

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPLICATION by the TOWN OF CANSO for the Dissolution of the Town

BEFORE: Roland A. Deveau, Q.C., Acting Vice-Chair
Kulvinder S. Dhillon, P.Eng., Member
Murray E. Doehler, CA, P.Eng., Member

COUNSEL:

TOWN OF CANSO
Duncan J. Chisholm, LL.B.

MUNICIPALITY OF THE DISTRICT OF GUYSBOROUGH
Robert G. Grant, Q.C.

UNION OF NOVA SCOTIA MUNICIPALITIES
Jimmy MacAlpine, President
(Deputy Warden, Municipality of the District of Digby)

PROVINCE OF NOVA SCOTIA
(Service Nova Scotia and Municipal Relations)
Duane A. Eddy, LL.B.

BOARD COUNSEL: Richard J. Melanson, LL.B.

HEARING DATE: December 5, 2011

SUBMISSIONS: January 10, 2012

DECISION DATE: **January 19, 2012**

DECISION: **The Town shall be dissolved, effective July 1, 2012.**

I INTRODUCTION

[1] The Town of Canso (the “Town”) filed an application under the *Municipal Government Act*, S.N.S. 1998, c. 18 (the “Act”) with the Nova Scotia Utility and Review Board (the “Board”) on September 29, 2010 for a Preliminary Order for the dissolution of the Town.

[2] Formal standing in this proceeding was granted by the Board to the Municipality of the District of Guysborough (the “Municipality” and “MODG”), to the Union of Nova Scotia Municipalities (the “UNSM”) and to Her Majesty the Queen in right of the Province of Nova Scotia as represented by the Department of Service Nova Scotia and Municipal Relations (the “Province” and “SNSMR”).

[3] The Board held a hearing for a Preliminary Order at the Canso Fire Hall, in Canso, Nova Scotia, on November 12, 2010, to determine, among other matters, which studies should be prepared with respect to the application.

[4] Following the hearing for a Preliminary Order, the parties consulted each other to seek consensus with respect to which studies should be prepared in advance of the hearing on the merits of this application, including terms of reference and a timeline. The Board also held a preliminary hearing by telephone on February 23, 2011 to canvass the list of proposed studies and the filing timeline for the evidence.

[5] After further submissions from the parties, the Board issued a Preliminary Order on May 25, 2011 directing, among other items, the nature of the evidence to be filed by the parties and the studies to be prepared by the Town in advance of the hearing on the merits, as well as setting down the timeline leading to the hearing on the merits.

[6] The filing of evidence and studies by the parties, as well as the filing of responses to Information Requests, was completed on December 2, 2011. The evidence included a two year financial forecast for the Town (if it remained undissolved) and a five year financial projection for the Municipality if the Town was dissolved and annexed to the Municipality (2013 - 2017).

[7] The Town, the Municipality and the Province executed a Letter of Intent on November 8, 2011, which was filed with the Board on November 17th, and provides as follows:

WHEREAS: On September 29, 2010 the Town applied to the Nova Scotia Utility and Review Board (UARB) pursuant to Section 394 of the Municipal Government Act to dissolve;

WHEREAS: Pending a decision by the UARB whereby dissolution is approved, the Town's citizens, the geographic area and elements of the Town's infrastructure will become part of MODG;

WHEREAS: In the best interest of all parties in moving the dissolution process forward the UARB had suggested that a mutual agreement by all parties be reached prior to the hearing.

THEREFORE:

1. Funding Assistance:

SNSMR will provide the following:

- (a) Unconditional Funding of \$262,824 per year for five years - \$1.31 million;
- (b) Funding to cover the outstanding debt of the Town - \$244,000 plus interest;
- (c) Infrastructure funding of \$360,000 per year for five years for infrastructure improvements within the Town of Canso, as outlined in the CBCL study and subject to verification by SNSMR. This funding can be used to secure other funding programs such as federal/provincial infrastructure programs. - \$1.8 million;
- (d) Funding to be used for a Human Resource and re-employment initiatives for former Town employees up to a maximum of \$166,000 to be administered by the Province/Town just prior to MODG taking over the operations of the former Town of Canso;
- (e) Funding of a 12 month term for a human resource to assist in the implementation of the UARB's Order - \$70,000.

