



PRINCE EDWARD ISLAND  
Regulatory & Appeals Commission  
Commission de réglementation et d'appels  
ÎLE-DU-PRINCE-ÉDOUARD

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**DOCKET:** LAM21005

**DATE:** February 3, 2022

**IN THE MATTER** of a proposal to restructure the City of Charlottetown pursuant to section 15 of the *Municipal Government Act*, R.S.P.E.I. 1988, c M-12.1.

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## **REPORT ON A PROPOSAL TO RESTRUCTURE THE CITY OF CHARLOTTETOWN**

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Panel Members:

J. Scott MacKenzie, Chair  
M. Douglas Clow, Vice-Chair  
Erin T. Mitchell, Commissioner

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## I. BACKGROUND

### A. General Overview

1. On October 19, 2021, the Prince Edward Island Regulatory and Appeals Commission (the “Commission”) received a proposal pursuant to section 15 of the *Municipal Government Act*<sup>1</sup> (the “Act”) from the City of Charlottetown (the “City”) to annex seven parcels of land, totaling approximately 116.30 acres of land located in the unincorporated community of Marshfield, bordering the City (the “Proposal”). The properties include: PID 140061, PID 140087, PID 1068873, PID 530972, PID 620989, PID 490573 and a portion of PID 992909 (the “Parcels”).<sup>2</sup>
2. The Proposal was initiated by the owners of one of the affected PIDs, PID 140087, being 101523 PEI Inc. Scott, James, Heather and Laura Lee Lewis (the “Lewis”) are the shareholders of 101523 PEI Inc. The Proposal has the support of the majority of current landowners.
3. Public notice of the Proposal was issued by the Commission on November 20, 2021.
4. The Commission received 10 responses to the Proposal from members of the public: 1 in support of the Proposal, 8 in objection, and 1 neutral response. The Commission heard from 5 of the affected property owners. 3 are in support of the Proposal, 1 objection and 1 neutral response requiring further confirmations from the City.
5. As a majority of the affected property owners are in favour of the proposal, and considering the City held three separate public meetings regarding the proposed annexation, and the Minister of Fisheries and Communities (the “Minister”) did not order the Commission to hold a public hearing,<sup>3</sup> the Commission did not hold a public hearing. The Commission is of the view that there have been sufficient opportunities for public discussion of the Proposal.

### B. Commission Recommendation

6. The Commission recommends that the Lieutenant Governor in Council approve the Proposal without modifications.

## II. LEGISLATIVE AUTHORITY

### A. Role of the Commission

7. The Commission’s role with respect to a proposal to restructure a municipality is advisory in nature. The Commission does not exercise decision-making authority with respect to the final determination of a proposal. This authority rests with the Lieutenant Governor in Council. Ultimately, the Commission is tasked with

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<sup>1</sup> RSPEI 1988, c M-12.1.

<sup>2</sup> Tab 1.

<sup>3</sup> Act, s.17(4)(b).

delivering recommendations to the Minister with respect to the proposal.<sup>4</sup> The Minister may accept, accept with modifications, or reject the recommendations of the Commission.<sup>5</sup>

## **B. Factors considered by the Commission**

8. In making its recommendations to the Minister, the Commission has considered the Proposal in accordance with the Act<sup>6</sup> and Regulations.<sup>7</sup>
9. The Proposal is a proposal to restructure a municipality by annexation of seven parcels of land located within an unincorporated area bordering the City. The Act and Regulations direct the Commission to consider a number of principles and criteria, including:
  10. the City's capability and ability to meet the needs of the residents;
  11. financial viability and economic activity;
  12. the impact, if any, on another municipality's ability to expand its boundaries or provide services<sup>8</sup>; and
  13. whether the Proposal supports ongoing municipal functions.<sup>9</sup>
14. The Commission must also consider that the City initiated the proposal following a request from the owners of one of the properties in the area to be annexed<sup>10</sup>.

