

Governance Structure: Port of Sydney

Final Report

Presented by:

Port of Sydney Governance Working Group*

July 20th, 2011**

*Membership listed in footnote 1 of the Report.

** Amendments as recommended by the Sydney Ports Corporation Board of Directors and agreed to by the Governance Working Group incorporated September 30, 2011.

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1. Introduction

1.1. Purpose of Report

This Final Report presents the recommendations of the Governance Working Group (hereafter GWG)¹ for the Port of Sydney's proposed new governance structure. It incorporates the outcomes of deliberations throughout 2009, the eighteen months between the circulation of the working draft paper (November 13th, 2009, hereafter the Draft Report) and the final decision making forum held on June 20th, 2011. The Final Report has incorporated the Draft Report and the additional intelligence, experience and stakeholder feedback gathered over the intervening period. It will be presented for acceptance and implementation to the Board of Directors and Membership of Sydney Ports Corporation Inc (hereafter SPC).

The reader will note that the direction under recommendation is the establishment of a world leading multimodal transportation hub. While this is a bold and courageous destination, it must be understood that the primary focus of deliberation has been the Ports of Sydney (hereafter collectively referred to as the 'Port'). Once the recommendations are adopted, the new governing entity will have to turn its attention to the bigger picture including all modes of transportation and related activities that position Sydney as a node within global supply chains.

1.2. The Place

Routinely ranked as one of the world's top island destinations, Cape Breton is known for its natural beauty and cultural diversity and is replete with talented, determined people. Occupying more than 10,000 square kilometers, the island of Cape Breton is the 77th largest in the world and the 18th largest in the vast geography of Canada. Five municipal units comprise the area and accommodate almost 145,000 residents. The Cape Breton Regional Municipality (CBRM) is the largest of the five with 75% of the total population. The Port is situated within CBRM.

¹Initially, members included: Jim Woolder, Chair, SMG; Brian Stanford, NSPI/SMG; Brian Shebib, M.V. Osprey/SPC/SMG/LEC; Don Rowe, SPC/SMG; Norma Boyd, LEC/SMG; Gary Latimer, MAI/SMG; Terry Pitman, SPC/SMG; Shelly Kehoe, ECBC; Robert Kazamel, Logistec/SMG; Gary Corsano, Sampson McDougall/Director of SPC, Larry MacPherson, Sydney Airport Authority. Expert support was provided by Dan White, Public Relations Advisor; Ron L'Esperance, CFN Consultants (Government Relations); Mary Brooks, Dalhousie University (Port Governance); Lesley Southwick-Trask, STP Consulting (Governance Strategist). The passage of time since the Draft Report was produced has resulted in the following changes: Sylvan Arsenault, Co-Chair of the SPC Board has replaced Terry Pittman; Marlene Usher has replaced Shelly Kehoe as ECBC's representative, Hayes MacNeil, Chair of the Sydney Airport Authority Board has replaced Larry MacPherson, and Brian Gallivan, NSTIR now represents the Province of Nova Scotia. CBRM has consistently been invited to participate and has thus far declined to do so. The formation of the GWG is discussed further in s.1.7.

1.3. Ports of Sydney

The Port has a venerable history as a fishing and commercial port and as a marshaling base for the Canadian Navy and the merchant marine during World War II. It is of strategic importance to the economy at both a regional and national level. Passengers and a diversity of waterborne cargoes are handled within the Port along the six kilometer 'Y' shaped waterway used for shipping activities. Some terminals are proprietary in nature and handle specific commodities such as coal, slag, fish, petroleum, and truck ferry traffic. As well, the Port accommodates noteworthy cruise custom. Landside facilities include Sydney Marine Terminal, Sydport Industrial Park, Harbourside Commercial Park, the International Coal Pier, and Atlantic Canada Bulk Terminal. The principal businesses and land base to support development opportunities within the Port are depicted below in Figure 1.

Figure 1: Port's Principal Asset Base



Marine Atlantic operates the ferry service to Newfoundland and Labrador from North Sydney and handles 3.5 million tons of cargo and upwards of 500,000 passengers per year. Logistec (a long established national stevedoring and terminal operating company) operates the International Coal Terminal on behalf of Nova Scotia Power Inc (NSPI) and receives approximately 2 million tons of coal over 50 port calls. The former Sydney Steel Corporation (SYSCO) dock owned by a Nova Scotia Crown corporation, Nova Scotia Lands Inc receives a small number of general cargo vessels per year. The Sydney Marine Terminal is operated by the Sydney Ports Corporation and welcomes over

80,000 cruise passengers per year over approximately 50 vessel calls, and also receives 337,000 kilolitres of refined petroleum products destined for the Imperial Oil tank farm from approximately 40 vessel calls. Sydport Industrial Park is operated by Laurentian Energy. There are in excess of 40 businesses in the Park employing several hundred people. A relatively small volume of liquid cargo and wood products are moved through the existing Sydport facilities and the Greenfield site at Point Edward is approved for the construction of a container terminal. In addition, a shrimp freezer trawler operates out of North Sydney at the MV Osprey Ltd. Terminal (15 calls per year), various government vessels utilize a range of berths within the port depending on availability and the Canadian Coast Guard College operates out of Westmount immediately adjacent to Sydport.

The fourth largest port in Atlantic Canada, Sydney employs 2,400 people directly and indirectly and contributes \$60 million annually to the local economy.² The Port is serviced by a short line rail operating between Sydney and Truro, connecting into Canadian National's North American inter-continental network. Sydney is also serviced by a regional airport designated as a Level III airport within Canada's National Airport System. It is a self-funding not-for-profit entity that operates two runways measuring 2,155 meters and 1,829 meters in length.

Sydney and area has developed around the considerable natural advantages offered by its protected, accessible and navigable harbour. The pivotal commercial importance and economic significance of the Port has not diminished with the passage of time and the Port factors significantly into the area's economic future. There is near uniform acceptance that Port development embodies the potential to grow and diversify the economy, generate consequential new employment and play an important role in the ongoing restructuring of the local economy necessitated by the closure of the coal and steel industries and the resultant loss of several thousand well paying jobs.

1.4. Formation of the Sydney Marine Group (SMG)

The Port is situated within a federal harbour, and historically the Government of Canada both owned wharves and associated infrastructure and had over-arching operational responsibility for the Port. Federally appointed Harbourmasters and Wharfingers collected harbour dues and wharfage fees, and the needs of the various public and private users were accommodated within this framework without the presence of a more robust governing "authority" found in larger ports. In keeping with the Government of Canada's recent policy of divesting control of community ports through the sale of assets and deproclaiming public harbours, the Sydney Government Wharf, home to the Port's cruise business was acquired by CBRM in 2002. Operational responsibility for the facility (now Sydney Marine Terminal) and related activities was transferred to a new not-for-profit corporation (Sydney Ports Corporation) that was established by CBRM. The Port, however, continued to operate without a traditional governing authority. In the absence of such an authority, the key Port operating companies came together in 2006 for the first time in the Port's history and

²An economic impact analysis was undertaken as part of the 2007 Master Port Plan research. The document can be located at www.portofsydney.ca and is discussed further below in s.1.5 and s.3.3.

formed a strategic collaborative called the Sydney Marine Group³ (SMG) to systematically advance port development opportunities.

Since its formation, the SMG (with a significant and continuing human resource, leadership, administrative and logistical contribution from the SPC), has played a catalytic and pivotal role in leading a master port planning initiative and an environmental assessment in support of Sydney Harbour access channel dredging. It has also forged strong ties into the broader community, including the membership of the Sydney Ports Advocacy Council⁴ and the Sydney Gateway Council⁵ and was heavily involved in the discussions related to the financing of the dredging for the Port's access channel. It has expended considerable energy and effort on communications to raise government and public awareness of Port related issues and to engage a highly motivated community. However, in its existing form - an unincorporated entity with a "project" focus and funding model - it can no longer function as an appropriate vehicle for sustained port governance/management. This conclusion has been reinforced by the recognition that the Port is only one part of a global supply chain, and that the non-marine transportation interests including rail, road and air should be directly represented in the governance structure that will serve as a one-stop shop to facilitate the best development outcomes and protect the Ports' long-term competitive position.

1.5. Master Port Plan for Sydney

With public and private sector financing the SMG commissioned a Master Port Plan (MPP)⁶ in 2007 to categorize and evaluate Port assets, and develop a blueprint for future development. Discussed in greater detail below⁷ the MPP embodied expansive research and careful analysis and confirmed that the Port represents real and significant development opportunities with potential to become a player of consequence in international trade. Inherent in these opportunities is significant new employment and important spinoff activity that cumulatively could produce a major impact on the marginal and challenged local economy.

From the time of the launch of the MPP in January, 2008 community interest in the undertaking has been consistent and at times overwhelming. It was as if the anticipated commercialization of the Port had awakened an unspoken but shared curiosity and belief among residents. A unique collaborative developed in support of Port development in parallel with the ongoing research and marketing effort that commenced with the MPP. A broad cross section of the community engaged and began to advocate for Port development at all levels of government and across the region.

³Members are Sydney Ports Corporation, Laurentian Energy Corporation Inc., NS Lands, Nova Scotia Power, Marine Atlantic, and Logistec.

⁴Members are New Dawn Investments, Membertou First Nations, Sydney and Area Chamber of Commerce and JCI Cape Breton.

⁵The group is chaired by the SMG and includes the Cape Breton and Central N.S. Railway, the Sydney Airport Authority, the C.B. Roadbuilders Association and representatives from organized labour.

⁶See footnote 2.

⁷See s.3.3.

Consequently stakeholders from all facets of the public, private and community sectors have been consulted, engaged and kept abreast of development plans. At no time in recent history has the community so clearly and completely demonstrated its support for and considerable interest in a development opportunity.

1.6. Port Governance – Sydney

The Port's governance structure has been evolving for some time. Looking back one sees that recent governance history has its origins in a working group sponsored by the former Sydney Board of Trade (later renamed the Sydney and Area Chamber of Commerce) and the CBRM called the Marine Transportation Working Group (MTWG). The MTWG's port vision was to create a new entity that would either control or manage the assets of Sydport, SYSCO and what was then known as the "government wharf" (now the Sydney Marine Terminal) where Sydney's cruise business was located. Control over the SYSCO lands and Sydport could not be realized, but in July 2001 the government wharf was sold to the Cape Breton Regional Municipality (CBRM) for \$1.5 million. Not wanting to manage this asset and the existing cruise business, CBRM leased the facility to the newly formed Sydney Ports Corporation in August of 2002. The SPC effectively replaced the MTWG, and the Chair of the MTWG and then Harbourmaster transitioned to the General Manager of the new not-for-profit corporation.

In recent years the landscape around the waterfront changed. New players like Nova Scotia Power Inc. (NSPI) and Logistec invested in the International Coal Pier and NSPI commenced importing substantial volumes of coal. As remediation of the former SYSCO site proceeded, the Provincial government started the development of the new Harbourside Industrial Park on former SYSCO lands. A broadly held local real estate development and manufacturing enterprise, Laurentian Energy Corporation Inc. (Laurentian) set its sights on developing a large piece of waterfront property adjacent to its commercial/industrial park into a container terminal. These organizations and other port operators, including Marine Atlantic Inc. and the Sydney Ports Corporation came together in 2007 as earlier noted to form the SMG.

The MPP reviewed the various asset management structures currently in place in the Port and the respective roles of the SMG and the SPC. It emphasized the importance of changing the Port's overall governance structure with a view to preparing the Port for the post federal ownership era and the implementation of the growth agenda articulated in the Plan. It is now accepted that the expansion to an integrated multimodal transportation entity can be accommodated within the SPC's Memorandum and Articles of Association with some minor modifications. That being said, it remains incumbent on the structure to ensure the delivery of the MPP as part of a global supply chain. While the SPC was identified as possessing the closest mandate and structure to a traditional port "authority", it was apparent that financial and human resource constraints had forced that organization to narrowly focus on the management of the asset under its control, the Sydney Marine Terminal, and the development of its principal business related to cruise and refined petroleum products. While the marine expertise embedded within the SPC Board and staff meant that the organization was called on from time to time to help with the advancement of port-wide

regulatory issues such as security and ice fees, the financial and human resource capacity to realize the expansive vision set out in the organization’s mission statement did not (and currently does not) exist.

1.7. Formation of Governance Working Group

In response to the questions presented around the future governance of the Port, a Governance Working Group (GWG) was struck in early 2009 as a committee of the SMG. Establishment of GWG reflected SMG’s appreciation of the importance of the issue as well as the inherent complexities associated with forging a governance structure appropriate to the somewhat unique circumstance of the Port at a time of considerable opportunity and promise. A federal Crown corporation mandated to facilitate economic development in the Cape Breton-Mulgrave area, Enterprise Cape Breton Corporation (ECBC), financed the initiative, and the SPC continued its key role as both a member of the SMG and the GWG and through the provision of administrative and logistical support. SMG sought to have GWG broadly representative as the heightened level of community interest in the matter demanded. Key members of the SPC and the SMG came together with the Sydney Airport Authority and expert advisors to initiate the development of a proposed governance model for the Port⁸. The initial governance working sessions commenced in the spring of 2009, and the details of the process leading to the recommendations contained in the Final Report are discussed further below⁹.

Given that the Port stakeholders had come to understand the Port as a node in an increasingly complex web of international supply chains, it was now apparent that other forms of transportation would need to be considered to optimize the economic development interests associated with the development of the Port. For this reason, the discussions embraced the development of the Port and its ancillary enterprises as a phased strategy for becoming a *world leading multimodal transportation hub*.

2. Socio-Economic Context

It is no surprise that the prospect of significant Port development has captured the imagination and support of the CBRM and its residents. In a word the main reason for this is “jobs”. Port development has the potential to create significant direct and indirect employment opportunities that will help to strengthen the region’s economy in a sustainable fashion. With a real GDP of approximately \$3.5 billion, Cape Breton’s economy is not able to achieve the Nova Scotia per capita average earned income of \$31,000. This is largely attributable to structural changes in the economic foundation of the Island that was once linked to significant coal mining and steel production.

⁸See footnote 1.

⁹See Section 4.

With the support of all three levels of government, efforts to build a stable, economic foundation within CBRM have achieved many small and medium sized successes, particularly in the areas of customer contact centers, health care, and education. However, the transition to a service-based economy has presented a new set of challenges for the Cape Breton economy. In particular, population trends that threaten all efforts aimed at achieving sustained economic growth.

The main demographic trend affecting the population is fewer births. The population is being reduced by a steady outmigration

that began more than thirty years ago. In effect, the age-class structure of the population has been changed. Although the working-age population declined during the past decade, the labour force has been relatively stable (Figure 2). In December 2009 it stood at 63,300. At that time, employment in Cape Breton was 54,300 and the monthly unemployment rate was 14.2% (Figure 3) as compared to 8.6% in Nova Scotia.

The service sector dominates Cape Breton's economic landscape accounting for approximately 85% of the full time and part-time jobs. The main sectors are trade, health care, and education. The implication for households is highlighted when incomes are examined.