- (f) SNSMR will provide a onetime grant of \$582,000 that MODG shall hold in a special reserve account and draw down as required to address capital improvements and remedial action on assets acquired by MODG as a result of dissolution of the Town of Canso. This funding can be used in conjunction with other federal or provincial funding programs.

2. Other Assistance:

- (a) SNSMR will work cooperatively with the MODG to identify funding sources and funding programs that will assist the MODG with future construction of the former Town's waste water treatment facility.
- (b) SNSMR will work cooperatively with the MODG to identify funding sources and funding programs to undertake a ten year Capital Plan to upgrade municipal infrastructure in the former Town.
- (c) SNSMR will hire and fund the legal expertise required to complete the transfer of all real property being transferred from the former Town to the MODG.

3. Canso High School:

In the event of the closure of the Canso High School, MODG will be responsible for the disposition of the facilities and the costs associated with such. Funding identified in Sections 1 (a), (b), (c), (f) and 2 (c) may be utilized for such purposes if deemed appropriate by MODG Council at the time.

4. Town Streets:

The Province will take over responsibility for the streets within the former Town limits as identified in the Roads Report submitted to the UARB by the Department of Transportation and Infrastructure Renewal.

5. Environmental Remediation:

SNSMR will assist the MODG's efforts to resolve any financial impacts relating to environmental clean-up or remediation associated with the following properties in the former Town:

- i. Old fire hall;
- ii. Public works garage;
- iii. Seaside Manor;
- iv. Municipal administration building;
- v. Whitman House.

Further: Phase I Environmental Site Assessments identified in Schedule "A" in respect of the real property currently owned by the Town have been filed with the Nova Scotia Department of Environment (NSE).

NSE confirms that the MODG is not required to conduct any further investigations into the environmental condition or any remediation concerning the present condition of the real property currently owned by the Town and outlined in Scheduled "A" on the assumption there is no further development of this real property.

NSE also agrees that the MODG will not require further investigation or remediation of these properties unless new information is brought to its attention justifying such actions.

In the event NSE in the future requires such environmental investigation in the form of a Phase II Environmental Site Assessment with respect to the real property outlined in Schedule "A", SNSMR will adhere to Section 2(b) of this Letter of Intent and explore funding opportunities to address this issue.

6. Sale of Town owned assets:

The MODG agrees that the proceeds from the sale of any real property, including the Town Electric Utility, presently owned by the Town will be held in a special reserve and can be used only for purposes associated with the former Town.

7. MODG agrees to do the following:

- (a) To work expediently and in good faith with the Town and the Province to implement the Order of the UARB dissolving the Town;
- (b) To cooperate with the Province and the Town in the best interest of the residents of the Town and the residents of the MODG in the delivery of municipal services.

8. Miscellaneous Provisions:

- (a) This Letter of Intent is not intended to create legally enforceable obligations under statute, common law, equity or otherwise.
- (b) Other than specified within this Letter of Intent the Province assumes no further financial responsibility for the dissolution of the Town of Canso.

[Exhibit C-72]

[8] The Town and the Municipality executed an Agreement respecting the terms of dissolution on December 2, 2011, which provides as follows:

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WHEREAS:

1. the Town applied to the Nova Scotia Utility and Review Board ("Board") on September 29, 2010 pursuant to Section 394 of the *Municipal Government Act* to dissolve;
2. the hearing before the Board is scheduled to commence December 5, 2011 and the parties have considered the evidence filed in support of the application;
3. the parties have executed a Letter of Intent dated November 8, 2011 which addresses the intentions of the parties with respect to funding, liability and the provision of Municipal Government following dissolution; and
4. the parties support the application for dissolution and are agreed upon the appropriate terms for the Order for Dissolution.

