The Disposition Protocol will be subject to review within 2 years from the date of approval.

PROPERTY DISPOSITION PROTOCOL
HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD

Overview:

In accordance with section 193(3) of the Education Act, a board has the power to sell, lease or otherwise dispose of any school site or part of a school site of the board or any property of the board, on the adoption of a resolution by the Board of Trustees that the site or part or property is not required for the purposes of the board.

With funding formula changes and facing declining enrolment, School Boards are in a position where they must consider the disposition of surplus property to generate funding in support of new school construction and or the acquisition of new school sites.

It remains in the best interest of the Board, students and community ratepayers to achieve the maximum return for surplus properties, while recognizing the need to maintain community involvement throughout the disposition process.

- The "Property Disposition Protocol" is to inform all interested parties of the steps taken by the HWDSB in the disposal and potential re-use of surplus school sites or property. It is also understood that the City of Hamilton is a significant community partner in the long and short term municipal planning aspects of Board sites as they exercise local jurisdictional authority over all land use applications and designations.

For the purpose of this Protocol, the term "disposition of land" can relate to:

- An entire school and property;
- Excess land on a piece of school property (on which a school will continue to operate);
- Vacant land
- Exchange of Lands

The Board retains the right to alter the application of the Property Disposition Protocol.

Guiding Principles:

The Property Disposition Protocol has been developed with an aim to ensure:

1. that Trustee fiduciary responsibility and effective public sector governance is clearly demonstrated when disposing of Board entrusted property assets;
2. full compliance with all Legislative and Regulatory requirements; and,
3. direction and decisions are clearly articulated in a timely fashion with the City of Hamilton and the Community at large; and,
4. open and timely communication

Benefits:

The Property Disposition Protocol is expected to achieve a number of benefits:

- Helping to well-position the Board as progressive and forthright, given the emphasis on transparency and upfront disclosure of intention;

- Enabling the Board to counter claims frequently made in the context of the existing process that an individual or organization "did not know about" or "did not have enough time" to consider and respond to the land disposition plan. This will be of particular value in the context of helping facilitate community group and City of Hamilton dialogue about the future of a particular property; and,

- Informing potential buyers and potentially stimulating greater interest in and higher prices for the property.

Definition of Key Terms:

- The term "Market Value" is defined as "the most probable price in terms of money which an estate (or interest) in real property should bring in a competitive and open market under conditions requisite to a fair and typical sale between a willing seller and willing buyer, each acting prudently and knowledgeably and assuring the price is not affected by undue stimuli" it is also often referred to as the "most probable selling price". During the 90 day "Preferred Agency" process, should there be disagreement on fair market value, the Regulation provides for adjudication through a defined arbitration process.

- As defined by the Board's solicitor, a "Bona Fide" offer is one that is presented in a legal format and will become binding upon the Board's endorsement. Conversely, a letter of understanding or intent to purchase, a Board or Council motion or any other form of expressed interest to purchase does not satisfy the legislative requirement and must be rejected. Should an Offer to Purchase be received from a Preferred Agent following the conclusion of the circulation period, the Board having satisfied the legislative requirements of Ontario Regulation 444 is not obligated or compelled to entertain the offer and the submitting agency loses their preferred status. During the Preferred Agency process, no offer can be considered or accepted until the expiry of the 90-day period. Following the close of the 90-day period, bona fide offers to purchase must be dealt with in accordance with the prescribed Regulation priority sequence.

- All references to the 90 or 60 day consultation period within this "Protocol" is to be understood to mean that administration will endeavor to accommodate a 90 or 60 day period although the number of days may have slight deviations due to weekends, holidays and timing of scheduled Board meetings.

Approach:

The Board currently adheres to a property disposition protocol, in accordance with the Education Act and Ontario Regulation 444 (Ont. Reg. 444). It is this Regulation that, at a minimum, prescribes:

- the list of Ministry Preferred Agents and their priority ranking that a Board must follow when assessing bona fide offers to purchase;
- a 90 day offering period be extended to Preferred Agencies; and,
- the Board's obligation to obtain "market value" for all property dispositions.