## **III. PROCEDURAL HISTORY**

15. The Commission received the Proposal on October 19, 2021.<sup>11</sup>
16. Notice of the Proposal (the "Notice") was posted in accordance with the procedural requirements of the Act on November 20, 2021. Notice was published in the Guardian<sup>12</sup> and on the Commission's website. Notice was posted in three conspicuous areas of the City<sup>13</sup>. Copies of the Proposal were emailed to the Minister and the Federation of Prince Edward Island Municipalities.
17. The Notice explained that an individual or municipality could file, using the Ministerial approved form, a response to the Proposal with the Commission on or before December 20, 2021.

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<sup>4</sup> Act, s. 19

<sup>5</sup> Act, s. 20

<sup>6</sup> Act, s.19(2).

<sup>7</sup> Regulations, s.13.

<sup>8</sup> Regulations, s. 2

<sup>9</sup> Regulations, s. 14

<sup>10</sup> Regulations, s. 14(c)

<sup>11</sup> Proposal – Tab 1.

<sup>12</sup> Notice of Proposal – Tab 2

<sup>13</sup> City Hall, Mel's Petro Canada, Sherwood Drug Mart

18. The Commission received 10 comments. Of the comments received, three were filed by affected property owners: 1 in favour, 1 in opposition and 1 neutral to the Proposal. The Commission also received 7 objections from Marshfield residents.
19. The following table summarizes the responses received from the affected property owners:

<b>PID</b>	<b>Acreage</b>	<b>Owner</b>	<b>Response</b>
140061	0.44	Martin Fobes	Object
140087	69.03	101523 PEI Inc.	Support
1068873	4	M & D Construction	Support
530972	8.69	Jewell's Country Market Inc.	Neutral
620989	.07	Bell Canada	No response filed
490573	.44	101449 PEI Inc.	Neutral
992909*	12.57	Wendy and Rodney Chappell	Support

\*PID 992909 consists of approximately 22.55 acres in total, with approximately 12.57 acres being located in the unincorporated area, and the remainder is currently within the City boundaries

20. The submission filed in support of the Proposal was signed by three of the affected property owners, being the owners of PID 140087 (101523 PEI Inc.), PID 1068873 (M & D Construction Inc.), and PID 992909 (Wendy and Rodney Chappell)<sup>14</sup>. The Lewis Restructuring Submission is very detailed and of great assistance to the Commission.
21. Martin Fobes, owner of PID 140061, being approximately 21.50 acres of land, filed an objection against the proposal.<sup>15</sup> Mr. Fobes' main concerns are relating to the potential commercial development of the lands and the impact said development may have on the landowner's enjoyment of his lands. Mr. Fobes also raises a concern that his property taxes may be subject to significant increase if the proposal is accepted.
22. The owners of PID 530972 and 490573, being Jewell's Country Market Inc. and it's affiliated company, 101449 PEI Inc., filed a neutral response with the Commission.<sup>16</sup> The property owner requested further confirmation from the City that it will be able to continue to use their own well water and will not be required to use city water. To date, the City has provided verbal confirmation to the land owner that the well water can continue to be used. The land owner operates a greenhouse and raises concerns that using City water would require large capital investments to treat the water prior to use in plant growth. The landowner also raises concerns regarding development of the lands and the potential impact on traffic in the area.

<sup>14</sup> Lewis Restructuring Submission – Tab 3

<sup>15</sup> Fobes objection letter – Tab 4

<sup>16</sup> Jewell's Response – Tab 5

23. The primary concern mentioned in the objections filed by the Marshfield residents are in relation to the potential development of the subject lands.<sup>17</sup>

#### **IV. THE PROPOSAL**

24. The Commission has considered the Proposal in light of the relevant criteria discussed above and as required by the Act and Regulations.
25. The Commission finds that the Proposal complies with the technical requirements of the Act and Regulations, including the fundamental principles found in section 2 of the Regulations.<sup>18</sup>
26. The City conducted three public meetings with respect to the potential annexation and included the minutes from each in the Proposal. The extensive public engagement and supporting information greatly assisted the Commission in making its recommendation to the Minister.

