

**Cape Breton Regional Municipality**

**Special Council Meeting**

**AGENDA**

**THURSDAY, JUNE 3, 2021**

**10:00 A.M.**

**VIA  
VIDEO/TELECONFERENCING**

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# Cape Breton Regional Municipal Council

## Council Meeting

Thursday, June 3, 2021  
10:00 a.m.

Via  
Video/Teleconferencing

### **AGENDA ITEMS**

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**Land Acknowledgement:** Mayor Amanda M. McDougall

#### **Roll Call**

1. **APPROVAL OF AGENDA:** (Motion Required)
2. **Welcome and Introductions:** Mayor Amanda M. McDougall
3. **CBRM Nominating Committee – Process:** Deborah Campbell Ryan, Municipal Clerk (See page 5)
4. **Port of Sydney Development Corporation – Review of Strategic Plan and Port Update:** Marlene Usher, Chief Executive Officer (See page 8)

#### ***Reference Materials:***

- **Articles of Association:** (See page 19)
- **Memorandum of Association:** (See page 34)

Continued...

5. **Continued Collaboration between the PSDC Board of Directors and CBRM Council:** Mayor Amanda M. McDougall

**ADJOURNMENT**

## M·E·M·O

320 Esplanade

Sydney, Nova Scotia, B1P 7B9

902-563-5010

**To:** Mayor Amanda M. McDougall & Councillors  
**From:** Deborah Campbell Ryan, Municipal Clerk  
**Date:** May 28, 2021  
**Subject:** CBRM Nominating Committee – Process

Attached is an excerpt from the RC4 Committees Policy regarding the Nominating Committee and the procedure for dealing with citizen applications.

In terms of process for recruitment of citizens for the Port of Sydney Development Corporation Board of Directors, the practice has been as follows:

- The Port advises the CBRM Clerk's office when the term of a Director is expiring or if there is a vacancy, noting the area of expertise required and the length of the term to be filled.
- The Clerk reports this to the Nominating Committee, after which the Clerk is directed to call for expressions of interest from CBRM residents to apply for the vacant position(s) based on the area of expertise.
- The advertisement is placed in the newspaper, on the CBRM website and social media asking that they submit a letter of application to the Clerk's office, together with their Resume, clearly indicating their interest in serving on the Board and to outline all qualifications and experience/volunteer work in the related field.
- As per the attached Policy, a summary matrix of all applications (by candidate number) is prepared by the Clerk and due to the confidential nature of the information, is circulated only to the Council members, together with the Resumes. A notation is made on the matrix if the applicant is a current member of the Board.
- The Nominating Committee reviews the applications in terms of suitability based on the area of expertise and forwards their recommendations to Council.

**Continued...**

- Council may ratify the report of the Nominating Committee or may substitute the name of any person instead of the person nominated by the Committee.
- Once the citizens have accepted the positions and any required background checks have been completed, their names are released at a subsequent open meeting of Council.

Thank you.

**Yours truly,**

*Original signed by:*

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**Deborah Campbell Ryan,  
Municipal Clerk**

Attachment

**12. Nominating Committee**

(1) At the first regular meeting of Council held, after the Election, and at the first regular meeting of Council held in October and every two years thereafter, the Council shall appoint, or authorize the Mayor to appoint, the Nominating Committee. The Committee shall consist of the Mayor and at least five (5) Councillors.

(2) Upon appointment, or soon thereafter, the Nominating Committee shall convene and nominate persons to serve for the next two years on the standing committees and external agencies/committees.

(3) The Nominating Committee shall also meet as required to deal with citizen appointments and any vacancies on Committees.

(4) With respect to the appointments of citizens to Committees, the following selection process shall be used:

- While the meetings of the Nominating Committee are open to the public, the proceedings will not be live streamed or videotaped when dealing with citizen appointments.
- The background information for the applicants will not be attached to the public agenda.
- A matrix of the applicants identified by name and number, noting their qualifications and experience in the related field, will be provided to the Nominating Committee.
- Discussion by the Committee will be non-specific, referring to the candidates by number and not by name.
- Recommendations to Council will refer to the candidate number, and once the citizens have accepted the positions and any required background checks have been completed, their names will be released at a subsequent open meeting.

(5) The Council may ratify the report of the nominating committee or may substitute the name of any person instead of the person nominated by the committee.

**13. Non-Committee Council Members**

Council members not serving on Committees will not be permitted to participate in the Committee debate or the vote, but are authorized to make comments, presentations and participate at Committee meetings.



# STRATEGIC PLAN 2020



## INSIDE:

1. Background
2. The Current Environment
3. Cruise Business, Economic Impact and Challenges
4. Predicted Cruise Traffic
5. Looking to the Future
6. Our Vision
7. Our Mission
8. Our Values
9. Strengths and Opportunities of the Port
10. Key Result Areas and Strategic Objectives
11. Measuring Our Success



# Port of Sydney

CANADA

# 1. BACKGROUND

The Port of Sydney Development Corporation (PSDC) was established in 2015 to replace Sydney Ports Corporation. The organization is a self-sustaining corporation and has a mandate which includes the Sydney Marine Terminal and related commercial business, as well as the marketing and development of Sydney Harbour.

The Sydney Marine Terminal and specifically the Joan Harriss Cruise Pavilion was constructed to sustain the cruise business and to participate with other Atlantic Ports in the cruise industry.

The Port of Sydney Development Corporation (PSDC) is governed by a Board of Directors who provide direction to the CEO and develop the strategic direction for the organization.

## 2. THE CURRENT ENVIRONMENT

The Port of Sydney Development Corporation manages and operates the Sydney Marine Terminal.

Included in this operation is the Joan Harriss Cruise Pavilion, a 100 m metre south dock, a 275-metre dock to the west of the terminal, and a new 180-metre north dock. The Port of Sydney currently has three main sources of income, including:

- ▶ Cruise vessel visitation
- ▶ Fuel tankers and other vessels
- ▶ Event, market and tenant revenue

With revenues approaching \$3 million and expenses (excluding depreciation) at \$2.2 million (2017), the Port of Sydney is self-sustaining and a valuable asset to the community.

The Port employs 18 people during peak season (April to end October).



# 3. CRUISE BUSINESS

## ECONOMIC IMPACT & CHALLENGES

Cruise traffic is the main source of revenue for the Port, growing to over \$1.3 million in passenger tax in the 2019 season.

Cruise activity is active from May to November and most concentrated in September and October (fall colours cruises), compounding the demand for berth capacity by the cruise industry.

Cruise activity in the Cape Breton Regional Municipality is a significant economic driver. In 2019 there were 108 ship calls with 215,600 passengers and crew arriving in Sydney.

Economic impact was estimated in excess of \$60 million.