As part of the commitment to operating in a professional and responsible manner, the Board recognizes the need to maximize the efficacy of its relationship with the City of Hamilton — particularly given that: the City has responsibility for park lands; is one of the Ministry identified "Preferred Agents"; and, that it manages the zoning change and development applications processes. In order to provide a pre-consultation opportunity with the City of Hamilton and local communities the disposition protocol has been assembled in three phases:

1. Pre-Consultation Process - (Pre Ont. Reg. 444)
2. Engagement of Ont. Reg. 444
3. Disposition - (Post Ont. Reg. 444)

In summary,

- **Phase 1 -** is the key communication period that will officially inform the City of Hamilton and local communities in advance of potential real property dispositions.

- **Phase 2 -** is the engagement of Ont. Reg. 444.
  Following the adoption of a resolution that the site or part or property is not required for the purposes of the Board, Ont. Reg. 444 will then be engage. The Board is compelled to satisfy all of the conditions therein and has no authority to alter, deviate or change in any way the legislative requirements**.**

- **Phase 3** – At the conclusion of the 90 day circulation period and having satisfactorily completed all conditions of Ont. Reg. 444, the Board's property will be sold to a "Preferred Agent" as prescribed or in the event of no sale under Ont. Reg. 444; the Board will be legally in a position to dispose of real property, at "Market Value" guided by Administrative direction. The Board will continue to support a submitted bona fide offer through to conclusion beyond the 90 day preferred agency timeframe, providing the formal arbitration process has not been engaged and the sale can be finalized within 45 additional days.

Phase 1 – Communication and Planning

Annual Capital Planning:

- Each year the Board relies on an updated Capital Plan to provide direction specific to the accommodation needs of the school board. The Board's capital plan is an integral part in the early identification of potential property disposition. The content of the report identifies all school board property assets along with strategic accommodation "Concepts Plans". The purpose of a "Concept Plan" is to provide guidance on student accommodation needs and also identify those facilities and properties that have the potential for disposal in the short, medium and long term.

- Accommodation Review Committees sanctioned by the Board will be empowered to conduct area reviews in accordance with the Student Accommodation Policy. Committee members, among others, include parents, ward councilors and community leaders. This diverse membership will assist the Board through its decision making process while also gaining in-depth knowledge of potential schools that may be recommended for closure. Through the public Accommodation Review process, both the City and Community will have up to two years lead time prior to disposal of a Board sanctioned school site. This lead time will provide the City and community ample opportunity to determine municipal requirements for the site and for the City to be prepared to submit a "bona fide" offer once Ont. Reg. 444 is engaged. As well, properties formally identified by the Board as surplus to its needs, will follow a 60 day notice period as outlined in the "Public Notice" section of this protocol.

- Following approval by the Board, the annual Capital Plan will be forwarded to City officials and posted on the Board's web site.

Identification of Surplus Sites Outside of the Capital Plan:

From time to time the Board may deem vacant lands, portion(s) of existing land or other lands surplus to its needs. In these circumstances, the Board will follow the conditions outlined in the "Public Notice" section of this Protocol. Administration will provide a report to the Board detailing the outcome of the 90 day consultation process and make recommendations for consideration. Should the Board then declare a property or portion of a property surplus to its needs, Ont. Reg. 444 will then be engaged.

Public Notice:

The aims of a joint City of Hamilton and Board pre-consultation process are to:

- meet a public and stakeholder expectations of helping to shape future development on lands of interest to them;
- keep the community better informed about what might be undertaken on surplus Board lands;

- uncover issues of concern and act as an 'early warning system' for the Board; and,
- minimize disruption to and time spent on the formal rezoning/ applications

To this end, Administration will conduct the following public process:

- In addition to posting a "Notice of Intent" to sell school lands' on the Board's web site, Administration will provide advanced public notice to known interested parties and residents in the vicinity of the site to indicate that the site is surplus, and that an appropriate after use is being sought. This advance notice will be issued 90 days prior to the Board's motion to declare the property surplus and commencing Ont. Reg. 444 (the formal 90-day preferred agency process).

