

**Guelph City Council as Shareholder of
 Guelph Municipal Holdings Inc.**

Council Chambers, Guelph City Hall

December 15, 2014 6:15 p.m.

Consolidated as of December 12, 2014

Please turn off or place on non-audible all cell phones, PDAs, Blackberrys and pagers during the meeting.

**6:15 P.M. GUELPH CITY COUNCIL CLOSED MEETING AS SHAREHOLDER OF
 GUELPH MUNICIPAL HOLDINGS INC.**

Rise and Report in Open Session

**6:25 P.M. GUELPH CITY COUNCIL MEETING AS SHAREHOLDER OF GUELPH
 MUNICIPAL HOLDINGS INC.**

DISCLOSURE OF PECUNIARY INTEREST AND GENERAL NATURE THEREOF

CONFIRMATION OF PROCEEDINGS FROM PREVIOUS GMHI SHAREHOLDER MEETINGS

None

CONSENT AGENDA

"The attached resolutions have been prepared to facilitate Council's consideration of the various matters and are suggested for consideration. If Council wishes to address a specific report in isolation of the Consent Agenda, please identify the item. The item will be extracted and dealt with immediately. The balance of the Consent Agenda can be approved in one resolution."

GMHI SHAREHOLDER CONSENT AGENDA			
ITEM	CITY PRESENTATION	DELEGATIONS (maximum of 5 minutes)	TO BE EXTRACTED
GMHI-2014.6 Amendment of Articles of Amalgamation			

ADJOURNMENT

TO City Council – As Shareholder of GMHI

SERVICE AREA Guelph Municipal Holdings Inc.

DATE December 15, 2014

SUBJECT Amendment of Articles of Amalgamation

REPORT NUMBER GMHI-05-2014

EXECUTIVE SUMMARY

PURPOSE OF REPORT

This report requests approval by the Shareholder of administrative amendments to the Articles of Amalgamation of GMHI.

KEY FINDINGS

At the time of amalgamation, it was determined that certain provisions in the old GMHI articles of incorporation were not required. The OBCA required that the old GMHI articles become the articles of amalgamation of the amalgamated company. The provisions of the Municipal Act require a business case study to be adopted by the Shareholder prior to approval of amendments of the articles of amalgamation.

FINANCIAL IMPLICATIONS

The cost of filing the amended articles is approximately \$250 which will be paid by GMHI.

ACTION REQUIRED

The Shareholder is being requested to adopt the business case study supporting an amendment of the articles of amalgamation and approve the amendment of the articles of amalgamation.

RESOLUTIONS:

AMENDMENT OF ARTICLES OF AMALGAMATION

1. The Business Case Study regarding the amendment of the articles of amalgamation of GMHI is approved.
2. The articles of amalgamation of GMHI shall be amended by deleting the restrictions in section 10 of the articles.

REPORT

At the time of amalgamation, it was determined that certain provisions in the old GMHI articles of incorporation were not required, details of which are contained in the business case study attached. The OBCA required that the old GMHI articles become the articles of amalgamation of the amalgamated company. The provisions of the Municipal Act require a business case study to be adopted by the Shareholder prior to approval of amendments of the articles of amalgamation. There was insufficient time prior to the established amalgamation date to prepare a business case study and have it approved by Council.

On September 11, 2014, the GMHI Board directed GMHI Staff to prepare the business case study to support a request to the City to approve the amendment of the articles. On December 4, 2014, the GMHI Board passed a resolution requesting the Shareholder approve the amendment of the articles.

The business case study is attached and contains the details and the rationale of the requested amendment and the rationale for them. The recommendation in the study is to proceed with the amendment.

GMHI STRATEGIC PLAN

READINESS:

GMHI will build its resources and skill sets to be in a position of readiness to deliver on initiatives.

CAPABILITY:

GMHI will put into place a collaborative structure that will take ideas and process them into outcomes.

IDENTITY:

GMHI will differentiate itself from the City and its purpose will be clearly understood by all stakeholders and the community.

CORPORATE STRATEGIC PLAN

- 2.1 Build an adaptive environment, for government innovation to ensure fiscal and service sustainability

ATTACHMENTS

Attachment A – Business Case Study for Amendment of Articles of Amalgamation.

Donna Jaques
Guelph Municipal Holdings Inc.