The average income in Cape Breton County is \$27,481 for individuals and \$49,665 for all households. The Nova Scotia

Figure 2: Cape Breton Working-Aged Population & Labour Force

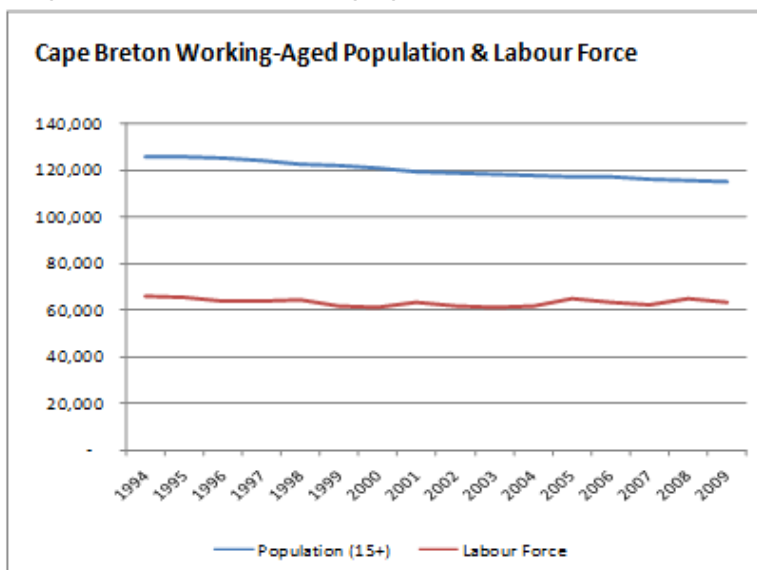
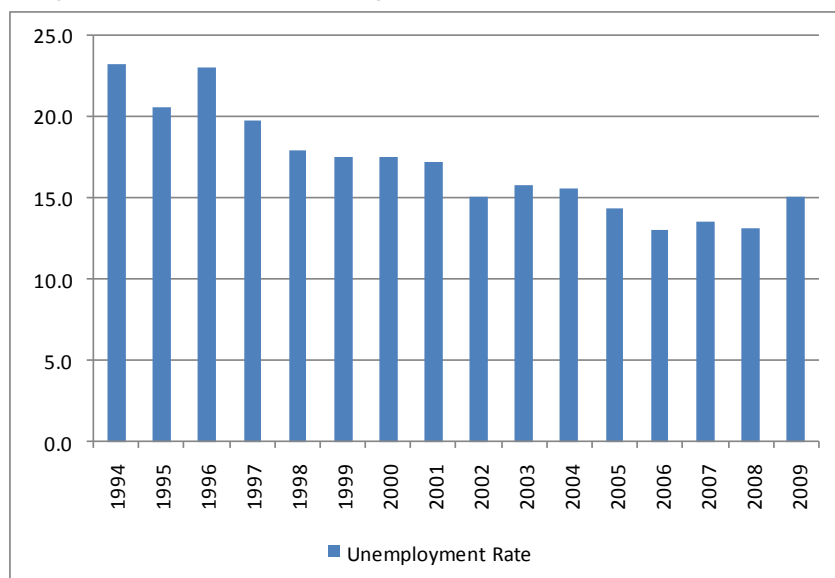


Figure 3: Cape Breton Unemployment Rate



picture is \$31,795 and \$57,366, respectively. This is a substantial gap that warrants continued efforts by all sectors of the economy.

There is a socio-economic gap between Cape Breton and the province as a whole. There is no single solution, but coordinated efforts that create direct jobs benefit the local population, and the province as a whole. Clearly this is the

premise that underlies the collaborative effort of the private and public sectors as well as the community as a whole in respect of the development of the Port in step with the MPP.

The community of Sydney and area aspires to be a world leading multimodal hub, operating as a vibrant partner in global supply chains committed to the economic development of Cape Breton. The critical component to unlocking the Port's potential has been clearly identified through exhaustive research, business development and marketing activities to be dredging of the access channel. With that activity currently underway and scheduled to be completed by the end of 2011, governance is the next critical path issue that must be addressed to leverage the Port's pending new world class deep water status.

3. The Case for Port Development

3.1. Introduction

To understand the viability of the goal of becoming a major multi-modal transportation hub, it is important to recognize the significant research, planning, capacity building and development related activity that has taken place within the Port community in recent years. The key milestones are set out below in the sequence they occurred with a brief description of the activities and outcomes that underpin the new Port vision and ultimately provide context for the port governance discussion.

3.2. Sydport Container Feasibility Study

This study was completed during 2006 by the international port development group TEC Inc. of Annapolis, Maryland (TEC) on behalf of Laurentian. TEC came recommended by some of the leading international shipping lines and brought substantial experience derived from its worldwide port development practice (including a substantial component of work for the U.S. Navy related to dredging and site remediation). The report concluded:

(i) Sydney's geographic location translates into competitive advantage within a global supply chain routed via the Suez Canal.

(ii) The superb physical characteristics of Sydney Harbour and the proposed Point Edward site combine to make Sydney an ideal location to situate a world-class container terminal once the main harbour access channel is dredged to 16.5m. The 16.5m draft will ensure that the latest generation of super post-Panama ships will have unrestricted access to the port. The existing on dock rail provides direct access into CN's North American network.

(iii) Sydport is the quickest to market and least expensive Greenfield container terminal project in North America.

Concerns associated with ice, dredging, aging rail infrastructure, distance from the market and dependence on single service rail provider are all issues that have been carefully considered. The frequency and nature of ice conditions in Sydney that may present challenges to navigation has been exhaustively reviewed by the Center for Cold Ocean Research & Engineering (C-CORE) at Memorial University and the probability of delay due to drift ice has been quantified as a one in four year chance with the potential for up to five days delay. This has been vetted with the operating community and is not considered a practical impediment to establishing a container terminal in Sydney. The access channel dredge contract has been awarded to provide the Port with a 16.5m unrestricted draft and this work will be completed by the end of 2011. Independent reviews of the short line rail infrastructure have confirmed that the 115 pound rail gauge is more than adequate for container service, and with the exception of one minor issue in North Sydney, the rail service is presently capable of accepting double stacked containers. The distance to market and concern over a single source rail provider has been substantially offset by the development of a viable transshipment model from Sydney to the US East Coast, evidenced by the strategic alliance that has developed among the Port and the organizations representing the container operators and organized labour in the Delaware River.

3.3. Master Port Plan¹⁰ Overview:

This study was undertaken by lead contractors TEC and CBCL Engineering of Sydney. TEC had recently completed the container feasibility study and acquired significant knowledge of the Port and its assets. CBCL is one of the largest multi-disciplinary engineering firms in Atlantic Canada with a strong background in a wide variety of marine transportation infrastructure projects. The key subcontractors were the leading container shipping consultancy Paul F. Richardson and Associates, port economists Martin & Associates and the well know cruise consultancy Bermello, Ajamil & Partners. The \$400,000 study spanned approximately one year and was publicly launched in January, 2008. Of particular significance was the non-partisan endorsement of the recommendations by the CBRM, regional MLA's and MP's. Key findings included:

- a. The Port is already generating 2,400 full time equivalent jobs (FTE's) and \$61 million in annual tax revenue.
- b. The deep water of the natural harbour is bordered by large tracts of undeveloped land, some with direct harbour frontage and others like the "port-to-port corridor" lands connecting the harbour to other key transportation assets like the Sydney airport.
- c. There are multiple development opportunities for the Port assets that represent prospective job potential in the range of 5,750 to 8,800 FTE jobs and associated annual tax revenue of \$90 to \$166 million. These opportunities include expansion of the existing cruise business, a return to coal export when the Donkin mine goes into production, locating a container terminal at Sydport's Point Edward Greenfield site, and major increases in break-bulk and project cargoes. With the exception of the cruise business, the vast majority of the

¹⁰ See footnote 2.

incremental growth potential in jobs and tax revenues is contingent on the dredging of the Sydney Harbour access channel (now underway).

- d. To capitalize on the development opportunities and to continue to build on the momentum created by the work of the SMG, a new Port governance structure is required.

NOTE: While the Master Plan did not specifically deal with ship construction/repair or marine related fabrication, it should be noted that subsequent to its release, evidence emerged (including a visit from Korea's Daewoo Shipbuilding & Marine Engineering and Laurentian's most recent foray into oil and gas fabrication activities with the world's largest offshore drilling contractor Nabor's Industries) to support the inclusion of these potential business lines in the overall suite of the Port's development opportunities.

3.4. Environmental Assessment: Channel Deepening and Container Terminal

Encouraged by the strong endorsement of the recommendations in the MPP, the SMG decided to raise the funding and complete the environmental assessment required for the dredging of the access channel and the eventual construction of a container terminal. The funding model that had been developed for the MPP proved to be successful once more, with public sector contributions received from all levels of government. The Project Description for the combined dredging and container terminal projects was filed with the Canada Environmental Assessment Agency in May of 2008. The Environmental Impact Statement was completed in December of 2008, and conditional Provincial and Federal regulatory approvals were obtained in May of 2009. The outstanding regulatory conditions have been satisfied since that time.

3.5. Access Channel Deepening

On December 10th, 2010 following funding commitments by Nova Scotia Power (\$1 million), the CBRM (\$2 million) and the Province of Nova Scotia (\$15.2 million), the Government of Canada committed \$19 million toward the estimated \$38 million cost of dredging the access channel. With the financing in place, and following an international call for proposals as part of a selection process spanning more than twelve months, the SPC signed a conditional contract with the preferred bidder, Boskalis Westminster NV of Holland on April 14th, 2011. All contractual pre-conditions were subsequently satisfied and the contract came into force on May 6th 2011. A Project Oversight Committee comprising government and SPC representatives is responsible for monitoring the execution of the contract.

The Boskalis trailing suction hopper dredge 'Oranje' is scheduled to arrive in Sydney on October 1st, 2011 and will complete the dredge work by the end of year. Preparatory work is underway at the time of writing this Final Report, including the construction of an access road and lay down area that will provide Boskalis the required access to the dredge disposal area. All required regulatory permits are being obtained in accordance with the environmental assessment approvals. Two of these permits involve conditions related to the local lobster, crab and eel fishery. In order to compensate for the loss of fish habitat that will result from the dredging activity, principally the in-

filing of approximately 175 acres at Sydport where the dredge material will be placed within a confined disposal field, a \$3.5 million habitat compensation fund has been set aside for the construction of artificial rock reefs at specified locations within the harbour. In addition, the Sydney Harbour Fishers Association (SHFA) will be contracted to catch and relocate marine life in the access channel and dredge disposal area before the dredging begins. These activities will then be evaluated over a five year period pursuant to an approved monitoring program.

3.6. Government Financial Support

It is important to recognize the very significant supporting role that governments have played throughout recent Port development activities. All three levels of government have financially supported the completion of the MPP, the environmental assessment for the access channel dredging and most recently the dredging program. CBRM has also played a consequential role through its acquisition of the Sydney Marine Terminal and its subsequent involvement with the SPC.

The substantial body of work and milestone events that have been achieved through this public funding have also resulted in significant community, regional and international interest in the Port's economic development potential. This in turn has created impetus for the Port stakeholders to define the type of governance and operational management structures that will ensure the desired development outcomes. It was with this in mind that the Government of Canada provided \$1 million of funding support to the SMG to research the complex governance question and make recommendations for the establishment of a new Port governance structure appropriate to the emerging vision of a multimodal transportation hub.

4. Developing a New Governance Structure: The Process

4.1. Structured Research and Deliberation

Initial GWG meetings took place on April 15th to 17th and May 22nd 2009. As noted earlier, the GWG undertook this research and ECBC financed the initiative. The SPC continued its key role as both a member of the SMG and the GWG and in providing administrative and logistical support. The outcome of the spring 2009 sessions and follow up meetings were outlined as a series of recommendations in a Draft Report. The recommendations included the development of an outreach program to explain the recommendations and broadly solicit feedback, the continued engagement with Transport Canada regarding its aspirations to divest the Sydney Harbour sea-bed and further investigation into the potential acquisition of harbour dues as a recognized critical success factor to the goal of achieving financial self-sustainability for the governance structure. Throughout 2010 the pre-occupation of the Port community at all levels was securing financing for the access channel dredging. However there were continued steps taken to implement these recommendations.

4.2. Draft Report

Major changes to SPC's Board and Membership structure is inherent to the recommendations to transition that organization into its what is referred to throughout the balance of the Final Report as SPC2 (i.e. the next iteration of the SPC). Therefore, it was important that SPC continue to be supportive of the process throughout. Until his untimely death in the fall of 2010, Captain Terrance Pittman, in his multiple roles as GWG participant, Chair of the SPC Board and Co-Chair of the SMG, was uniquely positioned to keep the SPC Board, Membership and its stakeholders apprised of all developments, including the recommendation to transform its organization structure to accommodate the proposed governance option. The Draft Report was presented by Captain Pittman to the SPC Board where it was thoroughly reviewed, extensively discussed and received positive support.

The SMG and GWG socialized the Draft Report for the purposes of gaining feedback from other important Port stakeholders. The recommendations were presented at the 2009 Sydney Ports Day gathering. Media briefings and Port related presentations invariably contained references to the planned structure. This precipitated additional public commentary and comment. The Province of Nova Scotia (TIR), Membertou, Nova Scotia Community College, New Dawn Enterprises, the Sydney & Area Chamber of Commerce and staff of CBRM were consulted directly. In March 2011 an Executive Summary of the Draft Report and a governance activities progress update was prepared by the GWG ¹¹(hereafter the Executive Summary) and was then circulated by ECBC to a number of important business, government and community groups under the title 'Transportation Corporation, Post Dredge Governance and Operations'. The Executive Summary was further circulated by the Sydney and Area Chamber of Commerce and the Cape Breton Partnership to their respective memberships. It is estimated that approximately 1500 people received the document by one means or another. Elected CBRM leadership have been briefed on the recommendations with the understanding that formal presentation of the Final Report will be made to CBRM once approved by SPC.

4.3. Harbour Dues and Financial Sustainability

Transport Canada has been closely involved with the Port development activities in its regulatory role as a 'Responsible Authority' pursuant to the access channel dredging environmental assessment. In addition, and as discussed in some detail in the Executive Summary, substantial dialogue has taken place over the past eighteen months among ECBC, the GWG and Transport Canada on matters related to port governance structures and harbour dues. Levies collected in Sydney from commercial vessel operators are considerable in relation to the overall annual SPC operations budget. These are collected by federally appointed Harbourmasters and remitted directly to Ottawa. Transport Canada is of the view that divestiture of a port's sea-bed does not confer on the new owner the right to collect harbour dues. The GWG has attempted to gain additional clarity around this issue, which is believed to be critical in the context of SPC2's financial sustainability and of sufficient importance to warrant detailed and special consideration.

¹¹ The Draft Report Executive Summary is attached in Appendix 1 of this Report.

Constitutionally the Government of Canada has the power to enact laws in respect of federally owned property.¹² By virtue of s.108 of the *Constitution Act, 1867*, public harbours are federal property for which the government has the power to levy harbour dues,¹³ essentially a tax on vessels calling at the port.

As of May 31st, 2009, 471 of 549 public harbours in Canada have been divested from the control of the federal government. While most included a transfer of the harbour bed, in some cases divestiture of the harbour bed either could not be negotiated or did not make economic sense.

The federal government currently collects approximately \$450,000 annually in the Port for harbour dues. If the government divests its ownership interest in the harbour bed, the government no longer has the legal authority to charge harbour dues and will lose this revenue stream.¹⁴ Unfortunately, however, divestiture to a local entity does not automatically transfer this revenue stream to the new owner and it is unclear how this can be accomplished. Transport Canada's current position is only the Government of Canada or a Canada Port Authority (acting as its agent) may legally collect harbour dues.¹⁵

One of the important distinctions between Sydney and other similar ports where divestiture of federal assets has taken place is that Transport Canada continues to own the sea-bed. This may offer the possibility of having the federal government transfer by agreement the right to collect harbour dues (while retaining ownership of the sea-bed) in consideration of SPC2 taking over the federal government's responsibilities related to the sea-bed (such as the provision of a security plan). While this seemingly runs contrary to Transport Canada's stated objective of selling the harbour-bed, it has been unsuccessful in attracting a buyer in well over a decade. There appears to be some recognition within the federal government of the extremely difficult position in which divested ports have and are being placed by the current divestiture policy; a policy that may well deprive the local management entity of the very source of revenue it requires to successfully advance the port's commercialization agenda and ultimately benefit the local community.

