



February 28, 2019

City Clerk's Office
Barb Westlake-Power, Deputy City Clerk
300 Dufferin Avenue
PO Box 5035
London, ON N6A 1V5

Re: Delegation Status at Strategic Planning and Priorities Committee Meeting

Dear Ms. Westlake-Power:

The London & Middlesex Community Housing (LMCH) would like to formally request delegation status at the Strategic Planning and Priorities Committee (SPPC) meeting scheduled for Monday, March 4, 2019 to address the City's report entitled "Response to London Middlesex Housing Corporation (LMHC) Requested Changes to the Articles of Incorporation and PriceWaterHouseCoopers Internal Audit Report".

As the Sole Shareholder of LMCH, it is important that the City of London be informed about our planning activities and the impact that the City's recommendation contained within the report will have. This will be highlighted in a 5-minute presentation along with the attached written submission and previous attachments provided to the City that were not included with the report.

We look forward to meeting with the City of London and the opportunity to discuss this important and valuable City asset – public housing. Please kindly confirm our status.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sean Quigley', followed by a vertical line.

Sean Quigley
Board Chair

Cc: LMHC Board
Dave Purdy, Manager of Housing Services
Sandra Datars Bere, Managing Director, Social Services, Housing and Dearness Home
Martin Hayward, City Manager
Cathy Saunders, City Clerk



SUBJECT: Requested Changes to the Articles of Incorporation and PricewaterhouseCoopers Internal Audit Report

DATE: February 28, 2019

FOR: Strategic Priorities and Policy Committee (SPPC) Meeting on March 4, 2019

FROM: London & Middlesex Community Housing (LMCH)

PURPOSE:

The purpose of this submission is to ensure that the SPPC has all the relevant information to provide clear direction on the requested changes to our Articles of Incorporation and participate in enabling LMCH to achieve the strategic objectives set out in our [Strategic Plan](#) presented and accepted by Council in June 2017. This includes linkages to the City's Strategic Plan, specifically in the key area of focus of *Strengthening our Community* and the strategy of providing *Caring and Compassionate Services*.

We recognize the important role of Civic Administration in providing an analysis of risk and agree that together we can mitigate those concerns through discussion and drafting of a new Shareholder Declaration.

It is our belief the flexibility proposed in the revised Articles of Incorporation will position LMCH to best address together the myriad of challenges before us. This includes our aging infrastructure, complex and diverse tenant base, increasing waitlist, lack of affordable and supportive housing, homelessness and ever-increasing demand on a social support system that is at capacity.

OUR REQUEST:

That, Council as Shareholder of LMCH, **APPROVE** the Amended Articles of Incorporation as previously submitted (Restrictive Version) through a Special Resolution of the Sole Shareholder (Attached as Appendix A) and **DIRECT** Civic Administration to work with LMCH staff to create a new Shareholder Declaration for the Annual Shareholder Meeting to be held in June 2019, that mitigates identified shareholder risk(s) and provides the appropriate accountability framework that enables LMCH's strategic plan.

BACKGROUND:

LMCH does not have any flexibility with respect to strategic and operational decisions under the terms of a Shareholder Declaration approved by the City of London on June 20th, 2011. Since that time, the City has evolved its delivery of social and affordable housing as is true across the Ontario social housing sector. This lack of flexibility restricts LMCH's ability to respond to growing and changing needs such as new and unique capital deficiencies and changing tenant demographics.

In order to enable our strategic plan, we requested in June 2018, that the City consider amending the Shareholder Declaration to acknowledge the following:

- LMCH's role in providing a broader range of housing forms to achieve mixed-income profiles and stronger communities;
- Flexibility to build improved revenue streams and a stronger balance sheet;
- New financial tools/greater financial flexibility in our relationship with our funders;
- Performance monitoring based on outcomes confirming the Board's responsibility to lead; and
- Support for our role in advocating for our tenants, taking a leadership role in the sector and supporting broader partnership development.

This position has been supported by PricewaterhouseCoopers LLP as part of the 2018 internal audit report that reviewed the operational alignment of our funding model and strategic plan. A copy of LMCH's response to the audit report can be found here <https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=46708>

The City's recommendation to "continue to work with LMCH and to bring forward at a future meeting a revised Articles of Incorporation endorsed by both the Civic Administration and LMCH for Council's approval" and lack of clear shareholder director, limits our ability to plan appropriately. All of our operational plans, including an Asset Management Plan, Regeneration Plan, Community Development & Tenant Engagement Plan, Long-Term Financial Plan, and Strategic Resource Plan, need to be advanced now in order to support our 2020-2024 multiyear budget submission.

