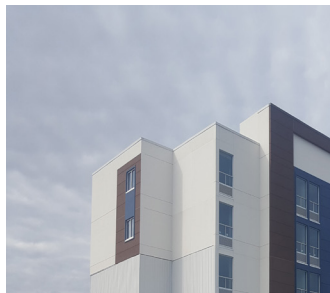


2024
**Report of the Auditor General
to the Nova Scotia
House of Assembly**

**Value for Money: Development of
Transitional Care Facilities**



Performance Audit
Independence • Integrity • Impact

Intentionally Left Blank

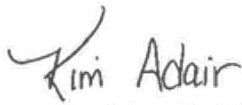
February 13, 2024

Honourable Karla MacFarlane
Speaker
House of Assembly
Province of Nova Scotia

Dear Madam Speaker:

I have the honour to submit herewith my Report to the House of Assembly under Section 18(2) of the Auditor General Act, to be laid before the House in accordance with Section 18(4) of the *Auditor General Act*.

Respectfully,



Kim Adair, FCPA, FCA, ICD.D
Auditor General of Nova Scotia

5161 George Street
Royal Centre, Suite 400
Halifax, NS B3J 1M7
Telephone: (902) 424-5907
www.oag-ns.ca

 [/company/oag-ns](https://www.linkedin.com/company/oag-ns)

 [@OAG_NS](https://twitter.com/OAG_NS)

 [/OAGNS](https://www.facebook.com/OAGNS)

 [@nsauditorgeneral](https://www.instagram.com/nsauditorgeneral)

Intentionally Left Blank

Table of Contents

1	Value for Money: Development of Transitional Care Facilities.....	7
	Reference Guide – Key Findings and Observations.....	9
	Recommendations and Responses	11
	Questions Nova Scotians May Want to Ask.....	14
	Background	15
	Healthcare in Nova Scotia	15
	Transitional Care Facilities	15
	Acquisition of Hogan Court and Focus of the Audit	18
	Auditees	19
	Steps taken to acquire Hogan Court property demonstrated a lack of due diligence and value for money considerations	19
	Inappropriate use of alternative procurement practices to accelerate the development of transitional care facilities.....	30
	Weaknesses in alternative procurement practices at Procurement Division of Service Nova Scotia	38
	Appendix I: Reasonable Assurance Engagement Description and Conclusions	41
	Appendix II: Transitional Care Facilities Timeline	43
	Appendix III: Listing of Alternative Procurement Circumstances	44

Intentionally Left Blank

Value For Money: Development of Transitional Care Facilities

Departments of Health and Wellness, Public Works, Nova Scotia Health, and Build Nova Scotia

Key Messages

- Although we acknowledge the significant challenges and pressures that exist throughout the healthcare system, addressing them should not promote a culture where expediency takes precedence over appropriate due diligence and value for money.
- Purchase of Hogan Court property for \$34.5 million did not demonstrate adequate due diligence to obtain value for money. Steps included an inadequate market scan of alternatives, a purchasing arrangement which reduced the Province's ability to minimize costs, and a valuation not based on the condition of the building at acquisition.
- Significant adaptability and design concerns leading to delays in project timelines, increases to construction and equipment costs totaling \$17.4 million, and a reduction in service capacity.
- Approximately \$81 million in untendered contracts for the development of transitional care facilities were not in compliance with provincial procurement protocols.

Why We Did This Audit

- Nova Scotia is experiencing significant healthcare delivery challenges.
- Government has placed a high priority on investing in healthcare services across the province. The 2023-24 budget included an estimated \$6.5 billion in healthcare spending, nearly half of the Province's total spending budget.
- The Province's 2023-24 Capital Plan includes an investment of \$532 million to advance healthcare projects. With such significant investment, it is imperative projects consider value for money.
- Concerns were raised regarding the price paid by the Province for the purchase of the Hogan Court property and the suitability of converting the structure to a transitional care facility.

Steps taken to acquire Hogan Court property demonstrated a lack of due diligence and value for money considerations

- The purchase of the Hogan Court property was a highly unusual transaction. We identified the following significant concerns with the steps taken to purchase and convert the property:
 - Inadequate market assessment of alternative locations
 - Memorandum of Understanding signed between Nova Scotia Health (NSH) and Developer A, rather than the property owner, reduced the Province's ability to minimize costs
 - Insufficient due diligence including no assessment of suitability of the property for conversion and the reliance on an appraisal report which assumed the Hogan Court property was fully constructed
 - Property described as approximately 90 per cent complete not independently verified prior to purchase
 - \$15 million conversion budget approved without detailed cost estimates
 - Property purchased for \$34.5 million, including \$875,000 to reimburse property owners for deed transfer taxes and contract break fees
 - Construction work procured by alternative procurement sole source process instead of publicly tendered
 - Fire Marshal approval issued more than 10 months after the January 2023 property purchase
 - Originally, the facility was expected to add 75 to 80 beds to the healthcare system, which was later reduced to 68 beds due to building design limitations
 - Limitations on patient profile in the care environment at Hogan Court
- Purchase of Hogan Court property for \$34.5 million did not demonstrate adequate due diligence in order to obtain value for money

Inappropriate use of alternative procurement practices to accelerate the development of transitional care facilities

- Initial alternative procurement practices and approvals supported the award of \$400,000 in construction management services for the Hogan Court facility, however:
 - Subsequently, an untendered \$10.6 million amendment for the construction work was approved, even though the conditions supporting the original alternative procurement circumstance no longer applied and the amendment related to a different scope of work.
 - The contract was signed November 1, 2023, months after on-site work began. Construction costs and completion timeline had not yet been finalized in the construction management contract.
- Architectural services appropriately awarded up to \$650,000 through alternative procurement, however:
 - No signed contract until August 24, 2023, despite nearly \$300,000 in payments already made.
 - Critical responsibilities missing from the final contract with the architect.
- Third-party operator alternative procurement process for the operation of the facility valued at \$67.5 million not in compliance with Sustainable Procurement Protocols
- Advisory services up to \$18 million provided by a single provider did not follow an established procurement process
 - As of November 1, 2023, \$860,000 in advisory services paid for acquisition assistance, development, and operational readiness of Hogan Court property
- \$3 million initial planning and site work contract for Bayers Lake transitional care facility not in compliance with alternative procurement guidelines
 - Changes in estimated cost for Bayers Lake transitional care facility may need further approval by government

Weaknesses in alternative procurement practices at Procurement Division of Service Nova Scotia



- Alternative procurement circumstances not appropriately assessed
- No formal sign-off by Procurement Division for amended alternative procurement forms
- No conflict-of-interest disclosure requirements for the approvers of alternative procurements
- Inaccurate and inappropriate details on alternative procurement awards posted on public procurement portal

Reference Guide – Key Findings and Observations









Paragraph	Key Findings and Observations
<i>Steps taken to acquire Hogan Court property demonstrated a lack of due diligence and value for money considerations</i>	
17	Inadequate market assessment of alternative locations
21	Memorandum of Understanding signed between NSH and Developer A, rather than the property owner, reduced the Province's ability to minimize costs
28	Insufficient due diligence including no assessment of suitability of the property for conversion
32	Purchase price based on the inaccurate assumption the Hogan Court property was fully constructed
38	Property described as approximately 90 per cent complete not independently verified prior to purchase
40	No analysis, detailed cost estimate or building plans for \$15 million conversion budget
42	Property purchased for \$34.5 million, including \$875,000 to reimburse property owners for deed transfer taxes and contract break fees
43	Construction work procured by alternative procurement sole source process instead of publicly tendered
44	In less than a year, the capital cost per bed increased between 14 to 21 per cent
45	Limitations on patient profile in care environment at Hogan Court
47	Fire Marshal approval issued more than 10 months after the January 2023 property purchase
49	Access to Hogan Court Transitional Care Facility remains on Developer A's land
50	Purchase of Hogan Court property for \$34.5 million did not demonstrate adequate due diligence in order to obtain value for money
52	Lack of real property acquisition policy exposes the Province to risks
<i>Inappropriate use of alternative procurement practices to accelerate the development of transitional care facilities</i>	
57	Initial alternative procurement practices and approvals supported the award of \$400,000 in construction management services for the Hogan Court facility
59	Inappropriate amendment for \$10.6 million construction management services alternative procurement
64	Construction costs and completion timeline not yet finalized in the construction management contract as of November 1, 2023, months after on-site work began
68	Architectural services appropriately awarded up to \$650,000 through alternative procurement
69	Critical responsibilities missing from the final contract with the architect; nearly \$300,000 in payments made before contract signed
70	Third-party operator alternative procurement process for the operation of the facility valued at \$67.5 million not in compliance with Sustainable Procurement Protocols
72	Alternative procurement approval obtained seven months after procurement process began
73	Advisory services up to \$18 million provided by a single provider did not follow an established procurement process
77	As of November 1, 2023, \$860,000 in advisory services paid for acquisition assistance, development, and operational readiness of Hogan Court property
79	\$3 million initial planning and site work contract for Bayers Lake transitional care facility not in compliance with alternative procurement guidelines
81	Changes in estimated cost for Bayers Lake transitional care facility may need further approval by government

Paragraph	Key Findings and Observations
<i>Weaknesses in alternative procurement practices at Procurement Division of Service Nova Scotia</i>	
82	Alternative procurement circumstances not appropriately assessed
85	No formal sign-off by Procurement Division for amended alternative procurement forms
87	No conflict-of-interest disclosure requirements for the approvers of alternative procurements
89	Inaccurate and inappropriate details on alternative procurement awards posted on public procurement portal

Recommendations and Responses

Recommendation	Department Response
<p>Recommendation 1.1 We recommend the Department of Public Works, as subject matter experts, in consultation with the Department of Finance and Treasury Board, develop a government-wide direction/policy for approving the acquisition of land and buildings, including:</p> <ul style="list-style-type: none"> • an assessment of the feasibility of subject property for intended use • appropriate due diligence requirements prior to purchase including cost estimates to prepare the subject property for its intended use • an independent appraisal based on the existing condition of the property • if renovations or construction are required, engage with a government department with the necessary expertise to oversee them prior to purchase • reassessment of approval if significant changes to assumptions and project information takes place following approval and prior to purchase • establish eligible costs related to the acquisition <p>Once developed, the direction/policy should be submitted to Treasury and Policy Board for approval.</p> <p style="text-align: right;">See paragraph 55</p>	<p>As stated at paragraph 53 of this report, Public Works does not have exclusive authority over real property transactions. While DPW did not purchase the Hogan Court property, the Department will work with the Department of Finance and Treasury Board to develop a direction/policy for acquisition of land and buildings to provide guidance to Departments and Agencies which have authority to acquire real property within their mandate.</p> <p>DPW will have a draft direction/policy completed by September 30, 2024.</p> <p>Final approval of the draft direction/policy is at the discretion of Treasury and Policy Board.</p> <div style="display: flex; align-items: flex-start;"> <div style="margin-right: 10px;">   </div> <div> <p>Department Agrees</p> <p>Target Date for Implementation: September 30, 2024</p> </div> </div>