IN WITNESS WHEREOF the parties hereto agree as follows:

1. the parties support the Town's application for dissolution;
2. the parties agree to submit to the Board that its Order for Dissolution address the matters required to be addressed pursuant to Section 399(2) of the *Municipal Government Act* as follows:
 - (a) the area comprising the Town shall be dissolved and annexed to the Municipality;
 - (b) the effective date of dissolution and annexation shall be July 1, 2012.
 - (c) the area of the Town shall be divided into two polling districts each of which will be annexed to areas of the Municipality as outlined in the recommendation of Stantec Consulting Ltd. in its Boundaries Report dated June 30, 2011 on file as Exhibit C-43 and being outlined as Table 4.1 on page 4.4 of the Report;
 - (d) the area of the Town shall not continue as a village;
 - (e) there are no necessary adjustment to be made to the assessment roll;
 - (f) (i) that the Board shall direct that the Mayor of the Town and the one councillor as selected by Town Council shall serve as councillors on the Council of the Municipality from dissolution until the scheduled municipal election in October, 2012;
 - (f) (ii) that municipal taxes collected by the Town be set at the same rate as set for 2011; that the revenue from these taxes may be used to continue the operations of the Town during the period leading to dissolution;
 - (f) (iii) that the final tax payment for residents of the Town in 2012 be based upon a rate set by Council for the Municipality following dissolution; and
 - (f) (iv) upon dissolution of the Town the Town councillors who are members of the Town's utilities, boards and commissions including Canso Seaside Manor shall be replaced by appointments to be made by Municipal Council.

[Exhibit C-79]

[9] The Board retained Bruce H. Fisher, MPA, CMA, to conduct an independent review of the parties' financial forecasts related to the dissolution. His

report, which expressed no opinion on the desirability of the dissolution, was filed on December 1, 2011.

[10] The Board held the hearing on the merits at the Canso Fire Hall on December 5, 2011, and heard witnesses on behalf of the parties. An evening session was also held on the same date for presentations from the public.

[11] The Town was represented at the hearing by its solicitor, Duncan J. Chisholm, LL.B., while the Municipality was represented by its solicitor, Robert G. Grant, Q.C. Duane A. Eddy, LL.B., acted as counsel for the Province. The UNSM was represented at the hearing by its President, Deputy Warden Jimmy MacAlpine. Board counsel, Richard J. Melanson, LL.B., was also present throughout the hearing.

II FINDINGS

(i) Should the Town of Canso be dissolved?

[12] Section 399 of the *Municipal Government Act* provides:

Order for dissolution of town

399 (1) After the application for dissolution is heard, the Board may dissolve the town upon such terms as it considers advisable.

(2) The order of the Board dissolving a town shall

- (a) declare that the area comprising the town be dissolved and be annexed to, and form part of, another municipality or municipalities;
- (b) set out the effective date of the dissolution;
- (c) determine that the area be an additional polling district or shall form part of another polling district of the municipality to which it is annexed;
- (d) determine whether the area should continue as a village and, if so, provide for all things necessary to convert the former town to a village;
- (e) direct the Director of Assessment to make any necessary adjustment in the assessment roll applicable to the area;
- (f) make such determinations, issue such orders and directions and do or cause to be done all such other matters and things as, in the opinion of the Board, are necessary or incidental to the carrying out of the dissolution of the town.

(3) An order of the Board may annex, amalgamate, continue or dissolve boards and commissions and allocate their assets as the Board considers fair.

(4) The Board may make an interim order and reserve further directions.

[13] As previously noted, the parties in this matter have arrived at a settlement respecting the application. They have agreed on the central issue that dissolution of the Town should occur. Further, there is also a proposed resolution of most issues arising from the dissolution.

[14] In its Decision related to NSPI, dated November 5, 2008, the Board outlined its general approach to settlement agreements submitted to it for approval:

[12] The Board's *Regulatory Rules* facilitate settlement discussions. The Board welcomes and appreciates the efforts of parties to, in good faith, settle issues, even where, as sometimes happens, a settlement cannot be ultimately achieved.

[13] Where, as here, the Agreement is supported by representatives of all of the customer classes, the Board can have confidence that the Agreement is in the public interest.

[14] Customers of NSPI and members of the public are, perhaps understandably, wary of the settlement process. Many of those customers and members of the public may not appreciate that by the time the hearing commences 80% of the rate hearing process has already happened. NSPI filed extensive evidence, as required by the Board, to support its rate request. Interested parties and Board Staff asked NSPI many hundreds of written questions (Information Requests), to which responses were filed.