Current Shareholder Declaration

As the sole shareholder of LMCH, the City of London establishes the overall direction and accountability rules for LMCH through the Shareholder Declaration. The Declaration provides both the range of accountability and operating practice, reporting structure and restricts the powers of the Directors to manage or supervise the management of the business and affairs of the corporation. LMCH operates within the Shareholder Declaration alongside its Articles of Incorporation established under the *Business Corporations Act*.

In general, corporations are governed by a Board of Directors. Shareholders meet annually, elect directors, and approve financial statements. Otherwise, the directors are mandated by the BCA to make decisions in the best interests of the Corporation. Section 108(3) of the BCA allows a sole shareholder to issue a "Shareholder Declaration" which takes back the powers of the board and vests them in the shareholder. Along with the responsibility, the shareholder assumes the liabilities of the directors with respect to the authorities which are reallocated to the shareholder.

Absent a Shareholder Declaration (or unanimous shareholder agreement where there is more than one shareholder), the Corporation may do anything a natural person may do. The board's only limits are (1) any restrictions in the articles, (2) the by-laws (though directors may amend these), and (3) the directors' obligation to act in the best interests of the Corporation.

Time has passed since the current Shareholder Declaration was executed, a new strategic focus has been articulated for LMCH, and the City has confirmed its organization and strategy for the development and expansion of housing services, facilities, and programs. When the original document was created the declaration was constructed around a goal of restricting the powers of LMCH and managing a transitional period.

An independent legal review the Articles of Incorporation and Shareholder Declaration in early 2018, concluded that while the operation of an Safe Consumption Facility (SCF) by a public housing corporation was not contemplated at the time that these governing documents were drafted, with the approval of the City, and adherence to the appropriate statutory requirements, it would be possible to amend both the articles and shareholder's agreement to allow for the operation of an SCF or other activities, projects or proposals. Any such amendments would not be specifically for the operation of an SCF but ought to be written in a way to support an SCF and other related activities to further both LMCH's and community objectives. The revised Articles of Incorporation (Restrictive Version) were written by LMCH's legal counsel with this intention.

In the shared goal of community renewal, increased independence and flexibility is important as we seek to collaborate in new and different ways to bring services and supports to our tenants and the wider community. As well, new or regenerated social housing today can become a host for a new range of commercial or community activity. This may, in turn, lay a foundation for more resilient communities with stronger and more diverse employment opportunities. This will again involve Service Manager collaboration about where to place services most effectively to achieve shared objectives.

CONSIDERATIONS:

We respect, understand and are mindful of the Civic Administration's comments and identification of risk related to the requested changes to the Articles of Incorporation. However, it is our position, supported by a legal opinion, that the mechanism for best mitigating these risks and areas requiring more clarity, is through a new Shareholder Declaration.

In reviewing Civic Administration's report, CarslylePeterson Lawyers, LLP states the following:

"The Report does not consider the control that the City maintains over LMCH via the Shareholder Declaration. Articles of incorporation are permissive. Control of this corporation always resides in the hands of the corporation's shareholder. The City of London, as LMCH's sole shareholder, is able to restrict LMCH's operations through the Shareholder Declaration. For example, we note that the Report is concerned that LMCH could become a "developer." Clearly, this cannot occur without the consent of the sole shareholder."

A second legal review provided by Dr. Richard Leblanc concluded that *" the shareholder authority is not diminished by the diversity of funding, or by decentralized and more autonomous, arm's length and flexible governance. The governance argument centers on flexibility and upward annual or regular reporting, with shared strategic and risk parameters between LMCH and the City, within which LMCH may function. This shared governance framework can be set out like an MOU and enables LMCH to be more responsive, and still, be ultimately accountable to the shareholder. The argument is that the proposed governance enhancements enables LMCH to be more flexible and responsive to their various plans, and still be accountable to the City. This is a valid and reasonable argument and position to take."*

