



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential

Prepared for Ewart O'Dwyer Barristers and Solicitors

KPMG Forensic Inc.

October 31, 2024

This report contains 47 pages



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Table of Contents

1	Introduction	1
1.1	Background	1
1.2	Mandate	2
1.3	Approach	2
1.4	Procedures	2
1.4.1	Document Review	3
1.4.2	Review of Relevant Emails	3
1.4.3	Interviews	7
2	Restrictions	8
3	KPMG Findings	9
3.1	Chronology of Events for the Trackless Procurement	9
3.1.1	Rationale and Timing of the Decision to Explore the Procurement of a New Sidewalk Machine	9
3.1.2	Steps Taken by the Infrastructure Group to Determine How the Sidewalk Machine Could be Procured	12
3.1.3	Vendor Selection Process Followed by the Infrastructure Group	17
3.1.4	Steps Taken by the Infrastructure Group to Seek Approval for the Trackless Purchase	20
3.1.5	Trackless Purchase: Issuance PO	24
3.1.6	Notifications from the Trackless Vendor of the Delivery Delay	25
3.1.7	Receipt of Trackless Invoice and Discovery that the Trackless Purchase did not Appear in Napanee's Budget for Fiscal 2022 or 2023	25
3.1.8	Delivery of Trackless to Napanee	32
3.2	Other Contextual Information	32
3.2.1	2022 Municipal Election	32
3.2.2	Mr. Paul Dowber, Former Treasurer	33
3.3	Procurement Process based on Procurement By-Law	35
3.3.1	Procurement By-Law Overview	36
3.3.2	Applicable Sections of Procurement By-Law to Consider Compliance	39
3.3.3	By-Law Compliance Assessment of Trackless Procurement	39
3.3.4	Trackless Procurement and Compliance with Napanee's Procurement By-Law	40
4	Assumptions and Limitations	43
4.1	Assumptions	43
4.2	Limitations	43
5	Scope of Review	45



1 Introduction

1. KPMG Forensic Inc. ("KPMG") was engaged by Ewart O'Dwyer, solicitor, on behalf of The Corporation of the Town of Greater Napanee ("Napanee" or "Town"), to conduct a forensic review of the procurement process that was followed by Napanee for the purchase of a large sidewalk operations equipment known as Trackless ("Trackless" or "Sidewalk Machine").
2. Specifically, our assistance was requested in response to concerns that the Trackless procurement may have circumvented the Town's Procurement By-Law that existed for this type of procurement.

1.1 Background

3. We understand that in March 2023, Napanee's Interim Treasurer at the time, Ms. Nicole Davidson¹ ("Ms. Davidson"), became aware of a large equipment purchase, which appeared to have circumvented the Town's Procurement By-Law.
4. We understand that this purchase was first discovered upon finances receipt of an initial invoice for \$22,939 from Joe Johnson Equipment for "ONE (1) NEW 2023 TRACKLESS 51' RIBBON SNOWBLOWER W/SIDEWALK CHUTE" dated February 1, 2023, that was connected to Napanee purchase order ("PO") 35737, dated August 17, 2022.
5. In addition to the ribbon snowblower with sidewalk chute, this PO also detailed additional items that appeared to have been purchased at the time, including a "Trackless MT7" for \$158,299 (excluding taxes) and other components for a total purchase of \$195,219² (excluding taxes).
6. See *Appendix 1- Joe Johnson-U00696-Snowblower Component-Privileged and Confidential* for a copy of this invoice and PO.
7. We understand that Napanee Finance staff were initially unable to find adequate approvals for this Trackless MT7 purchase upon discovery of it by Finance, which prompted Napanee's Chief Administrative Officer ("CAO") at the time³, Mr. John Pinsent ("Mr. Pinsent"), to undertake an initial internal investigation.
8. From his own internal investigation, we understand that it appeared to Mr. Pinsent that the documents and emails found, as well as those anticipated but not discovered, suggested to him that the Town's procurement process was not followed for this specific purchase.

¹ Ms. Davidson resigned from this position and was no longer employed by Napanee after August 4, 2023.
² It should be noted that an additional amount of \$2,820 appears to have been added to the PO but the total cost was not adjusted.
³ Mr. Pinsent resigned from this position and was no longer employed by Napanee after July 26, 2023.



The Corporation of the Town of Greater Napanee
Forensic Review of the Trackless Procurement
Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors
October 31, 2024

9. These concerns were raised to the Town's Mayor and Council, who requested an independent review be undertaken to understand the events that transpired with regards to this Trackless procurement.

1.2 Mandate

10. In light of the above noted concern, KPMG was retained by Ewart O'Dwyer, on behalf of Napanee, to conduct a forensic review of the Town's procurement process for the 2022 fiscal year in order to understand whether the Procurement By-Law, which was in effect at that time, was bypassed for the Trackless procurement and to identify whether there were any other unusual procurements that occurred at that time.
11. Specifically, this forensic review included a review of the Trackless procurement identified and the related documentation collected by Napanee management to determine whether the current Procurement By-Law may have been circumvented.

1.3 Approach

12. For the review of the Trackless procurement, KPMG's objective was to determine whether the current Procurement By-Law was circumvented.
13. To achieve this objective, we used the following phased approach:
 - a) Phase 1 – Planning and Information Gathering: to obtain an understanding of Napanee's internal investigation and the evidence that was compiled to date and to identify other sources of information that may be relevant to understanding how the current procurement process may have been circumvented for the Trackless purchase;
 - b) Phase 2 – Document Review and Analysis Phase: to develop a deeper understanding of the Trackless procurement process by reviewing documents and relevant emails, and conducting interviews to create a fact-based account of this procurement; and
 - c) Phase 3 – Reporting: to provide a fact-based account of the Trackless procurement, based on the information gathered throughout our review.

1.4 Procedures

14. In conducting this review, KPMG performed a review of documents identified for us by the Town's employees, reviewed relevant emails associated to the Microsoft Office 365 Accounts for the individuals who had key involvement in the Trackless procurement, and conducted interviews, where possible, with these individuals.



1.4.1 Document Review

15. KPMG reviewed and relied upon a variety of documents and other information provided to us by various Napanee employees. We have listed this information in Section 5 of this report.
16. These documents helped to formulate the fact-based account of the Trackless procurement.

1.4.2 Review of Relevant Emails

17. In addition to our document review, we conducted a review of relevant emails associated to the Microsoft Office 365 Accounts for the individuals who had key involvement in the Trackless procurement, to help augment and corroborate the fact-based account of the purchase.
18. Upon instruction by Napanee, this review was conducted using Napanee's Microsoft Purview eDiscovery (premium) program, which is not the eDiscovery platform that our team typically uses when conducting email review.
19. In order to determine what emails to review, KPMG:
 - a) Identified the individuals who may have played a key role in the Trackless procurement and its related activities;
 - b) In conjunction with the Town, determined key words to locate electronic documents relevant to this review; and
 - c) Used the listing of individuals and key words, along with a date filter for a period of time that would cover the activities relating to the Trackless procurement to create groupings of the emails by individual that could potentially be relevant for our review.

1.4.2.1 Identification of Key Individuals Involved in the Trackless Procurement

20. Following our initial discussions with Napanee's Manager of Legislative Services/Municipal Clerk, Jessica Walters ("Ms. Walters"), Ms. Davidson, and Mr. Pinsent, and in consultation with Ewart O'Dwyer, KPMG identified seven individuals that may have had key involvement with the Trackless procurement and its eventual discovery.
21. These individuals were as follows:
 - a) Mr. Pinsent, former CAO;



- b) Ms. Davidson, former Interim Treasurer;
- c) Mr. Peter Dafoe ("Mr. Dafoe"), General Manager of Infrastructure Services;
- d) Mr. Jeff Cuthill ("Mr. Cuthill"), Director of Capital Works;
- e) Mr. Mike Dwyer ("Mr. Dwyer"), Manager of Public Works;
- f) Mr. Paul Dowber ("Mr. Dowber"), former Treasurer (prior to Ms. Davidson); and
- g) Mr. Charles McDonald ("Mr. McDonald"), former Director of Operational Audits⁴.

1.4.2.2 Keyword Determination

22. With input from Ewart O'Dwyer and Ms. Walters, KPMG assembled an initial list of potential keywords to be used in the search for relevant emails in the Office 365 Accounts of the key individuals identified.

23. The following keywords were used for our email review:

Categories:			
Equipment	Purchasing Rationale	Vendor	Policy & Budgeting
Trackless	unexpected/ unforeseen repair	Joe Johnson	public works budget
MT7	unexpected/ unforeseen trackless repair	Dan/ Daniel Gervais	sidewalk plow budget
MV5, MV1500	unexpected/ unforeseen tractor repair	dgervais@jjei.com	capital works budget

⁴ Our review did not indicate that Mr. McDonald was involved with this transaction, prior to his retirement in December 2022.



The Corporation of the Town of Greater Napanee
 Forensic Review of the Trackless Procurement
 Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors
 October 31, 2024

Categories:			
Equipment	Purchasing Rationale	Vendor	Policy & Budgeting
Snowplow	snowplow procurement	Tony Bowen	capital account budget
Sidewalk machine	procurement issue	tbowen@jjei.com	capital fund expenditure
Tractor	sidewalk maintenance	tractor RFP	capital account
Ribbon blower	sidewalk winter maintenance	sidewalk RFP	procurement bylaw
Folding v plow	minimum maintenance standard	MacLean	
5/8-yard sander	MMS		

1.4.2.3 Review Process

24. Following the identification of the relevant individuals and key words, we applied the following filters to each of their Microsoft Office 365 email accounts in order to identify potentially relevant documents for the Trackless procurement for our review:

- a) Date Between July 1st, 2021, and August 31st, 2023; and
- b) Key words listed above.

25. The resulting emails within each account were then subject to a detailed review by our team.



26. Each email that was identified was initially reviewed and given a tag from the following list, according to its relevance to the procurement issue:

Tag	Description
Highly Relevant – Trackless	Items with a clear relationship to the Trackless procurement
Relevant – Trackless	Items with a possible relationship to the Trackless procurement
Highly Relevant – Other Procurement	Items with a clear relationship to other potential procurement issues
Relevant – Other Procurement	Items with a possible relationship to other potential procurement issues
Not Relevant	Items not found to be relevant to any procurement issue
Duplicate	Duplicate items found during our review

27. Items tagged as 'Highly Relevant' or 'Relevant', regardless of whether it related to the Trackless or another procurement, were subject to a secondary review to confirm the relevance and to identify any additional information that would help us further our understanding of the fact-based account of the Trackless procurement.

28. Where applicable, we have attached certain relevant emails located through the email review as Appendices to this report.

1.4.2.4 Key Limitation of KPMG's Review Process

29. Although also noted in Section 4.2 of this report, because of the potential impact to the accuracy and completeness of the emails that were identified for KPMG's review through Napanee's Microsoft Purview eDiscovery (premium) program, we have replicated this potentially significant limitation in our review of relevant emails in this section.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

30. During our filtering and review process, we observed that certain emails that should have been excluded through the filters applied in the Microsoft Purview eDiscovery (premium) program, were included in the population of emails to be reviewed by KPMG. For instance, we found items that fell outside of the specified time period from July 1st, 2021, to August 31st, 2023, as well as items that did not appear to have any relationship with the mailbox owner in our review sets.
31. This unexpected occurrence raises a concern that there may be relevant emails that may have been inadvertently omitted during the filtering process, and thus were not reviewed by KPMG.

1.4.3 Interviews

32. We conducted interviews with current and certain former Napanee employees involved in the Trackless procurement. We have listed these interviews and meetings in Section 5 of this report.
33. These interviews and meetings helped to formulate the fact-based account of the Trackless procurement.



2 Restrictions

34. We understand that our report is Privileged and Confidential and is intended to assist Ewart O'Dwyer in providing legal advice to Napanee regarding the matters being reviewed, including for the purpose of determining actions that may be required as a result of the concerns raised. We further understand that our report may be shared with Napanee for their internal use only. We consent to these uses of our report.
35. Other than the indicated use, our report may not be disclosed, copied, quoted, or referred to in whole or in part, whether for the purposes of litigation, disciplinary proceedings, or otherwise, without our prior written consent in each specific instance. Such consent will not be unreasonably withheld, including in the event of disciplinary proceedings, litigation, or other similar legal process or proceedings. We will not assume any responsibility or liability for any costs, damages, losses, liabilities, or expenses incurred by Ewart O'Dwyer or Napanee as a result of circulation, publication, reproduction, use of, or reliance upon our report contrary to the above. We will not assume any responsibility or liability for any costs, damages, losses, liabilities, or expenses incurred by anyone else as a result of circulation, publication, reproduction, use of, or reliance upon our reports.
36. Comments in our report should not be considered to be legal opinion as we are not qualified to provide such an opinion.
37. We have relied upon the completeness, accuracy and fair presentation of all the information obtained (the "Information"). Our comments are conditional upon the completeness, accuracy and fair presentation of such Information. Subject to the exercise of professional judgment, KPMG has not audited or otherwise independently verified the accuracy or fair presentation of any of the Information. Should additional information be provided to us after the date of this report, we reserve the right, but will be under no obligation, to review this information and adjust our report accordingly.



3 KPMG Findings

38. The following section outlines KPMG's findings based on our review of documents/emails and interviews that were conducted.

3.1 Chronology of Events for the Trackless Procurement

39. Before examining whether the Trackless purchase may have circumvented the Town's Purchasing Policy By-Law, an understanding of the facts and the chronology of events that transpired for the Trackless procurement was necessary

40. This understanding was achieved by creating a timeline of the various stages of the Trackless procurement, including the:

- a) Rationale and timing of the decision to explore the procurement of a new sidewalk machine;
- b) Steps taken by the Infrastructure Group to determine how the sidewalk machine could be procured;
- c) Vendor selection process followed by the Infrastructure Group;
- d) Steps taken by the Infrastructure Group to seek approval for the Trackless purchase;
- e) Trackless purchase: issuance of the PO;
- f) Notifications from the vendor of the Trackless delivery delay;
- g) Receipt of Trackless invoice and discovery that the Trackless purchase did not appear in Napanee's budget for fiscal 2022; and
- h) Delivery of Trackless to Napanee.