##### **A. Overview**

27. The Proposal was originally initiated by the owners of PID 140087, being 101523 PEI Inc. The owners of PID 140087 own approximately 69 acres of land just outside the City's eastern boundary, and approached the City to annex their lands into the City<sup>19</sup> for purposes of future development. Upon review, it was determined that PID 140087 was not immediately adjacent to the City's current boundary, therefore the City conducted an in-depth review of the lands in the area to determine the appropriate area for annexation.
28. To determine the best step forward, the City conducted three community meetings regarding the potential annexation: September 10, 2018, October 16, 2018 and April 28, 2021<sup>20</sup>.
29. Approximately 60 Marshfield residents attended the September 10, 2018 meeting. The majority of residents were opposed to the City annexing any portion of Marshfield for fear of increased taxes, loss of productive farmlands, concern of growth changing the Community's rural character, concern for increased traffic congestions along St. Peter's Road, and affordability of water and sewer services<sup>21</sup>.
30. Approximately 65 individuals attended the second public meeting held October 16, 2018. Residents voiced similar concerns as at the previous meeting. Following this meeting, Council directed City staff to move forward with the annexation of the revised area, being the area included in the current Proposal.

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<sup>17</sup> Marshfield Resident Responses – Tab 6

<sup>18</sup> Act, s.15(5); Regulations, ss. 2, 13 & 14.

<sup>19</sup> Special Council Meeting, June 28, 2021 – Tab 1, Appendix E

<sup>20</sup> Tab 1, Appendix E

<sup>21</sup> Tab 1, Appendix E

31. The City consulted the affected property owners on April 22, 2021 to discuss the proposed annexation. The City noted that all but one was in favour of the annexation. The City noted that the owners of Jewell's Country Market Inc. were in favour subject to an accommodation to continue to use well water for their greenhouse operation. The one individual opposed was concerned with increased property taxes and the impact of nearby commercial development on his property.
32. A third public meeting was held April 28, 2021. Approximately 50 Marshfield residents were in attendance. The majority of those in attendance noted their objection to the Proposal and future development because "it would alter the "country" feel of the community and bring additional development pressures, and the subsequent effect on their current taxes"<sup>22</sup>.
33. A third public meeting was held April 28, 2021. Approximately 50 Marshfield residents were in attendance. The majority of those in attendance noted their objection to the Proposal and future development because "it would alter the "country" feel of the community and bring additional development pressures, and the subsequent effect on their current taxes"<sup>23</sup>.

### **Ability and capacity to meet the needs of residents**

34. The Commission is satisfied that the City has the ability and capacity to meet the needs of the affected persons.<sup>25</sup> This includes the administrative and technical abilities to meet those needs.
35. The Proposal will have a limited direct impact on property owners as it only involves seven properties. The City estimates that the Proposal will result in an estimated 4 new individual residents.
36. The Commission is also satisfied that the Proposal will support ongoing municipal functions, including water and sewer services and enhanced economic development.
37. The City is well-staffed, has a dedicated chief administrative officer and a number of departments which provide services to its residents, including infrastructure and planning departments. It is clear to the Commission that the annexation of these Parcels will not negatively impact the City's abilities to meet the needs of its residents.

### **Financial viability of the City**

38. The City's costs associated with the annexation can be accommodated with the Strategic Priorities & Intergovernmental Co-operation approved operating budget.

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<sup>22</sup> Tab 1, Appendix E

<sup>23</sup> Tab 1, Appendix E

<sup>25</sup> Regulations, s.2(a).

39. The Lewis Restructuring Submission indicates:

*“The City of Charlottetown already possess the ability and capacity to meet the immediate and long term needs of residents; there are a limited number of residents in the area proposed for annexation. That being said, the expansion of the boundaries in that area would facilitate the potential delivery of commercial, retail, and institutional services through the additional parcels that would come under a municipal planning framework.”*

40. Having reviewed the City’s 2021-2022 budget and consolidated financial statements, the Commission is satisfied that the City is presently financially viable and that the Proposal will not hinder the City’s viability.<sup>26</sup>

### **Stable base of economic activity**

41. The Commission is satisfied that the City has a stable base of economic activity.<sup>27</sup> The City’s estimated population is 40,500. It is the largest city in Prince Edward Island.
42. By allowing the Proposal, the Parcels, which currently fall under the Special Planning Area of the Planning Act Subdivision and Development Regulations, would be brought under City’s planning policies. This would permit future development of the Parcels following the City’s vision for future development in accordance with its Bylaw.
43. As set out in the Lewis Restructuring Submission, the Commission agrees that “having the subject properties covered by a municipal planning framework would allow the City to assign zoning to all seven parcel and facilitate and direct the future development of the parcels in a coordinated and policy-based fashion when appropriate”.
44. The Commission is satisfied that the City has a stable base of economic activity and that the Proposal is intended to grow this base.