GWG has proceeded with active discussions on the harbour dues issue. Clearly this presents a major challenge for local "authorities" in divested ports looking to generate a sufficient revenue stream to be financially self-sustainable. Recognizing that the current legislation on the subject is at best unclear and that achieving success on this issue may require a change in government policy, the Strait of Canso Superport Corporation and the SMG entered into a Memorandum of Understanding in March of 2011 to jointly pursue the matter. A legal opinion has been obtained, the issue has been thoroughly canvassed in a dedicated panel session at the May 2011 Sydney Ports Days gathering, and meetings with Transport Canada were held in June 2011 to further discuss how the issue might be further advanced within the federal government. Plans are now in place to expand the Strait-Sydney MOU to include the Port of Victoria, and harbour dues collection is now on the agenda of the

¹²Constitution Act, 1867, s.91(1)(1A)

¹³Constitution Act, 1867, s.108

¹⁴www.tc.gc.ca/programs/ports/annualreport0405.htm#100

¹⁵ This issue has already presented real challenges for the Port of Souris, PEI as noted in the Executive Summary (Appendix 1) and the legal framework governing Canadian ports is also discussed more fully in s.5.2.

Independent Marine Ports Association of Canada (IMPAC) whose membership is directly impacted by the status quo. Next steps include revising the MOU to reflect the forward plan and Victoria's membership, issuing a Press Release that builds on the previous Sydney-Strait Release and Ports Days work, and drafting an 'issues paper' that will form the basis for the next round of discussions with the Policy and Planning branch of Transport Canada.

The practicality of effecting the required management agreement or policy change appropriate to the transfer of the right to collect harbour dues from Transport Canada to a new governing authority is as yet unclear as is the time required to form a definitive opinion on the matter.

4.4. Final Governance Forum June 20th, 2010

It is against the backdrop that the GWG met in May 2011 to consider its next step. The key question presented at the meeting was whether the Draft Report recommendations, as qualified by the feedback and experience garnered in the intervening months should be implemented in the absence of clarity on the issue of financial sustainability. The decision was overwhelmingly in favour of proceeding, in the full knowledge that the primary issue facing the new SPC2 Board of Directors would be securing transitional funding to support the operating structure required to meet the organization's mandate.

On June 20th 2011 the GWG convened to assess the information gathered since the Draft Report and to produce final recommendations. This document represents the final recommendation of the GWG for the Port's proposed governance structure. Its recommendations will be presented to the current SPC Board to secure its support for the proposed structure and the transition plan that has been developed to advance the recommendations to a successful conclusion. The circulation of the sanctioned Final Report will be undertaken by the GWG and the SPC as a combined and integrated effort.

5. Governance Model Rationalization

5.1. Options

Every port faces a dilemma when examining its governance, particularly at the time of public sector withdrawal or devolution, or later when devolution decisions are revisited. In the devolution process, each devolved entity faces an identity crisis: does it co-opt the objectives of government, or identify its own in keeping with the views of the newly created Board, or co-opt those of community stakeholders?¹⁶

¹⁶Brooks, Mary R. (2005), Good Governance and Ports as Tools of Economic Development: Are They Compatible? In World Shipping and Port Development, Tae-Woo Lee and Kevin Cullinane (eds.), London: Palgrave MacMillan, pp. 104-124.

Since strategic objectives determine the governance model, the principal factor in choosing a new model of governance is found by answering the question: *What is required of the new legal entity?* Studies have shown that worldwide ports may follow one of five strategic objectives:

1. Maximize profits for shareholders;
2. Maximize return on investment for government;
3. Maximize traffic throughput;
4. Maximize traffic throughput subject to a maximum allowable operating deficit; or
5. Optimize economic development prospects be they local or national.

The last objective is the one most frequently chosen,¹⁷ and the one adopted by the GWG. It is considered appropriate given the mix of public-private ownership of Port and associated transportation assets and the broadly held view among local stakeholders that the Port is one of the critical engines of potential growth for a challenged local economy. Notwithstanding this important decision, which fundamentally grounds the governance structure, the GWG is clear that competitive economics drive business decision making and investment in supply chains and that having an objective related to economic development in no way likens the new entity to an economic development agency or organization.

The requisite governance structure must reflect and represent the changing business of the Port i.e. the expectation of increased traffic, the objective of diverting the revenue stream associated with ownership of the harbour bed, as well as the development of capacity in terms of land, facilities, markets and service provision for the Port. This governance structure must be able to adopt and adapt to whatever new business lines will evolve from any expansion arising out of cooperative marketing activities. Having recognized the governance implications for shared business development and collaborative operations, the governance structure and mechanisms must also possess the inherent flexibility that enables individual combinations of players to pursue a variety of opportunities.

5.2. Possible Structures

“Governance is the process whereby societies or organizations make important decisions, determine whom they involve and how they render account.”¹⁸ As distinct from such definitions as “the adoption and enforcement of rules governing conduct and property rights”, this description points to the critical function of the governing body: making decisions and doing so with the necessary parties and respective accountabilities.

¹⁷Baltazar, R. and Mary R. Brooks (2007), Port Governance, Devolution and the Matching Framework: A Configuration Theory Approach in Brooks, Mary R. and Kevin Cullinane (eds), Devolution, Port Performance and Port Governance, Research in Transport Economics, Volume 17, pp. 379-404.

¹⁸Definition rendered by the Institute on Governance

When it comes to ports and their governance there are a number of considerations, starting with the possible structures.

There are generally speaking five types of port governance:

1. Central government-owned with central government management and control (Example: National Harbours Board ports in Canada pre-1982)
2. Government-owned but management and control are decentralized to a local government body (Example: Many U.S. ports)
3. Government-owned (federal, regional or municipal) but managed and controlled by a corporatized entity (Example: Sydney Ports Corporation)
4. Government-owned but managed by a private sector entity via a concession or lease arrangement, or owned and managed via a public-private partnership agreement (Example: Many ports in developing countries)
5. Fully privately owned, managed and controlled (Example: Many U.K. ports)

The Master Port Plan proposed a number of governance models for consideration. Taking a jet stream view, these models do not particularly offer a way forward for Sydney. One proposed approach was the multimodal model used in Boston at Massport or at the Port of New York New Jersey. Both of these entities are very much government-controlled with no mechanisms for community engagement. So while they may appeal superficially, in that they include all regional transport assets, their decision-making process is entirely political and the model is very much a 19th century approach to governance.

If Sydney and the surrounding community want a world-class governance model to match its world-class vision, a global scan of options is a good starting point. With the globalization of trade flows, shipping lines and cargo, customers have become more concerned about the performance of the entire logistics supply chain.¹⁹ This includes the performance of ports, which can no longer be seen as distinct and separate from their supply chain partners. How well ports perform and the governance structures in place have been discussed widely and consolidated in a treatise²⁰ prepared by the Port Performance Research Network, chaired by Mary R. Brooks of Dalhousie University. This work formed the base for the GWG governance discussions in April and May 2009.

As the U.S. model was considered in the MPP, the question arises: Is the U.S. model appropriate? It is important to have context here. The only federal role for ports in the U.S. is channel and navigational aid maintenance. Security rule-setting is governed by the Department of Homeland Security. Canada, on the other hand, has a deemed federal role in ports as part of its national

¹⁹Joint Transport Research Centre (2008), Port Competition and Hinterland Connections: Summary and Conclusions (Discussion Paper 2008-19). Paris: Organisation for Economic Cooperation and Development /International Transport Forum, Paris, April 10-11. <http://www.internationaltransportforum.org/jtrc/DiscussionPapers/DP200819.pdf>

²⁰Brooks, Mary R. and Kevin Cullinaneeds. (2007), Devolution, Port Performance and Port Governance (Research in Transport Economics Volume 17). Oxford: Elsevier, 656 pp.

economic policy and while the management and operation of the Port as well as the former government wharf and Sydport have been devolved (although the harbor bed has not), it remains subject to national regulatory oversight.

The framework of port governance in the U.S. is “complex and fragmented” with a web of public and private organizations involved in the management at national, regional and local levels, each with differing priorities, requirements and procedures.²¹ The multitude of jurisdictional forms has led to intense competition among and within ports in the U.S. This is not beneficial to what is needed in Sydney. U.S. ports are heavily dependent on government (loans, grants and taxes) and tax-exempt revenue bonds for their revenue. Tax-exempt revenue bonds are not allowed in the Canadian context. Furthermore, the U.S. model is considered highly inefficient.²²

Other models, such as the privatized U.K. approach are also not appropriate. Port devolution in the U.K. often involved outright sale, even of regulatory functions. Transfers were often at discounted prices and today there is no port regulator. Does the model work? It is flawed (from a public interest perspective) and there has been less investment than might have otherwise occurred.²³ As a result, other governments have not copied this model.

SMG came to the realization that in addition to regulations, investment and financing issues impose limits on the best options available to any community. When it comes to cost recovery, port users almost always want to be involved in port development, and this is reflected in the structure of the Canada Port Authority model. While the Canadian port governance models (discussed in the next section) have problems, and may not live up to expectations, they are better than those found in U.S., U.K. and Australian ports - the three examined most closely in the GWG meetings. In most other countries, ports remain owned by government but under various contracting out arrangements. Furthermore, while not entirely similar, the not-for-profit association model used for airport governance in Canada has allowed for significant capital investment to happen at Canada's larger airports. This approach holds some potential for Sydney if financial self-sufficiency can be secured over the longer term. While a number of features appeared to be instructive from a variety of locations, the myth of the one ‘Perfect Model’ is just that—a myth.

While there may be a certain degree of difficulty landing on the perfect model, there is no question that the legal structure must contain the authority necessary to deliver its mandate. The SMG has the assumed authority by virtue of stakeholder endorsement of the MPP, but the existing mandate is that which is defined in the SPC's Memorandum and Articles of Association. As long as the governance entity meets Canada's national laws and obligations, the authority for business activities of the SPC2 will be articulated in the Articles of Association.

²¹Newman, D. and J.H. Walder (2003), *Federal Ports Policy*, Maritime Policy and Management, 30, 2, 151-163.

²²Helling, A. and T.H. Poister (2000) *U.S. Maritime Ports: Trends, Policy Implications, and Research Needs*, Economic Development Quarterly, 14: 300-317.

²³Baird, Alfred J. (2000), *Port Privatisation: Objectives, Extent, Process and the U.K. Experience*, International Journal of Maritime Economics, 2, 3, 177-194.

These decisions led to the question: How should the governance structure be changed to capitalize on the opportunities available, yet within what is allowed by the current applicable regulatory framework?

In order to address this question, it is important to note that the Canadian Government chose three governance models for ports in Canada and these three models were explicitly described in the National Marine Policy of 1995 (Figure 4 below). The local/regional model was not prescribed in the policy.

Figure 4: World Class Governance

Model	National Marine Policy Criteria*	Example(s)
Canada Port Authorities (managed by a Board made up of nominated representatives of user groups and various levels of government)	Be financially self-sufficient; Is vital to domestic and international trade; Is part of the network of 40 ports accounting for 80 percent of Canada's marine traffic; Serves a large market area; Has links to major land transport infrastructure. 8 ports were required to apply (Fraser River, Halifax, Montreal, Prince Rupert, Quebec City, Saint John, St. John's and Vancouver). Others to apply and be dealt with on a case-by-case basis.	There are 4 in Atlantic Canada: Halifax, NS Saint John, NB St. John's NL Belledune, NB
Local/regional Ports	Can apply for CPA status (must be financially self-sufficient in this case) or be transferred to provincial governments, municipal authorities, community organizations, or private interests (in this order).	Sydney, NS** North Sydney, NS** Port Hawkesbury, NS**
Remote Ports	Is a port in an isolated community, reliant on marine transportation and a government wharf? To remain with the Federal Government.	Cap-aux-Meules, PQ

Note: *These criteria were stated in the National Marine Policy 1995 (Transport Canada, 1995) and the policy listed all ports that met the criteria in each group in the Appendices of the policy.

**The local/regional port divestiture might or might not include the harbour bed; these examples did not include the harbour bed.

Source: *National Marine Policy 1995* for the first two columns; the examples are listed at the Transport Canada Port Transfer Inventory web site as of March 31, 2009 (www.tc.gc.ca/programs/ports/transferinventory.htm).

Not all devolutions unfolded as planned in the *National Marine Act*. There were concerns expressed at the time by federal government staff that some municipalities, even some CPAs, might want to

strip port assets (like land for the development of condominiums), and so the letters patent for CPAs contained language preventing such activities. In Sydney, during the negotiations over the future of Sydport and the government wharf, transfer of control to community interests was rendered as achieved through the represented members of the SPC. Only one of these approaches, the local regional port model, involved the explicit withdrawal of federal government participation. Canada Port Authorities were commercialized, but the legal entity remains a non-recourse agency of the federal government accountable to the Minister of Transport, Infrastructure and Communities. Remote ports were seen as public service obligations and therefore not devolved at all. Therefore, while it might be seen desirable to follow another model from another country, as proposed in the Master Port Plan, this is simply not an option envisaged by the Government of Canada in its structuring of ports in Canada. As Sydney does not qualify as a retained remote port, it has only two options: (1) build the case to become a Canada Port Authority, or (2) revise its existing governance structure to meet its needs on a go-forward basis.

5.3. CPA Option-Sydney?

Even a cursory look at the second column of Figure 4 indicates that it may be difficult for Sydney to convince the Minister of Transport, Infrastructure and Communities that Sydney has met the criteria necessary to be a CPA. Conversations to date with Transport Canada officials have focused on whether Sydney could meet the financial responsibility test (the policy does not currently allow for the inclusion of harbour dues revenues in determining financial self-sufficiency) and the fact that the CPA model is designed for ports with federal assets (all of which save the harbour bed have already been divested thereby limiting the ability to generate lease revenue). That said, after additional research and discussion with various Canadian Port Authority CEOs, the SMG remains unconvinced that this is a suitable course of action even if it were possible.

CPAs are prevented from selling assets (although they may trade them) and all land assets remain the property of the Government of Canada. Being a CPA would mean that Sydney could pledge a revenue stream to support infrastructure development, but as a local and regional port, it can already do this. However, being a CPA means that the Minister must approve capital plans above a port-specific threshold. No such restrictions are currently imposed on the local decisions made in Sydney, where the Port's ability to raise capital is tied only by its imagination, persistence, and what the market will accept. Perhaps most important to those attending the GWG meetings on April 15th – 17th, 2009 was the fact that, under a CPA model, the Minister of Transport, Infrastructure and Communities has final control on appointments to the Board of Directors. This was seen as an unacceptable condition imposed on the future management of a community asset. In short, on the assumption that harbour dues currently being collected by the federal government could be eventually redirected in to the coffers of the new governance body, the GWG concluded there are no advantages to being a CPA that are not already available to Sydney; however, there are benefits to be lost if CPA status were to be granted. More importantly, the key to success for Sydney is through alignment of the strategic objectives and vision for the future of the Port and surrounding community via a world-class governance model for the 21st century.

While acquiring CPA status is not the preferred course of action, the GWG is aware of the practical realities imposed by the objective of financial self sustainability. As the outcome of the harbour dues issue becomes clearer and the financial circumstances of the new entity evolve, Sydney may need to revisit its option of applying to become a CPA. Sydney has been advised that a successful application would require a demonstration of financial self sufficiency without reference to any anticipated harbour dues revenue. In ports where federal assets have not been divested, lease income is the predominant source of revenue that supports a claim to financial independence. At the moment, the SPC owns no assets, and there are no federal assets (other than the sea-bed itself currently generating \$7,500 per year in water lot lease revenue) that could be transferred into the SPC2. However, dialogue is underway with government and contemplated with others with a view to having assets placed under the management and/or control of SPC2 in the expectation that this would eventually produce a source of ongoing revenue in addition to facilitating an integrated development strategy. The issue of financial sustainability and the anticipated operating revenue gap of the new organization is discussed further below.²⁴

5.4. 'World Class Governance' – Key Success Factors

The Government of Canada, in its devolution of airports, introduced a set of public accountability principles that were mandatory for airports to follow.²⁵ These were:

- not-for-profit corporation;
- Board of Directors that included two or three federal nominees;
- equitable access to all carriers;
- reasonable user charges;
- engagement in activities consistent with its purpose;
- general practice to tender contracts;
- declarations of business activities to avoid real or perceived conflict of interest and
- Community consultations.

These principles provide direction on the criteria to be considered in the establishment of a multimodal transportation entity. It should be noted that while this Final Report is focused predominately on the Port component of a multimodal transportation entity, the governance structure, process and principles adopted must reflect and represent all transportation modes and impacted organizations.

Irrespective of the complexity of the entity being governed, governance scholars have concluded that smaller boards (than the 15 seen at airports) and less government involvement have been more effective. Effective boards have been those that ensure that key decision-makers are involved. Stakeholder engagement has grown ever more important and the formalization of community consultation has been a positive force in the development of ports and airports worldwide.

²⁴ See Section 9.

²⁵ Auditor General of Canada (2000), 2000 Report of the Auditor General of Canada (Chapter 10: Transport Canada - Airport Transfers: The National Airport System), Ottawa: Office of the Auditor General of Canada.

Today, a world-class governance model is one that...

... is open and transparent,

...has key decision-makers in the room,

...practices community consultation, and is responsive and inclusive, and

...plans to deal with environmental concerns and social and economic sustainability in the future, to the benefit of the community in which it resides.

The key to achieving such world-class governance is therefore about openness and consultation, and the structures that are set in motion to conduct activities within these guidelines. A port governance model for a port seeking to optimize economic development prospects indicates that a broader stakeholder engagement model is appropriate (Figure 5) that may be achieved by thinking in concentric circles about those who need to be engaged. (Figure 6).

Figure 5: World Class Governance



Figure 6: The Multi-Model Governance Vision



This model is particularly instructive for Sydney where the opportunity and expectation exists for significant new development on tracts of land immediately adjacent to or near the harbour, including the 'Port-to-Port' corridor lands running from the Port to the airport. By definition development that is triggered by port related activity will involve (in addition to the land owner of the particular

Figure 7: Interlocking Regional Governance

piece of land) municipal land use-planners, rail, road and air transport service providers. Not surprisingly, these are the players that will ultimately make or break the Port's success as a node in a much bigger supply chain, and provides a compelling justification for an integrated approach to port governance that includes the key stakeholders responsible for all modes of transportation. As already stated, there is no one right governance model applicable to all port situations. Further to this is the requirement for the new entity to fit in with the existing governance bodies of its stakeholders. (Figure 7).



Possibly one of the better ways of viewing the authority of this body is through the framework of public policy... as a local / regional port this entity responds to the policy opportunities required by government to assume, define, and mobilize the mandate as long as Canada's national laws and obligations are met.

As such, this body garners the following:

1. Articulated authority from the Master Port Plan;
2. Assumed authority from the community to aspire to this mandate;
3. Declared legal authority in the memorandum and articles of association; and
4. Associated authority from the members and those who sit on the Board.

6. Vision & Mandate: Sydney Ports Corporation 2

6.1. Vision

As previously indicated, the entry point for the GWG working sessions was the following governance 'Vision Statement': Sydney will be a world leading multimodal hub, operating as a vibrant partner in global supply chains, committed to the economic development of Cape Breton (hereafter the Vision). As portrayed in Figure 6 above, the Port is foundational and pivotal to the establishment of a multi-modal hub.

While the initial focal point for the Vision will be the Port, the other concentric circles form key strategic elements of the Vision. Each of these circles represents a different set of players and a distinct economic model, all of which contribute to the economic development of the region in terms of investment attraction, business activity, employment and tax revenues. In the case of the second circle, local landside access companies like the rail service and the trucking companies, as well as the airport and future distribution centres, significantly contribute to the attraction of the Port as a global multimodal hub, thereby adding to the Port's viability and growth potential. Here the economic model shifts beyond harbour fees and the like to much larger business lines related to global transportation and distribution. The third concentric model represents the needs and interests of the local community whose involvement will be critical in the core and ancillary services and businesses associated with a global multimodal transportation hub. Herein lies the potential for significant employment growth including the small and medium size business community, the fastest growing sector in Canada in terms of employment as a result of the multiplier effect emerging from significant industrial development.²⁶ The fourth circle refers to the potential to become an interconnected multimodal hub with other Ports in the supply chain – such

²⁶The economic model developed in the Master Port Plan estimated that of the 2,125 jobs generated by marine and cargo activities at the Ports of Sydney in 2006, 833 were directly generated by those activities, and 1292 were supported by the purchases of those direct jobholders (induced) and the purchases of the local firms providing cargo handling and vessel services (indirect); Master Port Plan volume 1 p.16 a copy of which may be obtained at www.sydneyport.ca.

as Philadelphia in the Delaware River. As the Port grows its interconnectivity with other transportation hubs, so grows their partnership strength as a member of a global supply chain.

While the concentric circles demonstrate the growth potential of the Port and the evolution of distinct yet interrelated economic models, it should be noted that these are both concurrent arenas of development activity as well as phased approaches. Work is going on in all circles, and will continue as such along with the full realization that the Port is the pivotal foundation upon which everything else is being built. Indeed, the local community (circle three) has played a vital role in facilitating communications and assisting with political positioning. That being said, more than likely the development activity and intensity will assume a phased approach starting with the Port and then moving through the various concentric circles. It will therefore be incumbent on the governance structure to reflect the full nature of these concentric circles and their economic activity in order to become a viable stewardship mechanism for growth in all aspects of the opportunity facing this region.

It is important to remember that the purpose of the Vision is to establish an “end state” to which all stakeholders aspire. Its intention is to stretch the possibilities of thinking and believing to leverage the potential of the assets (human, financial, physical). Only when each feature expressed in the Vision is targeting focused, diligent and effective actions will it be possible to reach an outcome that has the most powerful and positive impact on the communities embraced by the Vision.

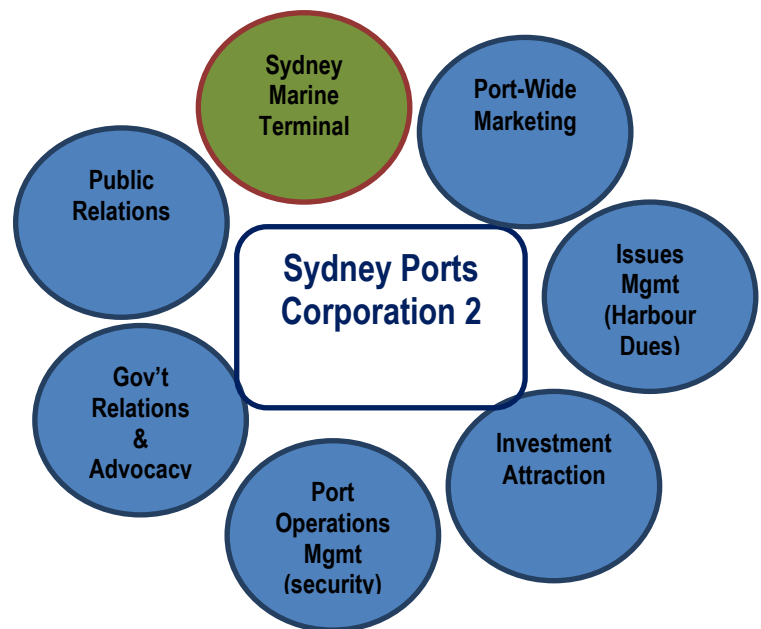
It is clearly understood that this Vision is aggressive in its nature, and therefore will demand a great deal from every single stakeholder. Let it be remembered that the purpose of this Vision is for one and only one reason, from which we cannot lose sight: to co-create a prosperous, self sufficient and self-reliant Cape Breton economy. By definition this Vision commands extraordinary collaboration amongst the critical businesses, communities, industries, government agencies and the public. It is a commitment to a specific future that each stakeholder must embrace as part of his or her respective organizational or community mandate. SPC2 therefore, does not stand alone in the pursuit of this Vision. It is held by all of its stakeholders.

The recommendations and rationale that follow describe the efforts that are required to translate this Vision into the governance structure that will ensure its realization.

6.2. Mandate

The figure to the right identifies the existing operational reach of the SPC in green (the management of the Sydney Marine Terminal on behalf of the CBRM) and the incremental activities depicted in blue that will clearly have to become part of the SPC2 core business if the governance Vision is to be realized. The purpose of this section is not to definitely articulate the mandate and activities in each of these areas, but to present a template that serves the purpose of defining the scope and complexity of the organization as dictated by the Vision.

Figure 8: Achieving the SPC2 Vision



6.2.1. Management of the Sydney Marine Terminal

The creation and evolution of the SPC and its management of the Sydney Marine Terminal on behalf of CBRM has already been discussed.²⁷ The continued successful management of this business is a critical success factor to SPC2. Recognizing the importance of capturing future growth opportunities in cruise related activities, the SPC2 Board will need to ensure that existing revenue from this operation is not diverted away from this business to the detriment of the future bottom line. In addition, it is recognized that an en masse change of the existing SPC working Board may have a negative impact on business continuity, and the transitional recommendations contemplate an operating advisory committee comprised of existing Board members to ensure the appropriate expertise is available through a transition period.²⁸

It is hoped that the operations management expertise that has evolved through management of the Sydney Marine Terminal will be leveraged and assist in generating additional sources of revenue. This will be particularly germane if the organization is successful at bringing other port assets under its management or control on a fee for service basis (discussed further below in this section) or if it becomes clear that port wide operational issues such as security or elimination of ice fees demand a coordinated response on behalf of Port users and operators on a fee for service basis.

²⁷ See s.1.4 and s.1.6.

²⁸ See Recommendation # 3, s.8.3.

6.2.2. Strategic Planning and Custodian of the MPP

The strategy as outlined by the MPP is a living dynamic comprised of assumptions, predicted events, desired outcomes and variables of every colour – economic, social, political and environmental. While the initial MPP was instrumental in the launching of the GWG, the need for continued collaboration of all the parties and revisions to the strategy as circumstances change is apparent. It will be dependent on the SPC2 to continue to update the Plan and ensure that focused attention is being given to the business development opportunities embedded in the Port vision.

Given the global market forces that have been in evidence within the past two years, the necessity for clear strategic thinking, timely decision making and targeted action is of paramount importance.

6.2.3. Government Relations & Advocacy

When an enterprise is comprised of multiple stakeholders, there is no question that it is also beset by multiple agendas. In the case of SPC2, it will be incumbent on the organization to manage multiple interests in striking a single advocacy agenda. This will position the organization on key issues that must be addressed in order for the enterprise to properly steward to its plan and realize its vision. One of the consistent messages received over the past number of years has been the requirement for clarity in terms of who speaks for the Port. The obvious corollary to that is defining the organization's position on the plethora of issues that challenge the Port's aggressive commercialization plans. Without a single strong advocacy agenda, SPC2 will find itself among conflicting and disordered forces through which it has no path or supporters to guide its actions.

The role of government in a public/private enterprise is a delicate one and demands special attention. Routinely positioned as both the funder and the regulator, organizations pay special attention to the quality of these government relationships so that they endure position changes, and human resource replacements. Without doubt, specific government agencies are critical to the success of a port operation. This is especially true when three levels of government are involved, as well as multiple departments, all of which may not be on the same page.

The role of the enterprise is to co-create (with its various governmental bodies) the policy frameworks, resource sourcing /allocations, regulatory environment protocols, government-to-government liaisons (this includes international agencies as well as federal departments) to name but a few of its functions. At a time when public /private partnerships have not yet gained the maturity necessary to carve the way clearly, government relations holds a powerful role in laying down an instructive and innovative precedent that guarantees a long term network of mutually beneficial relationships.

6.2.4. Regulatory Interface and Liaison

A stringent environment of regulations and working relationships governs port operations. In order to ensure operational excellence and a reputation in good standing, SPC2 must abide by a strict regime of conventions and agreements. The role of the organization is to establish itself as a valued presence within the various regulatory driven agendas, and to maintain a set of working relationships that will ensure the strategic agenda is properly implemented and mandatory regulatory compliance is achieved.

6.2.5. Marketing and Business Development/Investment Attraction

An optimized port is broadly viewed as a foundation on which to underpin a new regional economy. While the Port is an asset of considerable potential, it is operating in a highly competitive environment and is largely undiscovered within the global maritime community. The fundamental importance of marketing and promotion to the successful realization of the Port Vision cannot be overstated. Notwithstanding the quality of the Port assets and its soon to be realized world class deep water capability, marketing the concept of a world leading multimodal hub demands a comprehensive, innovative and highly strategic marketing capability. A distinction is drawn between marketing the Port and its existing business lines, as opposed to developing new business lines and attracting new investment. The latter requires very close collaboration with the asset owner to ensure that the messaging is consistent and that the organization's role is clearly defined, authorized and properly compensated. There is a clear link here between business development and ongoing operations management. It is hoped that SPC2 will replicate the existing SPC management model with the Sydney Marine Terminal or acquire lease or ownership positions in one or more of the following assets:

- SYSCO dock and adjacent property (N.S. Lands);
- Sydport (Laurentian);
- Port-to-port "corridor" lands (CBRM);
- Other industrial park lands (CBRM); and
- Sydney Harbour sea-bed (Transport Canada).

This issue of expanding the organization's operational reach beyond the Sydney Marine Terminal is tightly intertwined with long-term financial sustainability, and will require further dialogue with the asset owners. Among important issues to be considered is the financial risk associated with management, lease or ownership including tax considerations.

It is the mandate of SPC2 to become the clearing house for any other parties wishing to access the Port's facilities. It is one thing to position this as a requirement of doing business. It is quite another to then deliver the quality of services and marketing attraction to make this a viable component of Port operations. Not only will SPC2 have to navigate its way in branding and positioning the unique competitive advantage of the Port, it will also have to do so amongst the world leaders in multimodal transportation hubs.

6.2.6. Communications-Public Relations

SPC2 represents a consortium of players, both public and private. It is also positioning itself as a community-engaged enterprise. In a world without borders where information and knowledge are instantly available, keeping people informed has never been more important and challenging. It seems that the more information people are provided, the less they feel they know. In a climate of unpredictable variables, special interests, complex economics and multiple agendas, SPC2 will be challenged in respect of both internal and external communications.

The organization is responsible for ensuring that every stakeholder group is consistently and accurately informed so that they can continue to contribute their efforts optimally in the pursuit of

a shared Vision and new economic paradigm. This requirement not only applies to the identifiable members of the consortium, but also to the amorphous body of the public. Such a communications mandate faces even more difficulty when confronted with the scope and complexity of transitioning to a multimodal hub. With numerous interpretations of what such an end state actually means, the role of communications is to embed a common interpretation of the Vision and a shared understanding of the means by which it will be realized.

In a world rich with alternative media, SPC2 must find its way to innovatively incorporate a variety of communication mechanisms and technologies, each one used for the purposes it best serves. This means that not only is SPC2 expected to facilitate the creation of a common constructive culture among all of its key players; it must do so using the optimum media for each player and respective messaging.

7. Proposed Governance Model

7.1 Retain the Basic SPC Legal Structure

Under the Companies Act (Nova Scotia), the SPC is as a company limited by guarantee. It is a no share capital corporation that has the right to carry on business in the nature of port operations on Sydney Harbour or any other port on Cape Breton Island. The SPC is currently governed by its Members, a group consisting of no less than seven or no more than twenty-five individuals. Members are analogous to shareholders and have the ultimate authority with respect to SPC's governance. For the most part, the Members of the Company are comprised of citizens appointed from time to time by the then existing members, with each member having the right to hold membership for up to three terms of three years each.

In lieu of paying any dividend to its Members, as would be the case in a company limited by shares, any surpluses (or what may otherwise be characterized as "profits") or other accretions to the Company are used to promote the objects of the Company. Accordingly, for this limited reason, the SPC is considered to be a not for profit corporation. In almost all other respects, the SPC possesses the corporate capacity of any other conventional corporation. One unique feature of the SPC is that, subject to the rights of the creditors, in the event of it being wound up, any assets remaining would become the property of the Cape Breton Regional Municipality.

Currently, Members in SPC are not specifically divided into discrete classifications, although effectively SPC's current Articles of Association allow for four "classes" of Members: individuals, appointees from CBRM, the Province of Nova Scotia and the Government of Canada. Subject to certain procedural requirements, each Member under the current structure is entitled to vote.

Under the proposed restructuring, SPC2 continues to exist as the same legal entity, as a company limited by guarantee under the Companies Act (Nova Scotia), having no share capital and with any surpluses being reinvested in the company. The significant difference between the current SPC

structure and the proposed new SPC2 structure is the creation of seven classes of Membership: Municipal, Community-at-Large, Commercial Marine, Multimodal, Federal, Provincial and First Nations. The latter three classes are non-voting

A narrative of the proposed SPC2 structure follows, and a summary table that identifies the Membership and Board structure is shown below in Figure 9.

Figure 9: Proposed SPC2 Class, Membership and Board Structure

CLASS	MEMBERSHIP	BOARD OF DIRECTORS
CAPE BRETON REGIONAL MUNICIPALITY	<ul style="list-style-type: none"> CBRM 	<ul style="list-style-type: none"> Appoints 2 Directors Voting
COMMUNITY MEMBERSHIP	<ul style="list-style-type: none"> Comprised of 15 to 25 members from community organizations and individual citizens (at least 1/3 individual citizens and at least 5 community organizations). 	<ul style="list-style-type: none"> Members elect 4 Directors Voting
COMMERCIAL MARINE	<ul style="list-style-type: none"> Comprised of an unlimited number of Commercial Marine Interests. 	<ul style="list-style-type: none"> Members elect 3 Directors Voting
MULTIMODAL TRANSPORTATION	<ul style="list-style-type: none"> Comprised of unlimited number of Multimodal (Non-Marine) Transportation Interests. 	<ul style="list-style-type: none"> Members elect 1 Director Voting
GOVERNMENT OF CANADA	<ul style="list-style-type: none"> ECBC or as directed by the GOC. 	<ul style="list-style-type: none"> Appoints 1 Director Non-voting
GOVERNMENT OF NOVA SCOTIA	<ul style="list-style-type: none"> NS Dept of Transportation and Infrastructure Renewal or as directed by the GONS 	<ul style="list-style-type: none"> Appoints 1 Director Non-voting
FIRST NATIONS MEMBERSHIP	<ul style="list-style-type: none"> Comprised of members of the Aboriginal peoples in Canada who are neither Inuit nor Métis. 	<ul style="list-style-type: none"> Appoints 1 Director Non-Voting
SUMMARY		<ul style="list-style-type: none"> Voting Directors: 10 Non-Voting Directors: 3 CEO Non-Voting ex-officio: 1

7.2 Membership Classes

The purpose of dividing the Membership into specific classes is to ensure there is a representative cross-section of governmental, commercial and community interests.

In brief, the most important functions of the Members of the Company are to appoint the Board of Directors, admit new Members to their respective classes, review annually the financial statements of the Company, and amend, if necessary, the Memorandum of Association and Articles of Association of the Company.

The following provides a description of each class of Membership.

Class A - The Cape Breton Regional Municipality

CBRM has the right to membership in the Company. In exercising this right, CBRM will, from time to time, appoint an individual to act as its proxy at annual, general and special meetings of the Company. Under the proposed structure, each voting class of Members shall have the right to as many votes at such meetings as it has appointees on the Board of Directors. In the case of CBRM, it has the right to appoint two Directors and therefore the CBRM class will have two votes at any annual, general or special meeting of the Company. As in the case with all membership classes, elected government officials are not eligible for membership or appointment to the Board. While the other government classes of membership (which will be discussed below) do not have voting rights, the rationale for CBRM's voting rights is an acknowledgement of CBRM's unique relationship with SPC and the Port's previous governance history, and the accountability of CBRM to the community. As noted above, Class A has the right to appoint two voting Directors to the Board of Directors.

Class B – Community At Large Membership

This class will essentially be comprised of community organizations and individual citizens. The class will consist of no less than 15 and no more than 25 members.

At least 1/3 of this class must be comprised of individual citizens. The rationale for this is to ensure the presence of individual citizen voices unencumbered by representation.

The requirement to have representation from the community groups is to secure the involvement and commitment from specific groups of interest. There must be at least five community organization members within the class at all times. The community group membership could be from broad based community business organizations, broad based organized labour associations, commercial fishers associations, environmental groups, community economic development groups, educational institutions and groups dealing with the health and welfare of the population (although not exclusively).

Members are appointed for terms not to exceed 3 years. A citizen (individual) member cannot hold more than three consecutive terms. A community organization is not limited in the number of terms it may serve as a Member, subject to the discretion of the Class at the time of renewal. Term renewals must be approved by a majority vote of the members making up Class B. As Class B is entitled to appoint four voting Directors to the Board of Directors, it will have four votes as a Member at any annual, general or special meeting of the Company and will appoint a proxy from time to time to vote at such meetings. As noted, Class B has the right to appoint four voting Directors to the Board of Directors.

Community engagement and advocacy have played a critical role in the development of the Port to date, and will continue to do so. The result of SPC's deliberate community engagement focus is an energized community with an understanding of its stake in Port development. The proposed governance model has now formalized a key component of the next phase of community engagement. It will be critical that this Membership class develop open and transparent means of

representing their constituents including how they go about securing their members, keeping their members informed, representing the best interest of their members, and mobilizing their members around critical issues that emerge in the pursuit of the new vision.

Class C– Commercial Marine Membership

This Class will be comprised of an unlimited number of Commercial Marine Interests (generally, for-profit entities carrying on marine business activities in or related to the Port of Sydney)²⁹. Members are appointed for terms not to exceed three years. A Commercial Marine member is not limited in the number of terms it may serve as a Member, subject to the discretion of the Class at the time of renewal. Term renewals must be approved by a majority vote of the members of Class C. Class C appoints three voting Directors to the Board of Directors and as a Member is therefore entitled to three votes at any annual, general or special meeting of the Company and will appoint a proxy from time to time to vote at such meetings. As noted, Class C has the right to appoint three voting Directors to the Board of Directors.

Class D–Multimodal Membership

This Class will be comprised of an unlimited number of Multimodal (Non-Marine) Transportation Interests (generally, for-profit entities carrying on transportation activities in or related to the Port)³⁰. Class D Members can hold membership for a term not to exceed three years. A Multimodal Transportation member is not limited in the number of terms it may serve, subject to the discretion of the Class at the time of renewal. Term renewals must be approved by a majority vote of the members of Class D. Class D appoints one voting Director to the Board of Directors and as a Member is therefore entitled to one vote at any annual, general or special meeting of the Company and will appoint a proxy from time to time to vote at such meetings. As noted, Class D has the right to appoint one voting Director to the Board of Directors.

Class E and Class F – Federal & Provincial (Nova Scotia) Governments

The Governments of Canada and the Province of Nova Scotia have the right to membership in the Company. Upon admission to membership, each can remain a Member for an unlimited term and is entitled to be fully participating but non-voting at any annual, annual, general or special meeting of the Company. In exercising its right to membership, each Class will, from time to time, appoint an individual to act as its proxy at annual, general and special meetings of the Company. Each Class appoints one non-voting member to the Board of Directors.

The rationale for the non-voting status of these two levels of government is their stated preference of not being held to account for actions of the Board.

²⁹ Organizations such as Marine Atlantic, while not strictly “for profit”, could be admitted to this Class.

³⁰ Organizations such as the Sydney Airport Authority, while not strictly “for profit” could be admitted to this Class.

Class G – First Nations Membership

This class is made up of members of the Aboriginal peoples in Canada who are neither Inuit nor Métis. While over 600 recognized First Nations governments or bands exist across Canada, the Mi'kmaq are the most prominent in Nova Scotia. All Bands qualify for membership in this Class. In exercising its right to membership, the First Nations Class will, from time to time, appoint an individual to act as its proxy at annual, general and special meetings of the Company. Class G appoints one non-voting Director to the Board of Directors and as a Class is entitled to be fully participating but non-voting at any annual, annual, general or special meeting of the Company.

The rationale for the non-voting status is consistency with the other federal and provincial governments. Members of the Aboriginal community are eligible for membership in the voting Community category in the same manner as other citizens.

7.3 Membership - General

All classes may consider Members from outside of Cape Breton, subject to the Memorandum and Articles of Association of the Company. Overall guidelines will be developed for the membership classes, such as further demographic delineation, background and skill sets to ensure quality representation that can govern highly diverse constituents.

The expectations of each class are to:

- a. Develop and operate an active and meaningful organizing and feedback loop with their constituents i.e. a series of mechanisms to i) recruit and organize their members; ii) facilitate communication amongst their constituents; iii) gather input and direction from those they represent; iv) communicate back to their constituents the output from the Board in a timely and accurate manner.
- b. Nominate Directors who will serve in the best interests of SPC2 and support its activities as advocates.
- c. Decide on their positioning /resolution of issues brought forward.

7.4 Board of Directors

While the Members exercise ultimate authority and control over the Company in a manner analogous to the powers exercised by the shareholders of a conventional corporation, as with any corporation, the central governing responsibilities in SPC2 will rest with the Board of Directors. SPC2's Board of Directors will be comprised of thirteen Directors and, if so appointed, a CEO (ex-officio, non-voting) for a total of fourteen Directors, ten of whom are voting. Board positions are allocated by membership category as discussed above, with each category appointing their respective Directors to the Board as follows: a) Municipal 2 (voting); b) Community-at-Large 4 (voting); c) Commercial Marine 3 (voting); d) Multimodal 1 (voting); e) Government of Canada 1 (non-voting); f) Government of Nova Scotia 1 (non-voting); g) First Nations 1 (non-voting) .

Directors' terms cannot exceed three years and a Director can have his or her directorship renewed for a second consecutive term of no more than three years. Directors appointed by Class B, Class C and Class D must have their term of directorship renewed by majority vote of the membership Class which originally elected him or her.

The Board of Directors is responsible for hiring the CEO. The Members may appoint the CEO to be a Director on the Board, in which case the CEO would be a non-voting member and not subject to the term limits.

With the exception of the CEO, all of the Directors and Officers act in a voluntary capacity. The make-up of the Board reflects a balance of the representative Classes and skills appropriate to the various functions of the Board. With reference to the organization's vision and mandate, these required skills include, but are not limited to, strategy development, marketing and business development, communications and public relations, and community engagement and citizenship.

An important consideration for SPC2 is to have a clearly articulated vision for how the Board will carry out its mandate. The continuum runs from what is commonly referred to as a "working board" to that of a "policy board". In essence, a "working board" carries out functions which would otherwise be reserved to managers and operators. A "policy board's" focus is on the direction of the organization and the accountability of its management.

The current SPC has operated as a working Board. This has been both necessary and useful. As such, the Board simultaneously works on a range of critical operational issues, while also identifying areas where policy would be beneficial. It is suggested the time has come for the two functions – management/operations and governance - to be separated. A CEO would undertake the first with support from an Operational Management Group and the second would be the domain of the Board.

The challenges ahead for SPC2 are varied and, in many respects, complex. The enterprise's transition to a multimodal hub and partner in global supply chains commands strong leadership and adroit management. It will require advanced levels of operational acumen and highly competent governance. For these reasons, there must be an acute delineation between the operations of the SPC2 and its governance. Therefore, it will be necessary for SPC's Board of Directors to govern as a 'Policy' Board: (a) setting the vision, mission, and strategic framework; b) setting policies and establishing limits of authority; c) hiring and stewarding the CEO; d) measuring and guiding the organization's performance; e) leading the advocacy agenda and f) managing its own Board effectiveness.

It is anticipated as part of the transition work in advance of the establishment of the new Board, a governance roadmap document will be prepared detailing key points related to legal structure, process, accountabilities, membership, committee structure, mechanics of decision-making, engagement and reporting.³¹ This will assist the start up process and help to ensure the Board carries out its governing role, the membership is engaged and the operations are under the direction of the CEO/senior manager and his/her staff.

³¹ See the recommendation for the Transition Leader and associated scope of work discussed in s.7.5

Finally, it is important to note that as a Policy Governance Board, each Board member places his/her primary accountability to SPC2 and its interest and secondly to the constituents he/she represents. This is in contrast to a Representative Board in which the accountability is reversed – i.e. each member's primary accountability is to its constituents and secondly to the organization it is governing.

7.5 SPC Advisory Committee

With the establishment of the new Board, the current SPC Board will cease to function as Directors. While some SPC Directors may be appointed to the SPC2 Board, there is the risk that an important element of institutional memory and operational continuity as it relates to the Sydney Marine Terminal will be lost. In order to ensure the new Board is enabled with history and experience, it is recommended an SPC2 Advisory Committee be established from the membership of the current SPC Board. It is anticipated this Advisory Committee would be necessary for up to the first year of the new Board's existence.

7.6 Transition Leader

An obvious question relates to the implementation of recommendations once accepted: how to efficiently and expeditiously evolve from SPC to SPC2? The GWG articulated the gravity of the matter during its June 20th deliberations. There is a long list of reasons for moving in an expeditious and considered fashion. They include the pending completion of channel dredging by the end of 2011 and the need to refocus and prioritize Port marketing, the urgency of addressing the near term SPC2 operational funding requirements that will enable the hiring of a CEO and putting the requisite human resource complement in place to deliver the organization's vision and mandate, and advocacy and strategic leadership around issues related to the goal of financial sustainability.

Earlier attempts to put in place provisional structures such as an interim board and a nominating committee to guide the transition process were distracted by pressing issues of the day, in particular the acquisition of dredge financing. The GWG canvassed this issue and recommended a Transition Leader be recruited to effectively become the custodian of the transition process. Jointly reporting to the GWG and the SPC Board, the primary responsibilities would include the identification and briefing of the new membership and facilitating the membership classes in their appointment of the new Board. It was agreed that this role would terminate at the first meeting of the new Board, targeted for mid October, 2011. To assist the GWG in identifying an acceptable candidate, the following credentials were identified and considered:

- Salient knowledge of file;
- Arms length position – no vested interest;
- Objective and perceived to be so;
- Credible and trustworthy reputation;
- Working knowledge of the players;
- Transition and governance experience; and
- Excellent communicator.

At the conclusion of the discussion of criteria, unanimous consensus was reached on the suitability of Ron L'Esperance, former provincial Deputy Minister, as an appropriate candidate to perform this role. It was suggested the GWG Chair contact Mr. L'Esperance to explain the role and determine his level of interest, on the basis that the interim funding could be secured. The attached proposal (Appendix 2) has been presented in response, and includes a summary biography setting out relevant qualifications.

8. Summary Restatement of Governance Recommendations

This section restates the GWG recommendations for the next phase of the Port's governance. They are rationalized in the preceding sections of this document. The GWG views the recommendations as reflecting comprehensive research supported by subject matter experts and extensive and varied consultation with Port stakeholders. Importantly, the recommendations have been developed in partnership with the Sydney Ports Corporation. They are interconnected and considered key to the advancement of the Port in step with its potential and in the collective interest of economic diversification and the pursuit of prosperity.

8.1. Recommendation 1: *The Vision*

Adopt the new Vision of becoming a world leading multimodal hub, operating as a vibrant partner in global supply chains, committed to the economic development of Cape Breton. (Reference, s.1.7; s.6.1).

8.2. Recommendation 2: *The Mandate*

Adopt the core mandate of optimizing the Port's economic development prospects for the benefit of community and the key areas of responsibility identified as critical to achieving the mandate as follows:

- Management of the Sydney Marine Terminal
- Strategic planning and custodian of the Master Port Plan
- Government Relations & Advocacy
- Regulatory interface and liaison
- Marketing and Business Development/Investment Attraction
- Communications & Public Relations

(Reference, s.5.1; s.6.2)

8.3. Recommendation 3: *The Governance Structure*

This recommendation has multiple interlinked components.

Framework: Continue operating as a regional/local port in the context of the options available pursuant to the *Canada Marine Act* with the possibility of revisiting a CPA designation in the future in the context of financial sustainability. (Reference, s.5.2; s.5.3)

Legal Structure: Adopt the current SPC's legal framework as the basis for the expansion into a multimodal transportation entity, thereby necessitating modifications to the Memorandum and Articles of Association. (Reference, s. 7.1)

Membership: Govern with a membership structure as proposed, including the Classes of Members. (Reference, s.7.3)

Board: Govern as a Policy Board with the structure as proposed, including a transitional Advisory Committee comprised of existing SPC Board members. (Reference, s.7.2; s.7.4)

Community Mechanisms: Position SPC2 as an organization committed to fostering community ownership, involvement and engagement through the Community At Large Board membership as well as community engagement mechanisms for ongoing involvement. (Reference, s.7.3)

8.4. Recommendation 4: *Financial Sustainability*

Operate and govern SPC2 as a start-up and with the objective of reaching financial self-sustainability through the pursuit of harbour dues and other means of revenue diversification. (Reference, s. 4.3; s.5.3)

8.5. Recommendation 5: *Transition Plan*

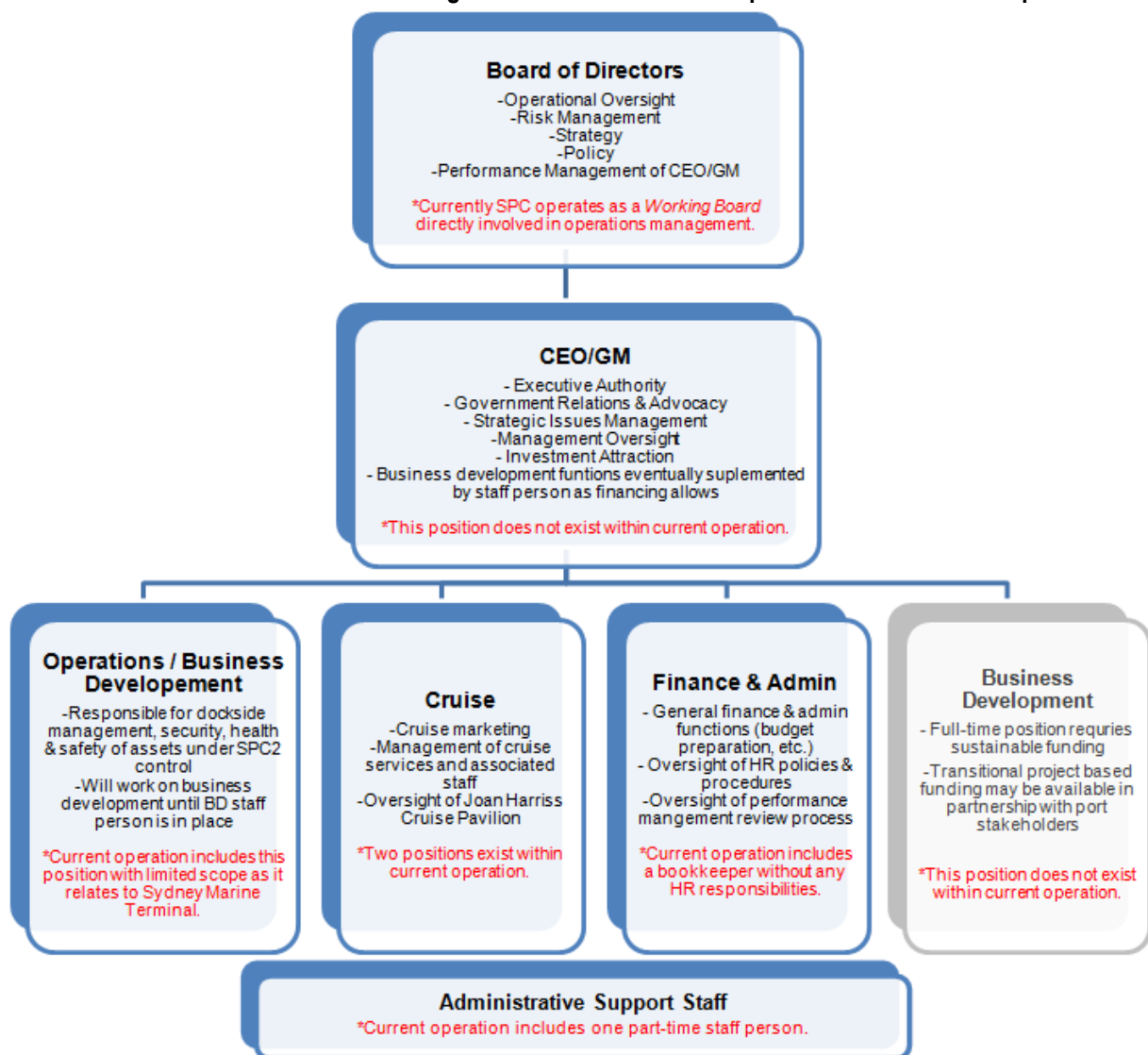
Source funding for and engage the Transition Leader to facilitate and expedite the transition to SPC2. (Reference, s.7.6)

9. Operational Considerations

It has been apparent for some time that the SPC's human and financial resource capacity will not support the mandate of SPC2. The Draft Report attempted to identify the incremental resources required to meet the new mandate without compromising the existing SPC operation and incorporated a substantial financial model and revenue forecast. Key model assumptions included the timing of harbour dues acquisition and the realization of development opportunities. The assumptions embedded in this model are now outdated and in some cases no longer valid.

Throughout 2010, SPC experienced a number of significant events that impacted staffing levels. These included untimely deaths, personnel illness and departures, and the retirement of the General Manager. Anxious to better understand the human resource issues and prepare the organization for the transition to SPC2, the SPC Board commissioned the GWG and SMG Chair to lead a Human Resource Needs Assessment. That work was undertaken in November 2010. It involved interviews with key staff members and identified the incremental resources required to meet the SPC2 mandate. The conclusions from this work were further refined in the March 2011 Executive Summary, and the draft organization chart from that document is reproduced below. The chart below (Figure 10) depicts the current SPC staff complement, and the notations in red identify the expected transitional gaps.

Figure 10: Governance and Operations Division of Responsibilities



Cognizant of the fact that interim financing would be required to support the changes, and on the assumption that the new CEO and/or Operations manager would have business development responsibilities, a phased approach was taken to delay implementing a separate business development position.

With the dredge financing completed and circulation of the Executive Summary to a broad cross section of the community, interest in the Port governance work was rejuvenated. The GWG was brought back together on May 10th 2011 to review some of the feedback received on the proposed governance structure and to review next steps. At that meeting the following “threshold” question was tabled:

In the absence of near term source of independent [sustainable] revenue, should we recommend implementing SPC2?

All members of the GWG were in attendance, and the decision to move forward was unanimously endorsed. It is the opinion of the GWG that the revenue issues presented by the acceptance of SPC2's Vision and mandate are best managed by the new Board. The significance of the issues is not underestimated. However, one of the noteworthy virtues of the new structure is that all of the key parties best positioned to successfully resolve the funding gap and lead the organization to its goal of financial sustainability are in fact represented on the new Board.

The issue of regional port sustainability received considerable attention at the May 2011 Sydney Ports Days. A panel entitled ‘Building a Sustainable Port Management Structure’ included presentations from the Independent Marine Ports Association of Canada, the Strait Superport Corporation and the Sydney Marine Group (the latter two groups now operating collaboratively in the pursuit of harbour dues under a Memorandum of Understanding). The feedback received from this event and from the Executive Summary consultation process was carried into the final June 20th GWG decision making forum. Anticipating that the issue of the interim funding gap would be further discussed, the following table was produced to update the work undertaken in the SPC Human Resource Needs Assessment which quantifies the financial gap.

Figure 11: Proposed SPC2 Operating Structure and Incremental Cost

DEPT	PERSONNEL	SPC CORE (pre-2010)	SPC2	Incremental \$
Executive	CEO	none	Executive Authority, Government Relations & Advocacy, Strategic Issues Management, Management Oversight, Investment Attraction, Business development functions eventually supplemented by staff person as financing allows. Reports to BOD.	\$135,000 - \$200,000
	Executive Assistant	none	EA to CEO, communications. Reports to CEO.	\$35,000 - \$40,000
Operations	Ops Manager	General Management of SPC, dockside management, security, health & safety. This person also performed the role of TC Harbour Master.	Expand SOW to include business development (until BS staff person in place) in addition to dockside management, security, health & safety of assets under SPC2 control. Reports to CEO.	up to \$40,000
Cruise	Cruise Manager	Cruise marketing, management of cruise services and associated staff, oversight of JHCP. This position also performed organization's HR function.	Remove HR function and provide full time marketing/cruise support. Reports to CEO.	-
	Cruise Support	Office Administrator provided support to Cruise Manager.	Provide marketing and activities support to cruise operation. Reports to Cruise Manager.	-
	Joan Harriss Cruise Pavilion	1 x Facility Supervisor & 4 part-time staff	Only SOW change identified is that JHCP supervisor will no longer have dockside operations function - will focus on JHCP marketing, oversight. Reports to Cruise Manager.	-
	Market Coordinator	Part-time seasonal staff to coordinate vendors market and taxi host program on cruise ship days.	No change. Reports to Cruise Manager.	-
Finance / Admin	Office Clerk	Duties were performed by Cruise Support.	Expand SOW to provide support to Finance Manager and Operations Manager, and provide office clerical duties.	\$30,000 - \$35,000
	Finance Manager	Performs general finance oversight and reports to Cruise Manager.	Expand SOW to include budget preparation, oversight of HR policies & procedures, oversight of performance management review process.	\$20,000 - \$30,000
Marketing & Investment Attraction			Support marketing and investment attraction.	\$150,000 - \$200,000
TOTAL ANNUAL INCREMENTAL BUDGET				\$410,000 - \$545,000

To assist with the interpretation of the table, it is important to note the following;

1. Based on the pre-2010 complement of staff, SPC consistently had no retained earnings and was not able to service (in its entirety) its capital lease with the CBRM. Therefore, all costs considered beyond SPC's ability to fund out of current operations are clearly identified.
2. In an attempt to capture synergies and efficiencies of scale, some existing roles have been expanded and/or realigned (only incremental costs have been accounted for);
3. Ranges have been identified to reflect uncertainty around qualifications and requirements; and
4. In keeping with the Organization Structure depicted above, provision has been made for discretionary business development and investment attraction activities; in part to offset the lack of a full time in-house business development position and in part to recognize the anticipated ongoing requirement for expert 3rd party consulting support.

There was considerable discussion within the GWG June 20th decision making forum regarding the need to protect the current operation from being cannibalized by the imposition of a new structure with an expanded and yet to be funded mandate. The assessments and conclusions presented in this section are based on considerable investigation and analysis, but are not meant to be prescriptive. Independent work involving Grant Thornton, Chartered Accountants is now underway to provide an additional perspective on a financial forecast for SPC2. Like any other organization, SPC2 will be required to secure interim funding before committing to incremental operating costs. That said, and as noted earlier, the uncertainty around funding is not a reason to delay implementing the new governance structure. Opportunities for new revenue sources have been identified and will be aggressively pursued toward the goal of self-sustainability and elimination of public sector support for core funding.

10. Conclusion and Next Steps

Significant effort over the past number of years has positioned the Port for what is reasonably believed to be an exciting future with obvious potential for substantial and positive economic impact at a time of strategic importance to Cape Breton Island and CBRM. For the reasons previously discussed, the Port's governance structure was identified early on as critical to the realization of future commercialization success and something that required change. During this substantial governance review process in an admittedly dynamic context the issues have been thoroughly researched, vetted and discussed. Draft recommendations that were broadly and transparently disseminated were effectively endorsed by the stakeholders with virtually no substantive objection or challenge. These draft recommendations have now been fine tuned in light of feedback received and the passage of time and are now ready for adoption and implementation.

The two years it has taken to get to this point have been in the broad sense a period of unprecedented activity at the Port. It is widely believed that the time to act on governance is now.

The recommendations in the Final Report reflect the considered view of a significant cross section of a community focused on its Port and filled with expectations about the future. They represent a consensus on that which is considered to be best for this Port at this time. Once implemented, the recommendations will transform, enhance and focus the existing SPC organization including the incorporation and expiration of the Sydney Marine Group. The Port will, perhaps for the first time, have a unified voice directed to the realization of its stakeholders' clearly articulated and shared vision.

The next steps include:

- (1) Engaging the SPC in the full and complete consideration of the Final Report with a view to securing adoption in accordance with its legal requirements and governing rules;
- (2) Facilitating the endorsement of the Final Report by CBRM;
- (3) Securing the financing for the Transition Leader and commencing the transition phase with an October 15th target date for the first Directors meeting of SPC2;
- (4) Preparing the necessary documentation, including changes to the SPC Memorandum and Articles of Association as required facilitating the orderly transition of the membership and Board;
- (5) Maintaining momentum in the prosecution of the harbour dues and related issues;
- (6) Completing the operating budget forecast; and
- (7) Continuing to operate in an open and transparent fashion to sustain the credibility of the process and the ongoing engagement and support of community stakeholders.

All of which is respectfully submitted by the Governance Working Group, July 15th, 2011.

APPENDIX 1: March 3, 2011 Executive Summary amended in accordance with Final Report

Port of Sydney **Governance Executive Summary**

A. Introduction

The Port of Sydney is poised for growth. The substantial body of work that has been completed over the past number of years has clearly set out the potential for Sydney harbour to once again become a major economic engine. The funding of the access channel dredging project means that the key enabling event should be completed within 2011. A deep water unobstructed port with the kind of physical attributes, infrastructure and human resource advantages possessed by Sydney has real potential to demonstrate competitive economic advantage and attract new investment capital.

Our recent collective effort has taught us that port development is a complex, competitive and challenging experience. There is an enormous body of work yet to be undertaken that requires expertise in advocacy and government relations, international marketing and business development and the entire suite of operations functions related to assets under the active management of the governing body. It is fair to characterize the recent port management experience as fruitful and collaborative involving many parties (with broad based community support) and led by the unique Sydney Marine Group and Sydney Port Corporation partnership. Leaving aside the day to day management of the cruise business and former government wharf (the exclusive responsibility of the Sydney Ports Corporation), the activity of this partnership has been both project focused and funded (Master Port Plan, Environmental Assessment for Access Channel Dredging and Sydport Container Terminal, developing the business case and advocacy for Sydney harbour dredging all of which were significantly funded by Enterprise Cape Breton Corporation). It has been broadly recognized among the Sydney port stakeholder community for some time that two things need to change. It is essential that the port governance structure and associated management resources evolve to reflect the port's changed circumstances, and a sustainable funding source is secured to support it. This document identifies the work that has been undertaken to date to advance these objectives and highlights some of the important outstanding issues and forward work plan.

B. Origin of port governance review

In January 2008, a comprehensive Sydney Master Port Plan (MPP) was tabled and endorsed by community stakeholders and all federal, provincial and municipal elected officials. The topic of port governance was addressed in the MPP, but further study was recommended. In early 2009 the Government of Canada provided funding of one million dollars to the Sydney Ports Corporation to continue the work of exploring the best possible governance structure. Over a period of approximately 8 months commencing in April 2009, a working group comprised of representatives from the Sydney Ports Corporation (SPC), the Sydney Marine Group (SMG), the Sydney Airport Authority (SAA) and Enterprise Cape Breton Corporation (ECBC) met with a facilitator and a number of consultants (including a leading and widely published port governance expert) to continue the review of governance in the Port of Sydney. The Cape Breton Regional Municipality declined to participate in this process. The point of departure for the analysis was the following vision statement: **“Sydney will be a world leading multimodal transportation hub, operating as a**

vibrant partner in global supply chains committed to the economic development of Cape Breton.” The key objective was to define a financially sustainable structure that would facilitate the achievement of the vision and the growth agenda articulated in the MPP. The working group analyzed the Canadian legislative context, the existing Sydney Ports Corporation structure and the predominant structures found in various jurisdictions throughout the world. The key findings and recommendations of the working group are discussed below. In full collaboration with the SPC, these have been presented as part of the 2009 Ports’ Days agenda, at a community leaders briefing session in October 2009 attended by over fifty people, in December 2009 to senior CBRM staff and various members of Council and consistently referenced in all other port briefings made over the past eighteen months. At the January 2010 meeting of the Mayor and Council, the Sydney Marine Group made a port presentation focused on harbour commercialization and dredging. Port governance was briefly referenced, and then deferred to a later date for further discussion. The port community was preoccupied throughout 2010 on securing the dredging financing. It is now time to return our collective attention to the advancement of the governance file. Recently CBRM has provided some thoughts on the appropriate structure in the form of an “Issue Paper” that has been passed on to the working group for consideration and follow-up.

C. Key findings of the Governance Working Group (GWG)

1. The Port of Sydney is a “regional” port that has been divested by the Government of Canada.

The Canada Marine Act (1995) placed all Canadian ports into one of three categories. The first category comprised those financially self sufficient ports deemed vital to domestic and international trade. These ports (19 in total) remain under federal government ownership and control and were organized into Canada Port Authorities (CPA’s). The third category was “remote” ports, isolated ports reliant on marine transportation or a government wharf. Many of these ports also remain under federal ownership and control. The second category was “regional ports”, ports that could apply to become CPA’s but were essentially identified as ports where the federal government intended to divest its assets and transfer control of the port to third parties. Sydney fell into the regional port category, and the process of federal divestiture of federal port assets is essentially complete (Sydney Marine Terminal to CBRM, North Sydney Marine Terminal to M/V Osprey Ltd, Sydport (owned by ECBC) to Laurentian Energy Corporation). Ownership of the sea bed of Sydney harbour remains with Transport Canada, and discussions are ongoing in relation to the ultimate ownership in light of the financial sustainability and commercialization objectives discussed further below.

2. Sydney may apply to become a CPA, but there are significant hurdles to overcome to meet the criteria set out in the legislation. In any event, a CPA is not considered as the ideal or preferred governance model.

The CPA governing legislation is designed for ports where the federal government continues to own assets (land, wharves and buildings in addition to the sea-bed) and requires a port to meet a rigorous financial self sustainability test without reference to harbour dues revenue. In addition to these challenges, there are also perceived shortcomings in the governing legislation including the federal appointment of the majority of Board members and limitations on the CPA’s ability to raise funds for capital projects. One important advantage of a CPA is its ability to collect harbour dues from vessels coming to the port.

3. The existing Sydney Ports Corporation (SPC) structure has many of the attributes required for a successful model.

Today, world-class governance models are inclusive, open and transparent, have key decision-makers in the room, practice community consultation and are committed to the social and economic sustainability of the community in which they reside. SPC's broad community and government representation and not-for-profit no share capital corporate structure are features that are consistently found in governance structures with similar mandates and considered essential to optimize development opportunities in a port with a mix of public and private assets. Noticeably absent in the SPC structure is any private sector corporate representation, also considered essential in a user fee model where there will be a requirement for future private sector financing. And because the Port of Sydney is simply one component in an increasingly complex supply chain dependent on other modes of transportation in the achievement of its vision, it is important to have representation from non marine transportation interests.

4. The governance structure must be financially self sufficient.

The success of any future model depends on securing a sustainable long term revenue source. Currently in the Port of Sydney, Transport Canada collects approximately \$450,000 per annum in "harbor dues", essentially a tax on vessels calling at the port. Transport Canada's position is that only it or a CPA may legally collect harbour dues. The ability to divert the harbor dues revenue into the coffers of a new governance structure is considered an essential pre-condition to the achievement of its mandate. The preliminary findings of a human resource assessment suggest that the harbour dues revenue is required to add the staff required to effectively manage the port.

D. Key recommendations of the Governance Working Group

- 1. Maintain the SPC's form of incorporated structure but amend its memorandum and articles of association as required (SPC2).**
- 2. Maintain the SPC's requirement for membership, but expand the eligible members to include not only individuals but not-for-profit organizations and corporations.**

The membership of SPC2 would be organized into various "classes" from which the Directors would be appointed or elected. While it was accepted that the proposal will require further comment and discussion, the carefully considered and recommended structure is depicted in Appendix 1 and summarized as follows:

- a. Class A, *Municipal Government*. CBRM appoints 2 voting Directors.
- b. Class B, *Community at Large*. This Class is comprised of 20 to 25 members drawn from community organizations and individual citizens. The community organizations must be representative of organized labour, commercial fishers (e.g. Sydney Harbour Fishers Association), First Nations, environmental groups, community economic development groups (e.g. Sydney and Area Chamber of Commerce, Cape Breton Partnership) and educational institutions. The Community at Large membership elects 4 voting Directors.

- c. Class C, *Commercial Marine*. The membership of this Class is drawn from terminal operators, ocean carriers, cargo owners, and other similar organizations and elects 3 voting Directors.
- d. Class D, *Multi-modal Transportation*. The membership of this Class is drawn from interests such as air, trucking and rail and elects 1 voting Director.
- e. Class E, *Government of Canada*. Appoints 1 non-voting Director.
- f. Class F, *Government of Nova Scotia*. Appoints 1 non-voting Director.
- g. Class G, *First Nations*, Appoints 1 non-voting Director

3. **Determine the status of SPC2's ability to gain access to harbour dues revenue.**
4. **Continue the dialogue commenced with GoNS (re Sysco dock) and engage others as appropriate with respect to diversifying SPC2's revenue base. Currently, SPC does not own any assets. It manages the former government wharf and Joan Harriss Cruise Pavilion on behalf of CBRM. Similar arrangements involving management contracts or leases may be achievable with the owners of other port assets.**

E. Next steps

1. **Determine whether and under what circumstances SPC2 would have a legal right to levy and collect harbour dues.**

At the time the GWG issued its report, this important issue was under consideration in the port of Souris, PEI. Once Transport Canada divested itself of all federal assets (including the sea-bed) to the Souris Port Corporation and withdrew from port operations, the local ferry operator CTMA refused to continue to pay harbour dues. The Port Corporation claimed entitlement to the dues pursuant to its divestiture agreement. Transport Canada took the position that because the vessel was simply transiting the harbour and calling at a berth not owned by the Souris Port Corporation, there were no "ancillary services" being provided that could justify the levy of harbour dues. Therefore, Transport Canada concluded that the Corporation was infringing on the vessel's right to navigation, something that only the federal government could do pursuant to its constitutional powers over shipping. While the GWG had anticipated that the Souris Port Corporation would pursue the matter in the Federal Court, it has been recently advised that the parties are attempting to negotiate a settlement. Therefore, it is now unlikely that any definitive guidance will evolve from this case. The GWG has been actively discussing the issue with other interested port authorities (including the Strait of Canso and Victoria) and is in the process of instructing lawyers to obtain a legal opinion on the questions of (1) a local authority's right to collect harbour dues in a divested port and (2) the nature of any ancillary services that would have to be provided to support its claim and reduce the likelihood that vessels would refuse to pay.

2. **In parallel with E (1), continue the dialogue with Transport Canada over the harbor dues issue.**

One of the important distinctions between Sydney (as well as the Strait of Canso and Victoria) and the Port of Souris is that Transport Canada continues to own the sea-bed in Sydney

harbour. This may offer the possibility of having the federal government transfer by agreement the right to collect harbour dues (while retaining ownership of the sea-bed) in consideration of SPC2 taking over the federal government's responsibilities related to the sea-bed (such as the provision of a security plan). While this seemingly runs contrary to Transport Canada's stated objective of selling off the sea-bed, they have been unsuccessful in attracting a buyer in well over a decade. Based on previous dialogue with senior Ottawa based departmental officials, there appears to be some understanding of the extremely difficult position divested ports are being placed in by the current divestiture policy; a policy that may well deprive the local management entity of the very source of revenue it requires to successfully advance the port's commercialization agenda and ultimately benefit the local community.

3. In parallel with E (1) and (2), continue the dialogue with Transport Canada regarding Sydney's ability to qualify as a CPA.

In the event that the avenues being pursued under E (1) and E (2) fail to secure the harbour dues revenue, Sydney should continue to explore its option of applying to become a CPA. As noted under C (2) above, this was not the preferred option of the GWG and Sydney has been advised that a successful application requires a demonstration of financial self sufficiency without reference to any anticipated harbour dues revenue. In ports where federal assets have not been divested, lease income is the predominant source of revenue that supports a claim to financial independence. At the moment, the Sydney Ports Corporation owns no assets, and there are no federal assets (other than the sea-bed itself currently generating \$7,500 per year in water lot lease revenue) that could be transferred into the SPC or its successor. However, as mentioned under D (4) above, dialogue is underway with the GoNS and contemplated with others with a view to having assets placed under the management and/or control of SPC2 in the expectation that this would eventually produce a source of ongoing revenue in addition to facilitating an integrated development strategy. This activity is likely to take some time and should be pursued irrespective of whether Sydney applies for CPA status or not.

4. Complete the SPC2 human resource "needs assessment" to identify the recommended operating structure and its cost.

It is assumed that the existing SPC operation and staff would continue as the starting point for the new organization. Appendix 2 provides a draft organizational chart and highlights the transitional issues.

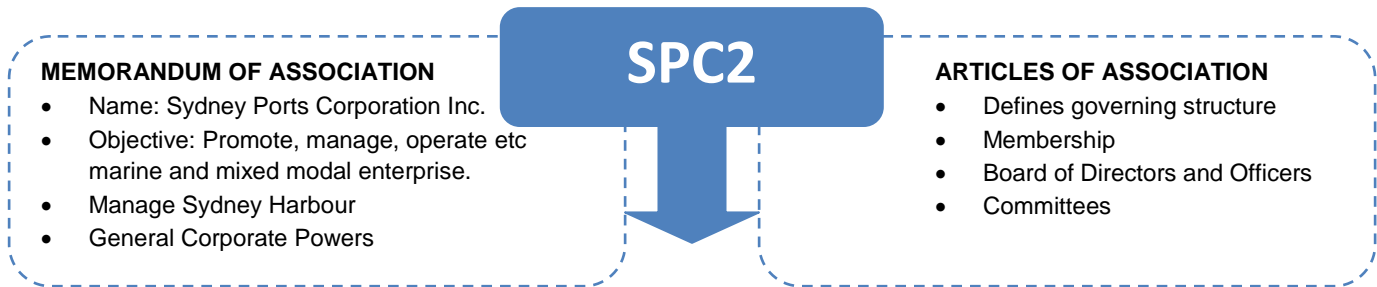
5. Make final recommendations.

The target date for reporting on the progress of the work plan and making final recommendations on the governance and management structures is the end of May, 2011. This timeline is dependent on receiving the necessary legal opinion, organizing meetings with Transport Canada officials and the extent to which additional stakeholder consultation is requested of the GWG. Although end of May is our objective, the timeline is difficult to predict with certainty. Ultimately, the SPC Board will have to review, approve and take the necessary steps to implement the final recommendations.

March 3rd, 2011

James Wooder, Chair, Sydney Marine Group

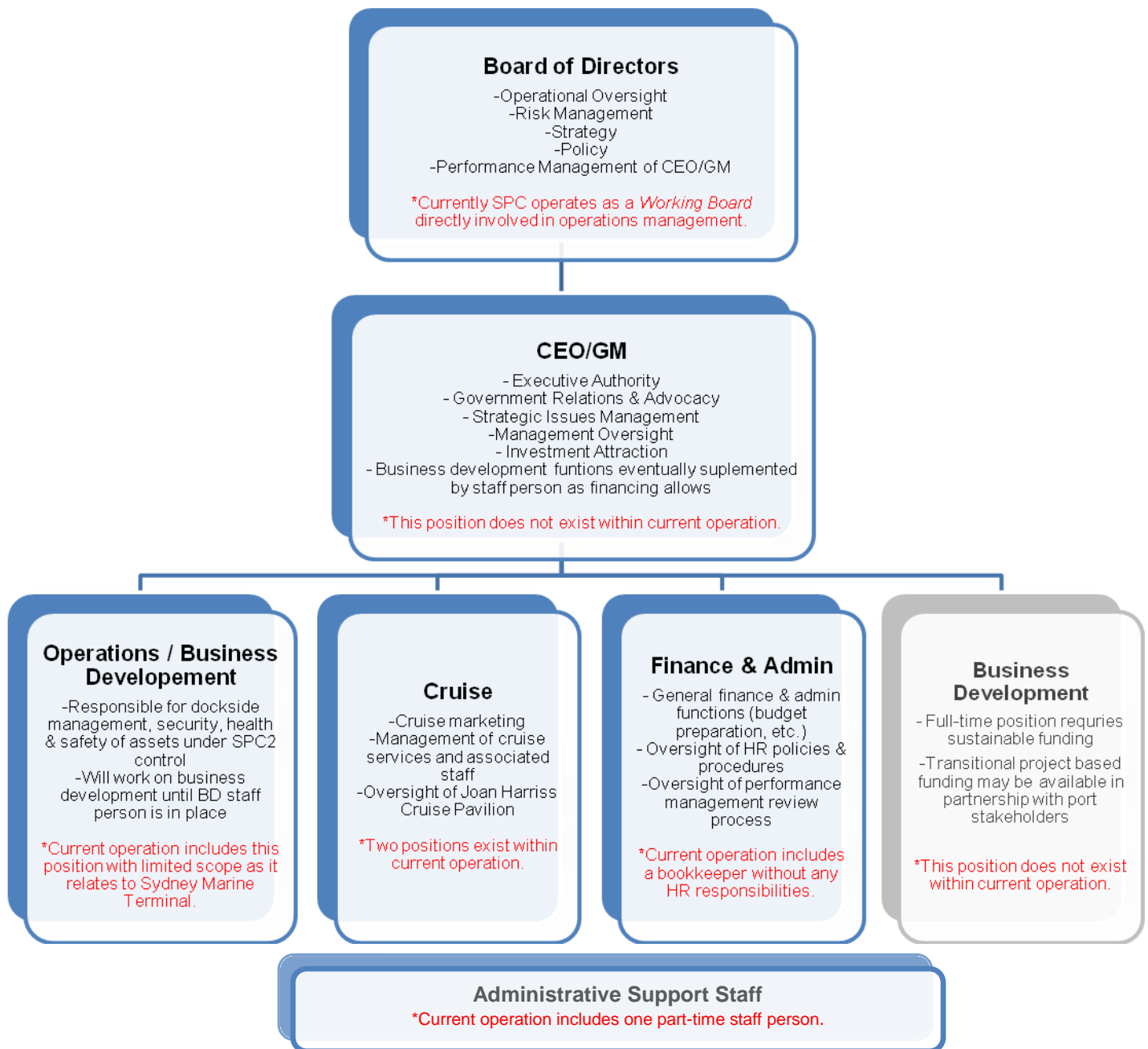
Proposed Board Structure



CLASS	MEMBERSHIP	BOARD OF DIRECTORS
A: Municipal Government	<ul style="list-style-type: none"> • CBRM 	<ul style="list-style-type: none"> • Appoints 2 Directors • Voting
B: Community at Large	<ul style="list-style-type: none"> • Comprised of 15 to 25 members from community organizations and individual citizens. The community organizations could be from broad based community business organizations, broad based organized labour associations, commercial fishers associations, First Nations, environmental groups, community economic development groups (e.g. SACC, CBP) and educational institutions. 	<ul style="list-style-type: none"> • Members elect 4 Directors • Voting
C: Commercial Marine	<ul style="list-style-type: none"> • Membership based on commercial entities drawn from terminal operators, ocean carriers, cargo owners, and other similar organizations. 	<ul style="list-style-type: none"> • Members elect 3 Directors • Voting
D: Multi-modal Transportation	<ul style="list-style-type: none"> • Membership based on commercial entities drawn from interests such as air, trucking and rail. 	<ul style="list-style-type: none"> • Members elect 1 Director • Voting
E: Government of Canada	<ul style="list-style-type: none"> • ECBC or as directed by the GOC. 	<ul style="list-style-type: none"> • Appoints 1 Director • Non-voting
F: Government of Nova Scotia	<ul style="list-style-type: none"> • NS Dept of Transportation and Infrastructure Renewal or as directed by the GONS 	<ul style="list-style-type: none"> • Appoints 1 director • Non-voting
G: First Nations	<ul style="list-style-type: none"> • Comprised of members of the Aboriginal peoples in Canada who are neither Inuit nor Métis. 	<ul style="list-style-type: none"> • Appoints 1 Director • Non-Voting
SUMMARY		<ul style="list-style-type: none"> • 10 voting Directors • 3 non-voting Directors • CEO/GM non-voting, ex officio*

*CEO/GM is a non-voting director officer hired by BOD

DRAFT
Governance and Operations
Division of Responsibilities



*References transitional issues from SPC to SPC2

Existing SPC Revenue and Staff Complement:

Annual Gross Revenue:	\$1,204,000
Passenger Tax	44%
Wharfage/Berthage	34%
Cruise Terminal	23%

Current Staff Complement:	
Full Time Staff	3
Part Time Staff	3
Seasonal Staff (cruise)	varies

APPENDIX 2



CFN Consultants (Atlantic) Inc.

I. Background:

As part of the effort to harness the transformative potential of Sydney Harbour, in addition to a comprehensive body of work including completion of a Master Port Plan and an environmental assessment for dredging of the harbour, the Sydney Marine Group has been focussed on effective governance of the port going forward. To this end, a *Governance Working Group* (GWG) was established to undertake a detailed analysis and assessment of the overall governance requirements of the port post dredging. The GWG is in the process of tabling its final report.

Rightly, in this analysis, a particular interest has been setting in place a methodology to manage the range of transition issues associated with moving to what is being called the Sydney Port Corporation 2 (SPC2).

The GWG will continue to function during this period and will manage the following:

- Completion of the final GWG Report;
- Continued engagement with stakeholders as required; i.e. CBRM;
- Complete any additional work required to finalize a HR needs assessment designed to identify the recommended operational structure, its cost and the funding gap;
- Continue to advance the dialogue associated with the harbour dues/divestiture issue; and
- Continue to build credibility, buy-in and transparency;

In addition to its work, the GWG is seeking a *transition leader* specifically to facilitate the formulation of the new corporate membership and transition to a new board of directors, effectively implementing the relevant recommendations contained in the GWG Report. Key objectives are to ensure that the process followed has been optimally open, transparent and defensible and to signal to stakeholders and the port user community that their interests have been taken into account in the formulation of the Board of Directors. As a starting point, the GWG has established key criteria respecting the new SPC2 structure. These include the following:

- Selected a governance model – this will be a policy board providing strategic planning and oversight for the port corporation;
- Outlined a proposed membership structure for SPC2 including a delineation of member classes and numbers
- Outlined the proposed structure of the Board of Directors;
- Developed a timeline for the board selection and a transition process – the GWG recommends that the new Board of Directors be in place by October 15th, 2011, with the inaugural meeting held at that time.

Utilizing the GWG as a resource and reporting to jointly to the GWG and the SPC Board of Directors, the specific role of the *transition leader* is to:

- Facilitate and steward application of the process established in the GWG Report;
- Identify the potential candidates (individuals and organizations) for SPC2 Membership and organize the Membership into the specified Classes;
- Ensure optimum understanding and awareness of the Membership classes on roles and responsibilities and desired qualifications/qualities of Board members;
- Advise and assist the Membership Classes with the appointment of candidates to the Board
- Consult with and assist the new Board on the establishment of an initial agenda and facilitate an inaugural Board meeting
- Prepare a governance 'roadmap' resource document for new Board members
- Communicate and report ongoing progress; and
- The position of *transition leader terminates* following the first Board Meeting.

This proposal outlines the proposed work plan associated with the services and approach to be taken by the *transition leader*.

II. Statement of Work:

CFN proposes to complete the following activities associated with this review. An accompanying work plan is included in Annex A, along with proposed project pricing in Annex B.

1. **Phase 1: Confirmation of Candidate Organizations and Individuals for SPC2 Membership according to Class, Organization of Membership and Briefings on Board Selection Criteria/Process** – Extrapolating from best practice models (through research and bench-marking) and in consultation with members of the GWG and other key informants, CFN Consultants will confirm the candidate Membership (organizations and individuals) and articulate clear guidelines/criteria for Board membership. This will take into account a variety of factors including:

- The proposed Membership Classes and associated numbers to be derived from these Classes for the first Board of Directors;
- Beyond consideration of Membership Class, identify the range and types of skill sets ideally required by the SPC2 Board as another key factor to guide final selection. Factors to consider in recruiting members to ensure a balanced Board include, among others – understanding of strategic port management, business development experience and contacts as related to port development, experience in sitting on senior level boards, educated on board roles/process/expectations, financial literacy, legal acumen etc.;

- Synthesizing these elements into a written, plain language document suitable for distribution to key stakeholders which will establish clear criteria for Board membership, as well as, the process to be followed; and
- Secure input and approval from the GWG prior to broader dissemination through a presentation of the proposed membership criteria and process for Board Selection to the candidate organizations and individuals.

To support this effort, CFN will conduct research and a focused benchmarking exercise to determine best practice models in boards responsible for the strategic management of port assets.

Phase 2 – Facilitation and Stewardship of the Board Selection Process – In this phase, the *transition leader* will conduct bi-lateral outreach to the membership class representatives/organizations to explain the process, review the composite and individual skill sets established for the Board and its individual members, receive input and facilitate and steward application of the process in a manner that is predictable, that follows the process and that is transparent and respectful of the member classes and their interests/stake in the Port. This will consist of a round of bi-lateral meetings to both review the proposed process and to identify any potential challenges/nuances in their application to particular membership classes to ensure that early concerns/issues can be optimally identified and extinguished, thereby, assuring a more harmonious process overall. The intent in this phase is to have these organizations identify potential Board members in adequate numbers and within a specific timeline to enable the formation of the Board within the target date. Experience would suggest that member organizations should advance more nominees than their required number to enable a matching process designed to provide for a board with the best membership cadre and skill sets that map to optimal Board requirements

Phase 3 – Ranking, Selection and Preparation of a Proposed Slate of Board Directors and the *Rationale for Same* – This phase will involve the facilitation of ranking, selecting and preparing a proposed slate of board directors by the membership groups through an iterative process. The *transition leader* will prepare a confidential matrix ranking proposed nominees against both membership criteria and Board composition factors and a rationale for the selection. A report containing the recommendations will be prepared and submitted to the GWG and SPC Board.

Phase 4 – Bi-lateral Outreach to Membership Classes to Confirm Selection and Results – This phase will involve the *transition leader* supported by the GWG/SPC Board as required conducting follow-up meetings with the membership organizations to communicate and explain results and to address any questions/concerns.

Phase 5 –Preparation of Guidance Document for Effective Board Governance – To ensure an effective launch and ongoing effective stewardship of the Board, the *transition leader* will prepare a plain language document that provides a summary of effective governance practices including consideration of the following and any specific requirements

mandated by the Memorandum and Articles of Association. The GWG will be briefed on this document and any amendments/ideas/suggestions incorporated in the final document:

- Establishing organizational ends and means;
- Establishing executive limitations for the CEO and a clear evaluation process;
- Establishing a director position statement that clearly positions the SPC2 Board as a policy board;
- Outlining a process for board orientation and preparation of an index for a board orientation package;
- Providing a list of desirable board governance practices/policies and sample content, including conflict of interest, succession planning for the CEO etc.;
- Offering advice on board roles and required committee structures including the executive committee, the audit committee and other important committees including governance and nominations committees; and
- Offering policy guidance, format and frequency recommendations for board evaluation.

Phase 6 – Facilitate the Scheduling and Assist in Executing the Inaugural Board Meeting – The *transition leader* will facilitate the scheduling and execution of the inaugural board meeting in consultation with SPC’s corporate counsel and on the advice of the GWG/SPC Board. It is expected that this meeting will take place on or around October 15th, 2011.

III. Consulting Team:

CFN advances Ron L’Esperance as the *transition leader*. Ron will be supported in some aspects of this assignment by CFN Associate Consultant Jon Corston. The Biography of the proposed *transition leader* is included in Annex C.

IV. Proposed Schedule and Project Costing:

The schedule for this project is attached at Annex A and the Project costing appears at Annex B.

IV. Conclusion

CFN has a strong working knowledge of the Sydney Port Development Initiative. Ron L’Esperance has been involved in the past in assisting with government relations associated with securing public sector financing for harbour dredging. Ron also has considerable experience in board leadership and board governance making him ideally suited to this assignment. CFN understands the high level of sensitivity associated with this initiative and the mission-critical nature of ensuring the identification of members to form a high performance board of directors to steward this transformative initiative for Sydney, for Cape Breton and for the Province.

Annex A – Proposed Schedule

Ser	Activity																
		JULY				AUGUST				SEPTEMBER				OCTOBER			
		4	11	18	25	1	8	15	22	29	5	12	19	26	3	10	17
	Contract Award																
1.0	Phase 1 - Confirmation of Candidate Organizations / Development of Membership Criteria and the Process For Board Selection																
1.1	Research																
1.2	Benchmarking exercise																
1.3	Consultation with members of GWG for confirmation of candidate organizations																
1.4	Initial consultation with other stakeholders																
2.0	Phase 2 - Facilitation and Stewardship of the Board Selection Process																
2.1	Bi-lateral outreach to membership class organizations/representatives																
2.2	Organizations identify potential representatives/members																
2.3	Receive input from organizations/representatives																
2.4	Facilitate and steward application of the process																
2.5	Power Point presentation of results to the GWG																
3.0	Phase 3 - Ranking, Selection and Preparation of a Proposed Slate of Board Directors and the Rationale for Same																
3.1	Preparation of confidential matrix of candidates																
3.2	Ranking of potential candidates																
3.3	Preparation of initial list of selected candidates																
3.4	Review of initial list with GWG																
3.5	Preparation of final list of selected candidates																
3.6	Review of final list with GWG and selection of candidates																
3.7	Power Point presentation of results to the GWG																
4.0	Phase 4 - Bi-Lateral Outreach to Membership Classes to Confirm Selection and Results																
4.1	Arrange follow up meetings with candidate organizations																
4.2	Meetings with candidate organizations																
4.3	Final list of selected Board of Directors presented to GWG																
5.0	Phase 5 - Preparation of Guidance Document for Effective Board Governance																
5.1	Preparation of first draft of Governance document																
5.2	Review of first draft of Governance document by GWG																
5.3	Preparation of final draft of Governance document																
5.4	Review of final draft of Governance document by GWG																
5.5	Publication of Governance document																
6.0	Phase 6 - Facilitate the Scheduling and Assist in Executing the Inaugural Board Meeting																
6.1	Schedule and plan for inaugural board meeting																
6.2	Facilitate inaugural board meeting																
6.3	Project completed																
7.0	Program Management & Administration																
7.1	Administration																
7.2	Project Management																

LEGEND	
	Activity Summary Bar
	To Be Completed
	Completed

ANNEX B – Project Pricing

	Pricing Proposal		
	1st Resource Person	2nd Resource Person	Totals
Proposed Resource to be Employed (Including Area of Expertise)	Ron L'Esperance Project Lead	Jon Corston Researcher Writer	N/A
Proposed Number of Days	28.0	2.0	30.0
Per Diem Rate (inclusive of administrative costs *)	\$ 800	\$ 750	N/A
TOTAL Professional Fees	\$ 22,400	\$ 1,500	\$ 23,900
Plus Travel Expenses	\$ 1,000	\$ -	\$ 1,000
TOTAL PROJECT COST	\$ 23,400	\$ 1,500	\$ 24,900
			\$ 24,900

Annex C: Consultant Biographies

Professional Profile

Ron L'Esperance

Principal, CFN Consultants (Atlantic) Inc.

Ron L'Esperance retired from the Nova Scotia Public Service in December, 2003, after serving the province in a wide range of senior leadership positions for twenty eight years. Following his retirement, Ron joined a national/international consulting company, CFN Consultants, immediately following his departure from government, becoming Principal of CFN's Atlantic Office.

At the time of his retirement, Ron was Deputy Minister of the Department of Environment and Labour, the province's regulatory affairs department at the time. Responsible for a broad range of regulatory matters including environment, insurance, financial institutions, securities, workplace and public safety, he led a regulatory reform initiative in the Department, which continued following his departure into a government-wide *better regulation* initiative. Ron also worked nationally with the then Prime Minister's Task Force on Smart Regulation.

Ron previously served as the Deputy Minister of Economic Development for Nova Scotia. Spearheading a broad-ranging public and stakeholder consultation process, he was responsible for developing the province's first economic growth strategy, "Opportunities for Prosperity" in eleven years.

Ron has worked extensively in a broad range of sectors including advanced manufacturing, the renewable energy sector, cultural and creative industries, the agriculture and fisheries sectors and the aerospace and defence sector at the provincial, national and international levels. In addition, Ron has extensive experience in working with in the area of port development, environmental services, the fishery, boat building and First Nation economic development, including knowledge of the protocols and requirements related to First Nation consultation.

Ron has also served as a Canadian in-market partner and consultant to International Business Wales, the international economic development arm of the Welsh Assembly Government.

In 2007, Ron was asked to lead the Province's celebration of 250 years of parliamentary democracy (in 2008) – a high profile partnership between Heritage Canada and the Province of Nova Scotia that garnered international attention and critical acclaim.

Ron has extensive knowledge and understanding of economic development and public policy development. He is highly experienced in regulatory matters, including in insurance, and in environmental policy. Ron brings the unique perspective of having worked at the highest levels in government service leavened with a strong understanding of business and with an impressive tenure in the private sector.

Ron also served as Deputy Minister of Community Services, the province's leading social policy department with an annual budget, at the time, approaching \$700 million. There, he gained extensive experience in managing organizational change, in leading major program evaluation initiatives and in the development of business improvement initiatives including the design and implementation of innovative information technology solutions to improve service delivery.

Over his career, Ron has had a broad range of experience in intergovernmental initiatives in the Atlantic Region, in Canada and internationally. This includes, most recently, being Canada's spokesperson at the International Labour Organization in Geneva in June, 2003 in the negotiation on an international instrument to govern human resource development globally. He also has an extensive network of senior level contacts in the business community throughout Atlantic Canada, across Canada and North America and overseas.

Ron L'Esperance has a strong community profile and in addition to other volunteer work has served on the Boards of Directors of the Greater Halifax Partnership, Innovacorp and the International Health Office at Dalhousie University.

Ron has extensive experience in board governance within government organizations, the private and NGOs. Ron has served on the Advisory Committee to the Atlantic Chapter of the *Institute of Corporate Directors*.

Ron presently is immediate past Chairman of the national organization, Food Banks Canada, and locally, serves on the Boards of Directors for Bicycle Nova Scotia, Metro Works and is on the Advisory Committee of the Atlantic Chapter of the Institute of Corporate Directors.

He has a Bachelor of Arts and Bachelor of Education degrees from St. Mary's University and a Masters of Arts (in Education) from St. Mary's University and Boston College.