3.1.1 Rationale and Timing of the Decision to Explore the Procurement of a New Sidewalk Machine

41. At the beginning of Napanee's 2022 fiscal year⁵, the Town owned and operated two machines that were used for sidewalk maintenance in both the winter and summer⁶. The first machine is a Trackless machine, which is specifically designed for year-round sidewalk maintenance. The second machine is a Bobcat, which is a general-purpose

⁵ Napanee's fiscal year ends on December 31 each year.

⁶ We understand that sidewalk maintenance typically involves snow-clearing in the winter months and sweeping and lawn maintenance in the summer months.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

skid steer typically used in construction, and is only suitable for specific winter maintenance.

42. We understand that due to its size, the Bobcat is unable to fit on all sidewalks and may cause lawn damage when used on sidewalks that are too small for it. As a result, the Trackless machine was considered to be the primary unit for sidewalk maintenance in Napanee.

43. The Trackless sidewalk machine that existed in the Infrastructure Group's fleet was approaching the end of its expected useful life, originally projected to be in 2024.

a) As part of our email review, KPMG observed that the Trackless sidewalk machine was listed in a Napanee spreadsheet titled "Equipment_DataCollection_Workbook_2022.03.31", found in Mr. Dwyer's emails, and shown to have been a 2010 model, with a 14 year lifecycle, due to be replaced in 2024.

44. We understand that during the 2021/22 winter season, the Infrastructure Group encountered numerous issues with the existing Trackless sidewalk machine as indicated below.

a) As Manager of Public Works, Mr. Dwyer noted in our interview with him that the Town was using the skid steer to clear the sidewalk, and they were in a situation where their original Trackless sidewalk machine was in the shop more than it was in use. He also noted that their current machine was not outdated, but it needed to be replaced because of all the repairs that were continuously required.

b) Mr. Dwyer also noted his concerns around the Town's ability to be compliant with the Minimum Maintenance Standards ("MMS")⁷ as a result of the issues with Napanee's sidewalk machine fleet. If the machinery was undependable and unavailable, the Town could potentially be exposed to risks of non-compliance with this provincial regulation and he expressed wanting to protect the municipality (and himself as he is the person responsible for ensuring compliance at the Town) from this possibility.

c) As Director of Capital Works, Mr. Cuthill noted in our interview that there was a considerable number of problems during the winter of 2021/22, including some "catastrophic failures". The volume of work to be done warranted three machines, but only two could be deployed, and only one of them was a standard sidewalk machine.

⁷ MMS is a Regulation of the Province of Ontario whose purpose is "to clarify the scope of the statutory defense available to a municipality under clause 44 (3) (c) of the Act by establishing maintenance standards which are non-prescriptive as to the methods or materials to be used in complying with the standards but instead describe a desired outcome." (<https://www.ontario.ca/laws/regulation/020239>).



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

- d) As General Manager of Infrastructure Services, Mr. Dafoe echoed these issues with the sidewalk machinery. In our interview with Mr. Dafoe, he stated that the equipment was encountering numerous issues during both the winter and summer seasons. Mr. Dafoe recalls that he wrote the "Sidewalk Machine Report" after a particularly severe breakdown of the machine that he describes as "the final straw". This 'Sidewalk Machine Report' is further discussed in Section 3.1.3.
- e) Mr. Dafoe also told us that he considered the Trackless purchase to be an emergency⁸ procurement. He expressed concern that Napanee may not be able to meet the legislative standard, required by the Municipality Act, the following winter season and that there may be risks and consequences to residents potentially getting injured from sidewalks not being cleared in a timely manner. Waiting further to procure a replacement sidewalk machine could have impeded their ability to meet legislative requirements for the upcoming winter.
- f) Mr. Dafoe also discussed issues with a "lack of long-term planning surrounding equipment within Napanee" and that there wasn't an optimal process for fleet planning. The due diligence work that was being done was meant to be part of budget deliberations, but the "catastrophic failures" of the current machine pushed them to go for the purchase as soon as possible.
- g) When asked about the possibility of borrowing machinery from other municipalities, he explained that they were frequently borrowing equipment and that it was becoming difficult to continue doing so. Equipment was not always available to be borrowed when needed, and as such it was not a reliable option. The equipment that could be borrowed was also often not the appropriate type (for example, a Bobcat tractor that was known not to be suitable for sidewalk maintenance and was causing lawn damage).
- h) As CAO at the time of the Trackless procurement, Mr. Pinsent acknowledged in our interviews that he did not disagree about whether Napanee needed the new equipment, but rather the process that was followed by the Infrastructure Group to purchase the machinery was at issue. This is further corroborated in the Confidential CAO Report⁹ that was authored by Mr. Pinsent.
45. We understand that the Town's original Trackless machine was also used in summer maintenance and that problems with the equipment persisted in the Summer of 2022.
- a) On June 30, 2022, an email was received by the Town with a transcription of a voicemail from a Napanee resident complaining that the grass was too long on Town

⁸ An 'emergency' procurement is defined as a type of non-standard procurement in Napanee's Procurement By-Law.

⁹ Note that due to the confidentiality of this report, we have not included it as an Appendix to our report. Mr. Pinsent authored this report, although the date of the report is not recorded.



land next to their property and needed immediate attention. This email was eventually forwarded to Mr. Dwyer and Mr. Cuthill and Mr. Dwyer informed other Napanee employees that "Hey, just so we are aware, our trackless that cuts some of these areas is a will be down (sic) for a min of 10 days. If anyone receives any more calls." See *Appendix 2- 2022-06-30-Email Describing that Trackless Was Not Available for 10 Days-Privileged and Confidential*.

- b) In our interview with Mr. Dafoe, he recounted that over the summer of 2022, the Infrastructure group faced another catastrophic failure when the Trackless machine, also used for lawn trimming, broke in half¹⁰. Mr. Dafoe could not specifically recall the date of this catastrophic failure but suggested following-up with Mr. Cuthill.
- c) Mr. Cuthill noted that the Town "experienced the major frame break in March of 2022, then needed to do extensive work on the hydraulic system in June of 2022. These are two of the more serious repairs that were needed to take place. There were many other problems with this machine, though I believe that you are only concerned about summer of 2022. Also to reiterate as mentioned on the phone, this machine did not drive correctly after the catastrophic frame break and made it very unsafe to operate. As mentioned on the phone our mechanics did their best to make this machine operational for the 2022 – 2023 winter season though we were without an operational machine more then (sic) we had one. Finally this machine was pulled from service in 2023 as it was deemed unfit to operate."

46. Knowing that procurement of any replacement sidewalk machine would require a long lead time given the ongoing supply chain challenges in the industry following the impacts of the COVID-19 pandemic, we understand that the decision to begin urgently exploring the procurement of a replacement sidewalk machine was made by Mr. Dafoe, Mr. Cuthill, and Mr. Dwyer following the apparent breakdown and maintenance issues in the summer of 2022.

47. We understand that in making the decision to pursue the procurement of the sidewalk machine, Mr. Dafoe stated that he knew there were options available to his team to fund the purchase of the machine, considering the urgency of the purchase (e.g. using the Town's reserves).

3.1.2 Steps Taken by the Infrastructure Group to Determine How the Sidewalk Machine Could be Procured

48. As a result of the issues involving the sidewalk machine fleet during the winter of 2021/22, we understand that the Infrastructure Group began investigating replacement

¹⁰ As of the date of this report, we are still awaiting confirmation of the date of this catastrophic failure of the old Trackless machine.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

options for the existing Trackless sidewalk machine in the winter of 2022 but accelerated this process after the Trackless machine broke in half in the summer of 2022.

49. Mr. Cuthill and Mr. Dwyer engaged with certain vendors (who were known to have equipment that could be used by the Town and who had previously contacted Napanee) to seek information on available sidewalk equipment.

a) In our interview with Mr. Cuthill, he noted that he had started looking into replacing the current machine when he became responsible for the operations of the Public Works department. He knew there would be a need for a new machine. He also mentioned that the Town had been looking at options in previous years and talking to manufacturers to be aware of what was happening in the industry, and in particular about the manufacturing slowdowns that were occurring due to the COVID-19 pandemic.

b) Mr. Cuthill also noted that there had been "salesmen for the MacLean¹¹ machine coming around" with information about their machines. They had discussions with these salesmen who eventually brought a demo that was quite "different than what they had at the time".

c) In our interview with Mr. Dafoe, he noted that there were few manufacturers of snowplow equipment (three or four) from where Napanee could procure replacement machinery.

i. Mr. Dafoe had also noted the limited number of possible vendors in *Appendix 3-2022-08-15-Dafoe Sidewalk machine report-Privileged and Confidential*, where he described that there were "Only three known equipment manufacturers offer a year-round machine but only two meet municipal specifications." This 'Sidewalk Machine Report' is further discussed in Section 3.1.3.

ii. Mr. Cuthill referenced that "I have attached four quotes for machines that we have looked into, and from the best of our knowledge these would be the only suppliers that would offer a machine that would meet our year round needs." As part of an email that he sent to Mr. Dafoe, with a copy to Mr. Dwyer, on August 16, 2022, in which he provided his recommendation on which sidewalk machine would be most suitable for Napanee. See *Appendix 4-2022-08-16-Cuthill Recommendation for New Sidewalk Machine-Privileged and Confidential*.

¹¹ MacLean is another brand of sidewalk machine and we understand is the brand that was being recommended by Cubex Equipment, another supplier of snowplow machinery.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

- d) From our email and document review, we identified the following documents that appeared to be related to replacement sidewalk machine options:
- i. Marketing materials for a MacLean MV1500 tractor from Greg Braun of CUBEX Limited ("Cubex") to Mr. Dwyer from dated June 24, 2021 (that was also forwarded in an email by Mr. Dwyer to Mr. Cuthill on January 7, 2022). The original email from Greg Braun also refers to this MV1500 as "Very similar to the unit I showed you 2 winters ago. Let me know if you have any questions or want to see a fresh demo. Maybe with a broom?". See *Appendix 5-2021-06-24-Marketing Materials for MacLean MV1500 Sidewalk Tractor-Privileged and Confidential*;
 - ii. A quote for a new Trackless MT7 sidewalk machine from Tony Bowen of Joe Johnson Equipment ("Joe Johnson") addressed to Mr. Dwyer dated January 14, 2022 (that was also forwarded by Mr. Dwyer to Mr. Cuthill on August 12, 2022) that included details of a purchase option and a "Lease to Own" option. See *Appendix 6-2022-01-14-Quote from JJ for Trackless MT7-Privileged and Confidential*;
 - iii. An email conversation between Dan Gervais (from Joe Johnson) and Mr. Dwyer between February 24, 2022, and March 3, 2022, that discussed a demo of the Trackless sidewalk machine by Joe Johnson at Napanee that was scheduled to occur on March 15, 2022. See *Appendix 7-2022-02-24-Email between Dwyer and JJ to Arrange a Trackless Demo-Privileged and Confidential*;
 - iv. A quote for a 2019 demo unit of the MacLean MV1500, dated August 8, 2022, with approximately 300 hours of use, addressed to the Town of Greater Napanee and lists the customer contact as "Jeff" and that was valid for 10 days only. See *Appendix 8-2022-08-08-Quote from MacLean 2019 MV1500 quote-Privileged and Confidential*.
 - v. A request from Mr. Dafoe to Mr. Cuthill on August 8, 2022, to provide additional information that Mr. Cuthill had about "the sidewalk machine". Mr. Cuthill responded (on the same date) with details that he had, including costs of the "Used 2019 machine¹²". See *Appendix 9-2022-08-08-Emails Between Cuthill and Dafoe Examining the MacLean MV1500 quote-Privileged and Confidential*.
 - vi. An email dated August 9, 2022, from Mr. Cuthill to Mr. Dafoe in which he forwards the MV1500 demo unit quote from Cubex dated August 8, 2022, and notes that the vendor "now only have the one 2019 demo unit available for sale". The original August 8, 2022, email from Cubex also notes that this

¹² Based on this description, we believe that this is in reference to the MacLean MV1500 quote.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

equipment could be available "sooner than 4 months" and that "there is only this one unit available. It is not the exact same one we showed you but looks the same.". See *Appendix 10-2022-08-09-Email Between Cuthill and Dafoe Reviewing the MacLean MV1500 demo unit-Privileged and Confidential*.