Recommendations and Responses

Recommendation	Department Response	
<p>Recommendation 1.2 We recommend the Department of Public Works and Build Nova Scotia sign contracts with private sector partners prior to work commencing.</p> <p style="text-align: right;">See paragraph 69</p>	<p>Prior to signing formal contracts, DPW uses a variety of methods to minimize risks associated with initiating work on projects. DPW has standard contractual terms and conditions, which are used in conjunction with purchase orders, award letters and other methods to provide written authorization to proceed.</p> <p>With both traditional and alternative procurement contracts, Departments and Build Nova Scotia will ensure that clear documented evidence of an agreement between the parties to the fundamental terms and conditions is established as early as possible in a contract relationship.</p> <p>The Department will continue to be mindful of ensuring the final contract document is signed by all parties within a timely matter and that clear documentation is in place in the event of a delay in finalizing the terms of a contract.</p> <p>DPW proposes developing guidelines by March 31, 2025 to allow work to proceed in a risk-managed approach until a formal contract is executed.</p>	<p> Department Agrees</p> <p> Target Date for Implementation: March 31, 2025</p>
<p>Recommendation 1.3 We recommend the Procurement Division of Service Nova Scotia update the Sustainable Procurement Protocols to clearly define when the healthcare and social services exemption is applicable and the process to obtain approval for use of the exemption.</p> <p style="text-align: right;">See paragraph 71</p>	<p>SNS Procurement will clearly define when the healthcare and social services Canadian Free Trade Agreement (CFTA) exemption is applicable and the process to obtain approval within the Procurement Protocols.</p>	<p> Department Agrees</p> <p> Target Date for Implementation: June 1, 2024</p>
<p>Recommendation 1.4 We recommend Nova Scotia Health require conflict-of-interest disclosure for procurement evaluation team members and the approvers of alternative procurements.</p> <p style="text-align: right;">See paragraph 72</p>	<p>NSH has a conflict of interest policy. NSH Affiliated Persons are required to disclose any potential conflicts immediately as circumstances arise. NSH will explicitly list evaluators and Alternative Procurement (ALTP) approvers in the definition of NSH Affiliated Persons which is currently defined as including 'Nova Scotia Health employees, medical staff, researchers, students, volunteers and Board members.'</p>	<p> Department Agrees</p> <p> Target Date for Implementation: March 31, 2024</p>
<p>Recommendation 1.5 We recommend the Procurement Division of Service Nova Scotia review changes to alternative procurements including cost increases and expansions to the scope of work and assess whether an alternative procurement process remains appropriate or requires public tendering.</p> <p style="text-align: right;">See paragraph 86</p>	<p>SNS Procurement will establish a process for clients to submit changes to High Value ALTP's processed through to contract by SNS Procurement, to determine if the original circumstance remains appropriate, and whether it supports the continued use of the ALTP as the appropriate procurement method.</p>	<p> Department Agrees</p> <p> Target Date for Implementation: September 1, 2024</p>

Recommendations and Responses

Recommendation	Department Response
<p>Recommendation 1.6 We recommend the Procurement Division of Service Nova Scotia require conflict-of-interest disclosure requirements for the approvers of alternative procurements.</p> <p style="text-align: right;">See paragraph 88</p>	<p>SNS Procurement Services will add a conflict-of-interest declaration to the Alternative Procurement form for the approver.</p> <div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">  </div> <div> <p>Department Agrees</p> </div> </div> <div style="display: flex; align-items: center; margin-top: 10px;"> <div style="margin-right: 10px;">  </div> <div> <p>Target Date for Implementation: April 1, 2024</p> </div> </div>

Questions Nova Scotians May Want to Ask

1. What action does the Province plan to take to ensure appropriate due diligence is performed for real property transactions?
2. How will the Province apply the lessons learned from Hogan Court to future infrastructure projects?
3. How much will the Hogan Court Transitional Care Facility ultimately cost taxpayers by the time it is operational and how will it provide value to the healthcare system?
4. How will the Procurement Division of Service Nova Scotia make sure alternative procurement forms are only supported if the circumstance is appropriate, and any subsequent amendments are reassessed?

1 Value for Money: Development of Transitional Care Facilities

Background

Healthcare in Nova Scotia

- 1.1 Nova Scotia has been experiencing significant healthcare delivery challenges for many years. In 2016, our office conducted an audit at the Department of Health and Wellness and Nova Scotia Health on the management of Nova Scotia’s hospital system capacity.

The audit found:

- the historical approach to healthcare delivery, with a heavy focus on hospital-based care, was not sustainable,
- annual capital funding was not enough to complete urgent repairs on hospitals throughout the province and,
- slow patient movement within hospitals was causing emergency department crowding.

- 1.2 The Province’s 2022-23 Budget – *Solutions for Healthcare, Solutions for Nova Scotians*, and Budget 2023-24 – *More Healthcare, Faster* demonstrate government’s priority to invest in healthcare in Nova Scotia. This included a total of \$5.7 billion in dedicated healthcare spending in 2022-23 and \$6.5 billion in 2023-24. This represents an \$800 million year-over-year increase.



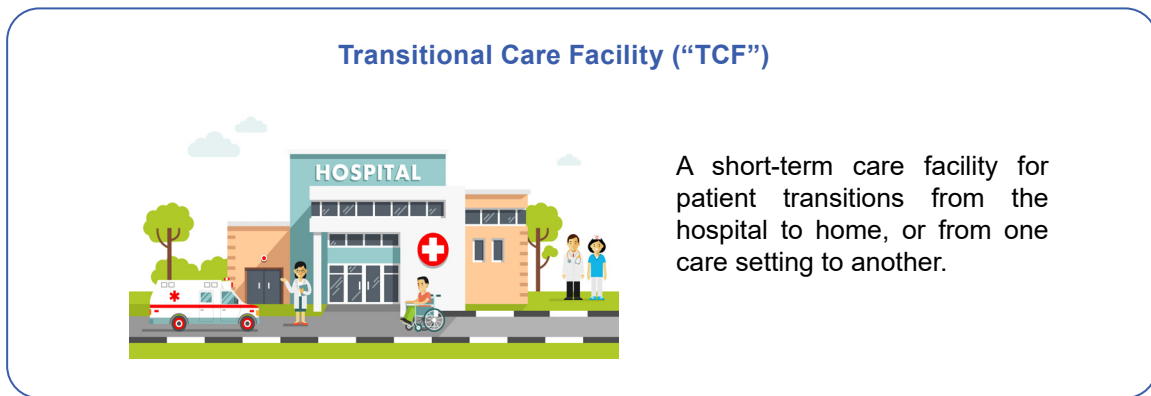
- 1.3 On April 22, 2022, the government introduced *Action for Health, A Strategic Plan 2022–2026*. The plan includes “six core solutions” to create an efficient, modern, equitable, and respectful health system. In a subsequent announcement on December 15, 2022, the government shared details of new healthcare builds and expansions. This included the building of two stand-alone transitional care facilities in Halifax Regional Municipality: one near the Bayers Lake Community Outpatient Centre and the other location not specified. Through the allocation of resources to the development of transitional care facilities, new beds will be added to the healthcare system to increase capacity.

Transitional Care Facilities

- 1.4 In 2022, management at Health and Wellness and Nova Scotia Health were considering available options to address the challenges facing Nova Scotia’s hospitals including:
- lack of availability of inpatient beds

- existing strategies to add new beds requiring multiple years to complete, and
- the need for interim strategies to reduce waitlists for surgery, improve patient flows from the emergency department to inpatient beds, and reduce ambulance offload times.

1.5 A proposed option to help alleviate these pressures was the development of stand-alone transitional care facilities to improve acute care capacity. Research regarding the existing use of transitional care units in Canada was reviewed by the Department of Health and Wellness to inform decision making.



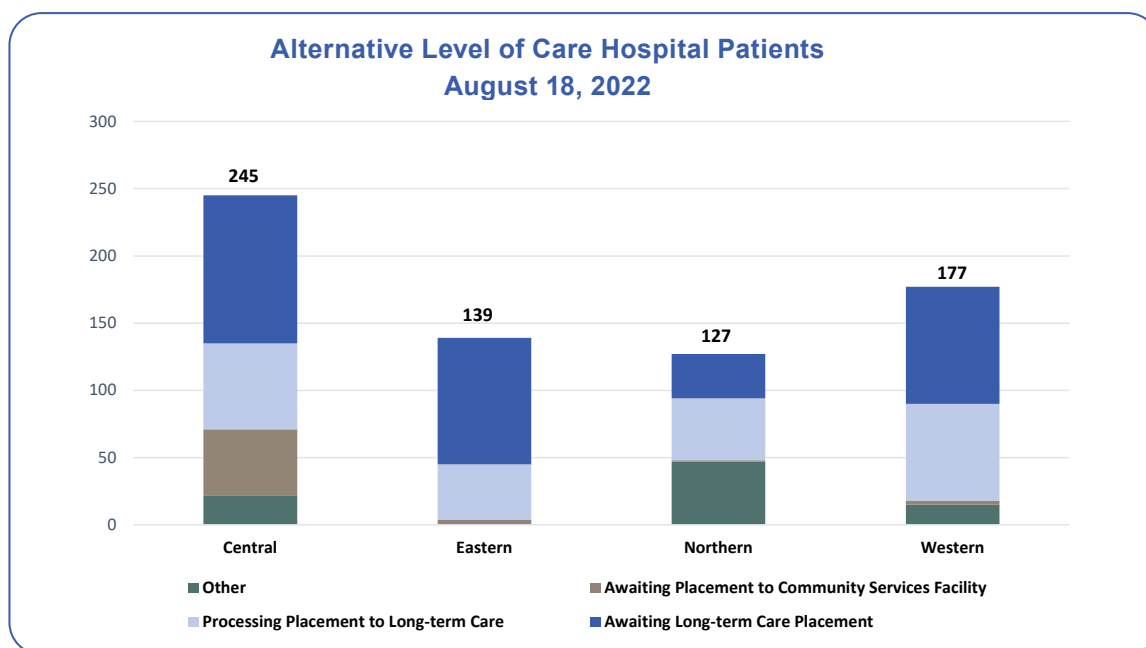
1.6 Transitional care units (“TCU”) are not new in Nova Scotia. In 2023, there were transitional care units located at three hospitals as shown below. Management attributes differences in the average daily cost per bed across these TCUs to staff composition and utilization of travel nurses, which makes direct comparison difficult. For example, we were told Victoria General employs significantly more Registered Nurses and travel nurses than Saint Martha’s and Yarmouth Regional. This emphasis on nursing staff, which is more expensive, contributes to Victoria General’s higher average daily cost per bed.