[15] All of the parties who chose to do so filed evidence, including expert evidence. Written questions (Information Requests) have been asked of and answered by interested parties who filed evidence. NSPI filed reply evidence. As noted, all of this happened before the hearing was scheduled to begin so that the parties and the Board are well informed about the case in advance of any oral public hearing.

[16] The public can rest assured that the Board Members hearing the matter have also thoroughly reviewed all of the material in advance of coming to a decision as to whether to approve the Agreement as being in the public interest.

[17] Settlement agreements, while relatively new in regulatory matters before the Board, are common in the litigation process. Within the Board's adjudicative mandate, for example, assessment appeals, planning appeals and other matters are often settled. In the civil courts of Nova Scotia, a much higher percentage of cases are settled than go to trial.

[18] That is not to say that the Board would hesitate to reject a settlement agreement it did not consider to be in the public interest, however, it should be understood that a properly supported settlement is a success of the regulatory process, not a failure.

[Board Decision, 2008 NSUARB 140]

[15] The Board considers that similar principles apply in this proceeding.

[16] The settlement achieved by the parties, which the Board considers as encompassing both the Letter of Intent and the Agreement (as later amended in correspondence from the parties with respect to the transitional operations from April to June 2012), represents a comprehensive resolution of the matter, with only a few outstanding items outlined below.

[17] Notably, the Board observes that the proposed dissolution, and other related items resulting therefrom, are supported by all parties in this proceeding, including the UNSM.

[18] The Board notes that dissolution of the Town is a result which is not opposed by members of the public. The Board did not receive any letters of comment or presentations at the evening session which opposed the application. While some comments urged the Board to exercise caution in its review of the impact of dissolution (i.e., the impact on both the residents of the Town and the Municipality), no one specifically opposed dissolution of the Town.

[19] The proposed settlement also comes at the conclusion of a thorough review of the Town's assets, liabilities, services, policies and by-laws. A number of studies were conducted respecting the Town's financial operations and its infrastructure, including its properties, as well as its water and electric utilities. The social impact of the Town's dissolution upon its residents was also examined. The results of the above review have, in many cases, been incorporated into elements of the proposed settlement.

[20] The total impact on the Municipality, including the financial impact, has also been considered.

[21] Moreover, the Board notes that the consensual resolution of most issues in this proceeding avoided what could, otherwise, have been a divisive contested hearing. When considered in the context of the future cooperation that is required to ensure a successful union of the dissolved Town with the Municipality, the settlement, for the most part, is clearly in the best interests of all affected residents.

[22] Finally, the proposed settlement involves the significant support of the Province, which continues for five years. This will provide stability for residents of the dissolved Town and the Municipality as they transition to a new municipal unit.

[23] As noted in the joint written submission of the Town, Municipality and Province dated December 13, 2011, both the Town and the Municipality are “struggling with declining and aging populations, high unemployment and modest household incomes”. Further, as noted in the submission, the decline of the fishing industry has had “a devastating effect upon the Town’s financial viability”. Also, the decline of production from Sable Gas is a risk factor to be faced by the Municipality in the future.

[24] However, with the anticipated savings as a result of annexing Canso to the Municipality, and with the Province’s support, the parties are satisfied that the combined Municipality will be viable. In the view of the Board, the efficiencies gained through the union of the municipal units will improve the ability of the area residents to meet the challenges and opportunities of the future.

[25] Taking into account all of the evidence and the submissions of the parties, the Board is satisfied that the dissolution of the Town is in the best interests of the

residents of the Town and of the Municipality. Given the financial challenges that are facing the Town, and to some extent the Municipality, the Board considers it necessary and expedient (as contemplated under s. 398(1)(b) of the *Municipal Government Act*) to order the dissolution of the Town.

[26] Further, the Board is satisfied that the settlement provisions contained in the Letter of Intent and the Agreement (as subsequently amended by the parties with respect to the April to June 2012 transitional period) are generally reasonable and appropriate and should, for the most part, form the basis of the terms of dissolution.