A Business Case Study To Support the Amendment of the Articles of Amalgamation of GMHI

Prepared by: GMHI

Date: December 15, 2014

TABLE OF CONTENTS

Table of Contents.....	i
Section 1: Executive Summary	1
Section 2: Background (Gap Analysis)	1
Section 3: Objectives / Desired Outcomes.....	3
Section 4: Environmental Analysis	3
Section 5: Option Identification	6
Section 6: Qualitative & Quantitative Analysis.....	7
Section 7: Alignment to Strategic Plans.....	14
Section 8: Conclusions & Recommendations	14
Schedule 1: Requests for amendments to the legislation	15

SECTION 1: EXECUTIVE SUMMARY

Introduction

On August 13, 2014, Council approved the amalgamation of GMHI with Guelph Holdings Inc. The amalgamation was effective September 6, 2014, following the filing of articles of amalgamation.

The initial articles of incorporation of GMHI became the articles of amalgamation for the new corporation. Some issues were identified in the wording of the articles during the implementation of the amalgamation, however there was not an opportunity to amend the original GMHI articles prior to amalgamation. In particular, restrictions are contained in section 10 of the Articles of Amalgamation which should not be included in the articles, both due to their incorrectness and the inability to change these restrictions easily as GMHI grows.

This business case study supports the request to Council, as shareholder, to approve amendments to the articles of amalgamation.

SECTION 2: BACKGROUND (GAP ANALYSIS)

The existing Articles of Amalgamation for GMHI continue the provisions of the Articles of Incorporation filed upon the creation of GMHI in 2011. During the amalgamation process, it was determined that restrictions contained in section 10 of the Articles were inappropriate and needed to be changed. The regulations under the *Municipal Act* require Council to adopt a business case study prior to approving any amendments to the articles of GMHI. There was insufficient time to obtain approval for this amendment prior to amalgamation and a decision was made by the GMHI Board to request the amendments at the first Shareholder meeting to be held December 15, 2014.

The following are the provisions in s.10 and the comments regarding their removal:

Without the prior written approval of The Corporation of the City of Guelph, the corporation shall not:

(a) Amend or repeal its articles of amalgamation;

- This restriction is contained in the shareholder declaration and is also required under the OBCA.

(b) Change the treasurer's role as auditor;

- The treasurer was never appointed as auditor. The OBCA and the Shareholder Declaration provide that the Shareholder appoints the auditor for GMHI at each annual meeting. The 2013 financial statements were audited by Deloitte & Touche and the shareholder appointed KPMG as the auditor for GMHI for 2014.

(c) Seek financial support or any changes to legislation or regulation from any governmental authority other than The Corporation of the City of Guelph;

- This restriction prevents GMHI from seeking provincial and federal grants to assist with development. There is no apparent rationale for this restriction. There are applications for grants in development which were being done by GHI. The applicant corporation has been changed to Envida to comply with this restriction in the short term, however this may have an impact on the tax planning strategy for the GMHI group of corporations.
- The requirement for shareholder approval of advocacy for changes in legislation that relate to the corporate structure of GMHI could be contained in the shareholder declaration. There is no apparent rationale for restricting GMHI from advocating for changes in legislation that negatively impact its business activities.

(d) Make representations or promises of any financial incentives or similar inducements that are binding on The Corporation of the City of Guelph;

- This restriction is included in the shareholder declaration.

(e) Issue publicly traded debt, or any debt instruments with real or implied recourse to, or guarantees from, The Corporation of the City of Guelph or any borrowing that in the opinion of the treasurer of The Corporation of the City of Guelph may have a negative impact on the credit rating of The Corporation of the City of Guelph;

- This restriction is included in the shareholder declaration.

(f) Make or hold investments outside of Canada; or

- There is no apparent rationale for this restriction as the shares of corporations that GMHI can hold are restricted to corporations that carry on business in the municipality.

(g) Act as an incorporator of another corporate body that is incorporated under any Act.

- This restriction is contained in O.Reg. 599/06 and is one which GMHI may request be amended by the Ministry.

SECTION 3: OBJECTIVES / DESIRED OUTCOMES

The business case study will support the amendment of the Articles of Amalgamation of GMHI by removal of the restrictions set out in section 10. The desired outcomes will remove unnecessary restrictions and allow the Shareholder the flexibility to set any restrictions on GMHI through the Shareholder Declaration, from time to time, without the necessity of amending the Articles as the corporation develops.