- vii. An email dated August 12, 2022, at 8:14 AM from Mr. Dwyer to Mr. Cuthill on August 12, 2022, forwarding the January 14, 2022, quote from Tony Bowen of Joe Johnson for a Trackless MT7 where Napanee could lease to own the machinery. See *Appendix 11-2022-08-12-Email from Dwyer to Cuthill Forwarding January 14 Trackless Quote-Privileged and Confidential*;
- viii. On August 12, 2022, at 11:23 AM, Andrew Schmitt from Kaercher Municipal North America Inc. ("Kaercher") provided Mr. Dwyer with a quote for a C70 machinery, which was forwarded to Mr. Cuthill on August 12, 2022. See *Appendix 12-2022-08-12-Email from Kaercher to Dwyer re Quote for C70-Privileged and Confidential*;
 - Specifications of the C70 tractor from Andrew Schmitt of Kaercher were attached to this email. See *Appendix 13-2022-08-12-C70. Specifications 1 Attached to Email from Kaercher-Privileged and Confidential* and *Appendix 14-2022-08-12-C70. Specifications 2 Attached to Email from Kaercher-Privileged and Confidential*;
- ix. On August 12, 2022, at 12:02 PM, Andrew Schmitt from Kaercher provided Mr. Dwyer with a quote for a C992 Tractor, which was forwarded to Mr. Cuthill on August 16, 2022. See *Appendix 15-2022-08-12-Email from Kaercher to Dwyer re Quote for C992-Privileged and Confidential*. This email was forwarded to Mr. Cuthill where Mr. Dwyer noted "but its (sic) still a machine that I know nothing about";
 - Specifications of the C992 tractor Andrew Schmitt of Kaercher were attached to this email. See *Appendix 16-2022-08-12-C992 Specifications Attached Email from Kaercher-Privileged and Confidential*;
- x. An email dated August 12, 2022, at 1:26 PM from Greg Braun at Cubex informing Mr. Cuthill that there would be a 10 month lead time with an order for a new MacLean machine. See *Appendix 17-2022-08-12-Email from Cubex to Cuthill with Notice of 10 Month Lead Time -Privileged and Confidential*;
- xi. An email dated August 15, 2022, at 1:37 PM from Mr. Cuthill to Dan Gervais of Joe Johnson requesting a Trackless MT7 quote by that afternoon "As I have a meeting to discuss the potential quick purchase of a sidewalk machine." See *Appendix 18-2022-08-15-Email from Cuthill to JJ Requesting*



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

a Quote That Afternoon-Privileged and Confidential. In this email thread, the January 14, 2022, Trackless MT7 quote appears to have been forwarded to Joe Johnson;

- xii. An email dated August 15, 2022, from Dan Gervais of Joe Johnson to Mr. Cuthill with an attached revised quote for the MT7 that is forwarded to Mr. Dwyer on August 16, 2022. See *Appendix 19-2022-08-15-Email from JJ to Cuthill with a Revised Trackless MT7 Quote-Privileged and Confidential*;
 - A revised quote for the Trackless MT7 dated August 15, 2022, was attached to this email. See *Appendix 20-2022-08-15-Revised Quote from JJ for Trackless MT7-Privileged and Confidential*;
- xiii. An email dated August 15, 2022, from Greg Braun of Cubex to Mr. Dwyer and Mr. Cuthill that suggests that pictures of the demo unit were provided. Mr. Dwyer responded that "This machine actually looks in better shape than the one we seen (sic)". See *Appendix 21-2022-08-15-Email from Dwyer to Cubex re Pictures of MV1500 Demo Unit-Privileged and Confidential*. Mr. Cuthill also responds shortly thereafter noting "Thanks Greg, sorry things are taking a little longer, in order for us to make the quick purchase, we had to obtain quotes from other suppliers and are still waiting for finals (sic) to arrive. I have reached out to All again and asked if I can receive them by noon today. Then we will be in touch.". See *Appendix 22-2022-08-15-Email from Cuthill to Cubex with Update-Privileged and Confidential*;
- xiv. An email dated August 16, 2022, from Mr. Cuthill responding to Joe Johnson's Dan Gervais's inquiry about the purchase where he notes that "Still working on it, we ended up having to postpone yesterday afternoon, and a couple of key members are off today. Trying to come up with a final decision tomorrow morning.". See *Appendix 23-2022-08-16-Email from Cuthill to JJ with Update-Privileged and Confidential*; and
- xv. An email dated August 17, 2022, from Dan Gervais to Mr. Cuthill where he noted that "December is still good pending any unforeseen component delivery issues.". See *Appendix 24-2022-08-17-Email from JJ to Cuthill re Additional Details for Trackless Order-Privileged and Confidential*.

50. A total of five sidewalk machine options from three different vendors appeared to have been identified and reviewed by Mr. Dwyer and Mr. Cuthill between June 24, 2021, and August 15, 2022. We have summarized all of the quotes and information gathered by the Infrastructure Group for these five options below:



The Corporation of the Town of Greater Napanee
 Forensic Review of the Trackless Procurement
 Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors
 October 31, 2024

	MacLean MV5	MacLean MV1500	Holder C70	Holder 992	Trackless MT7
Vendor:	Cubex Limited	Cubex Limited	Kaercher Municipal North America	Kaercher Municipal North America	Joe Johnson Equipment
Model Year:	2021	2019	Not listed	2018	Not listed
New/Used:	New & Unused	Demo unit, 300 hours	Not listed	New & Unused	New & Unused
Serial No:	1522	Not listed	MUC240 159151	53400540	Not listed
Price without options:	\$148,000	\$128,874.10	\$148,803.24	\$136,000 (discounted)	\$158,299
Price with all options:	\$181,645	\$193,274.18	\$183,552.90	\$168,932.79	\$240,019
Availability:	10 months	4 months	Not indicated	Not indicated	December 2022 (i.e. 3-4 months)

3.1.3 Vendor Selection Process Followed by the Infrastructure Group

51. After identifying potential vendors for the sidewalk machine between the summer of 2021 and August 2022, it appears that Mr. Dafoe, Mr. Cuthill, and Mr. Dwyer selected a vendor for the purchase of a new Trackless MT7 sidewalk machine from Joe Johnson on August 17, 2022.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

- a) In our email review, we found an email dated June 16, 2022, from Mr. Dafoe to Mr. Cuthill and Mr. Dwyer, where he was asking them if they knew the specifications and lead time for a grader purchase that they may need to tender or "look at Canoe¹³". In this same email, Mr. Dafoe asked Mr. Cuthill and Mr. Dwyer to see "... if the trackless machine is available. As long as we can afford it I will be recommending both (I assume grader is a year away so we likely could purchase the side walk machine)". In our interview with Mr. Dafoe, we asked if he had intended to pursue the Trackless machine from the start. He explained that given the value of standardization (i.e. where parts and components for the original Trackless machine could also be used for a new Trackless machine), there was a basic assumption that the next machine would also be a Trackless machine. However, he and his team still intended to collect quotes in order to seek the most economical and efficient option for the Town.
- b) In this same email of June 16, 2022, it appeared there may have been a plan to inform Council "during budget "about planned heavy equipment purchases. In this email, Mr. Dafoe commented on including heavy equipment on a "financing spreadsheet then we can discuss replacement cycles and your priorities. Paul is crunching numbers after the Enterprise presentation so we can present a plan to Council (during budget) that includes new equipment and appropriate replacement cycles". See *Appendix 25-2022-06-16-Email from Dafoe to Cuthill and Dwyer-Privileged and Confidential*.
- c) In our interview, Mr. Dwyer noted that they decided to get the same machine as what they have in their fleet (Trackless) so that they are stocking the same parts and can benefit from making use of them when needed. Mr. Dafoe echoed the value of standardization of equipment.
- d) In our interview, Mr. Cuthill recalled that he had prepared material explaining the available options and why the best option would be the Trackless option, and gave it to Mr. Dafoe to help garner the required approval for the purchase. He advised us that Mr. Dafoe was to discuss the unexpected purchase with the CAO at a Senior Leadership Team ("SLT") meeting but the SLT meeting was cancelled and never happened.
 - i. As part of our email review, we found an email dated August 16, 2022 (see *Appendix 26-2022-08-16-Email Noting Cuthill Purchase Recommendation and Rationale-Privileged and Confidential*), where Mr. Cuthill provided a rationale to Mr. Dafoe and Mr. Dwyer about the purchasing options from

¹³ Canoe is a cooperative buying group tailored to municipalities, non-profits, and the public sector across Canada. Canoe is the largest municipally focused cooperative purchasing group in the country.



"...the only suppliers that would offer a machine that would meet our year round needs". He was recommending the Trackless MT7 because:

- It was a new machine that was four years newer than the other available alternative and had no prior use;
- It was only \$24,000 more expensive than the other options; and
- The manufacturer had ramped up production of these units that would allow the Town to receive the equipment by December, which should have allowed Napanee to benefit from its use for the 2022/2023 winter season.

- e) In our interview, Mr. Dafoe indicated that he prepared a "Sidewalk Machine Report" (that was dated August 15, 2022) to present to the CAO to help seek approval for the purchase. See *Appendix 3-2022-08-15-Dafoe Sidewalk machine report-Privileged and Confidential* for a copy of this report.
- i. In our review of this report, we noted that it is titled as "Public Works – Equipment Purchase Rationale (2023 sidewalk machine)" and outlines the issues with the existing equipment, the concerns that had arisen in 2022 with the existing equipment, the timing and equipment availability, and a summary of the cost, warranty, and the pros and cons of the three available units that were available for purchase and would meet the minimum municipal specifications.
- ii. The report also includes a "Staff Recommendation" section where the purchase of a "2023 Trackless MT7 Articulating All-Season Tractor for the sum of **\$195,219 plus HST**" was being recommended by the staff.
- f) From our email review, we found an email dated August 15, 2022, where Mr. Cuthill informed Cubex (the vendor that could supply the MacLean sidewalk machine options) that the Town needed more time to make their purchasing decision due to the need to obtain quotes from other suppliers and waiting for final copies, and that he reached out to all suppliers to send their final quotes by noon that day. See *Appendix 22-2022-08-15-Email from Cuthill to Cubex with Update-Privileged and Confidential*.
- g) From our email review, we found an email dated August 17, 2022, between Mr. Cuthill and Dan Gervais from Joe Johnson with several queries before finalizing their sidewalk machine purchase decision. The queries included information on the warranty, pricing flexibilities, and confirmation of a December delivery date. Joe Johnson provided this information on the same day. See *Appendix 24-2022-08-17-*



The Corporation of the Town of Greater Napanee
Forensic Review of the Trackless Procurement
Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors
October 31, 2024

Email from JJ to Cuthill re Additional Details for Trackless Order-Privileged and Confidential.

h) From our document review, we reviewed an email dated August 17, 2022, from Mr. Cuthill to Greg Braun of Cubex informing them that Napanee has decided to purchase the sidewalk machine from a different supplier. See *Appendix 27-2022-08-17-Email from Cuthill to Cubex Informing Them of Purchase Decision.*

52. KPMG also performed certain limited research procedures to understand if there were any relationships between the Infrastructure Group, namely Mr. Dafoe, Mr. Cuthill, and Mr. Dwyer, and Joe Johnson.

53. A number of online, social media, and corporate registry sources were reviewed. No relationships or connections were identified through these open source searches between the Napanee employees in the Infrastructure Group and Joe Johnson or its representatives.

3.1.4 Steps Taken by the Infrastructure Group to Seek Approval for the Trackless Purchase

54. In our interview, Mr. Dafoe commented that he was attempting to schedule a meeting between himself and Mr. Dowber to discuss the procurement strategies for purchasing Trackless and to understand whether Council approvals were needed..

a) On August 10, 2022, in an email exchange between Mr. Dafoe and Mr. Dowber, Mr. Dafoe requested a meeting to discuss "approach to procurement". Mr. Dowber remarked that he was out of the office and suggested that they meet the next day. Mr. Dafoe agreed to meet with Mr. Dowber following an SLT meeting the next day. See *Appendix 28-2022-08-10-Email from Dowber to Dafoe re Procurement of Sidewalk Machine-Privileged and Confidential.*

b) Mr. Dafoe told us that he did eventually discuss the procurement with Mr. Dowber on the next day following the SLT meeting that took place on August 11, 2022. Mr. Dafoe stated that he asked Mr. Dowber what "boxes need to be ticked" to make sure the purchase was appropriate. We were told by Mr. Dafoe that the outcome of that discussion was that Mr. Dowber¹⁴ advised him that he should get approval for the purchase from Mr. Pinsent and that he would take an update to Council in the fall.

¹⁴ Because we did not have access to speak to Mr. Dowber over the course of our review, we were unable to confirm or refute this discussion.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

55. After speaking with Mr. Dowber, we understand that Mr. Dafoe was preparing to seek approval for the Trackless procurement and had intended to discuss the purchase at the August 17, 2022, SLT meeting. However, this meeting appears to have been cancelled, based on the information below:

- a) We inquired with Ms. Walters on May 13, 2024, if there were any meeting minutes for the planned August 17, 2022 SLT meeting. She noted that she did not attend any SLT meeting that day as she and Mr. Pinsent were both travelling back from the AMO conference in Ottawa at the time. She also inquired of Nathan Murphy ("Mr. Murphy"), who was responsible for preparing agendas for SLT meetings at that time, and he confirmed that his records show that the meeting on August 17, 2022, was cancelled. She also reviewed her personal notes from the August 11, 2022, SLT meeting and noted that she had written "No SLT next week"..

56. In our interview, Mr. Dafoe recalled that the SLT meeting scheduled for August 17, 2022, did not take place. Instead, he informed us that a one-on-one meeting occurred between Mr. Pinsent and himself.

- a) In our interview, Mr. Dafoe told us that an in-person meeting took place on August 17, 2022, between himself and Mr. Pinsent, which he initiated because of the sensitive timeline to purchase Trackless. Mr. Dafoe acknowledged that he sought out Mr. Pinsent for this meeting, that no other Napanee employees were present, and that he could not recall where the meeting took place. The purpose of this meeting was to obtain Mr. Pinsent's approval for the purchase of the Trackless machine, prior to him directing Mr. Cuthill to proceed with the purchase, as he had understood from Mr. Dowber this was required to purchase the sidewalk machine. In this brief meeting, Mr. Dafoe noted that only the sidewalk machine purchase was discussed and Mr. Dafoe recalls that Mr. Pinsent told him specifically to "go, go get it". Mr. Dafoe stated that at the time, he interpreted these words to be an approval to purchase the Trackless machine, especially in the context of long lead times for machine delivery and the urgency of the purchase. However, Mr. Dafoe also commented that based on what transpired with the Trackless procurement, he will never take another verbal directive again. He also reflected that he is "old school and I take somebody for their word when it's a colleague".

- b) In our interview with Mr. Pinsent, he did not appear to recollect this August 17, 2022 meeting and does not recall saying "go, go get it". However, he did specifically remark that "Even if I said go ahead and purchase, everybody knows that even if I say, 'go ahead and purchase' there is still a process to do it.". Mr. Pinsent contends that even if he had used these words (i.e. "go, go get it"), it would have been meant as an approval for the Infrastructure Group to proceed with the proper procurement process to procure the sidewalk machine, and would have never intended for these words to represent an approval for the Infrastructure Group to purchase Trackless without regard for the established procurement process. He insists that the



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

processes in the Procurement By-Law, which is also a requirement under the Municipalities Act, should have been followed and that he would have never given an approval of this type verbally.

