financial statements, as doing so would be inconsistent with the existing framework for all public notices and other communications that municipalities are required to give under *The Municipal Act*, which do not require posting on a website. Similarly, such a requirement would also be inconsistent with the existing legislative framework for all other documents that municipalities are required to provide public access to under *The Municipal Act*, which do not require posting on a website. However, the department is currently exploring changes to the legislative framework to provide municipalities with more flexibility and clearer options around posting public notices and other required communications online.

RECOMMENDATION 4

We recommend that the Department of Municipal Relations, work with municipalities to ensure councils:

- Create strategic plans to achieve municipal economic development, the plans should be created collaboratively between the council and their development corporation.
- Councils have annual goals to guide the activities of their development corporation in working towards implementing their strategic plan.

The department should work with municipalities to identify a risk-based threshold when municipal development corporations are required to produce both the strategic plan and annual goal setting. When applicable, the department should require that both the strategic plan and annual goals be made publicly available via the internet and are annually reviewed by council.

Response of officials:

The department disagrees with the recommendation that the department should ensure the creation of strategic plans for economic development by municipalities. While creating strategic plans to achieve economic development is a good practice, municipalities are not required to develop such plans under *The Municipal Act*. As local governments, a municipality has discretion to determine the most appropriate process to achieve municipal economic development.

However, the department will develop a guide in 2021/22 for municipalities that will highlight strategic planning and annual reporting on goals as best practices for the administration of local economic development services. The department will collaborate with municipal stakeholder organizations in the development of the guide, including the identification of circumstances where a municipality should consider requiring the production of strategic plans or annual goals in collaboration with its municipal development corporation. Municipal officials will have ongoing access to the guide as a reference and source of consistent advice.

The department disagrees with the recommendation that municipalities should be required to post these documents on a municipal website. The use of a municipal website for posting municipal documents is currently not a requirement in provincial legislation, although municipalities may choose to use this communication tool (e.g., website) as a service to their residents.

The department is not planning to introduce new regulatory requirements for municipalities' communication processes with their constituents about municipal documents that are not required by legislation, as doing so would be inconsistent with the existing framework for all public communications that municipalities are required to give under *The Municipal Act*, which do not require posting on a website. Similarly, such a requirement would also be inconsistent with the existing legislative framework

for all other documents that municipalities are required to provide public access to under *The Municipal Act*, which do not require posting on a website.

However, the department supports increasing transparency, and the guide developed by the department in 2021/22 will highlight that online public reporting of strategic planning and goals for municipal economic development is a best practice for the administration of local economic development services.

RECOMMENDATION 5

We recommend the Department of Municipal Relations provide clear guidance to municipalities and municipal development corporation boards as to who has ultimate control and authority for development corporations. The Provincial guidance documents for development corporations should clarify the governance structure for municipal corporations for both corporate boards and municipal councils.

Response of officials:

The department agrees with the recommendation. The department will develop a guide in 2021/22 for municipalities that will include information about governance structures for municipal economic development corporations and the usual extent of municipal control and authority over these entities. Municipal officials will have ongoing access to the guide as a reference and source of consistent advice.

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