[27] The Board notes here that clause 8(a) of the Letter of Intent stated that the terms were not intended to create legally enforceable obligations. However, the Board understands that the Province intended these commitments to remain in effect if dissolution was, in fact, ordered by the Board. Mark Peck, a municipal advisor to SNSMR, confirmed the above understanding at the hearing. The Board considers the Province's commitments as integral to the successful dissolution of the Town, and the Board so orders.

(ii) Outstanding items requiring directions from the Board

[28] There are a few outstanding matters which arose during the hearing which require the Board's direction.

a) Village status

[29] Mayor Fraser spoke at the evening session, requesting that the Board grant "village status" to Canso if it is dissolved. In his view, granting village status would allow the Town to retain its identity and to retain some decision making ability within the former Town.

[30] In the Agreement between the Town and the Municipality, the parties agree in clause 2(d) that Canso should not continue as a village. In response to an Information Request from the Board (Exhibit C-74, IR-11), the parties responded that another level of governance would be imposed upon Canso residents if Canso were to continue as a village. They added that this would defeat the efficiency improvements which are being sought through dissolution.

[31] While much of the decision making authority will flow to the Municipality regardless of village status, allowing Canso to continue as a village (which, as Mr. Carroll notes, effectively adds another level of governance to Canso residents) would serve as a distraction to the concerted effort which is needed by both Town and Municipality residents, and their elected officials, to make the new municipal unit function effectively into the future. Moreover, the overhead expense related to the village's administration would reduce the savings resulting from dissolution.

[32] Section 399(2)(d) of the *Act* allows the Board to determine whether the dissolved Town should continue as a village. In this instance, the Board agrees with the Town and the Municipality and concludes that it should not continue as a village.

[33] Accordingly, the Board denies the request by Mayor Fraser for village status.

b) Unfunded pension liability

[34] Note 7 to the Town of Canso March 31, 2011, consolidated financial statements states:

The Town is committed to annual pension and benefit payments to former employees of \$30,079 (2010 - \$29,648) and is adjusted annually with the increase in the consumer price index.

[Exhibit C-62]

[35] During the hearing, Michael Corkum, CA, of Grant Thornton, was questioned about the pension:

... I know the Letter of Intent says that the Province will take over the severance and pensions, but I didn't gather that was pensions if someone is already pensioned off.

A. (Corkum): Right. There seems to be one outstanding liability for someone that's been pensioned off.

Q. And there's no resolution of that.

A. (Corkum): No.

Q. The Letter of Intent doesn't cover it.

A. (Corkum): No. It will continue, as we understand it, as a liability for the combined unit.

Q. For the combined unit. So it won't necessarily be an area rate.

A. (Corkum): No.

[Transcript, pp. 72-73]

[36] The Board finds that this pension should be paid from the general tax rate of the Municipality and it will so direct in its Order for Dissolution.

c) Town's utilities

[37] The water and electric utilities will be transferred to the Municipality as part of the dissolution.

[38] In a letter dated July 21, 2011 (Exhibit C-55), Mr. Carroll advised that Municipal Council had decided that it did not want the electric utility and that if the sale was not completed before dissolution, it would proceed immediately to market and, preferably, sell the utility. The utility has not yet been sold.

[39] The Municipality, in pursuing this option, should take note of s. 62 of the *Public Utilities Act*, R.S.N.S. 1989, c. 380, as amended:

Approval for transfer of undertaking

62 Notwithstanding the provisions of any Act of the Legislature, no public utility shall sell, assign or transfer the whole of its undertaking or any part thereof to any person or corporation except with the approval of the Board first had and obtained.

[40] The Canso Water Utility is also to be transferred to the Municipality. As was noted at the hearing, the water utility is not in full compliance with the *Water Utility Accounting and Reporting Handbook* concerning the funding of depreciation. The Canso Water Utility has not properly set aside cash in the Depreciation Fund. The Board notes from the testimony at the hearing that this issue was in the process of being rectified.

[41] The Board notes that the Canso Water Utility provides wholesale water to the adjacent Hazel Hill Utility. For ease of administration, the Municipality may want to consider an application to the Board to merge the two utilities.

d) Polling districts

[42] The Board must address how dissolution will affect the governance of the combined Municipality (i.e., the number of councillors and polling districts on Municipal Council, and the boundaries of the polling districts).