Excursions at the Port of Sydney are some of the best in Atlantic Canada and include

multicultural experiences. Cruise spending is a critical factor in the success of many seasonal vendors and on-land excursions.

The combination of steady cruise business growth and the concentration of cruise activity, especially during the mid-week period combined with the regular use of the cruise berth for important fuel supply functions, has resulted in berth use scheduling conflicts, particularly during the fall peak cruise season.

With the new pier, revenues for berthage and wharfage are expected to grow.

In 2016, seven ships called that needed anchor. In 2019 there were 25 multi-ship days. Even with the addition of the second berth in 2020, there will be 9 ships anchoring because the two berths are occupied.

Anchoring is not favoured by cruise operators and it results in lost port revenues and reduced passenger spending.

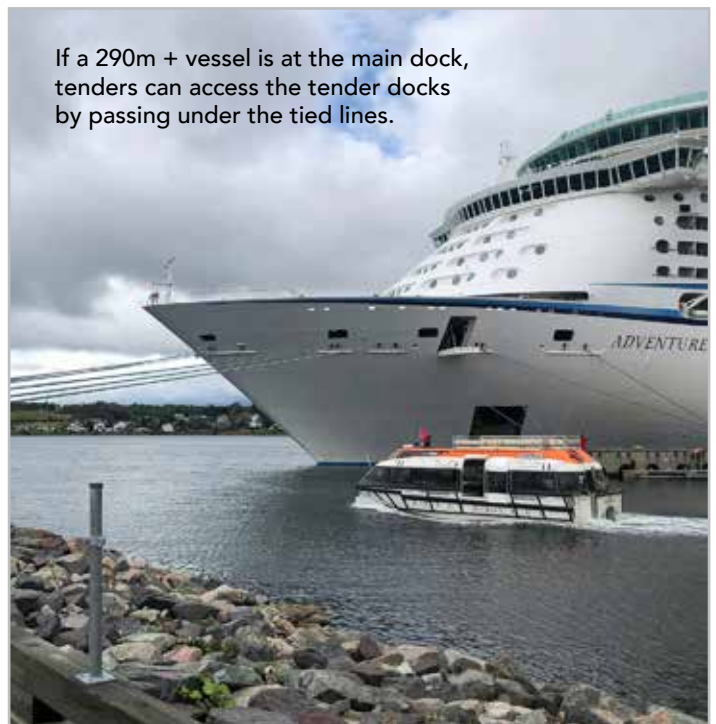
### TENDERING & LINE BOAT

At the new pier, vessels over 200m require the line boat.

At the main dock, vessels over 290m require the line boat.



If a 290m + vessel is at the main dock, tenders can access the tender docks by passing under the tied lines.





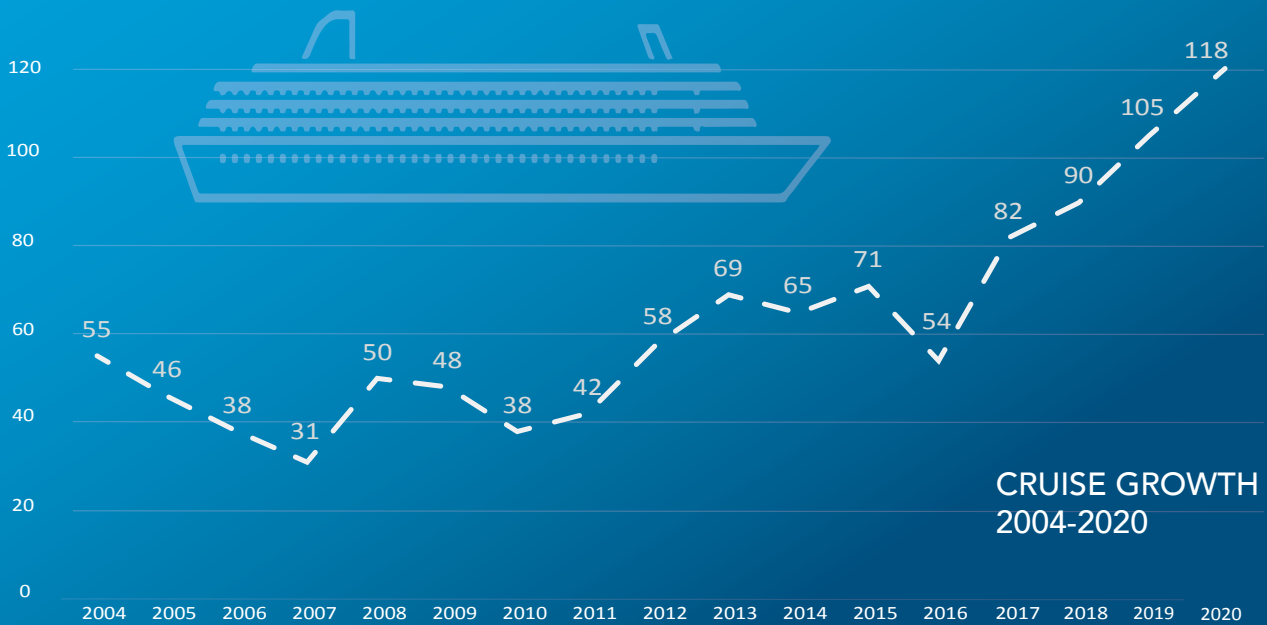
#### 4. PREDICTED CRUISE TRAFFIC

Cruise traffic projections over the next few years are difficult to accurately predict as the industry is quite cyclical. There are several factors which could impact cruise line decisions in planning itineraries. For the years 2021 and 2022 projections indicate that the industry in Sydney will remain strong.

The vision for the Port of Sydney includes continued growth of the fall cruise season with a focus on growth of the spring and summer markets. Increased destination awareness and

opportunities through the Atlantic Canada Cruise Association (ACCA) and Cruise Canada New England (CCNE) provide opportunities for growth.

For 2020 and beyond the issue of anchoring and tendering will be greatly minimized with the addition of a second berth which provides the Port an opportunity to market its new berthing capacity. This will increase visitation to the Port.



## 5. LOOKING TO THE FUTURE

The vision, mission and values are basic precepts and guiding principles that drive the organization.

A unifying vision, a meaningful mission, and adherence to basic values serve to set direction and inspire commitment to the Port of Sydney Development Corporation's future.

## 6. OUR VISION

To be a leading Atlantic Gateway multimodal hub, operating as a vibrant partner in the global supply chain and committed to the economic development and growth of the Port.



## 7. OUR MISSION

To support, promote and develop the harbour and related infrastructure with a view of growing the economy of the Cape Breton Regional Municipality.

