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## MEMORANDUM

January 4, 2022

To: Jennifer Bisley, Executive Director  
The Blue Mountains Attainable Housing Corporation

From: Suzanne Craig, Integrity Commissioner/Accountability Officer

Re: Accountability Regime Options for the Blue Mountains Attainable Housing Corporation (BMAHC)

### Background:

In October 2020, the Board of Directors (the “Board”) of the BMAHC appointed me as the Corporation’s Integrity Commissioner for a period of one year, ending on September 21, 2021.

My Agreement with the BMAHC set out the duties of the role of Integrity Commissioner, which included providing advice to members regarding ethical obligations and responsibilities of Board Members under the code of conduct, as well as Investigation of Formal Complaints alleging the contravention of Code or MCIA rules by Directors.

I commend the efforts of the Board of Directors of the BMAHC for the decision to adopt a Code of Conduct for Board Members and for appointing an Integrity Commissioner to receive and review complaints regarding conflicts of interest and other integrity issues.

During the year of my appointment, I received several Code complaints and in reviewing these, I identified issues which underscored the fact that the governance structure of the BMAHC is quite different from that of municipalities under Part V.1 of the *Municipal Act* (Accountability and Transparency which contains the statutory Integrity Commissioner scheme for Code and MCIA complaints). During my time as the Integrity Commissioner for the BMAHC, it became evident that the fact that I held the dual role of appointed municipal Integrity Commissioner for the Town of the Blue Mountains and BMAHC Integrity Commissioner, some members of the public came to the incorrect conclusion that the BMAHC Board Members were governed by the same accountability provisions as municipal councillors for the Town of the Blue Mountains. This is not the case. Many of the complaints that I received during my time as Integrity Commissioner for the BMAHC underscored a lack of understanding of the role of a Director of the Board. In addition, there was lack of understanding of the distinct role of the two municipal

members of council appointed to the BHAHC Board of Directors. Based on my experience as the Integrity Commissioner for the BMAHC for the period October 2020-September 2021, I have decided to write this Memorandum to provide accountability options for the Board's consideration.

### **Implications of the current Legislative regime:**

Upon review of the relevant provisions of the MCIA and the *Municipal Act*, it is my position that the BMAHC is not a "local board" for the purpose of the Accountability and Transparency provisions (s. 223.4.1 or 223.4(1) ) of the *Municipal Act*.

Despite the fact that the MCIA applies to BMAHC Board Members, the *Municipal Act* provisions under s. 223.4.1(2) relating to integrity commissioners, do not.<sup>1</sup>

This creates a number of issues to be considered in the creation of an accountability regime at the BMAHC:

1. the six-week time period to apply to a court is not extended pursuant to s. 8(3)(3) or (4) of the MCIA because even if an Integrity Commissioner is appointed to the BMAHC, she is not conducting an inquiry under s. 223.4.1 of the *Municipal Act*. So as soon as the Integrity Commissioner is told about these issues, she would need to investigate and either apply to the court within six weeks or tell the person that she won't apply within their six-week time frame to apply to a court. This will create some very urgent deadlines.
2. Under the current legislative regimes, the Integrity Commissioner of the BMAHC does not automatically have the same protections as would a municipal Integrity Commissioner under the *Municipal Act* and same powers (such as referral powers, access to corporate records, confidentiality).
3. Only a municipal Integrity Commissioner (governed by the rules of Part V.1 of the *Municipal Act*) can bring an application under the MCIA as the *Act* empowers an elector, a municipal Integrity Commissioner or "a person acting in the public interest".

### **Possible Solution Options:**

The following are options that the Board of the BMAHC can consider, in consultation with the Corporation's legal counsel:

- (i) The BMAHC can attempt to create an Integrity Commissioner position parallel to the one set out in the *Municipal Act* regarding the statutory role for municipalities. Instead of giving the Integrity Commissioner referral powers to a judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether a Director has contravened section 5, 5.1 or 5.2 of the MCIA, the BMAHC may consider a partial fix of appointing the Integrity Commissioner with the power to make a finding that the MCIA provisions

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<sup>1</sup> There are other sections of the *Municipal Act* that apply expressly to municipally controlled corporations (like the Auditor General powers in s. 223.19)

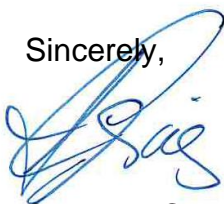
- have been engaged. However, only the courts and not an integrity commissioner, has jurisdiction to enforce the provisions of the MCIA and make a determination as to whether a Director has contravened the Act;
- (ii) The BMAHC can adopt a statutory regime similar to that set out in the *Municipal Act*, but expressly exclude MCIA issues from the complaint investigation officer's authority. The BMAHC can include a working definition of conflict of interest in its governance document that means a situation in which a Member has competing interests or loyalties between the Member's personal or private interests and their public interests as an appointed representative such that it might influence their decision in a particular matter.

In this way, if a member of the public believes that a Director of the BMAHC Board has contravened section 5, 5.1 or 5.2 of the MCIA, she or he can make an application pursuant to the MCIA directly to the courts.

- (iii) The BMAHC can adopt an accountability regime like most corporations, including municipal services corporations, that do not have a public facing complaints investigation officer. With this option, if there is a complaint that engages the corporation's conflict of interest or harassment policies, the corporation can hire an independent investigator who conducts an investigation and submits a report to the corporation's Chief Executive Officer/Executive Director who makes recommendations to the Board and the Board determines what will be done with the recommendations, including removing the Director or financial restitution. The report and recommendations of the investigator remain internal. To ensure transparency, the BMAHC can issue a statement following the in-camera meeting at which the recommendations are discussed, advising the public that the Director was sanctioned or removed, or will get training, etc.

I would recommend that the Board of Directors consider the above-noted options with the Corporation's legal counsel.

Sincerely,



Suzanne Craig  
Integrity Commissioner