SECTION 4: ENVIRONMENTAL ANALYSIS

The legislation and the Shareholder Declaration governing GMHI contain many restrictions, some of which are repeated in the Articles and are identified by highlighting.

Legislated Restrictions - Municipal Act – O.Reg. 599/06

The following restrictions are set out in the regulation governing municipal holding corporations:

Holding corporations

10. (1) A municipality may use the powers referred to in paragraphs 1 to 5 of subsection 203 (1) of the Act in relation to a corporation incorporated for the purpose of holding shares in one or more other corporations only if,

(a) the corporation is established by the municipality or the municipality and one or more other municipalities;

(b) the articles of incorporation of the corporation restrict the ownership of any and all voting and non-voting shares in the corporation to the municipality or to the municipality and one or more other municipalities; and

(c) the articles of incorporation of the corporation restrict the powers of the corporation to those necessary to acquire, hold, dispose of and otherwise deal with,

(i) shares of one or more corporations established under any Act by the municipality,

(ii) shares of one or more corporations established under any Act by another municipality that the municipality has agreed to allow to carry on business in the municipality, or

(iii) any combination of shares described in subclauses (i) and (ii). O. Reg. 599/06, s. 10 (1).

(2) In subclauses (1) (c) (i) and (ii),

“corporation” means a corporation other than a corporation established by a municipality for the purpose of holding shares in one or more other corporations.

Territorial operation of corporation

16. (1) A corporation may only operate within the boundaries of a municipality with the agreement of the municipality.

Amendments to corporate documents

17. (1) A corporation shall not make an amendment to its articles of incorporation or letters patent or to any subsequent articles or supplementary letters patent if the amendment would permit the corporation,

(a) to carry on a purpose other than a purpose that would be permitted by section 3;

(b) to carry on any business or activities that would include doing anything that the municipality or any of its local boards could do or be required to under any of the Acts mentioned in subsection 11 (1), except the business or activity of providing administrative services permitted by subsection 11 (2); or

(c) to carry on any business or activities that would include doing anything inconsistent with subsection 11 (3) or (4).

(2) A corporation shall not submit articles of amendment or any other articles or supplementary letters patent under any Act unless the municipality has first adopted a business case study in relation to the proposed amendment, articles or supplementary letters patent.

Limitations on actions of corporation

18. (1) A corporation shall not act as an incorporator of another corporate body that is incorporated under any Act.

(2) A corporation may only invest in securities prescribed under section 418 of the Act and, for the purpose of this subsection, any regulation made under that section of the Act applies to the corporation as if it were a municipality.

Shareholder Declaration Restrictions

The following provisions from the Shareholder Declaration approved by the Shareholder August 13, 2014 places restrictions on the actions of GMHI.

7.02 Annual General Meeting

GMHI shall hold an annual shareholder meeting prior to June 30 of each year. At the annual meeting, GMHI shall place before Council, the following:

- (a) Audited financial statements and notes thereto with the auditor's report for GMHI and the consolidated statements, notes and auditor's reports of GMHI Subsidiaries for the previous fiscal year;
- (b) Recommendations for any required appointment of members to the GMHI Board;
- (c) Recommendations for the appointment of auditors for GMHI; and,**
- (d) Any other information the GMHI Board determines should be presented.

Article 11 DECISIONS RESERVED TO THE SHAREHOLDER

11.01 Matters Requiring Shareholder Approval under the OBCA

GMHI shall not take any of the following actions without the approval of the City:

- (a) Amend or repeal its articles of incorporation;
- (b) Amalgamate with another corporation, apply to continue as a body corporate under the laws of another jurisdiction, merge, consolidate or reorganize or approve or effect any plan of arrangement, in each case whether statutory or otherwise;
- (c) Take or institute proceedings for any winding up, arrangement, reorganization or dissolution;
- (d) Create new classes of shares or reorganize, consolidate, subdivide or otherwise change its outstanding securities;
- (e) Sell or otherwise dispose of, by conveyance, transfer, lease, sale and leaseback, or other transaction, all or substantially all of its assets or undertaking;
- (f) Change the auditor;
- (g) Make any changes to the number of directors comprising the Board; or,
- (h) Enter into any other transaction or take any other action that requires shareholder approval pursuant to the OBCA.