In its advocacy role, the Port of Sydney Development Corporation will strive to create the 'conditions for success' with the aim of optimizing the Port's economic development prospects. The PSDC fulfills its mission through the following responsibilities:

1. To manage and operate the Port of Sydney in the Cape Breton Regional Municipality, Nova Scotia including the Sydney Marine Terminal;
2. To develop, build or acquire infrastructure needed for the operation, promotion or economic development of the Port of Sydney and/or its facilities;
3. To advocate for and assist private enterprise to grow the Port;
4. To efficiently and effectively manage and administer personnel and infrastructure assets under its care;
5. To foster a healthy relationship with all levels of government as well as other key stakeholders;
6. To maintain a close working relationship with Indigenous partners;
7. To actively market the advantages of using Sydney as a Port of Call;
8. To promote business development and investments in the Port of Sydney and related businesses; and
9. To provide an effective and robust communications and outreach plan for the Port of Sydney.

# LIGHTHOUSE CONCOURSE



## 8. OUR VALUES

Values clarify what we believe in, what we stand for, and how these beliefs are translated into action when we are conducting business and dealing with employees, clients, and stakeholders.

Board members and employees at the PSDC will be guided by these values including, but not limited to:

- ▶ Honesty and Integrity
- ▶ Quality
- ▶ Inclusiveness
- ▶ Respect



## 9. STRENGTHS & OPPORTUNITIES OF THE PORT OF SYDNEY

The Port of Sydney Development Corporation as an organization has many strengths. It is our intention to capitalize on those strengths to grow the Port.

The PSDC has examined the current landscape in which it operates. We have identified the following strengths which have allowed us to be successful.

### STRENGTHS

Strategically located on the eastern seaboard of North America

Protected ice-free harbour and unrestricted access-air and water draft

Sheltered headland providing safe harbour for vessels

Strong relationship with Atlantic Canada Cruise Association & Canada New England

Iconic marine terminal

Skilled workforce

Recent construction of second berth

Indigenous partnerships on projects and governance

Available land for development

Harbour dredged to accommodate ultra-large container vessels

### OPPORTUNITIES

Second berth opening in 2020

Advocate for supply of marine fuel

New marine services

Industrial and bulk cargo to second berth

Foreign trade zone designation

Project cargo

Boardwalk and waterfront development

Reconfiguration of spaces in the Joan Harriss Cruise Pavilion

Multi-purpose office space

New navigational aids installation by Canadian Coast Guard

Small cruise potential and homeporting

## LOOKING FORWARD

Identifying strengths and opportunities is an important component of the strategic planning process. This step in the process provides critical information on strategic issues and priorities for PSDC.

It provides the organization with an opportunity to compare “what is” with “what should or could be”. The following section focuses on the “where we want to be” - our vision of the PSDC in the years to come.

The recent success of the Port of Sydney has largely been because of extensive cruise ship activity. Second berth construction will further enhance the growth of the industry.

The Port will continue to monitor the local environment and also the global context. International issues that arise within the shipping industry may impact local opportunities. Consequently, proper planning and two-way communications are instrumental to our continued success.



## 10. KEY RESULT AREAS AND STRATEGIC OBJECTIVES

Based on our strategic assessment and our vision, mission and values, the PSDC has identified seven key result areas. These key result areas will be addressed by way of strategic objectives applied over a three-year framework. Results will be tracked through an accountability process as well as through the PSDC's business plan.

### KEY RESULT AREAS

1. Organization Sustainability, Growth and Development
2. Facilities and Support
3. People and Human Resources
4. Health, Safety, Security and The Environment
5. Financial Management and Governance
6. Quality Assurance and Performance Management
7. Reputation Management and Communications

# STRATEGIC OBJECTIVES:

PORT OF SYDNEY DEVELOPMENT CORPORATION

## AREA 1:

Organizational Sustainability,  
Growth and Development

### STRATEGIC OBJECTIVES:

1. Sustain current cruise traffic and attract more calls as second berth comes on stream.
2. Advocate for the installation of navigational aids in Sydney Harbour.
3. Advocate for a container terminal in Sydney Harbour including upgrade of existing rail line.
4. Grow non-cruise traffic at the Port including the transport of goods and project cargo.
5. Develop a marketing strategy to capitalize on foreign trade zone designation.

## AREA 2:

Financial Management and Governance

### STRATEGIC OBJECTIVES:

1. Operate the Port of Sydney to ensure it is sustainable, in a solvent position and where possible to grow revenues.
2. Implement best financial practices in operating PSDC by following Public Sector Accounting Standards (PSAS) and by achieving a clean audit opinion.
3. Ensure board appointments and committee structures are consistent with effective Governance processes

## AREA 3: Facilities and Support

### STRATEGIC OBJECTIVES:

1. To ensure that PSDC's physical infrastructure meets both the current and near future needs of the corporation and incorporates environmentally friendly practices where possible.
2. To ensure that PSDC's Information Technology infrastructure meets both current and future needs.

## AREA 4: Quality Assurance and Performance Management

### STRATEGIC OBJECTIVES:

1. Develop, implement and maintain PSDC validation and quality assurance standards aimed at ensuring the Port remains relevant and effective.
2. Develop and implement a risk management strategy.

## AREA 5: People and Human Resources

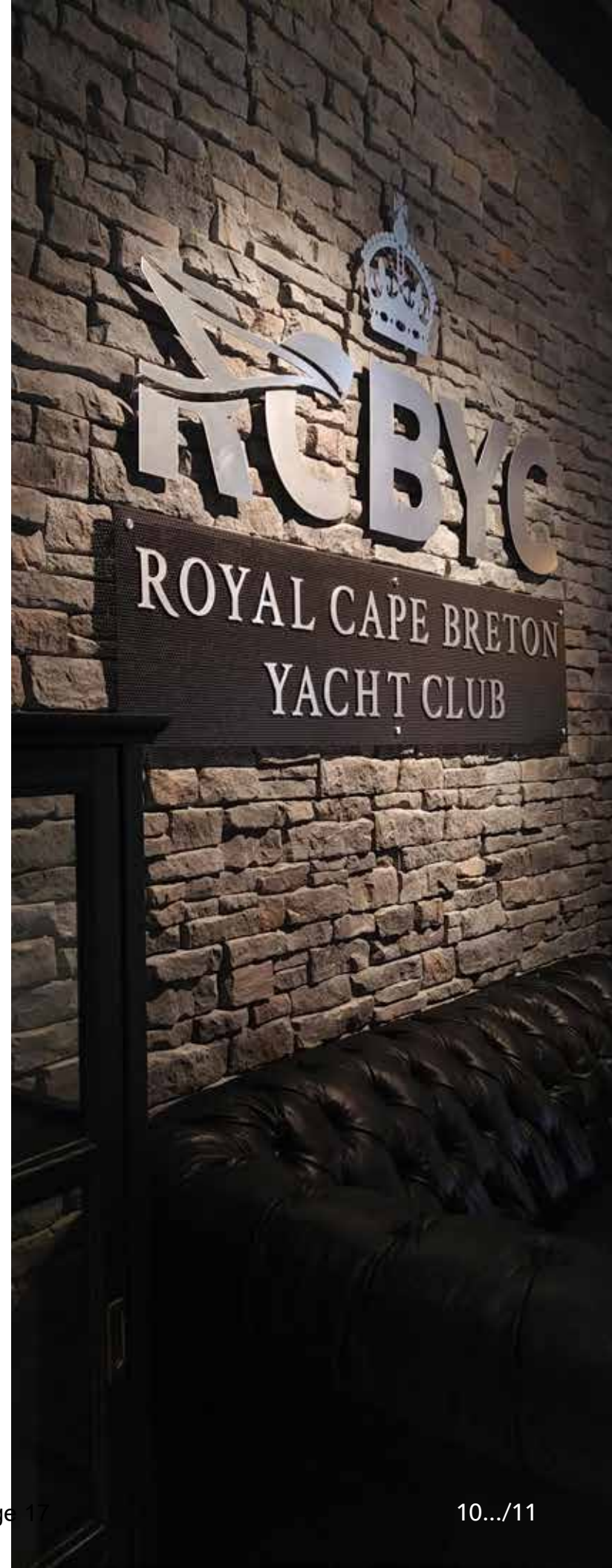
### STRATEGIC OBJECTIVES:

