Dispositions of Surplus Properties by School Boards — How New Rules Benefit Community Hubs and Impact Others

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On May 5, 2016, the Ontario government amended the rules that govern the sale of surplus properties by school boards. The new rules allow for the exploration of the property as a community hub or other public use, while continuing to ensure that the school board receives good economic value for the property.

Declining public school enrollment has created an expensive surplus of space which school boards must sell or otherwise find uses for. For example, an independent review of the Toronto District School Board, submitted to the Minister of Education on January 15, 2015, found that 131 of the Board's 585 schools were operating at 59% capacity or lower. According to the review, the Board faces a renewal backlog of about $3 billion, and lacks funding to address all needs.

At the same time, as we explored in BLG's April 22, 2016 Bulletin: "Introduction to Ontario's Community Hubs Strategic Framework and Action Plan", the Ontario government has expressed a new dedication to fostering community hubs as a key element of the cost-efficient and effective delivery of services to Ontario's diverse communities. It is not surprising, therefore, that surplus schools (whether all or part of the building) are often seen as an ideal location for community hubs.

As we noted in our previous Bulletin, Infrastructure Ontario permits the sale of surplus government properties to not-for-profit organizations at "market value" prior to the property being placed on the open market for sale. However, public organizations felt that the timeframe for this “pre-sale” was too restrictive and that requiring payment of market value did not account for the economic and social value of repurposing assets for the public good.

On May 5, 2016, O. Reg. 444/98 was amended in response to recommendations in the *Community Hubs in Ontario: A Strategic Framework and Action Plan* report. These amendments are expected to come into effect on September 1, 2016.

The first key amendment extends the circulation timelines. Organizations that submit an "expression of interest" within 90 days of receiving notification of sale or lease of surplus property now have an additional 90 days to submit a formal offer.

The second key amendment expands and reprioritizes the list of public organizations entitled to receive notification of surplus school property sale or lease. According to the Ministry of Education, the prioritized list is now as follows (with public entities newly added to the circulation list in italics):

1. Coterminous school boards;
2. *Agencies accommodating Section 23 programming;*
3. *District Social Services Administration Boards (DSSABs) or Consolidated Municipal Service Managers (CMSMs);*
4. Public colleges;
5. Public universities;
6. *Children's mental health lead agencies;*
7. *Local Health Integration Networks (LHINs);*
8. *Public health boards;*
9. Provincial government (The Crown in Right of Ontario);
10. Lower-tier municipalities;
11. Upper-tier municipalities;
12. Local service boards;
13. *First Nation and Métis Organizations;* and
14. the Federal government.

Although the current round of amendments do not adopt the *Community Hubs in Ontario: A Strategic Framework and Action Plan* recommendation that an exemption to the fair market value requirement be made available where a viable community hub plan is presented for a surplus school property that cannot sustain fair market value, the government's objective is that the circulation timeline extension will give community agencies additional time to develop workable funding plans.

These amendments will be relevant not only to school boards and organizations looking to create community hubs, but also to private sector players who are interested in redeveloping school board property or, even more interestingly, are interested in creating a mixed-use development that incorporates space for public benefit. BLG has particular expertise with the issues associated with these types of developments (e.g. think about property tax issues!) and in light of these amendments, as well as the Ministry of Education's announcement on May 6, 2016 of almost $90 million in funding to expand community space, child and family programs and child care in schools, we look forward to working with our clients on some exciting new projects.

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