Furthermore, in the LFP article dated February 26, 2019, Steve Pomeroy, an expert on housing policy and a senior research fellow at Carleton University's Centre for Urban Research and Education, said LMCH "has a legitimate case." Pomeroy continued by stating, *" Public housing organizations operate in a very regulated environment, mainly because in 2000 the province downloaded a whole bunch of responsibilities and assets to local municipalities and then embedded a whole bunch of rules. They're not very flexible and they're very difficult to change. That doesn't allow for the kind of creativity or innovation that's needed to deal with housing challenges in today's environment. Many communities have brought their public housing work back inside city hall rather than using a housing corporation as an arm's length agency. But that element of independence is important to deal with housing challenges and remain nimble. They don't need to get council approval every time they want to look around the corner. If you really want to change the culture and enable organizations with a social mission to operate with more of a market discipline, you need to give them the space to do that."*

It is also important to identify the risks associated with not moving forward the requested amendments to the articles and not providing staff with clear direction to draft a new Shareholder Declaration that aligns to the strategic plan. These risks lie in four distinct areas:

1) Our Ability to Deliver on our Strategic Plan:

Our strategic objectives include metrics which have been incorporated into the City of London's Strategic Plan, so our success contributes greatly to the City's objectives of *Strengthening our Community* and the strategy of providing *Caring and Compassionate Services*. Our ability to enact these new strategies will provide new solutions for our tenants, buildings and communities, all to the effect of delivering better outcomes for our City as a whole. If the articles do not allow for activities such as development, improved tenant supports and other revenue-generating activities, we are left with the current model, which, based on the state of our buildings and the clear need to respond to the ever-increasing complexity of the needs of our tenants, is inadequate. We understand that Civic Administration acknowledges that flexibility is needed, however, we must get clear direction regarding Council's risk appetite for the creation of the structural conditions to begin moving towards innovative solutions and new models to achieve different results.

2) Our Ability to Plan Most Appropriately for the Multi-Year Budget Submission:

Quite simply, if there is not clear direction regarding our ability to pursue our strategic plan, our multi-year budget request for both operational and capital will fully be allocated to the City, as our ability to mitigate costs through innovative strategies is fully diminished. With amended articles and clear direction towards an aligned Shareholder Declaration, we can with much more specificity and confidence, pursue alternate and diverse sources of revenue to address our growing financial needs.

3) **The Ability to Respond Appropriately to the Need for Greater Support within Social Housing:**

We hear daily from our tenants about the difficulties of their lives within our buildings sites and communities. From increased work order requests to growing complaints regarding social issues, crime and challenges navigating our social housing processes, our tenants need support to have successful and satisfying tenancies. With nine out of ten of our tenants coming to us from special priority and urgent waitlists, the complexity of our tenant's lives cannot be understated, and their needs significant. Our future goals of ensuring tenants have the supports they need within housing require us to engage differently than a traditional landlord role, by not amending our articles, this gap in service and the impacts of this gap on our communities will continue to be apparent.

4) **The Ability to Adequately Address our Aging Infrastructure and Fill an Identified Housing Gap for Deep Affordability and Increased Stock:**

Our Strategic Plan clearly aspires to grow our housing portfolio to include supportive housing through affordable housing. We believe that through our regeneration, asset management, and development plans we can increase the provision of deeply affordable housing while maintaining our RGI requirements. This is long term work that needs to start in order to be available as the need continues to grow. As it stands, the current articles do not allow for us to grow in the various ways we envision. Without the ability to develop, we will not be able to grow our capacity to serve the community by being a critical part of the housing solution.

See Infographic: Creating the Framework for New Solutions Attached as Appendix B

CONCLUSION:

LMCH continues to believe that amending the Articles of Incorporation is essential to completing our 2017-2020 Strategic Plan. In order to deliver new solutions in service of our tenants, we need new opportunities which the amended articles would afford us to review and consider.

The Board has been passionate about setting a new path for LMCH to ensure that in the future we are far more than just a landlord. Having a clear direction from the Shareholder is critical given our planning activities in advance of the multi-year budget.

We understand and can appreciate the City's position in their response and have every intention of working in collaboration to address their concerns regarding risk and language. It is our belief that there is a common ground and a way that we can move forward by addressing the City's concerns through a new Shareholder Declaration.

We are looking to unify on a common objective we share with both Civic Administration and Council around the overall impact that Community Housing would have on our tenants and community at large.

Attachments: Appendix A – Special Resolution of the Sole Shareholder
Appendix B – Infographic: Creating the Framework for New Solutions

APPENDIX A

LONDON & MIDDLESEX COMMUNITY HOUSING INC.