1. To ensure PSDC has the right people with the right skills for current and future operations.
2. To implement human resource policies which would support PSDC as an employer of choice.
3. Promote a culture of excellence throughout the organization.
4. Encourage diversity of individuals and a practice of inclusion for staffing.

## AREA 6: Reputation Management and Communications

### STRATEGIC OBJECTIVES:

1. Develop and execute a well defined communications strategy to ensure increased public awareness of Port activities.
2. Develop and implement a defined process for community outreach to increase transparency.
3. Develop an internal marketing committee to identify strategies to effectively market the Port.



## AREA 7: Health, Safety, Security and The Environment

### STRATEGIC OBJECTIVES:

1. Operate the Port in a safe and secure manner.
2. Ensure safety, security and environmental practices are compliant with provincial and federal standards.
3. Investigate and adopt new and innovative green technologies which make the Port more competitive.



## 11. MEASURING OUR SUCCESS

This plan has outlined the strategies that are necessary in the next two to three years and beyond, if we are to achieve our key results.

An essential part of this process is accountability. In being accountable we intend to track and report on our performance, including progress in our key result areas.

To measure our results, the PSDC will undertake the following key activities:

1. Conduct annual general meetings open to the public. Audited financial statements along with reports from operations and infrastructure will be presented and compared to planned results. The public will be invited to pose questions.
2. Economic impact reports will be commissioned and prepared by independent bodies. This will establish baseline economic impact and track economic growth in Port activities in a consistent manner.
3. Annual anonymous surveys will be completed by all employees. This will allow the board to evaluate how the Port is progressing towards becoming an employer of choice.
4. Finally, this strategic plan will be reviewed annually by the Board of Directors and changes or revisions will be made as necessary. This plan becomes a “Blueprint for the Future” providing a guide for management and board members and documenting the priorities for growth.

**ARTICLES OF ASSOCIATION  
OF  
PORT OF SYDNEY DEVELOPMENT CORPORATION**

**ARTICLE 1: NAME, PURPOSE AND DEFINITION**

- 1.01 The name of the Company is Port of Sydney Development Corporation.
- 1.02 The purposes, objects and powers of the Company are as set out in the Memorandum of Association of the Company.
- 1.03 In these Articles of Association of the Company:
- (a) "Company" means Port of Sydney Development Corporation;
  - (b) "Board" or "Board of Directors" means the board of directors of the Company;
  - (c) "Board Member" or "Director" means an individual who has been appointed as a member to the Board of Directors of the Company;
  - (d) "Member(s) of the Company" means an individual or such other legal entity who has acquired Membership, in the Company in accordance with Article 3 of the Articles of Association of the Company; and
  - (e) "Port of Sydney" means the Sydney Harbour and associated infrastructure as well as any operations collateral or incidental to the development of Sydney Harbour.

**ARTICLE 2: POWERS**

- 2.01 Subject to the Memorandum of Association of the Company, the powers of the Company are as set out in the *Companies Act*, Chapter 81, Revised Statutes of Nova Scotia, 1989, as amended from time to time.
- 2.02 In addition the Company shall have the power:
- (a) to fix and determine the basis and terms of membership in the Company;
  - (b) to carry out the financing and other agreements necessary to achieve its objects either alone or jointly with others; and
  - (c) to guarantee and act as an endorser on loans and obligations arranged by or on behalf of individuals or groups.

### **ARTICLE 3: MEMBERSHIP**

- 3.01 This, Article 3, shall apply to the admission of voting Members of the Company. Subject to the Memorandum of Association, the Members, by resolution, may approve the admission and terms of membership of non-voting members of the Company.
- 3.02 Subject to the right of the Company to extend its membership and to provide for the terms of such extension, the Members of the Company shall be as follows:
- (a) the Cape Breton Regional Municipality as represented by the Council of the Cape Breton Regional Municipality (sometimes referred to as the “Initial Member”);
  - (b) such additional Members of the Company who shall be appointed by the Initial Member; and
  - (c) such additional Members of the Company who shall be appointed by the Members of the Company.
- 3.03 Members of the Company (other than the Cape Breton Regional Municipality), shall, as a condition of membership, sign and file with the Company a copy of the Company's Memorandum of Association as confirmation of an undertaking to contribute to the assets of the Company, subject to the limitations expressed in Article 4 of the Memorandum of Association of the Company.
- 3.04 The number of Members who may be admitted to membership in the Company is unlimited.
- 3.05 The acts and votes of the Members of the Company shall be deemed to be legal and valid notwithstanding any default in the appointment of Members of the Company at the time of such acts or votes; and the act and vote of a majority of those present and voting at any duly convened meeting of the Members of the Company shall be deemed to be the act and vote of the Company.
- 3.06 Subject to Article 3.07, the Members of the Company, including the signatories to the Company's Memorandum of Association, shall continue to maintain membership in the Company unless otherwise removed by a vote of 2/3 of the Members of the Company present in person or by proxy at a duly constituted meeting of the Members of the Company for which notice of the proposed removal of the Member has been provided.
- 3.07 Any Member of the Company, including any signatory to the Company's original Memorandum of Association, shall cease to be a Member of the Company upon:
- (a) in the case of a Member of the Company which is a corporate entity, upon the corporate entity becoming insolvent or being assigned into bankruptcy or being wound up; or
  - (b) with the approval of the Board of Directors, if the Member of the Company fails to pay any fee which may be levied on the Member.

- 3.08 Notwithstanding the foregoing, no fees shall be levied on the Cape Breton Regional Municipality and the Cape Breton Regional Municipality shall not be removed as a Member of the Company.

#### **ARTICLE 4: MEETINGS AND VOTING OF THE MEMBERS OF THE COMPANY**

- 4.01 The Secretary or his or her designate shall be responsible for giving notice of all meetings of the Members of the Company.
- 4.02 Notice of the time and place of the annual general meeting of the Members of the Company (the "Annual General Meeting") shall be given to each Member by telephonic, electronic or other communication facility not less than two (2) weeks before the day on which the meeting is to be held. If a Member requests that the notice be given by non-electronic means, the notice will be sent by mail, courier or personal delivery.
- 4.03 Notice of the time and place of general meetings of the Members of the Company, other than the Annual General Meeting of the Members of the Company, shall be given to each Member by telephonic, electronic or other communication facility not less than two (2) weeks before the day on which the meeting is to be held. If a Member requests that the notice be given by non-electronic means, the notice will be sent by mail, courier or personal delivery.
- 4.04 Notice of any emergency meetings will be deemed sufficient if the Secretary gives notice by telephone, fax or message either in person to the Members of the Company or by message left with some responsible person at the respective homes or offices of the Members of the Company the day previous to the date of the emergency meeting of the Members of the Company.
- 4.05 Voting at any meeting of the Members of the Company shall be voiced "aye" or "nay" or by show of hands or by standing vote, unless a secret vote by ballot is requested by motion, seconded and carried by a majority of the Members of the Company present. A motion of request for secret ballot may not be ruled out of order by reason of there being a prior motion on the floor.
- 4.06 Subject to Article 8.01 of the Articles of Association of the Company, each Member of the Company shall be entitled to one (1) vote and no more on any motion.
- 4.07 A quorum of any meeting of the Members of the Company (whether annual, general or emergency) shall be fifty-one percent (51%) of the Members of the Company (actually present, or by proxy) with no person entitled to be counted as more than one (1). Any Member present at any meeting of the Members by proxy shall have filed with the Secretary or his or her designate at any time prior to the meeting of the Members of the Company a proxy form, (substantially similar to the one set out in Appendix "A" to these Articles of Association) and bearing the signature (or certifies the consent to the Secretary's satisfaction) of the Member who wishes to be present at the meeting of the Members of the Company by way of proxy. The proxy form may be presented to the Secretary or his or her designate either by hand (by any person), prepaid post, fax or such other device which, in written form, evidences the consent of the Member being present at the Meeting of the Members of the Company by proxy, the Secretary or his or her designate shall duly note such fact in the minutes of the meeting of the Company and the proxy form or a copy of the proxy form shall be filed with the minutes of the meeting of the Members.

4.08 The Members of the Company shall hold not less than one (1) meeting each year, of which one meeting shall be the Annual General Meeting of the Members of the Company. The Annual General Meeting of the Members of the Company shall be open to the public and is to be held at the Joan Harris Cruise Pavilion, or such other convenient location, at such time as is deemed expedient by the Board of Directors of the Company. At the Annual General Meeting of the Members of the Company, the order of business shall be as follows:

- (a) Roll call;
- (b) Approval of minutes of preceding Annual General Meeting of the Members of the Company;
- (c) Adoption of the annual report which shall include:
  - Audited financial statements;
  - Completion of a business plan for the fiscal year containing such information as the Council of the Cape Breton Regional Municipality may require, including but not limited to:
    - o Capital and operating budget, including financial targets;
    - o Anticipated infrastructure and facility maintenance;
    - o Marketing plan;
    - o Strategic operating plan.
  - Risk assessment, if applicable in the year of the Annual General Meeting; and
  - Summary of infrastructure maintenance and development for the prior fiscal year.
- (d) Adoption of treasurer's report and appointment of auditors;
- (e) Receiving report of Governance Committee of the Board of Directors;
- (f) Confirmation of individuals to the Board of Directors;
- (g) Election of new Members to Membership in the Company;
- (h) New business.

4.09 General meetings of the Members of the Company may be held at the discretion of the Board of Directors of the Company. Such meetings shall be held at such time and place, and shall take such form as is deemed expedient by the Board of Directors of the Company.

4.10 Emergency meetings of the Members of the Company may be called at such time and place as is deemed in the best interests of the Company. Such meetings shall be held when requested by:

- (a) One-third (1/3) or more Members of the Company by notice in writing, delivered to any officer of the Company; or
- (b) the Board of Directors of the Company; or
- (c) the chairperson (the "Chairperson").

4.11 Subject to such modification as may be required by law and/or pursuant to the Articles of Association of the Company, the business of the Members of the Company shall be conducted in accordance with the most recent edition of Robert's Rules of Order, as it may exist from time to time.

#### **ARTICLE 5: BOARD OF DIRECTORS OF THE COMPANY**

5.01 The Board of Directors of the Company shall be responsible to establish the policies and perspectives of the Company, including, but not limited to, major policy issues, financial issues and the hiring of the CEO, if any, and shall meet no less than six (6) times during the Company's fiscal year. The Board is responsible for governance and for the oversight of the activities of the Company.

5.02 Subject to Article 5.22, the following individuals shall not be eligible to sit as Directors:

- (a) an individual who is a mayor, councillor, officer or employee of the Cape Breton Regional Municipality;
- (b) an individual who is a member of the legislature of the province of Nova Scotia, or an officer or employee of the public service or of a Crown corporation of the province of Nova Scotia;
- (c) a Senator or a member of Parliament or an officer or employee of the federal public service or of a federal Crown corporation;
- (d) an individual who is not a resident Canadian;
- (e) an individual who is under 18 years of age;
- (f) an individual who has been declared mentally incompetent by a court in Canada or elsewhere; or
- (g) an undischarged bankrupt.

5.03 The Board shall consist of at least nine (9) voting Directors and no more than twelve (12) voting Directors.

5.04 The quorum necessary for the transaction of business at a meeting of the Board shall be a majority of the number of Directors in office. A quorum of Directors may exercise all powers of the Board.

5.05 The appointment of a Director shall be effected by a duly authorized resolution of the Council of the Cape Breton Regional Municipality and the Board of Directors shall be comprised of the following:

- (a) not less than one (1) individual holding a professional accounting designations;
  - (b) not less than one (1) individual licensed to practice law in the Province of Nova Scotia;
  - (c) not less than one (1) individual holding a professional engineering designation;
  - (d) not less than one (1) individual with noted expertise in marketing;
  - (e) not less than three (3) individuals with expertise in business and commerce;
  - (f) one designate appointed by band council resolution from Eskasoni First Nation who is not an elected band official; and
  - (g) one designate appointed by band council resolution from Membertou First Nation who is not an elected band official.
- 5.06 No Director of the Company shall hold office as a Director of the Company for a term greater than three (3) years; the Company may, by a majority vote of the Members of the Company present in person or by proxy at a meeting of the Board, extend such term for up to one (1) additional term, which shall not exceed three (3) years.
- 5.07 Subject to such other requirements prescribed pursuant to these Articles of Association of the Company with respect to membership on the Board of Directors of the Company, if a Director of the Company has held office for a period of six (6) consecutive years, he or she will not be eligible to hold office as a Director of the Company for a period of at least three (3) years from the date on which he or she attained six (6) consecutive years as a Director of the Company.
- 5.08 A Director shall cease to hold office when:
- (a) the Director dies or resigns;
  - (b) the Director is removed for cause;
  - (c) the Director is no longer qualified to hold the office of director;
  - (d) the term of office of the Director expires; or
  - (e) the Director is removed by majority vote of the Members of the Company. Subject to those items enumerated herein Article 5.08, so long as the Cape Breton Municipality is the sole Member of the Company, a Director shall not be unilaterally removed by majority vote of the Members, without cause.
- 5.09 A Director may resign his or her office as a Director by sending to the Company a written resignation which shall become effective on the date received by the Company or on the date specified in the resignation, whichever is later.

- 5.10 The Board shall appoint a Chief Executive Officer (CEO), who shall not be a Director. The Board shall fix the remuneration of the CEO of the Company, subject to the approval of the business plan of the Company at the Annual General Meeting.
- 5.11 The Board, subject to the approval of the Members, may appoint from their number one or more committees of the Board not otherwise provided for herein, to best carry out the provisions enumerated herein, however designated, and delegate to any such committee any of the powers of the Board except the Board shall not delegate to any committee the power to:
- (a) fill a vacancy in the office of the auditor of the Company;
  - (b) issue debt obligations except in the manner and on the terms authorized by the Board;
  - (c) approve the audited financial statements of the Company;
  - (d) adopt, amend or repeal by-laws; or
  - (e) authorize or ratify any activity carried on or to be carried on or any power exercised or to be exercised by a subsidiary.
- 5.12 The Board shall appoint from their number a governance committee comprised of not less than three Directors, one of whom shall be a barrister (the "Governance Committee").
- 5.13 The Governance Committee shall perform the following functions:
- (a) Develop and manage the administration of a code of conduct;
  - (b) Develop and annually update a long-term plan, including recommendations to the Board, for the composition of the Board, in terms of the optimal combination of skills, background or experience, which plan shall take into consideration the skills, background and experience of existing Directors, retirement dates and the strategic direction of the Company;
  - (c) at least four months prior to the expiry of the term of a director appointed by the Cape Breton Regional Municipality provide notice to the Cape Breton Regional Municipality, that the term of its appointee on the Board is about to expire and requesting an appointment;
  - (d) provide to the Cape Breton Regional Municipality the notice described in subsection 5.13(c) above, a current copy of the plan and recommendations described in subsection 5.13(b) and also provide a profile of the skills, background and experience of the continuing Directors;
  - (e) in the event a Director ceases to hold office, the Governance Committee shall forthwith provide to the Cape Breton Regional Municipality, a written request for a new appointment to fill such vacancy together with a copy of the plan and recommendations described in subsection 5.13(b) and the profile described in subsection 5.13(d).

- 5.14 Subject to such modification as may be required by law and/or pursuant to the Articles of Association of the Company, the business of the Board of Directors shall be conducted in accordance with the most recent edition of "Robert's Rules of Order", as it may exist from time to time.
- 5.15 No Director shall be paid any salary or remuneration for the execution of his or her duties other than such out-of-pocket expenses as he or she may properly incur on behalf of the Company.
- 5.16 Meetings of the Board of Directors of the Company may be held by telephone conference call and Directors of the Company may be present at any meeting of the Board of Directors of the Company by telephone speaker or such similar device, so long as the Director attending the meeting of the Board of Directors by way of speaker phone or such similar device is able to hear and participate in the meeting.
- 5.17 Notice of the time and place of a meeting of Directors shall be given to each Director by telephonic, electronic or other communication at least two (2) weeks before the day on which the meeting is to be held. If a Director requests that the notice be given by non-electronic means, the notice will be sent by mail, courier or personal delivery.
- 5.18 The Board of Directors of the Company shall be tasked with having the following corporate records available for inspection by the Council of the Cape Breton Regional Municipality at any time:
- (a) copies of the annual financial statements, for a period of six years after the end of the fiscal year to which they relate;
  - (b) copy of every document received by it in the last six years notifying it of the appointment or cessation of office of a director;
  - (c) copy of the constating instruments of each of its wholly-owned subsidiaries;
  - (d) Minutes of any meetings of the Board; and
  - (e) Records relating to the traffic and general use of the Port of Sydney.
- 5.19 The Board of Directors of the Company shall be required to report, and provide supporting documentation, to the Council of the Cape Breton Regional Municipality on the following matters within five (5) business days of such business being approved at a meeting of the Board of Directors:
- (a) filling a vacancy in the office of CEO;
  - (b) approving the annual financial statements;
  - (c) approving a borrowing of more than Fifty Thousand Dollars (\$50,000.00);
  - (d) adopting a land use plan or business plan;

- (e) authorizing or ratifying any activity carried on or to be carried on, or any power exercised or to be exercised, by a subsidiary of the Company; or
  - (f) approval of internal quarterly financial statements.
- 5.20 The Board of Directors of the Company shall requisition a risk assessment, relating to the Port of Sydney, prepared by a competent risk assessor every five (5) years with respect to:
- (a) risk, risk management, property value, risk transfer and probable maximum loss; and
  - (b) insurance coverage, limits and deductibles.
- 5.21 Notwithstanding the foregoing regulatory framework concerning the Board of Directors of the Company contained in this Article 5, immediately upon incorporation, the Initial Member shall appoint as the first Directors of the Company:
- (a) the Mayor of the Cape Breton Regional Municipality;
  - (b) the Deputy Mayor of the Cape Breton Regional Municipality; and
  - (c) three (3) councilors of the Cape Breton Regional Municipality.
- (collectively known as the "Interim Directors")

The Interim Directors shall hold office from the date of incorporation until such time as the requisite Directors have been established in accordance with Article 5.05 herein, and on staggered terms as enumerated in Article 5.06. As the requisite Directors are appointed in accordance with Article 5.05 herein, the Interim Directors shall proportionately resign.

**ARTICLE 6: OFFICERS: CHAIRPERSON, VICE-CHAIRPERSON, SECRETARY, and TREASURER,**

- 6.01 The elected officers of the Company shall be the Chairperson, a Vice-Chairperson, a Secretary, and a Treasurer, and such other officers as the Board of Directors of the Company may from time to time appoint (the "Elected Officers").
- 6.02 The Directors shall elect from their number the Elected Officers at each Annual General Meeting. Where a vacancy exists in any office of the Company, such vacancy shall be filled at the next meeting of the Board of Directors of the Company immediately following the Annual General Meeting of the Members of the Company, which meeting of the Board of Directors of the Company shall be held no later than thirty (30) days after the Annual General Meeting.
- 6.03 The Board of Directors shall have the authority to elect any Director to serve as an interim officer of the Company, should a vacancy occur during the Company's business year until the next Annual General Meeting.
- 6.04 Any Elected Officer of the Company shall hold office for one (1) year from the date of his or her election, provided such person continues to be a Director of the Company.

- 6.05 No Elected Officer shall be paid any salary or remuneration for the execution of his or her duties other than such out-of-pocket expenses as he or she may properly incur on behalf of the Company.
- 6.06 Notwithstanding anything to the contrary contained herein, with the consent of the Board of Directors, the offices of Secretary and Treasurer may be combined into the one office of Secretary-Treasurer.

#### **ARTICLE 7: EXECUTIVE COMMITTEE**

- 7.01 The "Executive Committee" of the Board of Directors of the Company shall consist of the following individuals:
- (a) the officers of the Company, from time to time;
  - (b) the Chief Executive Officer of the Company, if any, who shall be a non-voting Member of the Executive Committee.
- 7.02 The Executive Committee shall serve as a standing committee of the Board of Directors of the Company and shall oversee the effective execution of the day-to-day operations of the Company, approve all major budgeted expense items, act as the strategic planning committee of the Company, evaluate the performance of the Chief Executive Officer, and be responsible for issuing public statements on major policy/media issues. The Executive Committee shall have the authority to transact such business as may properly be required of the Company between meetings of the Board of Directors of the Company and shall carry on its activities in accordance with such directions and limitations as the Board of Directors of the Company may from time to time prescribe. The Executive Committee shall meet no less than once a month during the Company's business year.

#### **ARTICLE 8: DUTIES OF THE CHAIRPERSON AND VICE-CHAIRPERSON**

- 8.01 The Chairperson shall:
- (a) Provides leadership to the Board that will result in attaining the objectives of the Company and adheres to its Articles of Association;
  - (b) The Chairperson shall preside at meetings of the Members of the Company, the Board of Directors and the Executive Committee and shall have an extra or deciding vote when votes are evenly divided;
  - (c) Encourages Directors to participate in meetings and activities;
  - (d) Keeps the Board's discussion on topic by summarizing issues;
  - (e) Keeps the Board's activities focused on the Companies' issues;
  - (f) Evaluates the effectiveness of the Board's decision-making process;
  - (g) Makes sure that committee chairs are appointed;

- (h) Orients Directors and committee chairs to the Board;
- (i) Makes sure there is a process to evaluate the effectiveness of Directors, using measurable criteria;
- (j) Recognizes Directors' contributions to the Board's work;
- (k) Conducts biannual Director evaluations;
- (l) Acts as one of the signing officers for cheques and other documents, such as contracts and grant applications. Unless otherwise determined by the Board of Directors of the Company, the Chairperson, together with the Secretary, shall sign all documents requiring the seal of the Company and perform such other duties as are usual for such an officer;
- (m) Promotes the Companies' purpose in the community and to the media or to delegate such responsibility to another Director; and
- (n) Vets all reports for the Annual General Meeting.

8.02 In the event of the absence, illness, or incapacity of the Chairperson, the Vice-Chairperson shall act in his or her place and stead for all purposes. The Vice-Chairperson shall learn the duties of the Chairperson and keep informed on key issues. The Vice-Chairperson shall perform such duties as may be directed by the Chairperson or Board.

#### **ARTICLE 9: DUTIES OF THE SECRETARY**

9.01 The responsibilities of the Secretary are as follows:

- (a) Ensure notices of meetings have been prepared and delivered;
- (b) Ensure minutes of meetings of the Members of the Company, the Board of Directors of the Company and the Executive Committee are kept;
- (c) Ensure all correspondence has been read and answered as directed by the Officers and Board of Directors;
- (d) Serves on the Executive Committee;
- (e) Keeps copies of the Companies' Articles and the Board's policies and plans;
- (f) Keeps list of officers, Directors, committees and general membership;
- (g) Cares for official minute book;
- (h) Keeps record of Board attendance;
- (i) Makes sure that there is a quorum at Board meetings;
- (j) Distribute copies of minutes to Directors;

- (k) Signs official documents of the Company as required;
- (l) Files with the registrar, with its annual financial statement, a list of its Directors with their addresses, occupations, and dates of appointment or election, and, within fourteen days of a change of Directors, notify the registrar of the change;
- (m) Files with the registrar a copy in duplicate of every special resolution within fourteen days after the resolution is passed;
- (n) In the absence of the Chair and vice-chair, chairs Board meetings until the election of an alternate Chair; and
- (o) such other duties as may be designated from time to time by the Board of Directors of the Company are carried out.

#### **ARTICLE 10: DUTIES OF THE TREASURER**

10.01 The responsibilities of the Treasurer are as follows:

- (a) Ensure the financial affairs of the Company are monitored;
- (b) Serves on the Executive Committee;
- (c) Gives regular reports to the Board on the financial state of the Company;
- (d) Present the records to designated accountant for review and preparation of a certified statement for the Annual General Meeting. Prepare the annual financial statements required by law;
- (e) Receive and deposit all funds of the Company in the bank designated by the Board;
- (f) Monitor the budget as approved by the Board;
- (g) Acts as signing officer, with another officer or Coordinator for cheques and other documents; and
- (h) such other duties as may be designated from time to time by the Board of Directors of the Company are carried out.

#### **ARTICLE 11: ARTICLES OF ASSOCIATION**

11.01 The Articles of Association of the Company shall be amended or repealed only in accordance with the provisions of the *Companies Act*, Chapter 81, Revised Statutes of Nova Scotia, 1989, as amended from time to time.

#### **ARTICLE 12: ACTIVITIES OF THE COMPANY NECESSARY TO SUPPORT PORT OPERATIONS**

12.01 To operate the Port of Sydney, the Company may undertake the activities which are necessary to support the objects of the Company, including, but not limited to:

- (a) Subject to Article 5.20(c), the borrowing of money. The borrowing powers of the Company shall be exercised in accordance with the provisions of the *Companies Act*, Chapter 81, Revised Statutes of Nova Scotia, 1989, as amended from time to time;
- (b) Renting equipment;
- (c) Leasing or licensing real property – the acquisition of freehold title to real property shall be strictly prohibited unless approved by special resolution of the Members;
- (d) Acquisition, disposition, holding, leasing or licensing of personal property;
- (e) Participating as a partner, or a co-venturer in connection with the activities enumerated herein;
- (f) The management of harbour service fees;
- (g) Operation of restaurants, bars, retail, office, display, tradeshow, and carry-on entertainment activities, travel or tour operations and similar tourism-related activities;
- (h) Consulting services relating to the operation of the Port of Sydney; and

12.02 The Company shall carry out the following activities in relation to the operation of the Port of Sydney:

- (a) Environmental risk mitigation and maintenance;
- (b) Navigational services and aids;
- (c) Emergency planning and response;
- (d) Dispatching services;
- (e) Security;
- (f) Vehicle parking, control or marshalling facilities;
- (g) Stevedoring services; and
- (h) General facility maintenance.

12.03 The CEO shall deliver to the Members of the Company an operational report describing the activities undertaken in that quarter in reference to those items enumerated in Article 12.01 and Article 12.02.

### **ARTICLE 13: GENERAL PROVISIONS**

13.01 The books and accounts of the Company shall be audited each year and certified by a licensed public accountant appointed at the Annual General Meeting of the Members of the Company.

- 13.02 The Company shall maintain a registered office on Cape Breton Island, Nova Scotia, at a place determined by resolution of the Directors of the Company from time to time, and shall give notice of the same to the Registry of Joint Stock Companies.
- 13.03 Unless otherwise directed by the Board of Directors of the Company, at such registered office shall be kept:
- (a) the corporate seal of the Company;
  - (b) the official list of Members of the Company;
  - (c) the minutes of all meetings of the Members of the Company;
  - (d) the minutes of all meetings of the Board of Directors of the Company; and
  - (e) records and books of account of the Company.
- 13.04 The fiscal year of the Company shall be April 1 to March 31.
- 13.05 The Company shall adopt a seal which may be affixed to any documents signed for or on behalf of the Company. Such seal shall be authenticated by the signatures of the Chairperson and the Secretary or such other person or persons so designated and authorized by the Board of Directors of the Company. The seal is to be given into the custody of the Secretary or as designated by the Board of Directors of the Company.
- 13.06 Any Member of the Company may inspect the books of account or records of the Company at the registered office of the Company upon giving reasonable notice thereof to the Secretary of the Company.

**DATED** at Sydney, Nova Scotia, this \_\_\_\_ day of \_\_\_\_\_, 2017

**APPENDIX "A"**

**PROXY**

**To:**           **Chairperson**  
**And to:**       **Port of Sydney Development Corporation (the "Company")**  
**From:**        [Name and address of Member]

The undersigned, being a member of the Company, hereby appoints:

\_\_\_\_\_;

to be proxy of the undersigned (the "Proxy"). The Proxy shall have power of substitution, and may attend, act and vote for and on behalf of the undersigned at the \_\_\_\_\_ (the "Meeting") of the members of the Company to be held on \_\_\_\_\_, and at any adjournments thereof, with respect to all business and every poll that may take place at that Meeting, with the same powers that the undersigned would have if the undersigned were present at the Meeting, or any adjournment thereof.

Dated this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

Signature of Member

**MEMORANDUM OF ASSOCIATION**  
**OF**  
**PORT OF SYDNEY DEVELOPMENT CORPORATION**

1. The name of the Company shall be Port of Sydney Development Corporation (the “Company”).
2. For the purposes herein, the “Port of Sydney” means the Sydney Harbour and associated infrastructure as well as any operations collateral or incidental to the development of Sydney Harbour.
3. The Company is formed solely for the purpose of civic improvement, namely, the development of the Port of Sydney, which shall include the following objects with the following powers (all of which are hereinafter referred to as “Objects”):
  - (a) To manage and operate the Port of Sydney, in the Cape Breton Regional Municipality, Nova Scotia;
  - (b) To support and promote the development of the Port of Sydney;
  - (c) To develop and build infrastructure needed for the operation, promotion or economic development of the Port of Sydney and/or its facilities or in relation to the realization of any of the objects of the Company;
  - (d) To carry on the business of the Company without purpose of gain for its Members and any surpluses (or what may otherwise be characterized as "profits") or other accretions to the Company shall be used in promoting its Objects;
  - (e) To do all the acts or things set forth in sub-clauses (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), and (s) of sub-section (4) of section 26 of the **Companies Act** of Nova Scotia (Chapter 81, R.S.N.S., 1989) with the qualification that:
    - i. the reference to the letter "(a)" in sub-paragraph "(r)" be replaced with the letter "(b)" and it being understood that sub-clause (h) of sub-section (4) of section 26 is and has been deleted.
  - (f) To contract or hire such permanent and temporary staff as the Company deems necessary to carry out its Objects and to enter into all agreements and provide all security necessary to finance its operations in a manner consistent with good business practices;
  - (g) Subject to the rights of outstanding creditors, upon a winding-up or termination of the Company, to deliver and pay over the remaining assets of the Company to the Cape Breton Regional Municipality or its lawful successor; and
  - (h) To acquire shares and/or membership and/or to enter into partnership with and/or enter into joint ventures with any other company or companies or such other legal entities in an

outside of Canada, as the case may be, having Objects similar to those of the Company.

**AND** it is further declared that the intention is that the Objects specified in each paragraph of this clause shall, except where otherwise expressed in such paragraph, be in no way limited or restricted by reference to or inference from the terms of any other paragraph or the name of the Company.

**AND** it is further declared that no one or more of the foregoing Objects shall, as regards to all or any of the other Objects, be deemed the primary or principal Object of the Company.

**PROVIDED** that nothing herein contained shall be deemed to authorize the Company to carry on the business of banking, loan, trust, or insurance company.

4. The liability of the Members of the Company shall be limited, it being understood that the Company is a company limited by guarantee. The Company shall be not-for-profit and no income earned by the Company shall be available for the benefit of its Members.
5. The Company shall be authorized to create two classes of members, namely:
  - (a) Voting Member – Each voting Member is entitled to receive notice to attend all meetings of the Members of the Company and shall have one (1) vote at all such meetings.
  - (b) Non-Voting Member – Each non-voting Member is entitled to receive notice to attend all meeting of the Members of the Company but shall not be entitled to vote at such meetings.

(each herein referred to as a “Member”)
6. Every Member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound-up during the time that he or she is a Member of the Company or within one (1) year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he or she ceased to be a Member of the Company, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as is required, not exceeding Ten (\$10.00) Dollars.

**DATED** at Sydney, Nova Scotia, this \_\_\_\_\_ day of January, 2017.

**Cape Breton Regional Municipality**

\_\_\_\_\_  
Per:

\_\_\_\_\_  
Per:

Witness to all of the above signatures:

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Address of witness