11.02 Other Matters Requiring City Approval

Without the prior written approval of the City, GMHI shall not:

- (a) Make representations or promises of any financial incentives or similar inducements that are binding on the City;
- (b) Issue publicly traded debt, or any debt instruments with real or implied recourse to, or guarantees from, the City or any borrowing that, in the opinion of the City CFO, will have a negative impact on the City's credit rating;
- (c) Sell any shares of a GMHI Subsidiary;
- (d) Amend the dividend policy approved by the City in accordance with Article 5 or,
- (e) Approve an agreement for a transaction for the disposition or acquisition, whether by purchase, merger/amalgamation or otherwise, where the transaction involves GHESI or where the transaction has a value greater than 25% of the book value of GMHI on a consolidated basis.

Advocacy Restriction

The only restriction contained in section 10 of the Articles which is not already a restriction on the corporation through the Shareholder Declaration, the Municipal Act regulations or the OBCA is the following:

(c) Seek financial support or any changes to legislation or regulation from any governmental authority other than The Corporation of the City of Guelph;

The Council reports and the Business Case Study supporting the direction from Council to incorporate GMHI have been reviewed and there is no rationale contained in these documents to support the inclusion of this restriction.

Evida, through GMHI, has been pursuing financial support from upper level of governments for the capital requirements of the district energy projects. There is no apparent reason GMHI would be required to obtain Council consent to seek out additional sources of funding.

GMHI has identified legislative provisions that unduly restrict GMHI from fulfilling its mandate from the City in a fiscally prudent and compliant manner. It intends to advocate for changes to these provisions.

SECTION 5: OPTION IDENTIFICATION



The options are:

1. Status Quo – S.10 restrictions remain in the Articles of Amalgamation
2. Legislated restrictions are removed from the Articles of Amalgamation as redundant.
3. Legislated and Shareholder Declaration restrictions that are included in the legislation and the shareholder declaration are removed from the Articles of Amalgamation as redundant.
4. All s.10 restrictions are removed from the Articles of Amalgamation.

SECTION 6: QUALITATIVE & QUANTITATIVE ANALYSIS

SECTION 6.1 RISK ANALYSIS OF OPTIONS

The current City of Guelph **Risk Matrix** below assigns colours to the resulting score based on the City's risk tolerance as set out below.

Impact Scale 					
4 Catastrophic	4	8	12	16	20
3 Major	3	6	9	12	15
2 Moderate	2	4	6	8	10
1 Minor	1	2	3	4	5
Likelihood Scale 	1	2	3	4	5
	Rare	Unlikely	Somewhat Likely	Likely	Almost Certain

Option 1	Description					
Status Quo	All restrictions remain in Articles					
	Risk Categories	Risk ID#	Description	Impact	Likelihood	TOTAL
Legislated Restrictions	Regulatory/ Financial	1	Risk that GMHI's Articles will be in conflict with the legislation when relevant changes in the legislation are enacted and thus GMHI will be required to file Articles of Amendment (after completion of a business case study) to ensure compliance.	2	4	8
Shareholder Declaration Restrictions	Financial	2	Risk that GMHI will be required to file Articles of Amendment (after completion of a business case study) if changes to the relevant section of the Shareholder Declaration are required.	2	4	8
Advocacy Restriction	Financial	3	Risk that GMHI will be unduly hampered by process in applying for financial supports from upper levels of government and thus possibly miss deadlines.	3	4	12

Option 2	Description					
Remove legislated restrictions only	Legislated restrictions are removed and shareholder and advocacy restriction remain					
	Risk Categories	Risk ID#	Description	Impact	Likelihood	TOTAL
Legislated Restrictions	No risk identified					
Shareholder Declaration Restrictions	Financial	1	Risk that GMHI will be required to file Articles of Amendment (after completion of a business case study) if changes to the relevant section of the Shareholder Declaration are required.	2	4	8

Advocacy Restriction	Financial	3	Risk that GMHI will be unduly hampered by process in applying for financial supports from upper levels of government and thus possibly miss deadlines.	3	4	12
-----------------------------	-----------	---	--	---	---	----

Option 3		Description				
Remove legislated and shareholder restrictions only		Legislated and Shareholder restrictions are removed and advocacy restriction remains.				
	Risk Categories	Risk ID#	Description	Impact	Likelihood	TOTAL
Legislated Restrictions	No risk identified					
Shareholder Declaration Restrictions	No risk identified					
Advocacy Restriction	Financial	1	Risk that GMHI will be unduly hampered by process in applying for financial supports from upper levels of government and thus possibly miss deadlines.	3	4	12