Special Resolution of the Sole Shareholder

Recitals:

- A. The Corporation was incorporated by a certificate of incorporation dated December 14, 2000, with the name London & Middlesex Housing Corporation. The name of the Corporation was changed to London & Middlesex Community Housing Inc. via articles of amendment issued on August 20, 2018.
- B. It is considered necessary and expedient in the interests of the Corporation to amend the articles of the Corporation to better align the articles of the Corporation with the priorities identified in the Corporation's latest strategic plan.

NOW THEREFORE BE IT RESOLVED AS A SPECIAL RESOLUTION THAT:

- 1. The articles of the Corporation be amended to provide that the business of the Corporation shall be as set out in Schedule "A" attached hereto.
- 2. Any directors or officers of the Corporation be and are hereby authorized and directed to sign all documents and do all things necessary or desirable to effect such amendment including the delivery of articles of amendment in prescribed form to the Director under the *Business Corporations Act* (Ontario).

The foregoing special resolution is hereby passed by the sole shareholder of the Corporation pursuant to the provisions of the *Business Corporations Act* (Ontario).

DATED as of the ___ day of _____, 2019.

**THE CORPORATION OF THE CITY OF
LONDON**

By: _____
Name:
Title: Mayor

By: _____
Name:
Title: City Clerk

SCHEDULE A

The business of the corporation shall be restricted to:

- i. the development, provision, operation and maintenance of housing accommodation, with or without any public/community space, recreational facilities, commercial space, or buildings appropriate thereto, whether or not in partnership with for profit, not for profit, or governmental entities, in accordance with the Act;
- ii. obtaining outside sources of financing and revenue to further the provision of housing accommodation, as permitted by the Act;
- iii. the provision of programs and supportive housing to tenants and the community in accordance with the Act, including but not limited to, providing rent-gear-to-income assistance to households of low to moderate income and facilities which assist with vulnerable populations;
- iv. any other matter that is delegated to the corporation by the service manager in accordance with the Act; and
- v. any other matter that is prescribed under the Act,

and the corporation shall exercise no powers other than those required in carrying on of such business and actions reasonably incidental thereto.

CREATING THE FRAMEWORK FOR NEW SOLUTIONS

An overview of how changing the Articles of Incorporation for London & Middlesex Community Housing is linked to solving the complex and urgent need for improved and expanded housing options in our community.



CURRENT STATE

CHALLENGES
* Not an exhaustive list

- Increased complexity of tenant needs 9/10 new tenancies from Urgent or Special Priority lists.
- Not eligible for many grants/donations based on our designation (not a non-profit, inability to create a non-profit division).
- No reserves held by us means limited ability to plan for future or large projects, new developments etc.
- Increased safety concerns and limited resources to respond.
- Not funded to provide supports to tenants other than to act as a landlord. This role does not allow for specialized/supportive housing models needed to address tenant needs.
- 1/3 less turnover due to lack of other housing options.
- Aging Infrastructure = 230M investment to address.

RESOURCES

RESOURCES WE CAN PURSUE WITHIN CURRENT ARTICLES ARE LARGELY DEPENDENT ON THE CITY AND PARTNERS

- Funding through multi-year budgeting process at CITY
- Business case submission for funding from CITY
- Supports through partnerships with resource strapped community partners (with limited results, accountability and systemic approach to addressing root causes of tenant issues)

FUTURE STATE:

- Ability to plan alternate revenue streams
- Ability to create financial plans that incorporate reserves
- Risk mitigation through amended shareholder declaration and accountability rules
- Ability to leverage current stock to improve, regenerate and develop new stock
- Ability to seek and develop new revenue streams such as mixed portfolio housing, social enterprise and other financial tools (social bonds)
- increased Supportive Housing to grow housing stability



WE CANNOT SOLVE OUR CURRENT AND FUTURE PROBLEMS WITH OLD SOLUTIONS, NEW ARTICLES MEAN NEW POSSIBILITIES FOR SOCIAL HOUSING IN OUR CITY AND COUNTY

Housing matters. People matter more.

On Monday March 4, 2019 We ask Council to create the conditions for different outcomes in social housing:

Approve the amended articles of incorporation

Provide specific direction to for Civic Administration to work with LMCH Staff to re-write the shareholder agreement in alignment with the accepted Strategic Plan of LMCH