- The public will also be invited to a meeting to seek input on the appropriate after-use of the site and the potential for re-use of any existing buildings. Administration will explain the reason for the disposition, the legal requirements under Ont. Reg. 444 including the respective roles of key players in the process including the City of Hamilton as a preferred agency, Administrations desired intended planning use of the property and the Board's legal requirements relating to proceeds from disposition.

- Administration will share with at the Public meeting, approaches being considered to maximizing land values. Examples of disposition strategies include but are not limited to:
    - Determining the highest and best use of the site from a property planning perspective e.g. creating an approved plan of subdivision;
    - Developing lands to the point of registration of lots;
    - Amending the Official Plan, applications for zoning change;
    - Sever existing buildings leaving a vacant property with separate parcels disposed of separately;
    - Maintaining property in inventory for future fair market value disposition; and,
    - Requiring a school building to be demolished subject to Ministry approval.

- It is to be emphasized to the general public and the City of Hamilton that all disposition of Board property must be at 'fair market value.' This is both a regulatory requirement and a strategic imperative. Property is a tremendous Board asset — revenues from the sale of such enter the Capital Reserve accounts and are relied upon to support capital priorities and site acquisitions.

- Any disposition strategy or strategies will be recommended to the Board for approval following the 90 day public consultation period.

Phase 2 - Formal Property Disposition Process

Education Act

Under Section 194(3) of the Education Act, a Board has power to sell, lease or otherwise dispose of any school site or part of a school site of the Board or any property of the Board,

a) On the adoption of a resolution that the site or part or property is not required for the purpose of the board; or,
b) On the adoption of a resolution that the sale, lease, or other disposition is a reasonable step in a plan to provide accommodation for pupils on the site or part or property.

At the conclusion of the 90 day public consultation process, Administration will provide a report to the Board with recommendations regarding the declaration of property to be surplus to the Board's needs. Upon the adoption of such a motion, Ontario Reg. 444 will be engaged.

Ontario Regulation 444

Ontario Regulation 444/98 governs the disposition process of surplus real property.
Having initiated the process to dispose of surplus property as per s 194(3), first rights of acquisition must be extended to a prescribed list of preferred Ministry of Education agencies:

1. French Language Public District School Board
2. English Language Separate District School Board (H.W.C.D.S.B.)
3. French Language Separate District School Board
4. The board of a Protestant separate school
5. English Language College (Mohawk College)
6. French Language College
7. University (McMaster University)
8. Crown Right of Ontario
9. Municipality (City of Hamilton)
10. Crown Right of Canada

When beginning the circulation process, the Board shall issue a "Proposal to Sell" real property. This proposal must be issued on the same day to all the above noted preferred agencies. Upon issuing the proposal to sell, preferred agencies must be provided 90 days in which to submit a bona fide offer. During the process, offers that are received can not be considered until the expiry of the 90-day period.

Following the close of the 90-day period, bona fide offers to purchase must be dealt with in accordance with the priority sequence as outlined above. This prescribed priority sequencing requires the Board and the "Preferred Agent", who has submitted a bona fide offer and who has the highest ranking, to come to terms on market value. Should there be no resulting binding Purchase and Sale Agreement; the parties can agree to have the "market value" adjudicated through a defined arbitration process. At any time the "Preferred Agent" may choose to withdraw their interest in the site. Should the highest

ranking "Preferred Agent" withdraw, the Board is then legally permitted to consider the next, priority ranking, bona fide offer from with the "Preferred Agency" sequence.

Should an offer to purchase be received from a Preferred Agent following the conclusion of the circulation period, the Board having satisfied the legislative requirements of Regulation 444 is not obligated or compelled to entertain the offer and the submitting agency loses their preferred status. The Board will continue to support a submitted bona fide offer through to conclusion beyond the 90 day preferred agency timeframe, providing the formal arbitration process has not been engaged and the sale can be finalized within 45 additional days. The Board will continue to respect the preferred agency status and ranking during the 45 day period.
At the conclusion of the prescribed period of time, the Board must file with the Ministry that all legislative requirements have been satisfied before proceeding to the Board's Administrative process.

Phase 3 - Post Ont. Reg. 444 Circulation - Administrative Process:

If the Board does not receive an Offer to Purchase from a body to which a proposal was issued before the expiration of the 90day period, Administration will proceed to carry out the necessary actions required in order to implement surplus lands disposition recommendations as directed by Board. When disposing of surplus property Administration may:

- Undertake a public tendering bid process
- Receive offers to purchase
- Publicly advertise and negotiate a sale
- Engage a professional Real Estate firm to sell on behalf of the Board
- Transact with an individual purchaser (single source purchaser) when dealing with a unique set of land or development circumstances involving relatively minimal land sizes

All transactions that result from the disposition of properties require:

- Compliance with all provincial and municipal requirements
- Professional market value assessment
- Any agreements and/or applications are in a form satisfactory to the Board's solicitor

Summary Role of Trustees

Step 1) Initiating Stage:

- Trustees receive report from Administration which will identify those properties whereby a notice is to be issued informing the public and the City of Hamilton of the Board's "Intent to Sell".

Trustee action:

- ***Motion must by passed by the Committee of the Whole followed by the Full Board before any action can be initiated.***

Step 2) Administration to provide for a 90 or 60 day community awareness period:

public notice
community meeting
Community to be made aware of disposition protocol and Ontario Regulation 444 as well as the "Highest and Best Use" that Administration anticipates seeking after the conclusion of the circulation process should there be no sale to a "Preferred Agency".

Step 3) Administration's 2nd Report to Board:

summary of the community awareness outcome
Identify "Highest and Best Use" that Administration anticipates seeking after the conclusion of Ontario Regulation 444 should there be no sale to a "Preferred Agency".

Trustee action:

- ***To declare property surplus to the Board needs and to grant authority to Administration to carry out the disposition process.***
- ***Motion must be passed by the Committee of the Whole followed by the Full Board before any action can be initiated.***

Step 4) Engage Ontario Regulation 444

- 90 day circulation process
- No offers can be considered from a Preferred Agency until after the 90 day period expires
- Bona fide offers must be considered in priority sequence and must represent "Market Value".

Step 5) Administration's 3rd and Final Report to Board:

- Administration's to prepare "in-camera" recommendations regarding an Offer to Purchase the surplus site.

Trustee Action:

- ***Motion must by passed by the Committee of the Whole followed by the Full Board before sales transaction can conclude.***

Step 6) the final sale will be posted on the Board's web site as well as a letter advising the City as to the final disposition of Board lands.

<u>Additional Processing Information:</u>

- All property negotiations and transactions are considered "In-Camera" under Section 207 (2) of the Education Act and no public information regarding the sale will be released or made available to the general public until the transaction is complete and property ownership transferred between parties.
- When a property is tendered, there will not be a public opening of the tenders.
- All property appraisals are considered confidential and not released for public review.

- When Offers to Purchase are received after the completion of Ont. Reg. 444, Administration will make recommendations to the Board regarding acceptable offers.
- Public release of a specific property value will not be disclosed until Ont. Reg. 444 and the tender process, when engaged, is complete.
- Whereby a remnant parcel(s) of Board owned land is created through either City or Board initiatives, the abutting resident land owner(s), providing all legal and legislative processes being satisfied, shall be provided with the first right of refusal to the land based on a current market value appraisal.

Property Disposition Protocol Exemptions

The following circumstances are exempt from the Public Notice process:

- Board lands required for roadway purposes
- minor adjustments to property boundaries
- Easements or Licenses