- c) In Ms. Walters May 13, 2024, email to us, she stated that she and Mr. Pinsent were both travelling back from the AMO Conference in Ottawa on August 17, 2022. She further recollected that she was not in the office on August 17, 2022, and returned to work on August 18, 2022. She also noted that Mr. Pinsent was not in the office the rest of the week as he had become ill, following the Conference.
- d) We followed-up with Mr. Pinsent and he recalls attending the full AMO Conference in Ottawa, which we understand took place between August 14-17, 2022. He also noted that he may have returned to the office briefly after the Conference but then he became ill and had to return home soon after.

57. Mr. Dafoe stated in our interview that, following this August 17, 2022 meeting, he conveyed what he believed to be Mr. Pinsent's approval for the Trackless procurement to Mr. Cuthill verbally and then subsequently in an email on August 23, 2022, by directing him to attach the Sidewalk Machine Report (*Appendix 3-2022-08-15-Dafoe Sidewalk machine report-Privileged and Confidential*) and "all of the MacLeans/Trackless quotes to the PO". See *Appendix 28-2022-08-23-Email from Dafoe to Cuthill to Attach Sidewalk Machine Report to PO-Privileged and Confidential*.

- a) In our interview, Mr. Cuthill commented that it was "unorthodox to purchase something of this size without going to Council". As such, Mr. Cuthill wanted something in writing that included Mr. Dafoe's approval for the sake of keeping proper documentation. When Mr. Dafoe came back to the office and conveyed the apparent approval for the Trackless procurement, Mr. Cuthill went ahead and issued the PO to Joe Johnson for the purchase of the Trackless machine. Mr. Cuthill recalled sitting in his office with Ms. Tara Bruce and Mr. Dwyer when "Peter come (sic) back up to the office (unintelligible) I don't forget it – and, ugh, he's like 'you're good to go with the purchase'. Ummm, Paul will update ahhh Council ... umm, and (unintelligible) just go ahead and write the PO.¹⁵". Mr. Cuthill also recounted that he was told by Mr. Dafoe that Mr. Pinsent had given direction during a meeting to make the purchase and that Mr. Dowber would update Council at a later date.
- b) In this August 23, 2022 email from Mr. Dafoe to Mr. Cuthill, it was also noted that Mr. Dowber would update Napanee's Council in the fall.

¹⁵ Direct quotation from Mr. Cuthill's interview on November 14, 2023.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

- c) However, in our interview, Mr. Dafoe remarked that he later found out that this update never occurred and that the purchase was overlooked for a long time given everything happening in the Town (election, budget deliberations, Mr. Dowber's employment ending, etc.).
 - d) In our interview with Mr. Pinsent on May 10, 2024, he does not recall being involved in any discussions about Mr. Dowber being tasked with the responsibility to take the Trackless procurement to Council. He also stated that he "knew for a fact" that there was no report that went to Council to buy a snowplow.
58. Mr. Dafoe acknowledged that in hindsight, there were many opportunities at various Council and other meetings to raise the Trackless procurement between August 2022 (when the Trackless purchase was initiated) and March 2023 (upon the 'discovery' of the Trackless purchase). However, Mr. Dafoe admits that neither he, nor his team, took the opportunity to discuss the Trackless procurement at these subsequent meetings.
59. Mr. Dafoe stated that his only motivation for issuing the PO on August 17, 2022, was due to the long lead times associated with obtaining a sidewalk machine. He issued it as soon as possible once he believed that he had received verbal authorization from Mr. Pinsent.
60. Based on this information, if the approval was received before the Trackless PO was issued, it is our understanding that the approval would have most likely occurred between August 15, 2022 (when the Sidewalk Machine Report was authored by Mr. Dafoe) and no later than August 17, 2022, the date that the PO was issued to Joe Johnson, the Trackless vendor.
- a) We are aware that Mr. Pinsent was attending the AMO Conference in-person in Ottawa between August 14-17, 2022. Mr. Pinsent's attendance at the AMO Conference was corroborated by Ms. Walters, who was also in attendance at this Conference.
 - b) In an email from Mr. Pinsent to Mr. Brandt Zatterberg ("Mr. Zatterberg") dated Wednesday, August 17, 2022, at 1:05 pm, Mr. Pinsent replied from his mobile device "Just got this today. We can chat further tomorrow when I am in.", which might suggest that he was not intending to be in the office on the date the PO was issued (i.e. August 17, 2022) and might not have been available to provide an in-person approval to purchase Trackless between August 15-17, 2022.
 - c) In an email from Mr. Pinsent to Ms. Walters on August 19, 2022, he noted that he "Fell sick yesterday; went home at 11:00.". In this context, yesterday would have been August 18, 2022.



d) We reached out to Mr. Dafoe again on May 21, 2024, to check with him if he was certain that the one-on-one meeting (that he told us about) with Mr. Pinsent occurred on August 17, 2022, whether the meeting was held in-person, and if there was any possibility that the meeting occurred on a different date or possibly over the phone. Mr. Dafoe responded, "I would have to look back at notes to confirm the day but I am absolutely positive the meeting was in person and it was prior to me directing Jeff to proceed with the purchase."

61. Therefore, unless Mr. Dafoe is able to clarify the date of this one-on-one meeting with Mr. Pinsent, it is possible that Mr. Pinsent may not have been in a position to provide a verbal approval to Mr. Dafoe between August 14-17, 2022.

62. However, it should be noted that based on our review of the Procurement By-Law, the approvals that are required for a particular procurement are driven based on the categorization of the procurement (i.e. exempt, standard, non-standard).

63. For instance, in the non-standard procurement category, there is a sub-category called "Emergency" where "the Department Head may make such purchases without the involvement of purchasing staff and/or a competitive bidding process and without regard to the authorization limits and is authorized to do so in the most expedient and economical means possible. When feasible, purchasing staff shall be contacted to assist in obtaining quotes, securing services, and issuing purchase orders."

64. For further details of our assessment of the categorization of the Trackless procurement, see Section 3.3.3.

3.1.5 Trackless Purchase: Issuance PO

65. We reviewed an email dated August 17, 2022, from Mr. Cuthill to Dan Gervais of Joe Johnson that contained a document attachment of the PO for the Trackless purchase. See *Appendix 29-2022-08-17-Email from Cuthill to JJ with PO to Purchase Trackless-Privileged and Confidential*.

66. PO 35737 was issued on August 17, 2022, to Joe Johnson in the amount of \$195,219.00, excluding the cost of a Ride Control of \$2,820 that was handwritten onto the PO. This PO was authorized by Mr. Cuthill with his signature. See *Appendix 30-2022-Trackless Invoice and PO-Privileged and Confidential*.

67. On August 23, 2022, Mr. Dafoe asked Mr. Cuthill in an email to attach the "Sidewalk machine report" to the PO, and stated that Mr. Dowber, the Treasurer for Napanee at the time, would update Council on the matter in the fall. See *Appendix 28-2022-08-23-*



The Corporation of the Town of Greater Napanee
Forensic Review of the Trackless Procurement
Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors
October 31, 2024

Email from Dafoe to Cuthill to Attach Sidewalk Machine Report to PO-Privileged and Confidential.

3.1.6 Notifications from the Trackless Vendor of the Delivery Delay

68. As stated in various interviews with members of the Infrastructure Group, part of the reason the Trackless machine was selected was the higher likelihood of having it be delivered in December of 2022¹⁶, in time for the winter season.

69. However, the Trackless machine was not delivered on time due to manufacturing delays, most of which have been attributed to supply chain issues that had occurred during the height of the Covid pandemic. As a result, snow clearing operations had to proceed for the winter 2022/23 season with the current fleet on hand (See *Appendix 31-2023-01-25-Trackless Delivery Delay Letter-Privileged and Confidential* for a copy of the letter provided by Joe Johnson, advising Napanee of this delay).

3.1.7 Receipt of Trackless Invoice and Discovery that the Trackless Purchase did not Appear in Napanee's Budget for Fiscal 2022 or 2023

70. We understand, the Finance team first became aware of the Trackless purchase with the receipt of an initial invoice for \$22,939 from Joe Johnson Equipment for "ONE (1) NEW 2023 TRACKLESS 51' RIBBON SNOWBLOWER W/SIDEWALK CHUTE" dated February 1, 2023, that was connected to Napanee purchase order ("PO") 35737, dated August 17, 2022 (see *Appendix 1- Joe Johnson-U00696-Snowblower Component-Privileged and Confidential* for a copy of this invoice and PO).

71. From our review of an email conversation on March 7, 2023, we understand that Jennifer Remington ("Ms. Remington"), as Public Works Coordinator at the time, received this Trackless invoice and was looking for the 'capital account' that would be required to record this invoice in the Town's accounting books and records (See *Appendix 32-2023-03-07-Email Conversation between Remington-Davidson-Cuthill re Trackless Approval-Privileged and Confidential*).

72. When she could not locate this information, she asked Ms. Davidson and Mr. Cuthill for assistance. In this March 7, 2023, email conversation Ms. Davidson remarked to Mr. Cuthill that "I don't see this (i.e. the Trackless invoice) on the 2022 capital sheet or a report to council for this addition. Where is the approval for this purchase?".

73. Mr. Cuthill responded on March 7, 2023, that "I have had discussions with Pete, Paul, and John regarding the approval of this purchase. I was given the go ahead to place this

¹⁶ As per guidance provided by Joe Johnson in *Appendix 24-2022-08-17-Email from JJ to Cuthill re Additional Details for Trackless Order-Privileged and Confidential*.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

order, as per the attached email from Peter it states that Paul was going to update Council in the fall. I do not know if this ended up taking place or not".

74. There were two attachments to Mr. Cuthill's email response. They were as follows:

- a) August 16, 2022 email to Mr. Dafoe from Mr. Cuthill that attached four vendor quotations for a sidewalk machine and Mr. Cuthill's purchase recommendation (see *Appendix 26-2022-08-16-Email Noting Cuthill Purchase Recommendation and Rationale-Privileged and Confidential*); and
- b) August 23, 2022 email from Mr. Dafoe to Mr. Cuthill asking him to attach the Sidewalk Machine Report (which indicated that the purchase was for a 2023 sidewalk machine in the report title) and quotes to the PO and that "Paul will update Council on this expenditure in the fall" (see *Appendix 28-2022-08-23-Email from Dafoe to Cuthill to Attach Sidewalk Machine Report to PO-Privileged and Confidential*).

75. Around this time and leading up to a planned Council meeting on March 30, 2023, Napanee staff were preparing the budget for fiscal 2023. We understand from Mr. Pinsent that Ms. Davidson was also conducting a review of Napanee's reserves at this time.

76. On March 24, 2023, at 1:20 pm, an email from Ms. Davidson to Ms. Walters and Mr. Murphy, asked if they knew whether Mr. Dowber had taken the report to Council. On March 29, 2023, Ms. Walters indicated that she was not able to find "any report with this information on a Council agenda" (see *Appendix 33-2023-03-24-Email from Davidson to Murphy and Walters Discussing Taking Report to Council-Privileged and Confidential*).

77. In our review of the meeting minutes for the Public Council meetings from August 9, 2022 until February 13, 2023 and the Closed Session Council meetings from June 2022 to May 2023, we did not observe any reports on the Trackless procurement being made to Council, with the exception of the meeting from March 30, 2023, which will be discussed further below.

78. On March 24, 2023, at 3:18 pm, an email from Ms. Davidson to Mr. Cuthill asks him to complete the "rest of the budget enhancement sheet for the sidewalk machine for budget next week". She noted that she had "filled out the bones, but if you can add the reasoning that would be great". Ms. Davidson followed up with Mr. Cuthill in another email dated March 27, 2023, at 2:35 pm asking him to complete "this" (likely a 2023 budget enhancement sheet noted in email) on that day as Mr. Pinsent had wanted to send the document to Council with the presentation (likely the budget presentation as there was a Council meeting scheduled on March 30, 2023, to discuss the proposed budget). In an email on March 27, 2023, at 2:56 pm, Mr. Cuthill noted that he would complete the document immediately. On this same date, at 4:03 pm, there was an email from Mr.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

Cuthill to Ms. Davidson with the "BES sheet¹⁷" attached to the email (see *Appendix 34-2023-03-27-Email from Cuthill to Davidson with Completed Budget Documentation-Privileged and Confidential* for a copy of this email and *Appendix 35-2023-03-27-Completed Budget Documentation by Cuthill for Sidewalk Machine-Privileged and Confidential*, for a copy of the completed BES sheet).

79. On March 27, 2023, at 1:34 pm, Ms. Davidson sent a draft Budget Presentation to the SLT group (which we understand would include Mr. Dafoe), along with other employees, including Mr. Cuthill. In this email, Ms. Davidson requested they review the budget and let her know if there are any issues before they make it available to Council that afternoon (i.e. March 27, 2023) (see *Appendix 36-2023-03-27-Email from Davidson to Napanee Mgmt re Budget Presentation- Privileged and Confidential* for a copy of the email). A copy of this email and this draft version of the Budget Presentation was obtained from Mr. Dafoe on January 30, 2024, following his interview. We note that on slide 18, there is a listing of Capital Items, which includes a "Sidewalk Plow".
80. From our interview with Mr. Pinsent, we understand that Ms. Davidson alerted Mr. Pinsent around this time of the Trackless purchase. Mr. Pinsent recalls that Ms. Davidson came to him and noted that there was a big purchase 'charged to capital' but that she could not locate the approval for the purchase. She told Mr. Pinsent she had reached out to Mr. Dwyer about the purchase, who explained that it was supposed to have been taken to council by Mr. Dowber in the fall following the election.
81. We understand from Mr. Pinsent that he reacted immediately by checking to see if he had provided any approval for this purchase. He did not find any emails to support that an approval was provided. He also checked with Mr. Murphy to see if there were any SLT meeting minutes where the purchase was raised or discussed. Mr. Pinsent remarked that he generally reviewed funding decisions with the SLT before proceeding with a significant purchase but that no such minutes were found. He also recalls having reached out to Mr. Zatterberg, GM of Community and Corporate Services at the time, to see if he could remember any discussions about the machine. According to Mr. Pinsent, Mr. Zatterberg did not recall any such discussions.
82. Mr. Pinsent subsequently undertook his own internal investigation and requested that Napanee's IT Manager search and retrieve whatever emails he could find relating to the procurement and purchase of Trackless. Content searches were performed on various terms including Plow, Trackless, Sidewalk for any and all email custodians.

¹⁷ The 'BES sheet' is the Budget Enhancement Sheet. We understand that this document is prepared to provide rationale for capital purchases and is used to propose capital expenditures for inclusion and approval in the Town's budget.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

83. Based on the emails produced by the Town's IT Manager, Mr. Pinsent concluded that there was no written record of him having approved the Trackless purchase and he believed that the Procurement By-Law had been bypassed.
84. We understand that Mr. Pinsent immediately raised the situation with the Mayor and it was decided that an urgent Closed Session of Council would take place immediately preceding the Public Council Meeting that was scheduled for March 30, 2023.
85. We understand from our interview with Mr. Dafoe where he appeared to be referring to notes he had gathered, that he and Mr. Pinsent discussed the purchase on March 29, 2023, during a phone call around 4:30 pm. Mr. Dafoe mentioned that Mr. Pinsent told him that "Council was not happy" and he wanted to know if Mr. Dafoe would be able to discuss the purchased with him and be present for a Closed Session of Council scheduled for the following morning. Mr. Dafoe told him he would be there, reminded Mr. Pinsent of the Sidewalk Machine Report that he had provided to Mr. Pinsent the previous summer, and provided a verbal summary of this particular report.
86. Mr. Pinsent also authored a Confidential CAO report¹⁸ in relation to the Trackless procurement that he presented to Council during the Closed Session on March 30, 2023. The report included a proposed resolution for Council's consideration, some background on the matter at hand, and CAO recommendations. In this document, Mr. Pinsent expresses that he remembers being advised of the requirement of new equipment for the winter and that he remembers being in support of it, but that no other information or authorization can be identified in the written records of the emails of the town.
87. The report also includes an email to Joe Johnson from Ms. Davidson and Mr. Pinsent requesting that delivery be delayed. It also includes excerpts of the Procurement By-Law, including:
- a) Section 9.1 (re; CAO role);
 - b) Section 9.4 (re: Department Managers/Directors roles);
 - c) Section 15.2 (re: Conditions of Delegated Procurement Authority);
 - d) Section 16 (re: Table of Authority for Purchasing and Payments);
 - e) Appendix "F" – Request for Quotations ("RFQ"); and
 - f) Appendix "G" – Request for Tenders ("RFT").
88. On March 29, 2023, at 4:28 pm, an email from Ms. Davidson to Dan Gervais of Joe Johnson requests "Per our telephone conversation regarding the remaining items on PO

¹⁸ Note that the report itself does not include a date.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

35737 issued from the Town of Greater Napanee. Please withhold shipment of these items. We are discussing with our Town Council tomorrow on the approval of this item. Once we have direction on how we are to proceed we will be in contact promptly."

89. Dan Gervais responded to this email the next day (March 30, 2023) at 6:28 am that "Unfortunately orders of this nature cannot simply be cancelled at this stage. Before I run this up to my director, can you please provide a reason and plan for this cancelation. Please understand that there has been much time and investment in this order. The process took over a year. We provided a budget quote in January of 2022, a live demonstration in March of 2022 and a final quote that we understand was in the budget and approved by council. This is an essential product that the Town needs."
90. On March 30, 2023, at 6:37 am, Ms. Davidson forwarded this response from Dan Gervais to Mr. Pinsent asking whether Mr. Pinsent or Ms. Davidson should respond. In this same email, she also stated "This is full of BS as well."
91. Mr. Pinsent responded to Ms. Davidson on the same day at 6:45 am that "This was baked before they even talked to anyone about it. The emails Dave provided me corroborate the fact that it was ordered on the 23rd of August. About 2 weeks after Peter mentioned it to Paul about procurement.". Mr. Pinsent also noted that he would respond to Dan Gervais (see *Appendix 37-2023-03-29-Email Conversation re Request to Delay Trackless Delivery-Privileged and Confidential*).
92. On March 30, 2023 at 6:48 am, Mr. Pinsent responded to Dan Gervais's email that "As the treasurer has mentioned, please hold off on any further processing of this order. I will provide further details on this issue later today". We note that Dan Gervais responded at 7:27 am that "The machine is most likely already in transit. I will check on it but I can't guarantee that it won't show up at your municipal yard."(see *Appendix 38-2023-03-30-Email Conversation re Request to Delay Trackless Delivery-Additional-Privileged and Confidential*).
93. We understand that Town management discussed this Trackless situation and it was eventually agreed that Joe Johnson would keep the Trackless machine in their storage until a decision was made by Napanee.
94. Mr. Dafoe recollects coming to the office early on the morning of March 30, 2023, to prepare for the Closed Session of Council (including printing copies of the Sidewalk Machine Report) that could be provided for each Council Member. He also recalled meeting with Mr. Pinsent briefly and providing him copies of the report. Mr. Dafoe then noted that Mr. Pinsent seemed to remember the report at that time and then told Mr. Dafoe that he would no longer be needed for the Closed Session of Council that morning.
95. On March 30, 2023, a Closed Session of Council occurred at 9 am. The purpose of this meeting was to review the Confidential CAO Report in relation to the Trackless purchase.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

96. We understand from the meeting minutes of this Closed Session of Council that:

- a) Mr. Pinsent spoke to the Confidential CAO Report that was provided to Council at the meeting;
- b) Council directed the CAO to speak to the vendor to determine the Town's options going forward (which had already been undertaken on March 29/30, 2023, prior to the Council meeting as per the email exchange between Ms. Davidson, Dan Gervais, and Mr. Pinsent);
- c) Council discussed the need for an investigation to better understand what happened;
- d) Mr. Pinsent suggested that a detailed review of the procurement process also be undertaken;
- e) Adopted a resolution to receive the CAO's Confidential Report and move forward on these matters; and
- f) Mr. Dafoe was not in attendance at this meeting.

97. March 30, 2023, was also the planned date of a Special Session of Town Council to review Napanee's proposed budget for the 2023 fiscal year. We understand that this was the fourth session where Napanee's 2023 budget was being discussed and that this session began upon the completion of the March 30, 2023, Closed Session of Council.

98. We reviewed the following publicly available documents in relation to this meeting:

- a) A copy of the Budget Presentation that appears to have been given to Council and was presented at the March 30, 2023, Special Session of Council that was found on Napanee's website¹⁹. We note that on slide 18, there is a listing of Capital Items, which includes a "Sidewalk Plow";
- b) A copy of the 2023 Capital Budget was also found on Napanee's website²⁰. We note that under the category of 'Transportation', there is record of a Sidewalk Machine of \$200,000;

¹⁹ Source:

<https://greaternapanee.civicweb.net/filepro/documents/180777/?preview=183936&attachmenturl=%2FFileStorage%2FE4E9D2F0456D44DA817E2D09FA285A3A-Budget%252520Presentation%252520-%252520March%25252030th%2525202023.pdf>

²⁰ Source :

<https://greaternapanee.civicweb.net/filepro/documents/180777/?preview=183936&attachmenturl=%2FFileStorage%2F13A7FE4C86DF44D18434A391714D71A1-2023%252520Capital%252520Budget.pdf>



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

- c) Copies of the Budget Enhancement Sheets as supplemental documentation for the 2023 Capital Budget were also found on Napanee's website²¹. We note that there is a Budget Enhancement Sheet for a "Sidewalk Machine" that was included on pages 6-7 of this document; and
 - d) The meeting minutes to this March 30, 2023, Special Session of Council²².
99. The YouTube recording of this meeting²³ was also reviewed by KPMG. From our review, we note the following discussions:
- a) At the start of this meeting, Council Members were asked by the Mayor to disregard the Budget Enhancement Sheet for a Sidewalk Machine for the meeting;
 - b) Initially, the details of the Sidewalk Machine were excluded from the Treasurer's presentation of the Capital Items on slide 18 of the Budget Presentation. However, the Treasurer then referenced the Agenda amendment outlined by the Mayor at the start of the meeting and noted that Town staff would like to instead recommend Council consider moving the funding for the "Sidewalk Plow" out of the 2023 capital budget and into Napanee's reserves;
 - c) Ms. Walters advised Council that they would need to propose a motion that Council move the proposed \$200,000 that was being allocated to the "Sidewalk Plow", currently noted as a Capital Item request for 2023, directly into the Town's reserves;
 - d) Council brought forward and passed this motion to "support the capital items included within the budget, with the exception that the \$200,000 for the 'Sidewalk Plow' be removed from capital expenses and be included as a \$200,000 transfer to reserves."
100. Following this meeting, we understand that a number of events took place including an email that was sent to the Mayor by Mr. Dafoe on July 12, 2023. This email was sent following a Council Meeting on July 11, 2023, and an SLT meeting that occurred on the morning of July 12, 2023, where Mr. Dafoe outlined concerns relating to a staff report about procurement that was presented during the Council meeting, that had an apparent impact on staff morale and possibly public trust.

²¹ Source:

<https://greaternapanee.civicweb.net/filepro/documents/180777/?preview=183936&attachmenturl=%2FFileStorage%2FB892EE4FC65E489BBAA777EC236EED10-Supplemental%252520-%252520Budget%252520Enhancement%252520Sheets.pdf>

²² <https://greaternapanee.civicweb.net/filepro/documents/180780/?preview=185864>

²³ <https://www.youtube.com/watch?app=desktop&v=xVE4bjnApMw>



3.1.8 Delivery of Trackless to Napanee

101. In our interview, Ms. Walters noted that the Town had conducted a risk analysis and ultimately recognized that there would be too many risks if they withdrew from the purchase of Trackless. As a result, Napanee completed the Trackless procurement.
102. We understand that the Trackless MT7 tractor was ultimately shipped to the Town from the vendor's storage on June 29, 2023.
103. Invoice U00671, dated June 29, 2023, for \$200,845.07 (including taxes) was issued by Joe Johnson Equipment to the "Town of Greater Napanee".
104. PO 35737 was attached to this invoice. See *Appendix 39-Joe Johnson-U00671-Remaining Invoice-Privileged and Confidential* for a copy of this invoice and PO.
105. This invoice was approved for payment by Mr. Dafoe on July 6, 2023.

3.2 Other Contextual Information

106. In addition to the Trackless procurement that is described in Section 3.1, there were other factors present during this purchase that are relevant to consider.

3.2.1 2022 Municipal Election

107. In Ontario, elections took place for municipalities, including the Town of Greater Napanee, on October 24, 2022.
108. It is our understanding that during an election, there is a period of time when certain aspects of Council's authority may change beginning on the Nomination Date (August 19, 2022) for a particular election.
109. Specifically, pursuant to section 275 of the Municipal Act, 2001, S.O. 2001, c. 25, from the point at which it can be determined that the new Council will include less than three-quarters of the members of the outgoing council, Council shall not take certain actions, including appointing or removing an employee at the level of Senior Management; negotiating, approving, and executing agreements for the disposal of any real or personal property belonging to the City of a value greater than \$50,000; and making unbudgeted expenditures or incurring liabilities in excess of \$50,000. These powers are to be transferred to the CAO.
110. As a result, for Napanee, much of Council's authority was transferred to Mr. Pinsent, the CAO, from the period of August 19, 2022, up until the inaugural meeting of the new Council on December 6, 2022. The By-Law to transfer this authority was signed on April 5, 2022.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

111. In our interview with Ms. Walters, she confirmed that the requirements of the Municipal Act were adopted by Napanee and this was a period of time where Council was not allowed to hire, fire, commit to expenses over \$50,000 that are not part of the budget, or dispose items over \$50,000 that are not part of the budget after August 19, 2022. They could delegate the CAO to do these tasks, which they have done. After August 19, 2022, and until December 6th, 2022, it was Mr. Pinsent who was responsible for making decisions.
112. From our review, we note that the decision to purchase the Trackless machine and the PO was issued to Joe Johnson, supplier of the Trackless sidewalk machine on August 17, 2022, which would have been immediately before the period of time when the CAO would have had the authority to make such decisions (i.e. August 19, 2022).
113. While a bylaw transferring authority to the CAO had not yet taken effect, Council may have retained its authority regarding authorization of procurement matters. However, it should be noted that the final council meeting before this bylaw came into effect occurred on August 9, 2022, although we understand that Napanee's Procedural By-Law permits the Mayor to call for an emergency Council meeting without notice at any time, even during an election period
114. We spoke to Mr. Dafoe about the fact that the 2022 municipal election was approaching and that Council would have limited powers once the nomination period began. Mr. Dafoe stated he was not sure about what limitations were in place for approvals during this period but that following advice received from Mr. Dowber, he assumed the CAO would have the maximum authority and so he went to him directly for approval, and assumed Mr. Pinsent would have informed him if there had been any issues.
115. In our interview, Mr. Pinsent commented that he would never exercise authority without the knowledge of the Mayor. He noted that it was his management style to be transparent.

3.2.2 Mr. Paul Dowber, Former Treasurer

116. Mr. Dowber was the Treasurer for the Town of Napanee until early February 2023.
117. We understand from our review that Mr. Dowber had apparently agreed to report the Trackless procurement to Council but neither Napanee staff nor KPMG have any evidence that this was ever reported to Council.
118. We requested to meet with Mr. Dowber but as at the date of this report, we have not heard back as to whether he would be willing to meet with us. As such, we were unable to interview Mr. Dowber to determine:



The Corporation of the Town of Greater Napanee
Forensic Review of the Trackless Procurement
Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors
October 31, 2024

- a) If he agreed to reporting the Trackless procurement to Council;
- b) Whether he delegated this task to another individual and why he did not involve Mr. McDonald in this procurement;
- c) Whether anything impacted his ability to report information to Council; and
- d) Whether this task was reassigned to someone else at any time.

3.2.3 Mr. Charlie McDonald, Former Director of Operational Audits

119. Mr. McDonald began working for Napanee in 1988 and held a number of positions during his employment. His last role with the Town, prior to his retirement in late December 2022, was the Director of Operational Audits.

120. Based on the timeline of the Trackless purchase, Mr. McDonald was employed when the procurement was initiated and the PO was issued. However, he had already retired when the first Trackless invoice was discovered.

121. From our discussion with Mr. McDonald, we understand that the Director of Operational Audits reported to the Treasurer.

122. According to Napanee's Procurement By-Law²⁴, it is the Finance Department's role to assist in the Town's procurement operations and that the Director of Operational Audits is responsible for:

- a) "Researching developments in Canadian public procurement requirements and best practices and recommending updates to this By-law and the Town's procurement procedures and protocols to reflect such developments and support the Town's procurement goals and objectives;
- b) Providing procurement advice and related services, including developing and maintaining the necessary forms, contracts, and solicitation document templates, for the purposes of fulfilling the procurement needs of the Town;
- c) Developing procurement strategies and continually analyzing Town's business requirements and spending patterns to identify opportunities for more strategic sourcing, including:
 - i. the standardization of goods and service(s) in conjunction with departments, where appropriate and feasible; and

²⁴ We understand from our discussions with Mr. McDonald that as part of his role, he authored the Town's Procurement By-Law



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

- ii. the consolidation of all similar goods and service(s) where appropriate and possible.
- d) Ensuring the consistent application of procurement procedures and protocols and providing procurement services in an efficient and diligent manner;
- e) Referring unresolved complaints from bidders or suppliers to the Bid Review Committee, as necessary, or where required in accordance with applicable procedures and protocols;
- f) Providing appropriate orientation, training and tools to Town employees involved in procurement activities; and
- g) Serving as the Town's representative as a member of co-operative purchasing groups and organizations, where such membership is determined to be in the best interests of the Town.”

123. The Town's Procurement By-Law also specifies that procurements above \$20,000 are led by "User Departments in consultation with Purchasing Staff" for the procurement of supplies or services, and above \$50,000 for the procurement of construction. For Emergency procurements, we understand that a Department Head may make emergency purchases without involvement of Purchasing Staff but that they should be contacted to assist in obtaining quotes "when feasible". We did not see any mandatory requirements to involve Purchasing Staff for any other type of procurement.

124. We understand from our interview with Mr. McDonald that he was never made aware of the procurement of a Trackless machine at any point during the process. During this interview, he expressed that he believed that he should have been involved in the Trackless procurement, given the dollar value involved.

3.3 Procurement Process based on Procurement By-Law

125. The purpose of this review was to help Napanee understand whether the Trackless procurement may have circumvented the Town's Purchasing Policy By-Law that existed for this type of procurement.

126. To understand whether the By-Law was bypassed, KPMG first reviewed the Procurement By-Law to understand which elements were applicable to the Trackless purchase and then assessed whether the Trackless procurement was compliant or non-compliant with each of these elements.



3.3.1 Procurement By-Law Overview

127. The Town's current Procurement By-Law (2021-0046) came into effect on September 28, 2021. It is comprised of 34 Sections and 15 Appendices.

128. Section 2 of this By-Law outlines the purposes, which include:

- a) Strengthening the Town's goals and objectives for accountable local government; and
- b) Describing the roles, responsibilities, and authorities of the Town's employees, CAO, and elected officials in carrying out the Town's procurement operations.

129. The procurement goals and objectives are described in Section 3 of the By-law and include:

- a) To obtain the best value for the Town when procuring goods and service(s) and construction;
- b) To encourage competitive procurement and ensure that the principles of fairness, objectivity, transparency, and accountability are reflected in the Town's procurement processes;
- c) To offer a variety of purchasing methods and to use the most appropriate method depending on the particular circumstances of the acquisition; and
- d) To adhere to the highest standards of ethical conduct and to avoid conflicts between the interests of the Town and those of the Town's employees, CAO, and elected officials.

130. The remaining goals and objectives can be viewed in *Appendix 40-Napanee Procurement By-Law-Privileged and Confidential*.

131. Section 8 describes the separation of roles and the role of Council. In particular, we note that:

- a) It is the role of Council to establish policy and to approve expenditures through the Town's budget approval process;
- b) Council delegates to the Town's employees the authority to incur expenditures in accordance with approved budgets through the procurement of goods, services, and construction in accordance with the rules and processes set out in this By-Law; and
- c) To facilitate Council's oversight role, Council may require Departments to obtain Council's authority to initiate specific procurements by identifying procurement



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

projects of interest, such as procurements that are of high value or involve significant risk, security concerns or significant community interest.

132. Section 9 outlines the general roles, responsibilities, and authorities that are delegated to the Town's employees through the By-Law. The following responsibilities are noted for these specific Napanee positions:

- a) The CAO is responsible for ensuring compliance with the By-Law and reporting serious or repetitive incidents of non-compliance to Council, as warranted, and submitting recommendations and reports to Council;
- b) The Treasurer is responsible for overseeing Purchasing staff, addressing and, where possible, resolving issues or concerns that arise in respect of a procurement process or the application and interpretation of the By-Law and the Town's procurement procedures and protocols and seeking guidance and advice from the CAO and the Clerk, as required;
- c) The Director of Operational Audits/Finance Department is responsible for providing procurement advice and related services, including developing and maintaining the necessary forms, contracts, and solicitation document templates, for the purposes of fulfilling the procurement needs of the Town;
- d) Department Managers/Directors are responsible for:
 - i. Exercising their authority for all procurement activity within the prescribed limits of the By-Law,
 - ii. Ensuring that all procurement activities and decisions are authorized by this By-Law and are carried out in accordance with the Town's procurement procedures and protocols,
 - iii. Notifying the Treasurer and consulting with the CAO upon discovery of instances of non-compliance to obtain advice with respect to mitigating potential risks to the Town arising from the non-compliance; and
 - iv. The Department Manager or designate, shall inform the Finance Department of supplies and/or services with a total value exceeding \$20,000 (or for consulting and professional services exceeding \$50,000), detailing departmental requirements and including budgetary limits and authorization.
- e) Employees of all Departments are responsible for complying with the By-Law.



133. Section 12 provides an overview of the purchasing procedures that apply to all procurements, including:

- a) All costs to the Town, including as applicable, acquisition, maintenance, replacement, disposal, and training, delivery, installation and extension options, less applicable rebates or discounts and including the recoverable portion of the HST as applicable for the specific procurement request, shall be included in determining the procurement process to be followed. (Paragraph 12.1)
- b) The dollar values identified in this section represent the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, considering premiums, fees, commissions and interest and providing for the total value of all possible options. (Paragraph 12.2)
- c) The authority to purchase during emergency events is detailed under Appendix "C". (Paragraph 12.5)
- d) Procedures to be followed are outlined in various Appendices of the By-Law depending on the procurement category. (Paragraph 12.6)

134. The By-Law also includes a Table of Authority for Purchasing and Payments in Section 16.

- a) The authority limits for purchasing and payments (cost as defined in Appendix 'B') are as follows:

POSITION	DETAIL	MAXIMUM LIMIT
Mayor and Council	All expenditures	Unlimited
CAO & Treasurer	All expenditures	\$100,000
General Managers	All expenditures	\$ 50,000
Department Directors	General Purposes - day-to-day departmental requirements. Payments for approved Contracts/Service Agreements	\$ 20,000
Department Managers	General Purposes – day-to-day departmental requirements. Payments for approved Contracts/Service Agreements	\$ 10,000



- b) Authority for payments relate to payments of amounts contained in approved budgets or by resolution only. Department Heads are able to delegate signing authority to select individual(s). (Paragraph 16.2)

3.3.2 Applicable Sections of Procurement By-Law to Consider Compliance

135. Not all sections of the Procurement By-Law are applicable for every procurement. Therefore, to consider By-Law compliance, it is important to determine which Sections apply in the particular procurement circumstances.

136. To identify which Sections of the By-Law were applicable to the Trackless procurement, we believe that the following factors must be considered:

Factor	Applicable By-Law Sections
a) Procurement Categorization (i.e. whether the procurement is exempt, standard, or non-standard) b) the Applicable Procedural Requirements Based on the Trackless Procurement Categorization	<ul style="list-style-type: none"> ▪ Appendix A – Exempt Procurements ▪ Section 14-Non-Standard Procurement (including definition in Section 5-Definitions) ▪ Appendix C – Non-Standard Procurements²⁵ ▪ Section 13-Standard Procurement
c) Applicable Delegated Procurement Authorities that Apply d) Required Council Approval	<ul style="list-style-type: none"> ▪ Section 15-Delegated Procurement Authorities ▪ Section 17-Council Approval ▪ Appendix B – Delegated Procurement Authorities
e) Required Quarterly Reporting to Council.	<ul style="list-style-type: none"> ▪ Section 30-Quarterly Report to Council

3.3.3 By-Law Compliance Assessment of Trackless Procurement

137. Based on the applicable By-Law sections outlined in Section 3.3.2 of this report, we have assessed the By-Law compliance of Trackless procurement in the following schedules that accompany this report:

- a) *Schedule 1A-Privileged and Confidential – Trackless Procurement Compliance Assessment-Procurement Categorization;*

²⁵ Appendix C of the Procurement By-Law is written in an order that made it challenging for our team to follow. We have therefore re-ordered sections of this Appendix in *Schedule 1A-Privileged and Confidential – Trackless Procurement Compliance Assessment-Procurement Categorization* to help us better understand the requirements of this Appendix.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

- b) *Schedule 1B- Privileged and Confidential – Trackless Procurement Compliance Assessment- Applicable Procedural Requirements Based on Trackless Procurement Categorization;*
- c) *Schedule 1C- Privileged and Confidential – Trackless Procurement Compliance Assessment-Applicable Delegated Procurement Authorities Including Required Council Approval; and*
- d) *Schedule 1D- Privileged and Confidential – Trackless Procurement Compliance Assessment- Required Quarterly Reporting to Council.*

138. Please refer to these schedules for details of this assessment. Sections that are highlighted in colour are relevant for the assessment.

3.3.4 Trackless Procurement and Compliance with Napanee's Procurement By-Law

139. Based on this assessment, we note the following:

- a) The Town's Purchasing Policy By-Law allows for three types of procurements:
 - i. Exempt procurements (reference: Appendix A of Purchasing Policy By-Law);
 - ii. Standard procurements (reference: Section 13 and Appendix B of Purchasing Policy By-Law); and
 - iii. Non-Standard procurement (reference: Section 14 and Appendix C of Purchasing Policy By-Law).
- b) The Trackless procurement does not meet any of the listed exceptions for the Exempt Procurement category as described in Appendix A.
- c) All procurements should follow the Standard Procurement procedures described in Section 13 and Appendix B unless a procurement meets the conditions of a Non-Standard Procurement.
- d) Appendix C outlines specific circumstances when the Standard Procurement procedures do not need to apply, including procurements that are required for an Emergency.
- e) The Procurement By-Law notes that a procurement may be considered an 'Emergency' if, in the opinion of an "Emergency Authorized Person", there are threats " to public health, the maintenance of essential Town services, the welfare of persons or of public property, the protection of the Town's physical assets, or the security of



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

the Town's interests or financial liabilities arising from unexpected conditions, and the occurrence requires the immediate delivery of supplies or service".

- f) However, the Town's Procurement By-Law does not specify who would hold the position of "Emergency Authorized Person" and whether a person in this role declared that the Trackless procurement would qualify as an 'Emergency'.
- g) In the absence of this role being appropriately defined, we considered whether the characteristics of an 'Emergency' might have been present for the Trackless purchase. Specifically, we considered whether there would have been any threats to "public health, the maintenance of essential Town services, the welfare of persons or of public property, the protection of the Town's physical assets, or the security of the Town's interests or financial liabilities arising from unexpected conditions, and the occurrence requires the immediate delivery of supplies or service".
- h) At the time this purchase was being contemplated (i.e. in August 2022), it would not have been possible to know the type of winter Napanee would experience in the Winter of 2023.
- i) However, it may be reasonable for a decision-maker to presume that there would be a need for a reliable sidewalk snow plough machine in order for the Town to be able to clear sidewalks, within a reasonable time period, for the safety and welfare of Napanee's population following a snow event.
- j) The Town also needed to be mindful of potential financial liabilities if the Province's MMS are not met.
- k) As a result, it would appear that under these circumstances, the Town would need to acquire a reliable sidewalk machine as soon as possible, especially, considering the significant limitations of their current sidewalk machine fleet, and the known delays to order the required type of sidewalk maintenance machine at the time the Trackless purchase was being contemplated.
- l) In addition, it should be noted that in our interviews, all parties appeared to agree that a new sidewalk machine was needed for Napanee.
- m) Therefore, if the circumstances are present to suggest that the Trackless Procurement was considered an 'Emergency' procurement, the Town's Procurement By-Law notes that a "Department Head may make such purchases without the involvement of purchasing staff and/or a competitive bidding process and without regard to the authorization limits and is authorized to do so in the most expedient and economical means possible. When feasible, purchasing staff shall be contacted to assist in obtaining quotes, securing services, and issuing purchase orders".



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

- n) As Department Head for the Infrastructure Group, Mr. Dafoe would have therefore been in a position to approve the Trackless purchase, without:
 - i. Involving purchasing staff and/or a competitive bidding process;
 - ii. Authorization from the CAO or Council; and
 - iii. Regard to the existing authorization limits noted in the Napanee's Procurement By-Law.
- o) As noted in an email on August 23, 2022²⁶, Mr. Dowber may have been consulted and agreed to take an update to Council in the fall. However, it appears that the Infrastructure Group obtained the quotes, secured the services, and issued the PO on their own without involving the Finance Team. It is unclear at what point the General Manager and/or the Infrastructure Group determined that it would not be feasible to involve additional Purchasing Staff, in particular Mr. McDonald, and the reasons why. It is also not clear why Mr. Dowber may not have involved Purchasing Staff after he became aware of the Trackless procurement.
- p) In the absence of being able to obtain further clarity from Mr. Dowber, and in the circumstances described above, where the Trackless procurement could be considered an 'Emergency' procurement, and where it was not deemed feasible to request assistance from Purchasing Staff, Napanee's Procurement By-Law would not have been circumvented.

²⁶ This August 23, 2022 email was from Mr. Dafoe to Mr. Cuthill in which Mr. Dafoe was asking Mr. Cuthill to attach the Sidewalk Machine Report (which indicated that the purchase was for a 2023 sidewalk machine in the report title) and quotes to the PO and that "Paul will update Council on this expenditure in the fall" (see *Appendix 28-2022-08-23-Email from Dafoe to Cuthill to Attach Sidewalk Machine Report to PO-Privileged and Confidential*).



4 Assumptions and Limitations

140. In this section, we have summarized the assumptions and limitations of our report.

4.1 Assumptions

141. In preparing this report, KPMG has assumed that:

- a) Non-mobile communications between the Town's employees occur mainly via email as we were told at the start of the engagement that other electronic communication avenues (e.g. Teams messaging) is not commonly used as a means to communicate within Napanee;
- b) In the absence of the role being specifically defined in the Town's Procurement By-Law, it would not be unreasonable for a Department Head, such as Mr. Dafoe, to be considered an Emergency Authorized Person for the Town, so long as the procedures in the Procurement By-Law are still followed;
- c) Technical assessments of why Trackless was the most suitable sidewalk machine option for the Town are accurate;
- d) The appropriate contracting vehicle to purchase Trackless was a PO. The Town's standard terms and conditions would apply for the purchase and are correctly noted on the PO that was ultimately issued to Joe Johnson;
- e) Napanee representatives have provided accurate information during the inquiries and interviews to allow us to conduct our review of the Trackless Procurement; and
- f) Napanee has provided us with all relevant supporting documentation available related to the Trackless procurement and has not withheld any information.

4.2 Limitations

142. Our report is also impacted by the following limitations:

- a) We were unable to conduct an interview with Mr. Paul Dowber, former Treasurer, and confirm whether he was aware that he was committed to report the Trackless Procurement to Council and corroborate other elements of the Trackless purchase.
- b) We were directed to conduct our email review via Microsoft eDiscovery application. The capabilities of conducting the email review under this platform was limited as described in Section 1.4.2.4.



The Corporation of the Town of Greater Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

- c) We were not provided with the necessary data to review other forms of communication (e.g. text messages, voicemails, emails that occurred through non-Napanee email addresses, etc.) as part of our review.
 - d) Certain elements of the Procurement By-Law, such as who would be the Emergency Authorized Person for the Town, are unclear. We have relied on inquiries and representations provided by Napanee employees to get clarity on the proper procedures and processes.
 - e) Due to the lack of available documentation, we were unable to corroborate some of the information relayed to us in the interviews, particularly as they relate to ad-hoc meetings between Napanee employees.
 - f) Due to numerous delays encountered throughout this review, the complete and accurate recollections of the individuals with whom we met may have been impacted.
143. Our comments in this report are subject to any modifications or alteration that may become necessary should additional information be received in the future.



5 Scope of Review

144. Over the course of our review, KPMG had discussions, conducted interviews, and/or corresponded with the following individuals:

- a) Jeff Cuthill, Director of Capital Works
- b) Peter Dafoe, General Manager of Infrastructure
- c) Nicole Davidson, Former Interim Treasurer
- d) Mike Dwyer, Manager of Public Works
- e) John Ewart, Legal Counsel for Napanee from Ewart O'Dwyer
- f) Charlie McDonald, Former Director of Operational Audits
- g) Nathan Murphy, Current Town Treasurer
- h) Dave Nicholson, IT Manager
- i) John Pinsent, Former Napanee CAO
- j) Jennifer Remington, Public Works Coordinator
- k) Jessica Walters, Clerk / Director of Legislative Services

145. To conduct this review of the Trackless procurement, KPMG relied upon the following information:

- a) By-Law No. 2021-0046 – A By-Law to Define Procurement Policies and Procedures for The Corporation of the Town of Greater Napanee and to Repeal By-Laws 05-05 and Amendment Bylaw 2014-0051
- b) By-Law No. 2022-0021 – Being a By-Law to Authorize the Temporary Delegation of Authority to the Chief Administrative Officer for Certain Acts for the Period Between Nomination Day and the Commencement of the New Council Term
- c) Confidential CAO Report - Snowplow Procurement Process (March 30, 2023)
- d) Sidewalk Machine Report (August 15, 2022)
- e) Trackless purchase documents including:
 - i. Joe Johnson PO (August 17, 2022)
 - ii. Joe Johnson Supplier Invoice U00696 (February 1, 2023)
 - iii. Joe Johnson Supplier Invoice U00671 (June 29, 2023)
- f) Council Meeting Minutes available through the Town's website and provided by the Town representatives including the following:



The Corporation of the Town of Napanee

Forensic Review of the Trackless Procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors

October 31, 2024

- i. Council Public Meeting from August 9, 2022 to February 13, 2023 and from March 30, 2023
 - ii. Closed Session Council Minutes – June 14, 2022, to April 25, 2023
 - iii. Special Closed Session Council Minutes – May 3, 2022, to September 19, 2022
- g) 2023 Organizational Chart for Napanee
- h) Regular Session Council Staff Report re: Procurement Status Report Q2 2023
- i) Spreadsheet titled "Equipment_DataCollection_Workbook_2022.03.31" that describes Napanee's original Trackless sidewalk machine to have been a 2010 model, with a 14 year lifecycle, due to be replaced in 2024
- j) Email dated June 16, 2022, from Mr. Dafoe to Mr. Cuthill and Mr. Dwyer regarding Infrastructure Group procurements
- k) Email dated August 17, 2022, from Mr. Pinsent to Mr. Zatterberg regarding Mr. Pinsent's potential absence from the office for that day
- l) Email from Mr. Pinsent to Ms. Walters on August 19, 2022, regarding his health after returning from the AMO Conference
- m) Email dated July 11, 2023, from Ms. Walters indicating that Mr. Pinsent and Ms. Davidson had resigned from their positions at the Town
- n) Email dated May 13, 2024, from Ms. Walters providing information that helped understand that the August 17, 2022, SLT meeting was cancelled and that she and Mr. Pinsent had returned from the AMO conference in Ottawa that day
- o) Email dated May 15, 2024, from Ms. Walters clarifying the role of the "Emergency Authorized Person" referenced in the Procurement By-Law
- p) Email dated May 21, 2024, from Mr. Dafoe to re-confirm details surrounding the potential ad-hoc meeting that occurred between him and Mr. Pinsent on August 17, 2022
- q) All emails and documents attached as Appendices to this report

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors
 The Corporation of the Town of Greater Napanee - Forensic Review of the Trackless Procurement
 SCHEDULE 1A: TRACKLESS PROCUREMENT COMPLIANCE ASSESSMENT - PROCUREMENT CATEGORIZATION

Section Reference	Paragraph Reference	Per Procurement By-Law	KPMG Assessment
Appendix A – Exempt Procurements	N/A	Competitive Bidding processes are not required for the following categories. The listing below is not a comprehensive listing. Purchasing staff will, from time to time, review and approve new situations or items to determine if they fall within the purview of this Appendix. For exceptions outside of this Appendix purchasing staff may request the user department follow the requirements of Appendix "C" - Non-Standard Procurement. <ul style="list-style-type: none"> •Petty Cash Items •Training / Education / Professional Development •Refundable Employee Expenses •Corporate General Expenses •Professional and Special Services •Utilities •Election Materials 	Based on the categories outlined in Appendix A, a sidewalk machine to be used by the Town for sidewalk maintenance is not an exempt procurement.

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors
The Corporation of the Town of Greater Napanee - Forensic Review of the Trackless Procurement
SCHEDULE 1A: TRACKLESS PROCUREMENT COMPLIANCE ASSESSMENT - PROCUREMENT CATEGORIZATION

Section Reference	Paragraph Reference	Per Procurement By-Law	KPMG Assessment
Section 14-Non-Standard Procurement & Section 5-Definitions	14.1	A non-standard procurement is the acquisition of goods, services or construction through a process or method other than the process and method normally required for the type and value of the goods, services or construction, as identified and described under Appendix "C" of the Town's Procurement By-law. Non-standard procurement processes include:	Napanee's Procurement By-Law allows for goods, services, and construction to be obtained in a non-standard procurement, including through 'Limited Competition' IF the conditions of Appendix C are met. Since bids were solicited from a limited number of suppliers for the Trackless procurement (Cubex, Joe Johnson, and Kaercher), it appears that the conditions of a 'Limited Competition' may have been present.
	14.1.1	▶ a Non-Competitive Process, where the goods, services or construction are acquired directly from a particular supplier without conducting a competitive process when an Invitational Competition or an Open Competition would normally be required	
	14.1.2	▶ a Limited Competition, where bids are solicited from a limited number of suppliers when an Open Competition would normally be required	
	14.2	The use of a non-standard procurement process is only permitted under the specific circumstances set out in Appendix "C" of this By-Law.	
	14.3	All non-standard procurement processes must be approved and conducted in accordance with this By-Law and all applicable procedures and protocols.	
	5	▶ "Invitational Competition" means a competitive process in which an invitation to submit bids is issued to at least three suppliers	
	5	▶ "Open Competition" means the solicitation of bids through a publicly posted solicitation document.	

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors
The Corporation of the Town of Greater Napanee - Forensic Review of the Trackless Procurement
SCHEDULE 1A: TRACKLESS PROCUREMENT COMPLIANCE ASSESSMENT - PROCUREMENT CATEGORIZATION

Section Reference	Paragraph Reference	Per Procurement By-Law	KPMG Assessment
Appendix C-Non-Standard Procurement	Appendix C	In certain circumstances, the Town may not have the ability to go through a competitive process for its procurement activity. In specific reference to Appendix "C", the following are types of direct awards:	Based on this context, Napanee's Procurement By-Law allows for non-standard procurements to occur IF the circumstances of this Appendix C are met.
	Appendix C	▶ Contract Extensions - Contract extensions shall be allowed in accordance with the allowable 'Limited Tendering' circumstances (NOTE: these 'Limited Tendering' conditions are also outlined in Appendix C as items a to j).	N/A for the Trackless procurement Note that since the this type of direct award is not relevant for the Trackless procurement, these conditions are not captured in this Schedule. For further details, please refer to "Appendix "C" -Non-Standard Procurements" in <i>Appendix 40-Napanee Procurement By-Law-Privileged and Confidential</i> .
	Appendix C	▶ Single Sourcing - where purchases are made through a selected supplier, even though there are other suppliers that provide similar supplies or service.	Since there are documents that indicate that quotes were obtained from more than one supplier and that the Sidewalk Machine Report authored by Mr. Dafoe outlines the considerations for these quotes and the purchase recommendation, the Trackless procurement does not appear to be a Single Sourcing type of procurement.
	Appendix C	▶ Sole Sourcing - where there is only one available supplier for the source of the supplies or service.	Since there were multiple suppliers available from where a new sidewalk machine could be purchased, the Trackless procurement does not appear to be a Sole Sourcing type of procurement.
	Appendix C	▶ Purchase Order/Contract Increase - represents additional work that is required to address an unexpected problem or unforeseen circumstances and is required to deliver the original approved work and not expand the original scope of the project.	Since the Trackless procurement was meant to provide Napanee with a new sidewalk machine, it does not appear to be a Purchase Order/Contract Increase type of procurement.
	Appendix C	▶ Standardization - is the adoption of a single product, service or support activity to be used by one department or a number of departments, whereby a particular supplier may be identified based on technical specifications and sourced to the exclusion of others. This process will allow for a reduction in the number of supplies and services required, maximize volume buying opportunities, reduced handling, training and storage costs.	Although we have been told that standardization may have been part of the rationale for selecting the Trackless sidewalk machine to be purchased, it was not the reason that the procurement was pursued in August 2022.
	Appendix C	▶ Consulting Services- Repetitive Projects/ Assignments for Continuous Service	N/A for the Trackless procurement
	Appendix C	▶ No Submissions Received - Where a bid has been publicly advertised and no submissions were received, no bids conformed to the essential requirements of the bid document or no suppliers satisfied the conditions for participation.	N/A for the Trackless procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors
The Corporation of the Town of Greater Napanee - Forensic Review of the Trackless Procurement
SCHEDULE 1A: TRACKLESS PROCUREMENT COMPLIANCE ASSESSMENT - PROCUREMENT CATEGORIZATION

Section Reference	Paragraph Reference	Per Procurement By-Law	KPMG Assessment
Appendix C-Non-Standard Procurement (cont'd)	Appendix C	<p>Emergency - when an event occurs where in the opinion of an Emergency Authorized Person, to be a threat to public health, the maintenance of essential Town services, the welfare of persons or of public property, the protection of the Town's physical assets, or the security of the Town's interests or financial liabilities arising from unexpected conditions, and the occurrence requires the immediate delivery of supplies or service. The Department Head may make such purchases without the involvement of purchasing staff and/or a competitive bidding process and without regard to the authorization limits and is authorized to do so in the most expedient and economical means possible. When feasible, purchasing staff shall be contacted to assist in obtaining quotes, securing services, and issuing purchase orders.</p> <p>Note: there is no definition in the By-Law to define who are the Emergency Authorized Persons for Napanee. Based on our inquiries of Ms. Walters and her consultations with the current Treasurer, based on past and current practice, they would defer to the CAO and Treasurer for this role but would require consultation with the applicable Department Head to validate that the purchase/circumstances constituted an emergency.</p>	<p>Based on our discussions with Mr. Dafoe, we understand that he believed that the circumstances were warranted for the Trackless machine to be procured under this category of procurement. Because of the ongoing issues with the Town's original Trackless sidewalk machine and the fact that the alternate machine was known to cause damage for certain sidewalks, there were doubts as to the reliability of the sidewalk machine fleet for the upcoming winter and concerns about what risks that Napanee could be potentially exposed to if it were unable to meet the Minimum Maintenance Standards as set by the Province (i.e. potential risk to the maintenance of essential Town services and the potential risk to the welfare of persons or of public property).</p> <p>Knowing that procurement of any replacement sidewalk machine would require a long lead time given the ongoing supply chain challenges in the industry following the impacts of the COVID-19 pandemic (i.e. requiring immediate delivery, at the earliest possible opportunity, of supply and services), we understand that the decision to begin urgently procuring a replacement sidewalk machine was made by the Infrastructure Group, including Mr. Dafoe. From our interviews, we understand that Mr. Dafoe believed that this was an 'Emergency' purchase.</p> <p>The Procurement By-Law notes that a procurement may be considered an 'Emergency' if, in the opinion of an "Emergency Authorized Person", there are threats " to public health, the maintenance of essential Town services, the welfare of persons or of public property, the protection of the Town's physical assets, or the security of the Town's interests or financial liabilities arising from unexpected conditions, and the occurrence requires the immediate delivery of supplies or service".</p> <p>However, the Procurement By-Law does not specifically define who an Emergency Authorized Person would be for the Town of Napanee. According to Ms. Walters, in practice, they would likely defer to the Treasurer and CAO to make this decision, in consultation with the relevant Department Head, and would expect that a report be taken to Council, once all expenses are known. Nonetheless, because of the ambiguity with this term, there may be other acceptable interpretations of who could play this role, including the Department Head.</p>
	Appendix C	<p>► In the case of a declared emergency, the Town of Greater Napanee Emergency Plan will supersede this By-Law. The emergency award report shall detail the cause of the emergency and the action taken to resolve the emergency and shall be submitted for approvals within two working days following the resolution of the emergency. Where the emergency situation may be prolonged, the Department Head shall contact purchasing staff to determine the course of action moving forward.</p>	<p>Since there was no declared emergency at the time of the Trackless procurement, it should not be considered a procurement that occurred as a result of a declared emergency.</p>

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors
The Corporation of the Town of Greater Napanee - Forensic Review of the Trackless Procurement
SCHEDULE 1A: TRACKLESS PROCUREMENT COMPLIANCE ASSESSMENT - PROCUREMENT CATEGORIZATION

Section Reference	Paragraph Reference	Per Procurement By-Law	KPMG Assessment
Section 13-Standard Procurement	13.1	A standard procurement is the acquisition of goods, services or construction through the applicable process and method identified and described in Appendix "B". Depending on the type and value of the goods, services or construction required, standard procurement processes include:	Because the Trackless procurement meets the conditions of a non-standard procurement (see the following sections of this table), by default, a standard procurement is not applicable for the Trackless purchase.
	13.1.1	▶ placing an order under an existing Standing Offer	
	13.1.2	▶ conducting a Qualified Supplier Roster Competition to solicit bids from suppliers on an existing Qualified Supplier Roster	
	13.1.3	▶ making Low Value Purchases using petty cash, a corporate purchasing card or the issuance of a purchase order	
	13.1.4	▶ conducting an Invitational Competition by soliciting bids from a minimum of three suppliers	
13.1.5	▶ conducting an Open Competition by publicly advertising and posting the solicitation document		

Section Reference	Paragraph Reference	Per Procurement By-Law	KPMG Assessment
Appendix C-Non-Standard Procurement	Appendix C	For non-competitive procurement under the Sections above (i.e. all of the direct award types), a Non-Competitive Approval Form is required. The Department Head shall initiate a single source award report including rationale for requesting non-competitive procurement prior to making a commitment to a supplier or prior to commencing any work. Purchasing staff shall be involved and guide any negotiation process to ensure the Town employs fair and ethical practices.	Because the Trackless procurement does not appear to be a direct award, these procedures do not apply.
	Appendix C	Copies of executed contracts shall be kept on file with the Non-Competitive Approval Form in the Finance Department. Original executed contracts shall be provided to the Clerk's Department and kept on file in accordance with the Records Management Bylaw.	Because a Non-Competitive Approval form does not appear to be required for the Trackless procurement, these procedures do not apply.
	Appendix C	For emergencies, the Department Head may make such purchases without the involvement of purchasing staff and/or a competitive bidding process and without regard to the authorization limits and is authorized to do so in the most expedient and economical means possible. When feasible, purchasing staff shall be contacted to assist in obtaining quotes, securing services, and issuing purchase orders.	<p>With the understanding that the Trackless procurement constituted an emergency procurement and assuming that Mr. Dafoe would have been in an authorized position to declare the procurement as an emergency as defined by Appendix C of the Procurement By-Law, it would appear that Mr. Dafoe, as Department Head, would have had the authority to make emergency purchases that would have not required: the involvement of purchasing staff, a competitive bidding process, nor adherence to the authorization limits.</p> <p>Mr. Dafoe would be authorized to procure in the most expedient and economical option according to this Appendix C. The Infrastructure Group obtained quotes from three different vendors. We understand that based on the information that they received from these vendors, it was their belief that the Trackless machine would be available the soonest (in August 2022 when the vendor indicated that it would be available in December), would cost approximately \$24,000 more than the next economical option, which was a used machine that may have caused the Town to incur "high life cycle costing due to fuel efficiency" and would not helped the Town achieve equipment standardization according to the Sidewalk Report.</p>
	Appendix C	All non-competitive procurement greater than \$100,000 shall be awarded on the Town Procurement Portal (Bids and Tenders) as required by the CFTA.	If actually required by the CFTA, we did not find evidence of this non-competitive procurement being awarded on Bids and Tenders. Therefore, compliance with this element of the Procurement By-Law would not have been achieved.

Section Reference	Paragraph Reference	Per Procurement By-Law	KPMG Assessment
Section 15- Delegated Procurement Authorities	15.1	A contract must be established by the execution of a legal agreement and/or the issuance of a purchase order before the delivery of goods, services or construction commences.	For the Trackless procurement, a purchase order was issued, which we assume to be the appropriate contract type.
		Delegated authorities to award a contract or issue a purchase order evidencing a contract are set out in the table in Appendix "B" of this By-Law.	See below for assessment of the delegated authorities noted in Appendix B.
		A Purchase Order is to be used when the resulting contract is straightforward and will contain the Town's standard Purchase Order Terms and Conditions	A purchase order was issued for the Trackless purchase on August 17, 2022, which contains two standard terms and conditions for Napanee, which we assume are the appropriate Purchase Order Terms and Conditions referred in this Section of the Procurement By-Law.
		A legal agreement is to be used when the resulting contract is complex and will contain terms and conditions other than the Town's Standard Terms and Conditions.	Because the contract is assumed to be straightforward, we have assumed that a legal agreement was not required.
	15.2	The delegated procurement authorities are subject to the following conditions:	Based on our review, funding for the Trackless purchase was not included in fiscal 2022 because it was an unknown and unplanned expenditure requirement that arose during the winter and summer of 2022. We understand that the Trackless purchase was initially presented as a capital expenditure for the fiscal 2023 budget. However, because the sidewalk machine was already ordered through a PO in 2022, it was deemed by the Finance team and the CAO to not be appropriate to include for the 2023 budget as the purchase obligation was already in place. Rather, we understand that Napanee provisioned the purchase through the Town's reserves. Sections 15.2.3 and 15.2.4 do not apply for the Trackless Purchase. From our understanding of 15.2.5, it appears that these specific conditions outlined in Section 15.2 of the By-Law do not apply to the Trackless purchase as the circumstances would require Council approval. It should be also notes that we believe that there may be a typo in this section and that the Section reference should be 17, not 16 as Section 17 of the By-Law is titled "Council Approval".
	15.2.1	▶ No contract award may be approved unless the approved annual budget funding in an amount sufficient to cover the procurement value is available and the procurement process was conducted in accordance with this By-Law and all applicable procedures and protocols;	
	15.2.2	▶ No contract may be entered into, either through the issuance of a purchase order or the execution of a legal agreement, unless the approved annual budget funding in an amount sufficient to cover the procurement value is available and the procurement process was conducted in accordance with this By-Law and all applicable procedures and protocols;	
	15.2.3	▶ No legal agreement may be executed unless the agreement and any ancillary documents have been prepared in a form satisfactory to the CAO in consultation with the Town Solicitor;	
	15.2.4	▶ A financing lease may only be approved and entered into in accordance with the Town's Lease Financing Policy;	
	15.2.5	▶ The delegation of authority to approve a contract does not apply to a contract requiring Council approval under Section 16 of this By-Law.	

Section Reference	Paragraph Reference	Per Procurement By-Law	KPMG Assessment
Section 17- Council Approval	17.1	The following award of contracts require Council approval, unless approved in accordance with Section 16.2.	Section 16.2 relates to the authority to approve payments of amounts contained in approved budgets or by resolution only. Since the Trackless purchase was not already included in an approved budget or resolution, it does not appear that Section 16.2 authorities would apply. Section 17.1.1. also does not apply as the contract to purchase Trackless was not with the Province of Ontario. However, Sections 17.1.2, 17.1.3, and 17.1.4 all appear to apply for the Trackless procurement. This acquisition was not already included in an approved budget or resolution. The procurement value exceeded the approval limits of delegated procurement authorities set out in Section 16 (note that the By-Law referred to Section 15, which we believe to be a typo). There were also a number of unique circumstances at the time of the Trackless purchase (i.e. Council had already met for the last time prior to the 2022 election, Mr. Dowber was released from his duties for performance related reasons, the CAO was about to assume special authorities until the new Council was in place, etc.). Therefore, because no report was given to Council, there was non-compliance with the By-Law for this element. It should be noted that the By-Law (refer to the commentary for Appendix B below) also does not state who has the responsibility to take this report to Council. The Trackless PO was issued on August 17, 2022. The By-Law To Authorize the Temporary Delegation of Authority to CAO for Certain Acts during the election period was set to come into effect on August 19, 2022. The CAO authorities according to this By-Law include the "authority to make any unbudgeted expenditures or incur any other liability that exceeds \$50,000, including the authority to approve a bid or proposal for a project that has been included in the budget but is in excess of the budgeted amount approved by Council."
	17.1.1	▶ Any contract requiring approval from the Province of Ontario.	
	17.1.2	▶ Any acquisition of goods or services that is not already included in the approved budget, such as items requiring pre-budget approval or post-budget amendments, must be reported to Council to have the expenditure authorized via Resolution.	
	17.1.3	▶ There is an irregularity or unresolved challenge in connection with the Procurement and, in the opinion of the CAO, in consultation with the applicable Department Head and Treasurer, the award of the contract is likely to expose the Town to significant legal, financial or reputational risk.	
	17.1.4	▶ The procurement value exceeds the approval limits of delegated procurement authorities as set out in Section 15.	
17.2	Where necessary, the CAO is authorized to approve the contracts normally subject to Council approval, as set out in Section 16.1, during the time that regular Council meetings are suspended, provided that a report is submitted to Council, as soon as reasonably possible, setting out the details of any contract approved pursuant to this authority.		

Section Reference	Paragraph Reference	Per Procurement By-Law	KPMG Assessment
Appendix B- Delegated Procurement Authorities	Appendix B	Appendix B of the Procurement By-Law outlines the total procurement value, the procedure, the mandatory requirements, and the authority to approve the award of a contract and issue a PO for each category of procurement.	<p>It is our understanding that a report to Council was never given for the Trackless purchase, which would exceed the \$25,000 threshold and for these reasons alone, there is non-compliance with this element of the By-Law.</p> <p>We do not know if Mr. Dowber, Treasurer at the time, ever gave approval to purchase Trackless or why he did not report to Council.</p> <p>Mr. Dafoe insists that he received verbal approval from Mr. Pinsent, as CAO, to procure Trackless during the ad-hoc meeting that may have taken place on August 17, 2022.</p>
	Emergency Procurement > \$25,000	A report must go to Council if the procurement is over the approved budget. The authority to approve rests with the CAO or Treasurer.	<p>Mr. Pinsent conveyed to us that he never gave explicit permission for the purchase of Trackless during the alleged meeting on August 17, 2022, a meeting he does not even remember having taken place. However, he acknowledged that any remark he may have made at any point should not be misconstrued as a green light to make a purchase. Instead, it should be understood as an endorsement to adhere to the correct procurement procedures.</p> <p>In addition, it should be noted that the By-Law is silent on who has the ultimate responsibility to provide the report to Council.</p>
	Emergency Procurement < \$25,000	A report must go to Council if the procurement is over the approved budget. The authority to approve rests with the Department Head.	N/A for the Trackless procurement
	Other Procurement Types	Refer to <i>Appendix 40-Napanee Procurement By-Law-Privileged and Confidential</i> for details of the remaining procurement categories.	Other than the Section of this Appendix that describes when Council Approval is required, which is discussed in our assessment of Section 17, the other procurement types are not applicable for the Trackless procurement

Privileged and Confidential - Prepared for Ewart O'Dwyer Barristers and Solicitors
The Corporation of the Town of Greater Napanee - Forensic Review of the Trackless Procurement
SCHEDULE 1D: TRACKLESS PROCUREMENT COMPLIANCE ASSESSMENT - REQUIRED QUARTERLY REPORTING TO COUNCIL

Section Reference	Paragraph Reference	Per Procurement By-Law	KPMG Assessment
Section 30-Quarterly Report to Council	30.1	The Finance Department must submit a quarterly procurement information report to Council to provide the following information about the Town's procurement activities.	We did not find any documents in our review that suggest that the Finance Department submitted required procurement information in a quarterly report until July 25, 2023. Therefore, because no report appeared to have been given to Council around the time of the Trackless procurement, there appears to be non-compliance with the By-Law for this element. However, because of the extenuating circumstances involving the former Treasurer, Mr. Dowber, the timing of the purchase, and the likelihood that Ms. Davidson (who took over for Mr. Dowber after his departure) would have known about this procurement that occurred in August 2022 until it came to her attention in March 2023, it would not be unreasonable for such a report to have excluded the Trackless procurement.
	30.2	The circumstances and details of any emergency purchase(s) with a Procurement value equal to or greater than \$100,000; and	
	30.3	The circumstances and details of all non-standard procurements with a procurement value equal to or greater than \$10,000.	