[43] In their Agreement, the Town and Municipality have proposed that a portion of the area comprising the dissolved Town (i.e., adjacent to the Hazel Hill area) be annexed to the Municipality's existing Polling District #5 and that another portion of Polling District #5 (i.e., in the vicinity of The Tickle, as well as the islands) be added to the remaining portion of the dissolved Town to form a new polling district. Thus, with the addition of the area comprising the dissolved Town, the number of polling districts in the Municipality would increase from seven to eight.

[44] As part of the evidence prepared by the parties in advance of the hearing on the merits, Stantec Consulting Limited (“Stantec”) was retained to conduct Governance and Boundary studies to assist the Board in determining: 1) the size of council to serve residents of the new combined Municipality, and 2) the boundaries of the polling districts.

[45] Stantec, through its principal John Heseltine, MCIP, conducted extensive public consultations with the residents of the Town of Canso and of the Municipality, including a telephone questionnaire survey and a series of public meetings in each of the seven polling districts of the Municipality and in the Town.

[46] In addition to recommendations about annexing the area of the dissolved Town to the Municipality’s polling districts, the Stantec Boundaries Report also recommended a few changes to the Municipality’s remaining polling district boundaries in order to better balance relative parity of voting power between the districts and to improve the communities of interest.

[47] The recommended changes are outlined in Table 4.1 on page 4.4 of the Boundaries Report prepared by Stantec, dated June 30, 2011, and filed in this proceeding as Exhibit C-54.

[48] The provisions in the *Municipal Government Act* dealing with the configuration of polling districts following dissolution are as follows:

Order for dissolution of town

399(2) The order of the Board dissolving a town shall

...

(c) determine that the area be an additional polling district or shall form part of another polling district of the municipality to which it is annexed;

Electors and polling districts

400 (1) Where an order of the Board results in the dissolved town being one additional polling district, until the next regular election of councillors, the mayor of the town dissolved is the councillor for the district.

(2) Where an order of the Board results in the dissolved town being more than one additional ward or polling district, a special election shall be conducted by the returning officer of the municipality to which the dissolved town has been annexed in accordance with the *Municipal Elections Act*.

[49] However, s. 399(2)(f) also confers upon the Board a broad power to make such other directives as are necessary to the carrying out of the dissolution:

399(2)(f) make such determinations, issue such orders and directions and do or cause to be done all such other matters and things as, in the opinion of the Board, are necessary or incidental to the carrying out of the dissolution of the town.

[50] The Board notes that the recommendations made by Stantec with respect to the area of the dissolved Town do not fall expressly within that contemplated under s. 399(2)(c) and s. 400(1) and (2). In this sense, there appears to be a legislative gap in these provisions dealing with municipal governance following dissolution. The Stantec proposal not only creates an additional polling district for Canso, to be known as Polling District #8 (and annexes a portion of the adjoining municipal Polling District #5, including the islands, to the new "Town polling district"), but it also adds a portion of the area comprising the dissolved Town to the adjoining municipal Polling District #5 of the Municipality. Further, the Stantec recommendations include a few proposed changes to the remaining polling district boundaries of the Municipality in order to better balance relative parity of voting power among the polling districts and to better reflect communities of interest.

[51] Taking into account all of the evidence and the submissions, the Board is satisfied that the proposed changes (both those dealing with the area comprising the dissolved Town and those relating to the boundaries of the remaining polling districts of the Municipality) are reasonable and that the changes should all be approved.

[52] There are a number of reasons for this conclusion.

[53] First, the proposed changes follow an extensive public consultation carried out by Mr. Heseltine of Stantec. He held public meetings in all seven municipal polling districts and in the Town. The proposal addresses relative parity of voting power among the polling districts and improves the communities of interest in parts of the Municipality. These proposed changes appear to have broad support from the residents and municipal officials.

[54] Second, while the changes do not appear to fall expressly within the scenarios contemplated under s. 399(2)(c) and s. 400(1) and (2) of the *Act*, the Board considers it has the broad power under s. 399(2)(f) to make such other directives as are necessary to the carrying out of the dissolution. In this instance, the Board considers that these changes are necessary to give full and better effect to the carrying out of the dissolution. As noted above, the proposed changes are reasonable and appropriate in that they improve relative parity of voting power among the polling districts and better reflect communities of interest (both in dealing with the area comprising the dissolved Town and with the remaining polling districts of the Municipality).

[55] Third, in addition to the Board's powers in s. 399(2)(f), the Board notes that s. 368(1) of the *Act* allows a municipality to apply to the Board to amend the boundaries of any polling district and to determine the number of polling districts.

[56] In the present matter, the Municipality and the Town both supported Stantec's recommendations and asked the Board to approve all the changes (including the proposed changes to the remaining polling district boundaries of the Municipality). The Board considers that this request amounted, in effect, to a request under s. 368(1) of the *Act*.

[57] Taking into account that an extensive public consultation was conducted in advance of this hearing, that the recommendations were filed on the public record almost six months prior to this hearing, that the changes to the remaining polling district boundaries in the Municipality are relatively minor in nature, and that the changes appear to have broad support, the Board considers it is appropriate to approve them as well under s. 368(1).

[58] Fourth, the Board notes that the next regularly scheduled municipal boundary review is to be conducted by municipalities in 2014 under s. 369(1). In the event there are any concerns that arise with respect to the proposed changes to any of the eight polling districts, the issue can be revisited at that time.

[59] Accordingly, the Board approves the proposed polling district boundaries for the eight polling districts of the combined Municipality. The Municipality is directed to file descriptions for the polling districts, which the Board will incorporate into a subsequent Order.

[60] Notwithstanding the above, the Board does not accept the Town and Municipality's request that both the Mayor of the Town, and one other councillor selected by Town Council, serve as councillors on municipal council of the Municipality until the next municipal election scheduled for October 2012. In the Board's view, the framework and legislative scheme of the *Municipal Government Act* do not contemplate nine councillors representing eight polling districts.

[61] Accordingly, further to s. 400(1) of the *Municipal Government Act*, and considering that following dissolution there will not be sufficient time to hold a special election under the *Municipal Elections Act*, R.S.N.S. 1989, c. 300, before the regularly

scheduled election in October 2012, the Board directs that the Mayor of the Town, alone, will represent Polling District #8 until the October 2012 municipal election.

[62] Nevertheless, the Board sees the benefit of the Municipality receiving further input from an additional elected Town official. To that end, it is within the Municipality's discretion to invite, *ex officio*, another member of Town Council to sit in on its meetings until the next municipal election this autumn.

e) Town employees

[63] Upon dissolution of the Town, the employment of the Town's employees will cease. The Municipality has indicated that it will need to hire additional employees as a result of the dissolution, but not necessarily the total number of positions currently in the Town. The Municipality has committed that it will hire employees in accordance with its municipal hiring policies and that it will fairly consider the application of any current Town employee for open positions.

[64] As noted in the joint written submission on behalf of the Town, Municipality and Province dated December 13, 2011, it is in the interests of the Town and Municipality that the Town's employees are dealt with fairly and in a manner which mitigates the liability exposure of the Town and the Municipality.

[65] Accordingly, in its Order for Dissolution, the Board will include a directive related to the provision of notice to Town employees of termination of employment upon dissolution.

f) Transitional period (April 1 to June 30, 2012)

[66] The parties have requested an effective dissolution date of July 1, 2012. This date was requested to accommodate a more efficient transition and to mitigate

staffing constraints related to conducting the transition while continuing normal municipal operations.

[67] The Board considers the proposed dissolution date of July 1, 2012 to be reasonable in the circumstances.

[68] However, towns and municipalities currently operate on a March 31st fiscal year end. Accordingly, there must be some provision for a budgeting and tax billing process during the transitional period from April 1 to June 30, 2012, while the Town is still in existence.

[69] The Agreement between the Town and Municipality initially outlined a proposed method for the collection of taxes and payment of operating expenses for the transitional period April 1, 2012 to June 30, 2012. When explained at the hearing, there appeared to be some confusion as to how exactly the mechanics of this proposal would be conducted. A series of letters between the Municipality, the Town and the Province, that continued up to and including January 10, 2012, explained various options, including a proposed agreement. The Board's interpretation of the mechanics is as follows:

- (a) The Town Council will prepare a budget for the transitional period April 1, 2012 to June 30, 2012 (the "quarterly budget"). This quarterly budget is to be sent to the Province for subsequent approval;
- (b) The Town will send out an interim tax bill to all properties using one half of the 2011/12 tax rate applied to the 2012 assessment roll;
- (c) The Province will pay one quarter of the 2012/13 equalization grant to the Town;

(d) The Town will deposit half of the interim tax bill collections into its general account. The remaining half will be deposited into the Special Reserve account; and

(e) In the transitional period, no amounts can be expended from the Special Reserve account, or any amount in excess of \$500 from the general account, without the prior approval of the Town's Transition Coordinator.

[70] The Board found the language in the correspondence dealing with the transitional period to be, at times, confusing and unclear. It has set out above what it considers to be the understanding of the parties. Nevertheless, the Board accepts the transitional financial arrangements as described by the parties and is prepared to revisit its Order if it is not in accord with the parties' agreement.

[71] Note 5 to the Town of Canso's non-consolidated financial statements discusses the Province's contributions to eliminate the March 31, 2010 operating deficit. The deficit as at March 31, 2011 was \$109,796, with contributions from the Province of \$50,857 to be made in 2012 and 2013, and a final payment of \$25,434 in 2014.

[72] The Province further committed in its December 15, 2011, letter:

... SNSMR is prepared to commit to off-setting an operating deficit should one be incurred by the Town for fiscal 2011/12 and during the three months of operation from April 1, 2012, to June 30, 2012.

[73] The Board accepts the mechanics of the financial operations for the transitional period and the resolution of any potential operating deficits between now and June 30, 2012.

[74] The Board will incorporate this process into its Order for Dissolution.

g) General

[75] There will be a number of issues to be addressed by the parties in the transitional period leading to dissolution of the Town on July 1, 2012, and the period thereafter. In the event of any question or disagreement respecting the application or implementation of the directives in the Board's Order for Dissolution, or of any matter or thing necessary to give effect to the carrying out of the dissolution, the parties shall apply to the Board for further direction.

[76] The Board reserves the jurisdiction to issue further orders and directions which are necessary or incidental to the carrying out of the dissolution.

III CONCLUSION

[77] As noted above, the Board orders the dissolution of the Town, effective July 1, 2012.

[78] While dissolution may be considered by some as a negative outcome, the Board observes that this can, instead, be considered as an opportunity. The Board was encouraged to hear that others hold this more optimistic view. At the evening session, Finley Armsworthy, a resident of the Town, a businessman, and one of its councillors, stated:

There's some people taking this as sad times in our community. It is some sad times, but we should be looking -- you know, Canso's history is always going to be history, but this should be an exciting time. This is the way that I see this whole ordeal unfolding as an exciting time because we have a number of things -- it's been a long time coming in our community.

...

We have some exciting things in our town. We have a Parks Canada -- you know, a Parks Canada site in our town. We have the wastewater -- our wastewater -- our water treatment plant in our community, a number one facility. We have our fire hall that we can build onto. We're a cash-strapped community, that's what we are, and that's why we want

to amalgamate. I think amalgamation is the only thing that can make this community go forward and go better. Our fire department here, next to none. But like I say, we need new machinery, the same as in our town. You know, like I say, our equipment is getting old in our town.

...

That's what we've been doing for the last 10 years, trying to exist. It's time not to exist anymore, it's time to be able to join with a bigger municipality that has good management skills, has the right team in place to be able to make us go forward and make the right decisions.

...

And the thing about this all, it's all for the people, that's what it's supposed to be for. Not about individual groups, or you know, anything like that. It's supposed to be for the people. That's what goes on in your community. You elect your representatives to do that. So that's what we got to do. We got to go forward.


But like I say, we have an exciting history to come here, and I'll tell you one thing, we're lucky to be able to go down this road. And I hope the people stick together in our community, and like I say, we go forward, because there's going to be a plan...

[Transcript, pp. 28-35]

[79] In the Board's opinion, adopting the above approach will help ensure successful municipal government in the Canso area and in the Municipality.

[80] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 19th day of January, 2012.



Roland A. Deveau



Kulvinder S. Dhillon



Murray E. Doehler