Existing Transitional Care Units in Nova Scotia Fiscal Year 2023					
Hospital	Unit Type	Location	Year Opened	Bed Count	Average Daily Cost per Bed
Saint Martha’s Hospital	Temporary Space	Antigonish	April 2022	12	\$405
Victoria General Hospital	Partial Floor	Halifax	March 2022	17	\$574
Yarmouth Regional Hospital	Partial Floor	Yarmouth	Pre 2007	17	\$319

Source: Nova Scotia Health (unaudited)

- 1.7 In addition, temporary transitional care units were used during the COVID-19 global pandemic to increase capacity in the healthcare system. The Province temporarily rented two floors with 50 beds in a Halifax hotel from December 2020 to November 2021.
- 1.8 Transitional care facilities aim to improve acute care capacity and outcomes of alternative level of care patients. Alternative level of care is a term used in hospitals to describe patients who occupy an acute care bed but do not require the intensity of services provided in a hospital setting. For example, patients awaiting placement at a long-term care facility or patients requiring healthcare services and support prior to returning to their home.

1.9 The following provides the total number of alternative level of care patients in hospital on August 18, 2022, when the creation of stand-alone transitional care facilities was considered:



Source: Department of Health and Wellness (unaudited)

1.10 In September 2023, our office released an audit of the Department of Health and Wellness and Emergency Medical Care Inc. on ground ambulance services. We found paramedics spent on average one quarter of their working hours waiting at emergency departments to offload patients at an estimated cost of over \$12 million in 2022. The backlog in emergency departments is in part linked to a lack of availability of inpatient beds, which is linked to a lack of long-term care beds. The pressures within emergency departments in Nova Scotia are also part of the larger problems within the healthcare system being experienced across the country.

1.11 A hospital is not an appropriate place for patients requiring an alternative level of care, nor is it an efficient use of resources for the healthcare system. The system faces high demand for hospital beds. If patients occupy acute care beds when they do not require that level of service, it reduces access for those who need them while contributing to emergency room overcrowding. The cost of healthcare provided in a hospital is also much higher than in a long-term care facility. The following provides the Province's estimated average daily cost of a bed in each of the noted care settings:

2022 Average Daily Cost Per Bed		
Care Setting	Cost	Costs Included
Acute Care in Hospital – Central Zone	\$975	Direct Costs ³
Estimate for Hogan Court TCF	\$544 ¹	Operating
Long-term Care Nursing Home	\$300 ²	Operating and Capital
Residential Care Facility	\$190 ²	Operating and Capital

Source: Nova Scotia Health and Department of Seniors and Long-term Care (unaudited)

¹ Estimate calculated by Office of the Auditor General based on approved value on alternative procurement form for third-party operator. Capital costs are not included as the facility is not yet complete.

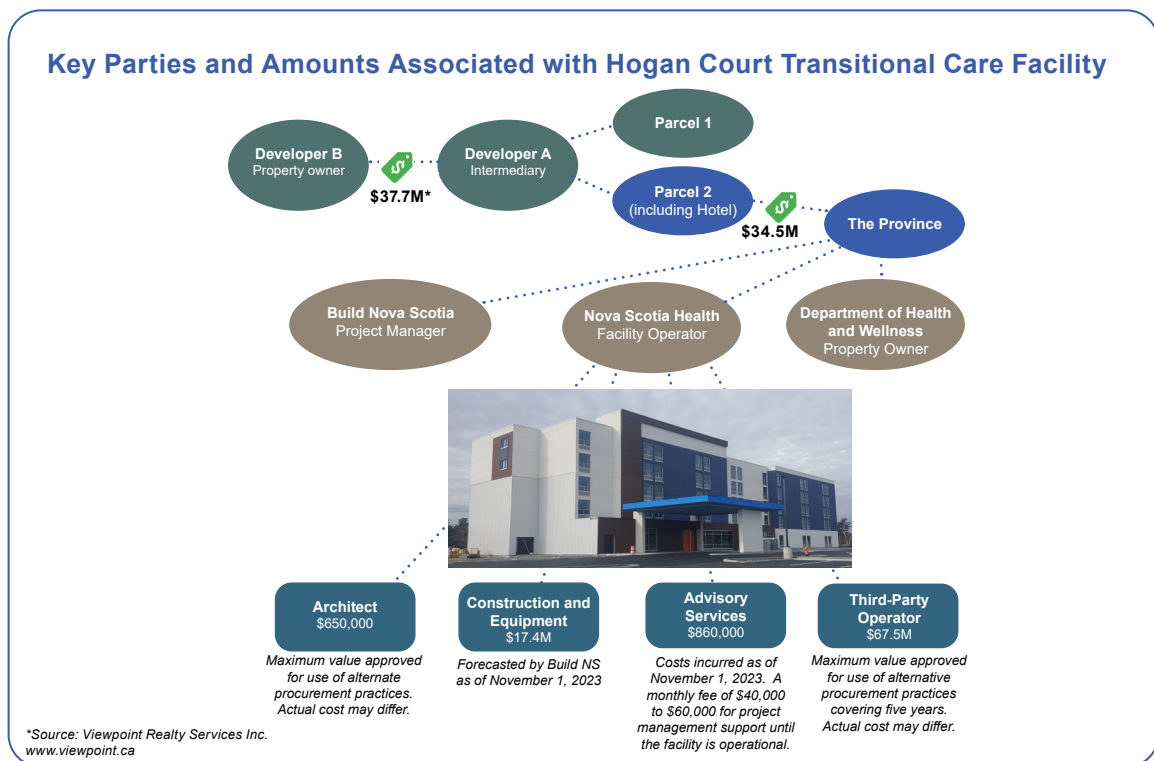
² Rates represent the total expense, which is a combination of operating and capital expenses. These rates are influenced by the age of a facility and the corresponding funded mortgage balance. Therefore, the cost for new facilities may differ.

³ Direct costs represent a cost that can be calculated and identified directly with a function or activity.

- 1.12 On November 20, 2023, the Province announced a total of 5,700 long-term care rooms would be added or replaced by 2032 to help meet the care needs of the Province's aging population. As of September 27, 2023, there were 2,098 individuals waiting for initial placement at a long-term care facility, including 387 waiting in hospital, demonstrating the high demand for these care beds which come at a lower average daily cost than the estimate for the Hogan Court facility. However, it will take a number of years for these beds to become available. In contrast, the Hogan Court facility was originally anticipated to begin operations within 12 to 18 months. The intent was to address the need for system capacity in a shorter time frame. Once operational, the Hogan Court facility is anticipated to create 68 beds.

Acquisition of Hogan Court and Focus of the Audit





- 1.13 In August 2022, approval was granted by government for the Department of Health and Wellness to negotiate with relevant parties to create transitional care facilities in Central Zone to alleviate pressures on alternative level of care beds in hospitals.
- 1.14 In December 2022, further approval was granted by government to negotiate the purchase of the Hogan Court property in Bedford and the construction of a transitional care facility in Bayers Lake, next to the newly constructed Community Outpatient Centre. A full timeline of key events from both projects is attached in Appendix II.
- 1.15 This audit examined whether the Departments of Health and Wellness, Public Works, and Nova Scotia Health exercised adequate due diligence in order to obtain value for money in the selection of Hogan Court for conversion to a transitional care facility. It also examined whether initial procurements to convert the property, including those conducted by Build Nova Scotia, complied with provincial procurement policies.



Source: Office of the Auditor General of Nova Scotia

Auditees

1.16 During the course of our audit, we engaged with four auditees. The role of each in the creation of the stand-alone transitional care facilities has been outlined below:

Auditees	
Organization	Role
Department of Health and Wellness (“DHW”) 	<ul style="list-style-type: none"> Responsible for providing leadership for the health system, providing healthcare funding, and ensuring accountability for funding and monitoring of health-system performance. Received approval from government to purchase and convert the Hogan Court property. Owner of both transitional care facilities once operational.
Nova Scotia Health (“NSH”) 	<ul style="list-style-type: none"> Operate hospitals, health centres and community-based programs across the province. Negotiated acquisition of Hogan Court property. Responsible for delivery of services at the transitional care facilities once operational.
Department of Public Works 	<ul style="list-style-type: none"> The Building Infrastructure Design and Construction Division is responsible for building projects, including those valued at more than \$1 million or otherwise characterized as having heightened complexity and risk. From December 2022 to May 2023, Public Works was responsible for the conversion of Hogan Court to a transitional care facility.
Build Nova Scotia 	<ul style="list-style-type: none"> Created on December 1, 2022, through a consolidation of the former Nova Scotia Lands Inc. and Develop Nova Scotia. Manages and develops strategic provincial infrastructure. In May 2023, assumed project management responsibility for the conversion of Hogan Court from Public Works. The transfer of the project aligned with Build Nova Scotia’s responsibility for healthcare redevelopment projects including the Halifax Infirmary Expansion.

Source: Office of the Auditor General of Nova Scotia

Steps taken to acquire Hogan Court property demonstrated a lack of due diligence and value for money considerations

Inadequate market assessment of alternative locations

- 1.17 In August 2022, NSH commissioned a market scan of possible properties to convert to a transitional care facility. This occurred prior to DHW seeking approval from government to negotiate the purchase of Hogan Court. The market scan was conducted by a third-party consultant and consisted of a list of 17 properties in the Central Zone, including the Hogan Court property. It included the year each building was built, its location, and the number of units. We could not determine whether the list of properties contained viable alternatives as there was no documented assessment of the properties against the established evaluation parameters.
- 1.18 We assessed the Hogan Court property against the evaluation parameters created for the scan and found it met three of four parameters. Specifically, its location was beyond the 10-km boundary from the QEII Health Sciences Centre.

Hogan Court – Evaluation	
Met?	Evaluation Parameters from Market Scan
✓	60,000 – 100,000 Square Feet and/or opportunity to convert to 100+ patient rooms
✗	Within 10 kilometres of QEII Health Sciences Centre
✓	Class B or Class C Building
✓	Relevant Zoning – Assuming Ambulatory Transport Required

Source: Office of the Auditor General of Nova Scotia

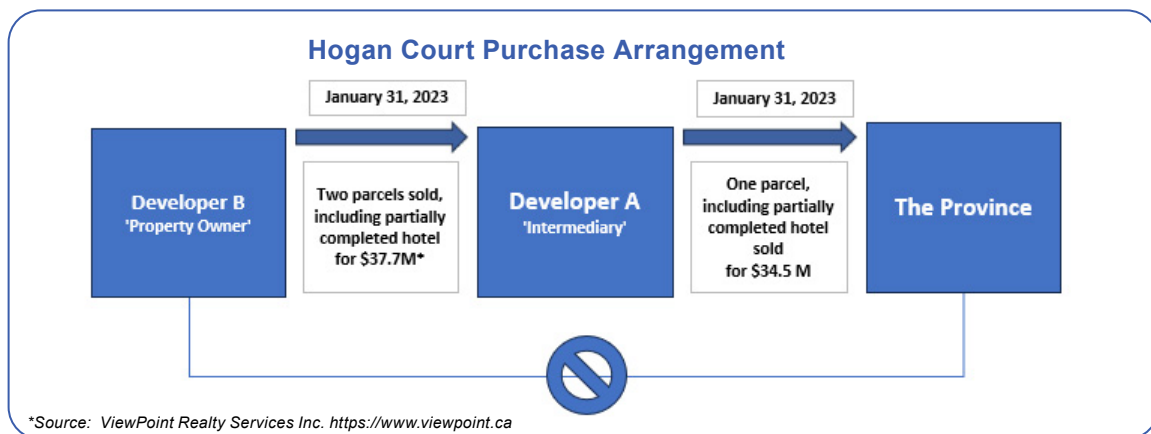
1.19 Management at NSH explained a detailed discussion between NSH and the consultant on the market scan took place; however, this was not documented, and no report was produced.