Option 4		Description				
Remove all restrictions		All restrictions removed.				
	Risk Categories	Risk ID#	Description	Impact	Likelihood	TOTAL
Legislated Restrictions	No risk identified					
Shareholder Declaration Restrictions	No risk identified					



Advocacy Restriction	No risk identified					
----------------------	--------------------	--	--	--	--	--

6.1 Qualitative Analysis Summary – RISKS

Viable Options	Risk Categories	
Option 1: Status Quo	Financial/Regulatory	28
Option 2: Remove Legislated Restrictions Only	Financial	20
Option 3: Remove Legislated and Shareholder Declaration Restrictions Only	Financial	12
Option 4: Remove all restrictions	No risks identified.	0

SECTION 6.2 BENEFIT ANALYSIS OF OPTIONS

The current City of Guelph **Benefit Matrix** below assigns colours to the resulting score based on the City’s benefit significance as set out below.

Impact Scale 					
3 Significant	3	6	9	12	15
2 Moderate	2	4	6	8	10
1 Minor	1	2	3	4	5
Likelihood Scale 	1 Rare	2 Unlikely	3 Somewhat Likely	4 Likely	5 Almost Certain

Option 1 – Status Quo					
Benefit Categories	Stakeholders <i>(Specific Groups)</i>	Description	Impact	Likelihood	TOTAL
<i>No benefit identified.</i>					
0					

Option 2 - Remove Legislated Restrictions					
Benefit Categories	Stakeholders <i>(Specific Groups)</i>	Description	Impact	Likelihood	TOTAL
Organizational Performance	City Council GMHI	There will be increased agility in the structure of the relationship between the City and GMHI.	1	4	4
4					

Option 3 - Remove Legislated and Shareholder Declaration Restrictions					
Benefit Categories	Stakeholders (<i>Specific Groups</i>)	Description	Impact	Likelihood	TOTAL
Organizational Performance	City Council GMHI	There will be increased agility in the structure of the relationship between the City and GMHI.	2	4	8
8					

Option 4 - Remove All Restrictions					
Benefit Categories	Stakeholders (<i>Specific Groups</i>)	Description	Impact	Likelihood	TOTAL
Organizational Performance	City Council GMHI	There will be increased agility in the structure of the relationship between the City and GMHI.	3	4	12
12					

6.2 Qualitative Analysis Summary – Benefits

Viable Options	Org Performance	TOTAL
Option 1 Status Quo Status Quo	0	0
Option 2 – Remove Legislated Restrictions	4	4
Option 3 – Remove Legislated and Shareholder Declaration Restrictions	8	8
Option 4 – Remove all Restrictions	12	12

6.3 QUANTITATIVE ANALYSIS – FINANCIAL

All options except Status Quo have a financial cost of approximately \$250, being the cost of filing Articles of Amendment with the Ministry.

Options 1 through 3 create a risk that there would be additional financial costs in the future to amend the articles when required, which costs would include the filing fee for the amendment as well as the staff time required to prepare a business case study and report to council.

6.4 Overall Viable Option Ranking <i>*Overall Ranking of viable options with 1 being the best.</i>				
Viable Options	Qualitative		Quantitative	*Overall Viable Option Ranking
	Risks	Benefits	Financial	
Option 1: Status Quo	28	0	unknown	4
Option 2: Remove Legislated Restrictions	20	4	\$250 and unknown	3
Option 3: Remove Legislated and Shareholder Declaration Restrictions	12	8	\$250 and unknown	2
Option 4: Remove All Restrictions	0	12	\$250 and no unknown	1

SECTION 8: ALIGNMENT TO STRATEGIC PLANS

City Strategic Plan

The restructuring plan aligns to the Corporate Strategic Plan as follows:

Organizational Excellence

1.3 – Building robust systems, structures and frameworks aligned to strategy.

The removal of the restrictions from the Articles allows the City greater flexibility and agility in managing its relationship with GMHI.

SECTION 9: CONCLUSIONS & RECOMMENDATIONS

Based on the analysis above, GMHI is recommending that the Business Case Study for Amendment of the Articles of Amalgamation of GMHI be approved by the City and the City approve the amendment of the Articles by removing the restrictions set out in section 10 of the Articles.

SECTION 11: APPROVAL

Approved By City Council: