

TO:	CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE MEETING ON JULY 18, 2017
FROM:	SANDRA DATARS BERE MANAGING DIRECTOR HOUSING, SOCIAL SERVICES AND DEARNESS HOME
SUBJECT:	DELEGATION OF THE RENTAL HOUSING COMPONENT OF THE PROVINCIAL SERVICE MANAGER ADMINISTRATION AGREEMENTS FOR THE DEVELOPMENT OF AFFORDABLE HOUSING TO THE HOUSING DEVELOPMENT CORPORATION, LONDON (HDC)

RECOMMENDATION

That, on the recommendation of the Managing Director of Housing, Social Services, and Dearness Home, and with the concurrence of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, the attached proposed By-law (Appendix "A") **BE INTRODUCED** at the Municipal Council meeting of July 25, 2017:

- (a) **TO DELEGATE** to the Housing Development Corporation, London the duties and responsibilities of the City as Service Manager contained in Schedule "A" of the Service Manager Administration Agreement for the 2016 Social Infrastructure Fund (SIF) dated August 19, 2016, between The Corporation of the City of London and the Minister of Housing, as it relates to the administrative and development activities for capital development within the "Rental Housing Component"; and
- (b) **TO DELEGATE** to the Housing Development Corporation, London the duties and responsibilities of the City as Service Manager contained in Schedule "A" of the Service Manager Administration Agreement for the Investment in Affordable Housing for Ontario (2014 Extension) dated October 31, 2014, between The Corporation of the City of London and the Minister of Housing, as it relates to the administrative and development activities for capital development within the "Rental Housing Component" to the Housing Development Corporation, London;

It being noted that the City as Service Manager will retain responsibilities for ongoing operational compliance following construction and initial rent-up of the housing projects.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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Strategic Priorities and Policy Committee

October 26, 2015 Housing Development Corporation, London Incorporation and Initial Corporate Organization

Community and Protective Services Committee

July 19, 2016 Approval of the Service Manager Administration Agreement for the 2016 Social Infrastructure Fund (SIF) and Pending Assignment to HDC

Dec. 15, 2015 Amendments to Existing Municipal Contribution Agreements (MCA) for Affordable Housing

Sept. 22, 2015 Assignment of New Rental Component of Administration Agreement for the Investment in Affordable Housing for Ontario (2014 Extension) to the Housing Development Corporation, London (HDC)

Sept. 22, 2014 Investment in Affordable Housing for Ontario (2014 Extension) Approval of Administration Agreement.

BACKGROUND

Purpose of this Report:

The City of London is the designated Service Manager for provincial housing services and programs administered under the general authority of the *Housing Services Act, 2011* and associated funding and program agreements. In addition to provincial programs, the City of London has historically delivered local housing development programs and funding.

In 2015, the City incorporated the Housing Development Corporation, London (HDC) to oversee and manage its actions related to advancing affordable housing development, including the administration of related federal and provincial programs and funding. The City has delegated local program authority and funding to HDC to deliver housing development programs.

Further to the report to Community and Protective Services Committee on September 22, 2015, this report delegates Council's authority defined within the approved Service Manager Administration Agreements between the City of London and Province of Ontario related to the capital development of rental housing to HDC.

This delegation of authority is for the Rental Housing Component including the determination of viable projects, authorizing agreements, determining the appropriate financial tools to secure the projects, overseeing the associated rental housing development projects to completion, and other general business including acting on behalf of the Service Manager in these areas.

HDC and The City of London Roles in Affordable Housing:

The Housing Development Corporation, London is a separate entity, under the Business Corporations Act, with the City of London as sole shareholder. It has a Council-appointed Board of Directors with industry expertise. HDC focuses on the development of affordable housing. Its funding is approved by Council through the municipal budget process.

HDC is a mechanism to enhance and better utilize both municipal incentives and federal, provincial, municipal and investor funding. It brings together governance tools, existing resources and knowledge to support sustainable development.

The City retains its role as Service Manager under the Housing Services Act for reporting purposes, but under this report, will delegate those Service Management duties related to rental housing capital development to HDC.

Investment in Affordable Housing for Ontario

Investment in Affordable Housing for Ontario (IAH) is a joint federal/provincial program for the creation and repair of affordable housing. IAH provides flexibility, with accountability, to municipal Service Managers to deliver affordable housing in our communities. The City of London is the Service Manager for the city as well as for Middlesex County.

On August 11, 2014, the Province announced the IAH 2014 Extension (IAH-E) which began on April 1, 2014 and ends March 31, 2020. On July 12, 2016, the City entered another Service Manager Administration Agreement with the Ministry of Housing (MoH) for additional IAH funding under the "Social Infrastructure Fund" (SIF) program.

The Ministry of Housing provides guidelines for the various components and program requirements under IAH to facilitate participation by Service Managers.

Service Manager Administration Agreements

In order to participate in the IAH (2014 Extension) and Social Infrastructure Fund Program, the City of London was required to sign Service Manager Administration Agreements with the Province. These Administration Agreements outline financial provisions, eligibility criteria, indemnification and repayment provisions, risk management protocols for projects facing difficulties and reporting, auditing and other accountability and enforcement provisions.

The Administration Agreements include both operating and capital programs. The capital program includes the Rental Housing Component which provides for the construction of new affordable rental housing. The Administration Agreements also provide Service Managers up to 5% of their total funding allocation to assist with administration of the programs.

Consideration of the various program components is based on local housing needs, local market

indicators, and local housing plans. The apportioning of funding is determined by Civic Administration and provided to the province in the form of a Program Delivery and Fiscal Plan (PDFP). The Administration Agreements then require Service Managers to report quarterly on program activity on their funded components.

Delegation of Service Manager Authority

The Service Manager role, as defined in the Housing Services Act, 2011, “may establish, administer and fund housing and homelessness programs and services and may provide housing directly.” (HSA 2011, c. 6, Sched. 1, s. 13 (1)). These programs include affordable housing programs established under administration agreements with the Service Manager within the designated geographic area.

Consistent with the report that was received by the Community and Protective Services Committee (CPSC) on September 22, 2015, the HDC has already assumed the lead on City’s housing development activities, including the general management of delivery of the IAH-E Rental Housing Component and similar SIF Rental Housing Component, and municipal programs defined in the September 22, 2015 report.

Subsequent to the September 22, 2015 CPSC Report, reviews conducted by the City’s Housing, Legal, and Financial Services areas determined that the transfer of the Service Manager authority to deliver the planning, building, and related administration of the Rental Housing Component should occur by **delegation of authority** through Municipal Council rather than the “assignment and assumption” of the agreements, as originally considered.

The capacity for the City to delegate authority to HDC is permitted within the associated provincial agreements. The approach of empowering HDC to act on behalf of the City for the Provincial Rental Housing Component and funding was proposed in the HDC Articles of Incorporation and HDC Shareholder Declaration, (SPPC, November 21, 2016) Section 2.2 (b) (iii): *“to co-ordinate and leverage the deployment of federal, provincial, and municipal funding.”*

What Does Delegation Mean?

In general, “delegation” ensures that the City retains its overall responsibility for the Service Manager Administration Agreements while allowing HDC to exercise the full range of duties defined within the HDC Business Plan, including:

- Determining new ways to work with the community in potential affordable housing projects;
- Establishing procurement practices that engage competent and capable developers and that determine the most viable projects to be advanced for funding and construction;
- Creating programs, policies, contribution agreements, and administering the allocation of federal/provincial and municipal funds to new rental housing development; and
- Working in partnership with the City’s Housing Services to co-ordinate compliance reviews, operational rules, and reporting, including representing the Service Manager, overseeing industry knowledge related to the local housing market, its needs, recommended solutions, and conducting any associated administrative duties as required.

Where the Rental Housing Component (Schedule “A” of the Administrative Agreements) and any related appendices defines the role of the Service Manager related to the delivery of the “Development Activities” of the Rental Housing Component specifically or generally defines the roles of the Service Manager for all areas of this program component, these roles are delegated to the Housing Development Corporation, London (HDC). This includes all responsibilities for establishing local terms, conditions, service levels, and any other such criteria as required.

Overview of Delegation:

HDC’s delegated authority as Service Manager for the Rental Housing Component includes the following business and administrative responsibilities:

1. Establishing and Signing of Rental Housing Contribution Agreements on Behalf of the City of London as Service Manager:

HDC will establish the funding and program requirements within “contribution agreements” between developers and HDC both for HDC funds and on behalf of the City as Service Manager for federal/provincial funds. The revised three party agreements will address the capital and ongoing operating/compliance requirements for the respective projects.

HDC will sign agreements on behalf of the City as Service Manager as well as for any HDC funded commitments. These agreements will be registered on title to hold the combined government investments and any associated rules and expectations as an encumbrance against the property for the term of the agreement.

This delegation is separate from the delegation of municipal programs and funding that has been delegated to HDC. HDC will continue working with Legal Services and Financial Services on contribution agreements executed on behalf of the City to ensure they are in a format that is acceptable to the City's Legal Services.

This delegated capacity will allow HDC to negotiate federal/provincial and municipal funding with a housing development proponent through one contribution agreement with HDC. This approach is based on the success and strength of current contribution agreements. HDC will replace the City of London as the party on these agreements.

As agent for the City, HDC will allocate the Rental Housing Component funds on behalf of the City as Service Manager within this delegated role. Any remedies or repayments resulting from these delegated activities would be assigned toward further Rental Housing Component activities by HDC.

2. Financial Considerations of Provincial Transfers:

Provincial payments related to the Rental Housing Component will continue to be directed from the province to the City of London based on projects established by HDC and the associated completion of milestones that generate payments.

HDC will continue to work with the City's Financial Services staff to assign both provincial as well as HDC based payments to project proponents upon confirmation of the milestones. HDC will continue to update provincial and municipal databases related to these payments in accordance to established business practices. HDC will also continue to work with the City's Financial Services related to quarterly reporting requirements to Civic Administration to ensure compliance with the HDC Shareholder Declaration.

HDC, as delegated agent for the City as Service Manager, will retain responsibilities for Rental Housing Component funding except for any administration fees which will be separately transferred to HDC in accordance with current transfer practices. Delegation provides HDC the ability to authorize affordable housing developments payments under the Rental Housing Component on behalf of the City as Service Manager.

3. Delegation of Control of the Rental Housing Component Administration:

HDC will retain control over projects from conception and incubation to the point of project completion which may, subject to the details of any specific project, be defined as:

- initial tenant occupancy and associated reports;
- any interest adjustment date (IAD) associated with any associated mortgage; or
- confirmation of the capital audit.

Proponents will interact with HDC for all project design, procurement, funding, and building requirements. HDC will work with the City's Housing Services who retain responsibility for overseeing ongoing operating compliance to the contribution agreement.

Issues emerging through compliance reviews will be shared with HDC. Any remedies, mortgage postponements, or other substantive changes to the project will be addressed in conjunction with HDC. HDC will work with the City's Legal, Financial, and Housing Services as required related to actions and the proponent will recognize HDC as the primary party in the agreement and the City in the role of ongoing compliance management.

HDC already retains delegated responsibilities to amend existing (completed) affordable housing project contribution agreements in accordance to City By-law No A-7341-26 passed by Council on January 4, 2016 (CPSC: Dec 15, 2015).

4. Delegation, Indemnification, and Liabilities:

The City's ability to exercise its authority over HDC in this delegation is defined within:

- i) the HDC Shareholder Declaration which provides the general rules, limitations, and approval processes for HDC business; and

- ii) the by-laws providing this delegation of authority, which may be repealed at any time and which would then revert back to the City's authority in these matters.

As a vehicle created to benefit the City's interests in affordable housing, the City shall indemnify HDC to be held harmless from any liabilities it may incur in the normal exercising of these delegated duties. This does not include protection from negligent HDC actions.

5. Other Delegation Considerations:

Where the Master Administration Agreement or any schedule thereof has administrative reporting requirements related to the delivery of the Rental Housing Component, those requirements are delegated to HDC, including uploading information, producing reports, managing mandated technologies, or other requirements related to provincial reporting, communications, or approval processes, noting that the Province will be informed that HDC is delegated these duties to act on behalf of the Service Manager.

The Communications Protocol requirements of the Service Manager related to the Rental Housing Component shall be delegated to HDC to ensure program compliance, and HDC shall be accountable for any related compliance requirements and penalties.

Requirements to meet obligations of the French Language Services (FLS) Act related to the delivery of the Rental Housing Component shall be delegated to HDC to ensure program compliance. HDC shall be accountable for any related compliance requirements and penalties, recognizing that FLS supports are available from the City to assist.

Where the assignment of funding under the existing IAH-E and SIF programs was done in collaboration with HDC, any future similar programs or program extensions will be done in a similar way, noting that Council would be required to similarly delegate its authority.

The allocation of existing Administration Fees allowable within the Administration Agreement will be transferred to HDC, noting such fees will consider a proportional allocation based on the distribution of services within the associated notional envelope.

Where HDC is required to represent the Service Manager in formal and informal forums with the community, other orders or government, or others, that HDC provides a report back to the Manager of Housing Services as applicable and appropriate.

Where the City retains responsibility for operating compliance to the Rental Housing Component, and where in this work, authority is required for postponements, transfers, new encumbrances, discharges and renewals of affordable housing registered charges or related instruments registered on title by either HDC or by the City of London (including for former affordable housing programs), these authorities are delegated to HDC.

Any related actions administered by the City of London's Housing Services through their ongoing compliance and operational management of affordable housing projects will be reviewed and confirmed with HDC prior to action.

Activities Retained by the City in the Rental Housing Component:

This delegation to HDC includes all Schedule "A" responsibilities except the following duties retained by the City's Housing Services area associated with the ongoing operational compliance of proponents and their developments after rent-up of the affordable housing units:

- Ongoing compliance reviews and related requirements including the review and submission of any information reports to the Ministry of Housing;
Outlined in Section 5.13 a) and b) in IAH-E (CPSC Sept 22, 2014) and Section 5.14 a) and b) in SIF (CPSC July 19, 2016);
- The completion of the "Proponent's Annual Occupancy Report". This is one of the forms noted above and is used to gather information and ensure operating compliance of each affordable housing project. This includes past projects completed by the City of London.
(The form is included in the Schedule "A" Rental Housing Component as Appendix "B" Proponent Annual Occupancy Report).
- The ongoing review and updating of information in accordance to the "Rental Protocol". HDC will establish the rules and conditions of the "Rental Protocol" with proponents at the time of the agreement. This includes the unit compositions, initial rents and future rent incrementations, and the affordability period of the development. The City retains the responsibilities associated with the annual review, updating of information, and compliance monitoring based on this protocol.

(The form is included in the Schedule "A" Rental Housing Component as Appendix "D" Rental Protocol).

Delegation of Authority:

The attached By-law delegates the duties and functions set out in Schedule "A" Rental Housing Component of the Service Manager Administration Agreement between the City of London and Her Majesty the Queen in Right of Ontario for the Investment in Affordable Housing 2014 Extension, (signed October 31, 2014) and similar Schedule "A" of the Administration Agreement between the City of London and Her Majesty the Queen for Social Infrastructure Fund, (signed August 19, 2016), to the Housing Development Corporation, London (HDC).

The Schedule "A" Rental Housing Component outlines the Service Manager requirements related to the delivery of provincial "development activities" for new affordable housing development.

Shared Services:

The City of London's Housing Services will continue to deliver other affordable housing program components (such as Ontario Renovates and Rent Supplements) and will continue to oversee the annual and ongoing compliance processes defined within the Rental Housing Component upon the completion of the capital component of the project.

The City's Housing Services and HDC will work together to ensure shared program or service interests between capital development and operational compliance are consistently managed.

The City of London's Civic Administration will continue to provide financial, risk management, and legal services related to the exercising of these authorities to support the work of HDC in these specifically delegated activities in the same manner as were formerly provided to these functions when delivered by the City's Housing Services area.

FINANCIAL IMPACT

There are no financial impacts related to these changes. All funding remains as established within the approved municipal budgets and provincial program delivery and fiscal plans.

RECOMMENDED BY:	CONCURRED BY:
SANDRA DATARS BERE MANAGING DIRECTOR HOUSING, SOCIAL SERVICES AND DEARNESS HOME	ANNA LISA BARBON MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER

ATTACHMENTS:

Appendix "A" A by-law to delegate the responsibilities of the City related to the details in this report to the Housing Development Corporation, London (HDC)

- C. D. Mounteer, Solicitor, City Solicitor's Office, Legal and Corporate Services
- J. Smout, Solicitor, City Solicitor's Office, Legal and Corporate Services
- K. Murray, Senior Financial Business Administrator, Finance and Corporate Services
- Dave Purdy, Manager, Housing Services
- Tony Brutto, Team Lead, Regional Housing Services, Ministry of Municipal Affairs, Ministry of Housing (Municipal Services Office)
- Cindy Howard, General Manager, Finance and Community Services, County of Middlesex
- Stephen Giustizia, Chief Executive Officer, HDC London
- Members, Board of Directors, HDC London

By-law No.

By-law No.

A by-law to delegate the responsibilities of the City contained in Schedule "A" of the Service Manager Administration Agreement for the 2016 Social Infrastructure Fund (SIF) and in schedule "A" of the Service Manager Administration Agreement for the Investment in Affordable Housing for Ontario (2014 Extension) between The Corporation of the City of London and the Minister of Housing as it relates to the administrative and development activities for capital development within the Rental Housing Component, to the Housing Development Corporation, London.

WHEREAS section 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 8 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 11 (1) of the *Housing Services Act, 2011* designates the City of London (the City) as the Service Manager for the purposes of that Act and section 13 provides the General powers of Service Manager to include the administration and funding of other programs;

AND WHEREAS section 17 (a) of the *Housing Services Act, 2011* allows Service Managers to delegate, in writing, some or all of its powers and Duties under this Act;

AND WHEREAS The City has established the Housing Development Corporation, London as a mechanism to advance the development and sustainability of affordable housing;

AND WHEREAS City is responsible for the delivery and administration of affordable housing initiatives through other direct delivery or through the Housing Development Corporation, London;

AND WHEREAS Section 23.1 of the *Municipal Act* permits the delegation of the powers and duties of the municipality by by-law;

AND WHEREAS it is deemed expedient for the City to delegate its duties contained in Schedule "A" of the Service Manager Administration Agreement dated August 19, 2016 for the 2016 Social Infrastructure Fund (SIF), and the Schedule "A" of the Service Manager Administration Agreement dated October 31, 2014 for the Investment in Affordable Housing for Ontario (2014 Extension) between The Corporation of the City of London and the Minister of Housing as they relate to the administrative and development activities for capital development within the Rental Housing Component, to the Housing Development Corporation, London;

NOW THEREFORE the Municipal Council of the Corporation of the City of London enacts as follows:

1. The duties of the City as Service Manager contained in Schedule "A" of the Service Manager Administration Agreement for the 2016 Social Infrastructure Fund (SIF) dated August 19, 2016 between The Corporation of the City of London and the Minister of Housing, as it relates to the administrative and development activities for capital development within the Rental Housing Component, are hereby delegated to the Housing Development Corporation, London, except the following duties retained by the City associated with the ongoing operational compliance of proponents and their developments after rent-up of the affordable housing units including:
 - (a) Ongoing compliance reviews and related requirements including the review and submission of any information reports to the Ministry of Housing;
 - (b) The completion of the "Proponent's Annual Occupancy Report";
 - (c) The ongoing review and updating of information in accordance to the "Rental Protocol". The City retains the responsibilities associated with the annual review, updating of information, and compliance based on this protocol.

2. The duties of the City as Service Manager contained in Schedule "A" of the Service Manager Administration Agreement for the Investment in Affordable Housing for Ontario (2014 Extension) dated October 31, 2014 between The Corporation of the City of London and the Minister of Housing, as it relates to the administrative and development activities for capital development within the Rental Housing Component, are hereby delegated to the Housing Development Corporation, London, except the following duties retained by the City associated with the ongoing operational compliance of proponents and their developments after rent-up of the affordable housing units including:
 - (a) Ongoing compliance reviews and related requirements including the review and submission of any information reports to the Ministry of Housing;
 - (b) The completion of the "Proponent's Annual Occupancy Report";
 - (c) The ongoing review and updating of information in accordance to the "Rental Protocol". The City retains the responsibilities associated with the annual review, updating of information, and compliance based on this protocol.

3. Scope of Power:
 - (a) The municipality may revoke any delegation under this by-law at any time without notice;
 - (b) Nothing in this delegation shall limit the municipality's right to revoke the delegation beyond the term of the council that made the delegation;
 - (c) Both the municipality and the delegate can exercise the powers delegated under this by-law;
 - (d) Any delegation of a duty under this by-law results in the duty being the joint duty of the municipality and the delegate.

4. The delegation to the Housing Development Corporation, London is subject to the following condition:
 - (a) The Housing Development Corporation, London shall include within its annual report to the Strategic Priorities and Policy Committee information with respect to the fulfillment of the duties delegated to the Housing Development Corporation, London.

5. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on _____, 2017.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading –
Second Reading –
Third Reading -