1.20 As a result, the following causes us to seriously question the value and ability of the market scan to support the selection of the Hogan Court property as best meeting the Province’s needs and greatest value for money:

- lack of analysis of whether each of the 17 properties met the evaluation parameters
- lack of indication whether any of the 17 properties were available for sale
- absence of a final recommendation
- no written report produced

Memorandum of Understanding signed between NSH and Developer A, rather than the property owner, reduced the Province’s ability to minimize costs

1.21 Developer A was the original owner of Hogan Court. In 2017, Developer A sold the property to Developer B for the construction of a hotel. Prior to the decision to work with Developer A, NSH attempted to identify the property owner (Developer B) through a consultant. However, neither NSH nor its consultant were able to identify Developer B to pursue a direct purchase of the property. Management at NSH and DHW explained Developer A was already interested in reacquiring the property and had a right of first refusal should Developer B decide to sell the property. Therefore, it was deemed more efficient to work with Developer A than attempt to negotiate with Developer B. The Province did not confirm the existence of this right of first refusal.



*Source: ViewPoint Realty Services Inc. <https://www.viewpoint.ca>

Source: Office of the Auditor General of Nova Scotia

- 1.22 On June 22, 2022, NSH signed a Confidentiality Agreement with Developer A. The Agreement committed NSH to receive and maintain information in strict confidence. NSH was prohibited from disclosing any confidential information without prior written consent from Developer A. Management at NSH explained this was signed to ensure both parties maintained confidentiality of information being shared in good faith during discussions of a potential agreement.
- 1.23 On August 24, 2022, DHW and Public Works were granted approval from government to sign a Memorandum of Understanding (“MOU”) between NSH and Developer B’s seller’s agent, which was Developer A. On September 6, 2022, NSH signed the MOU with Developer A.



Source: Office of the Auditor General of Nova Scotia – 5th Floor – No Conversion Completed (August 2023)

- 1.24 The MOU outlined the mutual understanding reached by NSH and Developer A to work together to explore the potential adaptation of Hogan Court from a hotel to a transitional care facility. According to the MOU:
- NSH engaged in preliminary discussions with Developer A regarding the possibility of entering into a 10-year lease agreement for the property to be converted to a transitional care facility;
 - the Province was actively undertaking efforts to improve healthcare delivery for all Nova Scotians;
 - Developer A did not own the property but had expressed interest in buying it before being engaged by NSH;
 - the property was originally designed as a 108-room hotel and was claimed by Developer A to be 90 per cent complete as of July 27, 2022;
 - it did not obligate the parties to reach an agreement and expired on December 31, 2022, prior to the purchase date of January 31, 2023.
- 1.25 Preliminary discussions considered the possibility of NSH entering into a 10-year lease agreement with Developer A for the Hogan Court property at an estimated annual cost of \$5.1 million. Public Works provided an analysis which demonstrated leasing would be costly at an estimated capital

cost per bed of \$626,000. NSH's consultant provided further analysis demonstrating the cost of purchasing the property would be less than leasing. Therefore, the lease arrangement was abandoned in favor of purchasing.

1.26 The MOU reduced the Province's ability to minimize costs due to the following reasons:

- The Province agreed not to contact the property owner, Developer B, and instead engaged exclusively with Developer A. A risk associated with this decision is less favorable terms for the Province, as Developer A could use their position as leverage against the Province during negotiations and may not have provided complete information to the Province to inform decision making.
- The Province revealed its motivation to acquire the property and convert it to a transitional care facility to improve healthcare delivery for all Nova Scotians. A risk associated with this decision is a higher asking price.

1.27 The decision to sign the MOU with Developer A and not engage directly with the owner of the property was highly unusual. By serving as an intermediary between Developer B and the Province, Developer A was in a very advantageous position to minimize the cost to acquire the property and maximize the price paid by the Province, which may not have been conducive in generating value for money for the Province. To address their disadvantaged position to some degree, the Province should have required Developer A to disclose their cost to acquire the property from Developer B. However, this did not occur. We contacted Developer A and Developer B to try to confirm the amount paid, however, neither party confirmed the amount, citing privacy and confidentiality reasons.



Source: Office of the Auditor General of Nova Scotia
– Hogan Court, Bedford

Insufficient due diligence including no assessment of suitability of the property for conversion

1.28 Prior to acquisition, a feasibility study to convert Hogan Court into a transitional care facility was not completed.

1.29 In December 2022, after the government approved the purchase of the property, a consultant's report was prepared for NSH with civil, structural, mechanical, and electrical engineering project observations. The purpose of the report was to provide an overview of the building engineering systems. This report did not assess the building relative to the detailed requirements of various Canadian healthcare facility standards or the feasibility of conversion. The consultant indicated a detailed comparison between the facility and applicable Canadian Healthcare Standard requirements was not completed because *“the number of missing or inappropriate systems (would) be far too numerous to provide value in documenting.”*

1.30 On January 23, 2023, an architectural firm with experience in healthcare design, planning, and programming provided a high-level opinion on the adaptation of Hogan Court to a transitional care facility. The draft report found the building could not be adapted to suit the patient profile without severe restrictions on patient admission, even with costly and time-consuming re-design and renovations. These restrictions would essentially require patients to fit the profile of a hotel guest. In contrast, transitional care patients may have mobility, behavioural or cognitive issues. Despite its recommendation not to convert the building, the draft report had no impact on the decision to purchase the Hogan Court property as it was issued after government granted approval to purchase the property and the due diligence date of January 15, 2023. The due diligence date represents the deadline for buyers to complete necessary inspections before the closing date of a property purchase. When the report was finalized on October 30, 2023, the draft opinion to forgo the purchase and conversion had been removed. Management at Public Works explained the opinion was removed, as it was originally based on a patient profile that had not been defined and the rendering of an opinion was not part of the architect's service proposal.

1.31 The Province entered into a significant purchase arrangement without a comprehensive understanding of the building's suitability for conversion or the associated costs. This has contributed to project timeline delays, issues with code compliance, unforeseen costs, and changes to the patient profile.



Source: Office of the Auditor General of Nova Scotia – Hogan Court, Bedford

Purchase price based on the inaccurate assumption the Hogan Court property was fully constructed

1.32 On October 27, 2022, NSH obtained an independent appraisal report to determine the value of the Hogan Court property. The appraisal employed three valuation methods, each providing a range of values.

Hogan Court Appraisal Report		
Valuation Method	Range	
Income Approach	\$29.9 M	\$35.3 M
Cost Approach	\$30.1 M	\$33.8 M
Direct Comparison Approach	\$29.6 M	\$33.3 M

Source: Nova Scotia Health (unaudited)

1.33 The final valuation range from the appraisal report was based on the Income Approach, which recognized the Hogan Court property as a potential income-producing asset which could provide a stream of rental income to the owner. This method provided the highest valuation compared to the other methods and represents the best use of the property.

1.34 The appraisal was subject to “Extraordinary Assumptions.” According to the report, an Extraordinary Assumption is an assumption, which, if found to be false, could materially alter opinions or conclusions. The following Extraordinary Assumptions used for the valuation report were not met when the property was purchased:

- property is presently being utilized for alternative commercial or institutional use,
- property is fully constructed, and
- property is leased on a 10-year lease term to a government or national tenant occupying multiple assumed units in the building.

1.35 The appraisal report was based on Extraordinary Assumptions that did not align with the condition of the building at the time of acquisition. NSH's reliance on the appraisal report to determine the value of the property was inappropriate, as the appraisal was based on unmet assumptions which could have materially altered the appraisal report's opinions or conclusions.

1.36 On December 6, 2022, DHW and Public Works were granted approval to negotiate the purchase of Hogan Court for an amount not to exceed \$36 million and a \$2 million capital grant was provided to NSH to plan and design the facility. On December 14, 2022, government approved the purchase of Hogan Court by DHW for \$34.5 million and a renovation budget of \$15 million. The price paid for the property was only within the range of the Income Approach.

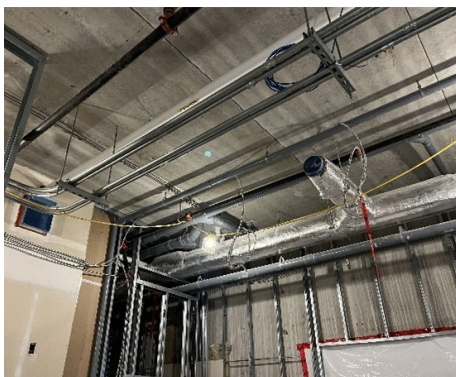
1.37 As a result of the Extraordinary Assumptions not being met in the valuation report, we were unable to assess whether the price paid for the Hogan Court property was reasonable as the report assumed highest and best use of a complete building, which did not exist at the time of purchase. However, it is likely the appraised value was overstated due to the incomplete nature of the property.

Property described as approximately 90 per cent complete not independently verified prior to purchase

1.38 There was no analysis or study conducted by the Province to support the property being 90 per cent complete. This figure came from a statement from Developer A in the MOU. The Province should have completed its own assessment of the level of completion, in order to validate the statement made by Developer A who had a vested interest in completing the transaction and keeping a portion of the land. Accepting unsubstantiated information as a basis for decision-making created the risk that the level of work the property still required for completion and the related costs were underestimated.



Source: Office of the Auditor General of Nova Scotia
– First Floor Pool to be Filled (August 2023)



Source: Office of the Auditor General of Nova Scotia
– Non-Functional HVAC System (August 2023)

1.39 On February 8, 2023, following the purchase of the building, the project's external architect prepared a draft conversion report for the Province, which estimated the level of completion to be approximately 85 per cent. However, this was based on the building's plan to be completed as a hotel. It is likely more work would be required to reach substantial completion as a transitional care facility.

No analysis, detailed cost estimate or building plans for \$15 million conversion budget

1.40 DHW was approved for \$15 million in renovations without detailed cost estimates or a comprehensive breakdown of the budget. At the time of approval, there were no building plans for the transitional care facility. As of November 1, 2023, the building designs were not finalized as Fire Marshal approval was still in progress.

1.41 Additionally, during due diligence, a quantity survey was not performed as architectural drawings for the facility were not prepared. A quantity survey could have provided estimates for the cost of conversion, allowing the Province to assess the project's financial viability. By allocating the required materials and labour, it would have helped create a detailed, well informed, and supported budget for the conversion. The conversion budget was not based on a quantity survey or other similarly detailed analysis. Requesting \$15 million for renovations without detailed cost estimates creates the risk that decision makers are making decisions with incomplete and inaccurate information. The projected cost of construction and equipment as of November 1, 2023, is approximately \$17.4 million.



Source: Office of the Auditor General of Nova Scotia – 1st Floor Lobby (August 2023)

Property purchased for \$34.5 million, including \$875,000 to reimburse property owners for deed transfer taxes and contract break fees

1.42 The Province purchased Hogan Court for \$34.5 million. The purchase price included costs which we do not consider value for money to the Province in a purchase and sales agreement. Additional costs could be considered appropriate if they helped facilitate a smooth and timely transaction, especially if the costs were a barrier to the purchase. However, the Province should not have paid the unsubstantiated or unnecessary costs:

- The Province included in the purchase price \$375,000 in unsubstantiated hotel franchise break fees to facilitate the purchase. By virtue of their negotiating position, there is a risk Developer A may have offered to pay the fee to Developer B to facilitate negotiations in their favour, only to pass on the cost to the Province. This shows a lack of prudent management of public funds.
- The Province included in the purchase price \$500,000 for Developer A's deed transfer tax. Management explained this was to ensure transparency by requiring a deed transfer registration. Additionally, this preemptive action aimed to prevent negative attention on the Province's involvement if the seller, Developer A, did not fulfill its tax obligations. The Province would have saved \$500,000 if it dealt directly with Developer B because the Province is not required to pay deed transfer tax. As part of the purchasing arrangement, the property was subdivided with Developer A retaining control over 3.72 acres of land, with the deed transfer tax covered by the Province.

Construction work procured by alternative procurement sole source process instead of publicly tendered

1.43 Sole sourcing is an approach to procuring goods or services where only one proponent is selected. Sole sourcing bypasses the standard competitive procurement process of obtaining quotes from multiple vendors or requiring large dollar purchases to be put out to tender. The initial decision to sole source construction services for Hogan Court through an alternative procurement process was compliant with procurement protocols. However, the decision to expand the award from \$400,000 to \$10.6 million was not and will be examined in more detail later in this report. There was also no request to government to sole source the construction. Government approval serves as a safeguard, allowing officials to review and validate significant procurement decisions. In contrast, approval was granted by government to negotiate the construction of the Bayers Lake transitional care facility with a specified company. Inconsistency regarding sole sourcing construction contracts raises governance and procedural concerns.



Source: Office of the Auditor General of Nova Scotia – Work to add Additional Stairwell (August 2023)

In less than a year, the capital cost per bed increased between 14 to 21 per cent

1.44 DHW estimated the capital cost at Hogan Court to be between \$644,000 to \$687,000 per bed. In less than a year, the capital cost per bed increased between 14 to 21 per cent since December 2022. This is primarily attributed to the decrease in the number of beds initially proposed. Initially, 75 to 80 beds were expected. However, this has since been reduced to 68 beds.

Hogan Court Capital Cost per Bed		
Hogan Court Property	December 2022	November 2023
Purchase	\$34.5 M	\$34.5 M
Planning and Design	\$2 M	\$1.3 M
Construction and Equipment	\$15 M	\$17.4 M
Total	\$51.5 M	\$53.2 M
Number of Beds	75 to 80	68
Capital Cost per Bed	\$687,000 to \$644,000	\$782,000

Source: Department of Health and Wellness and Build Nova Scotia

Limitations on patient profile in care environment at Hogan Court

1.45 The initial patient profile for transitional care facilities was individuals who do not need hospital care and are:

- awaiting confirmed placement in Long-term Care or a Department of Community Services facility or,
- still in need of health services and in the process of a potential placement in Long-term Care or a Department of Community Services facility or,
- still in need of health services and awaiting set-up of support services to return home.

1.46 For Hogan Court, the initial patient profile was for the patient to fit the building, rather than for a facility to respond to the needs of the healthcare system. Since the purchase of the property, the patient profile was revised to the following:

Hogan Court TCF Patient Criteria	
Revised Patient Profile Inclusion	Revised Patient Profile Exclusions
• Adults 18+, Seniors	• Children (under 18)
• Mobility equipment, technology and equipment supporting independence	• Equipment requirements that exceed capacity of the facility
• Require transitional support to return to community	• Primary diagnosis or chronic disease requires acute services
• Individuals located in Central Zone	• Individuals outside of Central Zone considered on an individual basis
• Finished either tertiary or secondary rehab and have been medically discharged	• Require tertiary or secondary rehab
• Individuals with a gastrostomy tube (inserted in the stomach)	• Naso-gastric tube (in the nose) considered on an individual basis
• Individuals requiring complex wound dressing, splinting, tracheostomy, or risk of aspiration	• Responsive behaviours requiring sitter and/or security
• Individuals recovering after an illness or surgery who are not yet able to take part in required rehab	• Communicable diseases • High risk for infection or pneumonia

Source: Department of Health and Wellness

Fire Marshal approval issued more than 10 months after the January 2023 property purchase

1.47 As of November 1, 2023:

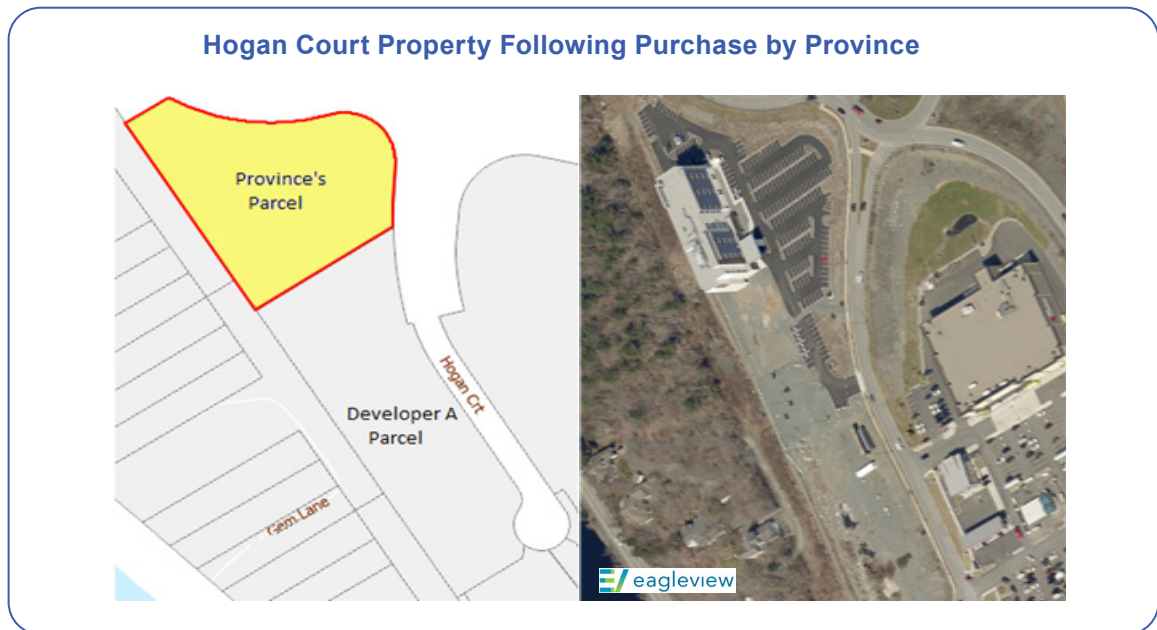
- The Office of the Fire Marshal had not approved the design of the facility. An iterative process was underway to gain approval including providing required detailed drawings to demonstrate compliance with the Nova Scotia Fire Safety Act, Regulations and Fire Code. The Fire Marshal conducted their initial review in July 2023, which identified items to be addressed prior to the start of construction. Following resolution of their concerns, design approval was issued on December 7, 2023.
- Given challenges with fire code approval, only a limited scope of construction could proceed on site (i.e., demolition of bathrooms and walls).

- The Project Plan dated February 3, 2023, projected Hogan Court becoming operational in January 2024. The construction completion date has been delayed to July 2024. It is unclear when the facility will become operational.

1.48 To mitigate these limitations and to make an informed purchase decision, the Province should have evaluated the feasibility of conversion against applicable healthcare facility standards and completed a detailed cost analysis of the conversion prior to purchase.

Access to Hogan Court Transitional Care Facility remains on Developer A's land

1.49 It is important to note that, as part of negotiations, Developer A retained a portion of the property representing 3.72 acres. Additionally, service and access easements were required and built into the purchase and sales agreement as a portion of the parking lot and the entrance to the property is located on Developer A's portion of the property.



Source: Nova Scotia Property Online and Property Valuation Services Corporation

Purchase of Hogan Court property for \$34.5 million did not demonstrate adequate due diligence in order to obtain value for money

1.50 The Province did not exercise appropriate due diligence in the acquisition of the Hogan Court property for \$34.5 million. The steps taken to acquire the property diminished value for money due to an inadequate market assessment of alternative locations, a compromised purchasing arrangement which reduced the Province's ability to minimize costs, a valuation based on the highest best use of the property which did not exist at the time of purchase, and no assessment of the feasibility of converting the property.

1.51 It appears to us the acquisition of Hogan Court is a consequence of the overall approach to addressing the healthcare crisis and significant pressures facing the system. The introduction of the 2023-24 *More Healthcare, Faster Budget* signifies a sense of urgency and willingness to

allocate significant resources to address issues in the healthcare system. However, this approach should not promote a culture where expediency takes precedence over appropriate due diligence. Addressing the issues requires a balanced approach which acknowledges the urgency of the crisis but also upholds value for money.

Lack of real property acquisition policy exposes the Province to risks

1.52 The Province does not have specific policy or guidelines for real property acquisitions, particularly those with both real estate and capital development components. Instead, Departments follow the government submission process for direction and approval at Treasury and Policy Board. Formal guidelines would ensure transactions are consistently procured, analyzed, and follow both the Province's Sustainable Procurement Policy and the Public Procurement Act.

1.53 The Building Infrastructure Design and Construction Division of Public Works is responsible for managing major construction projects over \$1 million. However, Public Works does not have exclusive authority over real property transactions. Therefore, Departments like DHW have the power to purchase property independent of Public Works. There is no centralized, experienced property acquisition team within government managing these purchases.



1.54 For the acquisition of Hogan Court, Public Works played a supporting role, providing feedback on building quality and the reasonability of the construction budget based on the assumption limited renovations were needed. Public Works was responsible for the conversion of the property until May 2023 when the project was transferred to Build Nova Scotia as part of their Healthcare Infrastructure Division.

1.55 The necessity of a real property acquisition policy, particularly those that govern both real estate and capital development, is illustrated in the findings throughout this audit. Having a formal policy can help to reduce the risk of an acquisition not achieving value for money. In general, the absence of policy guidance exposes the Province to risks, such as:

- inconsistent decision making
- gaps in due diligence
- lack of fairness, transparency, and accountability in decision making
- project delays and cost overruns

Recommendation 1.1

We recommend the Department of Public Works, as subject matter experts, in consultation with the Department of Finance and Treasury Board, develop a government-wide direction/policy for approving the acquisition of land and buildings, including:

- an assessment of the feasibility of subject property for intended use
- appropriate due diligence requirements prior to purchase including cost estimates to prepare the subject property for its intended use
- an independent appraisal based on the existing condition of the property
- if renovations or construction are required, engage with a government department with the necessary expertise to oversee them prior to purchase
- reassessment of approval if significant changes to assumptions and project information takes place following approval and prior to purchase
- establish eligible costs related to the acquisition

Once developed, the direction/policy should be submitted to Treasury and Policy Board for approval.

Public Works Response: As stated at paragraph 53 of this report, Public Works does not have exclusive authority over real property transactions. While DPW did not purchase the Hogan Court property, the Department will work with the Department of Finance and Treasury Board to develop a direction/policy for acquisition of land and buildings to provide guidance to Departments and Agencies which have authority to acquire real property within their mandate.

DPW will have a draft direction/policy completed by September 30, 2024.

Final approval of the draft direction/policy is at the discretion of Treasury and Policy Board. Target date: September 30, 2024.

Inappropriate use of alternative procurement practices to accelerate the development of transitional care facilities

1.56 The following table details the five alternative procurements that were examined as part of our audit. Of the untendered contracts examined, we found a total of \$81 million were not in compliance with provincial procurement protocols.

Alternative Procurements Examined During This Audit			
Services Provided	Circumstances Justifying Alternative Procurement	Maximum Approved Value	OAG Assessment of Appropriateness Yes/No?
Construction Management Services for Hogan Court Transitional Care Facility	Confidentiality	\$400,000 (initial)	Yes
		\$10,564,832 (amended)	No – rationale no longer applicable and significant changes in scope.
Architectural Services for Hogan Court Transitional Care Facility	Patents, Copyrights or Other Exclusive Rights	\$650,000	Yes
Third-party Operator for Hogan Court Transitional Care Facility	Health and Social Services Exemption	\$67,500,000	No – rationale not an approved circumstance in Sustainable Procurement Protocols.

Alternative Procurements Examined During This Audit			
Services Provided	Circumstances Justifying Alternative Procurement	Maximum Approved Value	OAG Assessment of Appropriateness Yes/No?
Advisory Services for Hogan Court	None – No Alternative Procurement Form	–	No – alternative procurement process not approved. As of November 1, 2023, \$860,000 in costs have been incurred. Additional \$40,000 to \$60,000 monthly expected until project completion.
Initial Planning and Site Work for Bayers Lake Transitional Care Facility	Additional Deliveries	\$3,000,000	No – inappropriate rationale for use of alternative procurement.

Source: Office of the Auditor General of Nova Scotia

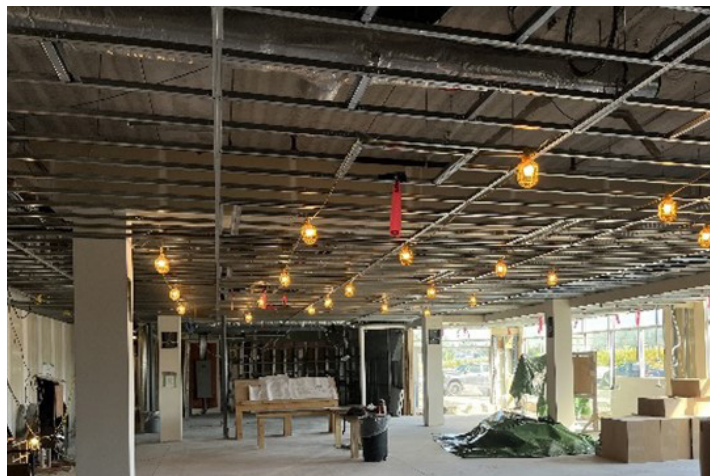
Initial alternative procurement practices and approvals supported the award of \$400,000 in construction management services for the Hogan Court facility

- 1.57 The Sustainable Procurement Policy permits the use of alternative procurement practices under specific circumstances, including but not limited to emergency situations or for confidentiality. Appendix III contains a full listing of the circumstances when alternative procurement practices are permitted and examples of when they apply.
- 1.58 An initial alternative procurement form for construction management services of \$400,000 for the Hogan Court facility was completed and contained appropriate signatures. The circumstance cited on the alternative procurement form was confidentiality. Management from Public Works explained this procurement occurred during negotiations to purchase the property, as construction expertise was needed to provide insight into conversion of the building. Without confidentiality, the Province would have been required to publicly list information earlier than it would have liked, which could have adversely affected ongoing negotiations. This circumstance was appropriate, given the alternative procurement form was signed prior to the due diligence and closing date of the property.

Inappropriate amendment for \$10.6 million construction management services alternative procurement

- 1.59 An amended alternative procurement form for the Hogan Court construction management services was signed on August 2, 2023, subsequent to the sale finalization on January 31, 2023, by Build Nova Scotia. The amendment was approved under the confidentiality circumstance, which is the same circumstance applied to the original alternative procurement form and increased the total approved amount by \$10.2 million.

1.60 The confidentiality circumstance was no longer applicable at the time the amended alternative procurement form was approved because the Province owned the building. We were unable to obtain an appropriate rationale to support a continued use of the confidentiality circumstance. Furthermore, information about the building purchase and construction was available to the public and the awarded company signage is prominently displayed at the site.



Source: Office of the Auditor General of Nova Scotia – 1st Floor Lobby (August 2023)

1.61 The amendment to the alternative procurement form was generated due to the contract's conversion to a Construction Manager at Risk contract. Under a Construction Manager at Risk contract, the construction manager assumes the risk in the budget and schedule of the subcontractors. The original form signed for \$400,000 was solely for advisory services, including project management, site supervision, estimator, and administration personnel for the project.

1.62 The amendment, signed for \$10.6 million, was 26 times more than the initial services awarded. This was to add construction work, specifically for subcontractors. Despite the significant change in scope, value, and nature of the work, the Procurement Division of Service Nova Scotia did not complete a reassessment of the alternative procurement circumstance before supporting the amendment. As a result, none of the projected \$10.6 million in construction management services were publicly tendered. Since that signing, an additional amendment is anticipated due to increases in the estimated conversion costs. As of November 1, 2023, the additional amendment had not been approved.

1.63 The use of alternative procurement raises concerns when amendments can significantly alter the circumstance, scope, and value from the original procurement. Conducting alternative procurements under inappropriate types and circumstances, results in an inappropriate circumvention of the procurement policy, a lack of transparency, fairness, and increases the risk the Province is not achieving value for money when spending taxpayer dollars.

Construction costs and completion timeline not yet finalized in the construction management contract as of November 1, 2023, months after on-site work began

1.64 On November 1, 2023, the construction management services contract was signed by the Province through Build Nova Scotia. The contract did not contain a guaranteed maximum price and did not contain the most recent projected timelines and estimated costs. Prior to this date, there was no interim contract in place; however, the contractor was still performing the following work on site:

- Demolition of showers and bathtubs in units
- Demolition of walls and creation of alcoves
- Planning for replacement of windows in 26 rooms
- Planning for construction of an additional stairwell at the back of the building
- Planning for filling in the unwanted pool



Source: Office of the Auditor General of Nova Scotia – 2nd Floor Renovations (August 2023)

1.65 Additionally, we observed costs incurred above the initial alternative procurement approval of \$400,000, prior to approval of the amended total of \$10.6 million. Specifically, the contractor billed the Province nearly \$1 million prior to the amendment approval. We confirmed payments above \$400,000 were not made until after the amendment was approved.

1.66 In our December 2019 report on the QEII New Generation Project – Halifax Infirmary Expansion and Community Outpatient Centre, we had a similar finding where there were significant delays in signing contracts with consultants. It is imperative to have signed contracts to hold contractors accountable and protect the Province's interests.

1.67 The delay in signing the Construction Manager at Risk contract negates the benefit of using this approach, as risk is intended to transfer to the contractor. Since purchasing Hogan Court, the Province has employed a quantity surveyor to assist with assessing the reasonability of costs, however, budget and schedule risk is not transferred until the contract (including a guaranteed maximum price) is signed, which cannot be completed until the architectural drawings are substantially complete. As the months tick by and untendered work continues to be rendered on site by the Contractor without a contract sum being calculated, risk stays with the Province and is not transferred to the Contractor.



Source: Office of the Auditor General of Nova Scotia – 1st Floor (August 2023)

Architectural services appropriately awarded up to \$650,000 through alternative procurement

1.68 The rationale for alternative procurement for architectural services up to \$650,000 was cited as proprietary information. While it would have been possible to engage another architect to create new designs, this would have resulted in additional costs and time to create the drawings from scratch. As such, this was an appropriate use of alternative procurement.

Critical responsibilities missing from the final contract with the architect; nearly \$300,000 in payments made before contract signed

1.69 On August 4, 2023, we requested a copy of the final signed contract with the architect. At the time of our request, the contract had not yet been signed by the Province despite the architect's signature on June 5, 2023. The contract was fully signed on August 24, 2023. We did, however, discover payments totaling nearly \$300,000 were made for architectural services at Hogan Court prior to the contract being finalized. Additionally, the final contract did not include requirements for the architectural services firm to certify change orders or use the schedule of values, which is the detailed construction schedule, as a basis for issuing certificates for payment. These requirements were included as the architect's responsibilities in the draft construction management contract. Management told us the missing requirements would be addressed by a change order to the contract; however, this change order had not yet been signed and approved as of November 1, 2023.

Recommendation 1.2

We recommend the Department of Public Works and Build Nova Scotia sign contracts with private sector partners prior to work commencing.

Public Works and Build Nova Scotia Response: Prior to signing formal contracts, DPW uses a variety of methods to minimize risks associated with initiating work on projects. DPW has standard contractual terms and conditions, which are used in conjunction with purchase orders, award letters and other methods to provide written authorization to proceed.

With both traditional and alternative procurement contracts, Departments and Build Nova Scotia will ensure that clear documented evidence of an agreement between the parties to the fundamental terms and conditions is established as early as possible in a contract relationship.

The Department will continue to be mindful of ensuring the final contract document is signed by all parties within a timely matter and that clear documentation is in place in the event of a delay in finalizing the terms of a contract.

DPW proposes developing guidelines by March 31, 2025 to allow work to proceed in a risk-managed approach until a formal contract is executed. Target date: March 31, 2025.

Third-party operator alternative procurement process for the operation of the facility valued at \$67.5 million not in compliance with Sustainable Procurement Protocols

1.70 NSH obtained support from the Procurement Division of Service Nova Scotia to apply a health and social services exemption to follow an alternative procurement process to procure the third-party operator for the Hogan Court property. The initial estimated value of the five-year agreement was \$67.5 million.

1.71 A health and social services exemption is noted in the Canadian Free Trade Agreement (CFTA). However, this exemption is not included as a circumstance for approval of alternative procurement practices and no separate policy direction exists within the Province's Sustainable Procurement Protocols to outline when this exemption should be applied and the process that should be followed. Management at the Procurement Division of Service Nova Scotia explained there are active discussions currently underway to determine whether or not delivery of a service which helps health should qualify under the exemption. Without guidance regarding when this exemption is appropriate, it may be used inappropriately to avoid procurements needing to undergo a competitive process.



Recommendation 1.3

We recommend the Procurement Division of Service Nova Scotia update the Sustainable Procurement Protocols to clearly define when the healthcare and social services exemption is applicable and the process to obtain approval for use of the exemption.

Service Nova Scotia Response: SNS Procurement will clearly define when the healthcare and social services CFTA exemption is applicable and the process to obtain approval within the Procurement Protocols. Target date: June 1, 2024.

Alternative procurement approval obtained seven months after procurement process began

1.72 While an alternative procurement process was approved to contract with a third-party operator, a total of seven proponents were considered across two rounds of submissions and vendor evaluations. We identified the following concerns for the third-party operator procurement:

- NSH began procuring the third-party operator before receiving approval to proceed with an alternative procurement process under the health and social services exemption. In November 2022, meetings were held with potential third-party operators to discuss their interest, capability, and readiness to support NSH on the transitional care initiative. Invitational questionnaires were sent out to the potential operators and proposals were received back by May 2023. Approval of the alternative procurement process under the exemption did not occur until May 24, 2023.
- No conflict-of-interest declarations were completed by the evaluation team as this is not a requirement of NSH's internal procurement policy. Instead, NSH relied on individuals self-declaring conflicts of interest. By placing the onus on the individual to declare a conflict of interest rather than requiring a declaration form be completed by all evaluation team members, there is increased risk of undeclared conflicts of interest.

Recommendation 1.4

We recommend Nova Scotia Health require conflict-of-interest disclosure for procurement evaluation team members and the approvers of alternative procurements.

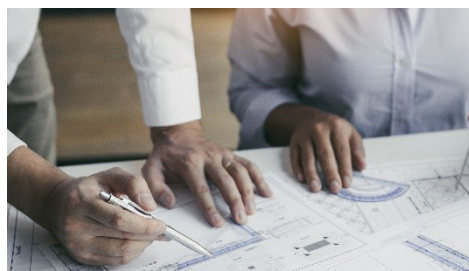
Nova Scotia Health Response: NSH has a conflict of interest policy. NSH Affiliated Persons are required to disclose any potential conflicts immediately as circumstances arise. NSH will explicitly list

evaluators and ALTP approvers in the definition of NSH Affiliated Persons which is currently defined as including 'Nova Scotia Health employees, medical staff, researchers, students, volunteers and Board members.' Target date: March 31, 2024.

Advisory services up to \$18 million provided by a single provider did not follow an established procurement process

1.73 Advisory services associated with the purchase and ongoing development of the Hogan Court transitional care facility began in 2022. This work was added to an existing agreement between NSH and a professional advisory firm and did not follow an alternative procurement process.

1.74 In 2020, NSH procured consultants to assist with the delivery of a Reset and Transformation project, which included a number of items such as revenue optimization, COVID-19 leasing and change management support. This procurement was awarded through sole sourcing due to the state of emergency during the COVID-19 global pandemic. Neither a competitive process nor alternative procurement process was completed.



1.75 According to the Procurement Division of Service Nova Scotia, when a state of emergency is declared, purchases can be completed without the use of an alternative procurement form provided the purchase is related to the state of emergency. If a purchase is not associated with a state of emergency, the completion of an alternative procurement form is required. The Statement of Work for the advisory firm included both services associated with and not associated with the COVID-19 state of emergency. According to the Chief Procurement Officer, the elements not associated with the COVID-19 state of emergency should have followed an alternative procurement process. Additionally, as this procurement exceeded NSH's spending threshold, this work should have been processed by the Procurement Division of Service Nova Scotia.

1.76 Since the initial award in 2020 for the advisory services, there have been significant changes in the value and scope of services provided by the contractor. Since the rescinding of the state of emergency, additional Statements of Work and a new Master Services Agreement have been created and renewed without the initiation of a new procurement process. The Master Service Agreement contains the formal terms and conditions of the contractual agreement between the Province and the consulting firm. Statements of Work are commonly used to outline the key activities, timelines, deliverables, and fees as part of a contractual arrangement. The estimated value of these services, which includes services related to Hogan Court, now totals up to \$18 million.

Estimated Value of Sole Sourced Statements of Work with Advisory Firm		
Date	Low Estimate	High Estimate
July 23, 2020 – Value of Initial Reset and Transform Statement of Work	\$1,220,000	\$1,500,000
April 3, 2023 – Estimated Total Value of Statements of Work Since 2020 (including Hogan Court advisory services) ⁴	\$14,658,618	\$18,281,618

Source: Nova Scotia Health (unaudited)

⁴ In addition to the above cited amounts, a Statement of Work dated July 18, 2022, was referenced in the Master Service Agreement dated August 5, 2022. However, management indicated this Statement of Work was not created and is therefore not included in the totals above.

As of November 1, 2023, \$860,000 in advisory services paid for acquisition assistance, development, and operational readiness of Hogan Court property

1.77 As of November 1, 2023, \$860,000 was paid to the consultant for services related to the acquisition, development, and operational readiness of Hogan Court. This included a flat fee of \$170,000 for pre-transaction assistance and \$690,000 in additional services post-purchase. This advisory service was in addition to project management and support by Public Works and Build Nova Scotia. We were unclear as to the need for a separate consultant.



1.78 The consultant was initially engaged in June 2022 to assist with the development of transitional care facilities. However, the relevant Statement of Work, which included support through the Hogan Court purchase transaction and launch of operations, was not signed until January 23, 2023, nearly eight months after the consultant's initial involvement in the project. The total estimated cost of the advisory services was between \$310,000 to \$370,000 plus a monthly fee between \$40,000 to \$60,000. Furthermore, we were unable to confirm the total remaining costs of these advisory services, as it will be dependent on how long it takes for the facility to become operational.

\$3 million initial planning and site work contract for Bayers Lake transitional care facility not in compliance with alternative procurement guidelines

1.79 In addition to auditing the Hogan Court transitional care facility, we also examined the steps taken to construct a transitional care facility in Bayers Lake. An alternative procurement form for initial planning and site work for the Bayers Lake transitional care facility was completed and contained the required levels of approval. On December 6, 2022, government provided approval to commence negotiations with a sole source contractor as they were already mobilized for the Bayers Lake Community Outpatient Centre. Management of Build Nova Scotia confirmed no other proponents were considered.



Source: Build Nova Scotia – Bayers Lake Community Outpatient Centre

1.80 The rationale for using alternative procurement practices was cited as “additional deliveries.” According to the Alternative Procurement Practices Circumstance Guide, this circumstance would

apply when additional goods or services are required from a supplier which was not included in the initial procurement and a change of supplier cannot be made for economical or technical reasons. This circumstance would not apply when additional deliveries are considered a separate scope of work which could be provided by another vendor, for example, by providing additional products and services to a new site. Although employing the same contractor engaged for the Community Outpatient Centre could create efficiencies in the project, the scope of work and timing of the transitional care facility are separate. Therefore, the rationale for alternative procurement was not appropriate. The preliminary contract signed with the contractor for initial planning and sitework is \$3 million.

Changes in estimated cost for Bayers Lake transitional care facility may need further approval by government

- 1.81 The Bayers Lake transitional care facility was originally anticipated to be a 200-bed facility with an estimated project capital cost of \$100 million. Government provided approval to commence negotiations with the contractor for construction not to exceed \$90 million. Due to higher anticipated costs, additional government approval may be required at a later date.

Weaknesses in alternative procurement practices at Procurement Division of Service Nova Scotia

Alternative procurement circumstances not appropriately assessed

- 1.82 Procurement supported all alternative procurements examined as part of this audit and told us they complied with the Sustainable Procurement Policy, with the exception of advisory services. Procurement was not involved in the award of advisory services as this was completed internally at NSH. We inquired with Procurement about whether or not they perform an independent assessment of the circumstance listed on initial alternative procurement forms. Management said the expectation is for employees to use professional judgment based on guidelines to determine if the circumstance is applicable.
- 1.83 The Procurement Division of Service Nova Scotia has two different ways to handle a change to an alternative procurement project. For example, if the value of the purchase changes, the Division assesses whether the revision falls under the same project and requires an amendment, or whether a request should be submitted as a new alternative procurement. Procurement does not perform an assessment of whether or not the original circumstance is still applicable, or if the type of item being purchased (goods, service, construction) needs to be revised.
- 1.84 It is important to assess whether the circumstance of an alternative procurement is still applicable and supports the continued use of alternative procurement practices. When a project substantially changes scope, cost or type, a higher level of scrutiny should be applied to assess whether applying alternative procurement continues to comply with the spirit of the Sustainable Procurement Policy or if a competitive process should be used to ensure projects achieve value for money.



No formal sign-off by Procurement Division for amended alternative procurement forms

- 1.85 Until recently, there was space on alternative procurement forms for a Procurement representative to indicate whether they supported the amendment by selecting 'yes' or 'no' and adding their signature. Management from the Procurement Division advised us a new alternative procurement form was recently put in place, and this form does not contain a section for Procurement to indicate their support of an amendment. This change resulted from changes in trade agreements which no longer required the sign-off from the Procurement Division to indicate their support for amendments.
- 1.86 In one of the procurement forms we examined, a Procurement representative's name was typed into the amended alternative procurement form to indicate support. However, there was no digital signature or timestamp. Management at Build Nova Scotia explained they were instructed by Procurement to type in the Procurement representative's name, which was confirmed by Procurement. By failing to require a signature and date to indicate Procurement's support, there is increased risk of amended alternative procurement forms being completed and approved without Procurement's knowledge. There is also a risk associated with the amendment commencing prior to Procurement's review and support.

Recommendation 1.5

We recommend the Procurement Division of Service Nova Scotia review changes to alternative procurements including cost increases and expansions to the scope of work and assess whether an alternative procurement process remains appropriate or requires public tendering.

Service Nova Scotia Response: SNS Procurement will establish a process for clients to submit changes to High Value ALTP's processed through to contract by SNS Procurement, to determine if the original circumstance remains appropriate, and whether it supports the continued use of the ALTP as the appropriate procurement method. Target date: September 1, 2024.