### **Ability of other municipalities to expand their boundaries**

45. The Commission finds that the Proposal will have minimal to no impact on the ability of other municipalities to expand their boundaries.<sup>28</sup> The properties to be annexed are currently part of an unincorporated area and not adjacent to any other municipalities.

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<sup>26</sup> Regulations, s.2(b).

<sup>27</sup> Regulations, s.2(c).

<sup>28</sup> Regulations, ss.2(d)



46. Given the location of the Parcels,<sup>29</sup> the Commission is satisfied that approval of the Proposal will not prejudice the ability of other municipalities to restructure their boundaries, should they so desire.

### **Ongoing Municipal Functions**

47. The Regulations require the Commission, in making its recommendation to the Minister, to consider whether the Proposal supports ongoing municipal functions.<sup>30</sup> The Commission is satisfied that the Proposal demonstrates it supports ongoing municipal functions.
48. The Proposal states it will provide the following services to the Parcels: planning and development, public works and beautification, police, fire, recreation, tourism and economic development, environment and sustainability, finance, HR and administration, and in time, expanded transit services and water and sewer services.
49. Furthermore, the Proposal will tie the development of the Parcels to comprehensive land use planning under the City's Official Plan and Bylaw.

### **Land use planning**

50. Land use planning is not one of the criteria to be considered for city annexations under the Regulations; however, the Commission wishes to comment on land use planning for the proposed annexation in light of the objections received in relation to the Proposal.
51. The Commission notes that the Parcels are currently located within the Charlottetown Region Special Planning Area established pursuant to the Planning Act Subdivision and Development Regulations. These regulations address the lack of land zoning near cities and towns and provide ground rules for land use in specific designated areas of PEI to provide for orderly and well planned development in areas without an official plan.
52. A number of the letters of objection filed with the Commission noted recommendation number 8 found in the Land Matters Advisory Committee's final report dated July 2021:
53. "That the provincial government immediately implement province-wide interim regulations to further regulate subdivision and development in areas without an official plan until a province-wide land use planning framework is adopted."
54. To date, no such regulations have been enacted implementing this recommendation.

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<sup>29</sup> See Map, Tab 3.

<sup>30</sup> Regulations, s.8

55. The City has an Official Plan and Zoning and Development Bylaw which provides a process for rezoning lands within the City's boundaries. Should the Proposal be approved, the City would undergo an assignment of zoning designations to the Parcels. This would involve a public process to amend the City's Official Plan and Bylaw.
56. The Commission notes the Proposal will support and satisfy the objectives of the SPA, promoting orderly and well-planned development over time.
57. While the Commission is satisfied that the City is well-positioned to address future development of the Parcels in accordance with the processes set out in its Development Bylaw, the Commission does recommend that the Minister work with the City to ensure compliance with the Planning Act and its regulations, as they pertain to the Charlottetown Region Special Planning Area.

### **Proposed boundary is capable of definition**

58. The proposed boundary is capable of definition and the Commission recommends its approval. A map outlining the proposed boundary is attached to this report at Tab 7.

## **V. CONCLUSION**

59. The Commission has considered the Proposal in accordance with its obligations under the Act and Regulations. The Proposal satisfies the Principles set out in section 2 of the Regulations and demonstrates that the Proposal supports ongoing municipal functions.
60. The Commission recommends approval of the Proposal.

**DATED** at Charlottetown, Prince Edward Island, February 3, 2022.

**BY THE COMMISSION:**

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J. Scott MacKenzie, Q.C., Chair

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M. Douglas Clow, Vice-chair

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Erin T. Mitchell, Commissioner

**VI. INDEX TO APPENDICES  
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- 6** Marshfield Residents' Submissions
- 7** Map of affected area