No conflict-of-interest disclosure requirements for the approvers of alternative procurements

- 1.87 The Sustainable Procurement Policy indicates all participants involved in a procurement process must ensure there are no undeclared conflicts of interest. Evaluation team members are required to sign individual conflict of interest declarations. However, this requirement does not exist for alternative procurement processes as evaluation teams are not used. There was no individual conflict of interest declarations for the alternative procurements we examined as part of this audit.



- 1.88 While the Sustainable Procurement Policy indicates those involved in any procurement are responsible for ensuring they have no undeclared conflicts of interest, this should be confirmed through a declaration for the approvers of alternative procurement to prevent possible conflicts of interest from occurring or not being appropriately mitigated.

Recommendation 1.6

We recommend the Procurement Division of Service Nova Scotia require conflict-of-interest disclosure requirements for the approvers of alternative procurements.

Service Nova Scotia Response: SNS Procurement Services will add a conflict-of-interest declaration to the Alternative Procurement form for the approver. Target date: April 1, 2024.

Inaccurate and inappropriate details on alternative procurement awards posted on public procurement portal

1.89 For high-value, non-competitive procurements, the Sustainable Procurement Policy requires Procurement to post the name of the supplier and the value awarded on the Public Procurement Portal. During our audit, we identified the following concerns related to information publicly disclosed on the procurement portal:

- The \$10.6 million procurement of construction management of the Hogan Court facility was posted to the portal in error despite the Alternative Procurement Practices Circumstance Guide indicating confidential procurements are not to be posted. This was due to an inaccurate circumstance for approval being cited.
- As of October 16, 2023, the \$650,000 procurement of architectural services was not posted to the portal. Following an inquiry by our office, it was posted. However, the category and award date did not align with details on the approved alternative procurement form.
- The procurement for initial planning and site work for \$3 million for the Bayers Lake Transitional Care Facility was posted to the portal under the circumstance of “sole source” however, the alternative procurement form noted the circumstance of “additional deliveries.” Additionally, the award date did not match the date the preliminary contract was signed.

1.90 By listing incorrect details or omitting information from the portal, transparency regarding the award of alternative procurements is reduced. These lapses also reduce accountability to the public or to other proponents who may have wanted to bid on a project.

Reasonable Assurance Engagement Description and Conclusions

In Winter 2024, we completed an independent assurance report of the initial development of transitional care facilities at the Departments of Health and Wellness, Public Works, Nova Scotia Health, and Build Nova Scotia. The purpose of this performance audit was to determine whether an appropriate process was followed for the initial development of transitional care facilities in the Central Zone.

It is our role to independently express a conclusion about whether the development of transitional care facilities complies in all significant respects with the applicable criteria. Management at the Departments of Health and Wellness, Public Works, Nova Scotia Health, and Build Nova Scotia have acknowledged their responsibility for the development of transitional care facilities.

This audit was performed to a reasonable level of assurance in accordance with the Canadian Standard on Assurance Engagements (CSAE) 3001—Direct Engagements set out by the Chartered Professional Accountants of Canada; and sections 18 and 21 of the *Auditor General Act*.

We apply the Canadian Standard on Quality Management 1, which requires the Office to design, implement and operate a system of quality management, including policies or procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with the independence and other ethical requirements of the Code of Professional Conduct of Chartered Professional Accountants of Nova Scotia as well as those outlined in Nova Scotia's Code of Conduct for public servants.

The objectives and criteria used in the audit are below:

Objective:

To determine whether the Departments of Health and Wellness, Public Works, and Nova Scotia Health exercised adequate due diligence in order to obtain value for money in the selection of Hogan Court property for conversion to a transitional care facility.

Criteria:

1. The Departments of Health and Wellness, Public Works, and Nova Scotia Health completed an appropriate analysis of available options, including whether options would achieve intended outcomes, prior to deciding to acquire Hogan Court property.
2. The Departments of Health and Wellness, Public Works, and Nova Scotia Health adequately assessed the feasibility of converting Hogan Court property to a transitional care facility prior to deciding to acquire.
3. The Departments of Health and Wellness and Public Works, and Nova Scotia Health completed an appropriate valuation of Hogan Court property prior to deciding to acquire.
4. The Departments of Health and Wellness, Public Works, and Nova Scotia Health followed an appropriate process in the initial acquisition and development of Hogan Court property.

Objective:

To determine whether the Departments of Health and Wellness, Public Works, Nova Scotia Health, and Build Nova Scotia complied with provincial procurement policies to develop transitional care facilities.

Criteria:

1. The Departments of Health and Wellness, Public Works, Build Nova Scotia, and Nova Scotia Health procured construction, professional, and operational services in compliance with provincial procurement policies.

Generally accepted criteria consistent with the objectives of the audit did not exist. Audit criteria were developed specifically for this engagement. Criteria were accepted as appropriate by senior management at the Departments of Health and Wellness, Public Works, Nova Scotia Health, and Build Nova Scotia.

Our audit approach consisted of interviews with management and staff of the Departments of Health and Wellness, Public Works, Nova Scotia Health, and Build Nova Scotia; reviews of policy, examinations of processes for development

of transitional care facilities and detailed file review. We examined relevant processes, plans, reports, and other supporting documentation. Our audit period covered April 1, 2022, to June 30, 2023. We examined documentation outside of that period as necessary.

We obtained sufficient and appropriate audit evidence on which to base our conclusions on February 2nd, 2024, in Halifax, Nova Scotia.

Based on the reasonable assurance procedures performed and evidence obtained we have formed the following conclusions:

- Adequate due diligence was not exercised in order to obtain value for money in the selection of Hogan Court property for conversion to a transitional care facility. Specifically, there was not an appropriate analysis of available options, a valuation based on the condition of the building at acquisition or an assessment of the feasibility of converting the property.
- Four of five procurements examined related to the development of transitional care facilities did not comply with provincial procurement protocols due to inappropriate use of alternative procurement.

Transitional Care Facilities Timeline

	HOGAN COURT	BOTH SITES	BAYERS LAKE
2017	Property sold for \$4.14M* by Developer A to Developer B for construction of a hotel.		
June 2022	Nova Scotia Health sole sources to an advisory firm to begin preliminary discussions including determining ownership of the property.		
June 22	Nova Scotia Health signs confidentiality agreement with Developer A.		
Aug 9	Advisory firm completes market scan of possible property options to convert to a transitional care facility.		
Aug 10		First presentation to government for the creation of transitional care units at two sites in the Halifax Regional Municipality.	
Aug 24		Government grants approval to engage in discussions with external stakeholders to develop transitional care units.	
Sept 6	Memorandum of Understanding signed between Nova Scotia Health and Developer A to work together to assess viability for conversion to a transitional care facility.		
Oct 27	Appraisal report completed assuming property is 100% complete and values the property at between \$29.9M to \$35.3M.		
Nov 24			Government approves \$2.5M in funding to purchase land adjacent to the Community Outpatient Centre in Bayers Lake for the creation of a transitional care facility.
Dec 6		Government approves sole sourcing the construction of the Bayers Lake Transitional Care Facility for an amount not to exceed \$90M and the negotiation of the purchase of Hogan Court not to exceed \$36M. Capital funding grant of \$5M was also granted to undertake planning and design work for the facilities.	
Dec 14	<ul style="list-style-type: none"> Government approves the purchase for \$34.5M and an additional \$15M to cover renovation costs. Contract between Developer A and the province signed with a closing date of January 31, 2023. 		
Dec 15		Province announces the building of two new standalone transitional care facilities in the Halifax Regional Municipality.	
Jan 10, 2023	Alternative procurement form signed to award \$400,000 construction management services for conversion to contractor.		
Jan 15	Due diligence date for property sale.		
Jan 23	<ul style="list-style-type: none"> Architectural consultant provides draft report including the opinion Hogan Court could not be adapted to suit the patient profile without severe restrictions on patient admission eligibility. Statement of Work signed with advisory firm to continue to secure ownership and coordinate resources to achieve operational readiness of the facility. Total cost not determined; it will depend on length of time for facility to become operational. 		
Jan 31	Closing date of property sale. Developer A purchases property back from Developer B for \$37.7M*, re-sells a portion of property to province for \$34.5M.		
May 16	Responsibility for renovations reassigned from Public Works to Build Nova Scotia.		
June 2			Preliminary contract signed with contractor for initial site work and planning.
Aug 2	Alternative procurement form for construction management services for conversion amended from \$400,000 to \$10.6M, expanded to include construction.		
Dec 7	Design approved by Office of the Fire Marshal.		
July 2024	Anticipated date of construction completion.		
2025/26			Estimated completion of Bayers Lake transitional care facility.

*Source: Viewpoint Realty Services Inc. www.viewpoint.ca

Listing of Alternative Procurement Circumstances

Alternative Procurement Circumstances	
Circumstance	Examples of Applicability
Emergency	Bridge collapse, fuel spill, security breach, infrastructure malfunction, or to protect human lives
Confidentiality	Advice or goods of a privileged nature relative to sensitive information that could put the Province at risk
Compatibility	Original equipment manufacturer with no substitute or only this vendor can provide maintenance
Patents, Copyrights and Other Exclusive Rights	Original design work or one-of-a-kind goods/services
Sole Source	Total absence of market competition of the product or service
Monopoly	Nova Scotia Power, Canada Post, Heritage Gas
Commodity Market	Metals, Livestock, Agriculture
Leased Building	Renovation or maintenance provided by the landlord
Warranty	Equipment maintenance, repairs, or upgrades
Research	Fish analysis in river to determine if a new highway project can proceed based on results of local habitat analysis
Advantageous Circumstances	Car auction, land sale
Original Art	Art Gallery purchasing Maude Lewis' house and paintings
Design Content	NS Tourism – promotes campaign to bring visitors to NS by way of design contest to spark awareness about NS abroad and promote local talent
Subscriptions to Periodicals	Chronicle Herald, New York Times
Additional Deliveries	Additional service provided by current vendor to allow smooth transition time to a new RFP award
No Suppliers Satisfied the Conditions	No bids received or noncompliant, documented by Procurement
Financial Management Services	Bankruptcy, foreclosure, receivership
Goods for Resale	Clothing, promotional pins
Procurements Financed by Donations	QEII Foundation provides funds to NSH for the purchase of a new piece of equipment
Payments to other Governments	Joint procurements, policing services
Equal Opportunities	Services from a social enterprise, community interest group
Ability to Maintain Security/Life/Health	Court ordered assessment, pandemic
Minority Business	Direct purchase of goods and services from Indigenous vendors

Source: Procurement Division of Service Nova Scotia

• • • Office of the Auditor General • • •

5161 George Street, Royal Centre, Suite 400

Halifax, Nova Scotia

B3J 1M7

www.oag-ns.ca

[in/company/oag-ns](https://www.linkedin.com/company/oag-ns)

[X @OAG_NS](https://twitter.com/OAG_NS)

[f /OAGNS](https://www.facebook.com/OAGNS)

[@nsauditorgeneral](https://www.instagram.com/nsauditorgeneral)