Winnipeg
Audit Department
Service de vérification

Independent Fairness Commissioner

Final Report
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Background

At a Special Meeting of Council on July 9, 2014, Council passed the following motions:

> 19. A. That the City of Winnipeg create an Independent Fairness Commissioner (IFC), who would have the power to review all Real Estate Transactions and Management Services before they are presented to the Standing Policy Committee and/or Council, and that they would report directly to Council, via and under the Office of the City Auditor;
>
> B. That the power to review and comment on all real estate transactions by the IFC, be retroactive to all potential transactions now underway and that the said IFC be reviewed by Council in 5 years;
>
> C. That the Auditor, in consultation with the City Solicitor, report to Council for the purpose of approving the mandate/model for the IFC and the financial resources required for the operation of the said Independent Fairness Commissioner.

The objective of the Independent Fairness Commissioner (IFC) is to ensure that real estate transactions adhere to the policies and procedures of the City of Winnipeg. Additionally, the IFC should consider if the policies and procedures in place meet the goals of being open, fair and transparent.

The IFC achieves this objective by reviewing Real Estate Transactions and Management Services before they are presented to the Standing Policy Committee and/or Council. The IFC's findings are reported directly to the appropriate governing body.

The following sections will provide an overview of potential implementation models and estimated costs for an Independent Fairness Commissioner.

The following report was developed by the Audit Department in consultation with Legal Services.

Overview

Research conducted by the Audit Department did not identify any other jurisdictions that have implemented a fairness commissioner (also known as fairness monitor) specific to real estate transactions.

In other jurisdictions and levels of government, a fairness monitor role may be included in major capital projects. The fairness monitor will typically provide arm's length advice to project managers and independent assurance to the public sector entity on the fairness and appropriateness of the procurement processes related to the specific capital project. The fairness monitor reviews the processes and decisions developed by the procurement project management to assess whether they are fair, reasonable, and consistent with the jurisdictions established procurement processes.

At the initiation of the capital project, the role of the fairness monitor may include:

- advising the public sector entity on the procurement process for the purpose of ensuring that it is conducted with openness, transparency, integrity and accountability;
- reviewing procurement documents and the processes described within;

- assessing whether the procurement process, including the selection of the successful proponent conformed to the procurement solicitation documents, and the applicable procurement laws, agreements, policies and procedures.

Upon completion of the procurement processes, the fairness monitor will then submit a final report to the public sector entity summarizing their duties and any findings about the procurement processes.

Potential Independent Fairness Commissioner Models for Implementation

The creation of a fairness commissioner solely for real estate transactions does appear to be unique. In consultation with representatives of the Planning, Property & Development Department, the Audit Department has identified three potential models for implementation of an Independent Fairness Commissioner. The difference between potential models is the option of using internal staff versus contracted services and on the level of IFC involvement at different points in the review of the real estate transactions.

Regardless of the model implemented a set of criteria is necessary to provide guidance on the various aspects that will be reviewed for each type of real estate transaction. A preliminary listing of those criteria is included as **Appendix A**. The final listing of criteria to evaluate specific real estate transactions should be agreed to by the IFC, Director of Planning, Property & Development Department and City Auditor.

The number of transactions to be reviewed annually has been estimated based on available information and includes a threshold of $100,000 to identify the transaction as significant and to trigger IFC involvement. Additional criteria to warrant IFC review could also be considered.

An overview of each model, an estimate of costs and implications from implementation of that model is provided below. A recommendation on the model best suited to the City's needs follows the discussion.

Model 1 – Contracted out Performance of Compliance Review of Significant Transactions

Description

- A contract with a qualified external party would be awarded to perform compliance reviews of significant real estate transactions. Criteria in addition to the $100,000 transaction value would be developed and agreed to by the IFC, Director of Planning, Property & Development Department and City Auditor.
- Criteria for evaluating compliance of the different types of real estate transactions would be developed and agreed to by the IFC, Director of Planning, Property & Development Department and City Auditor.
- A compliance review of significant real estate transactions would be initiated near transaction completion and be completed prior to political approval.
- The IFC would submit a report on each transaction to the appropriate governing body prior to political approval.
- A sample of other completed real estate transactions would be performed annually along with submission of a summary report.

Costs

Approximately $310,000.

- Assume 5 year contract with an estimated rate of $400/hour.
- The estimated number of transactions to be reviewed by type of real estate transaction is based on consultation with the Director, Planning, Property & Development Department, analysis of historic transaction volumes and a projection of future activity.
- Estimates on the level of effort required to complete the compliance review of different types of real estate transactions is based on consultation with the Director, Planning, Property & Development Department and the professional judgment of Audit Department staff. These hours also include development of a report for the appropriate governing body. The level of effort estimate is based on a routine transaction; complex transactions would require additional effort.
- It is estimated that the number of land sales will remain relatively flat as the portfolio of property for sale has decreased. Estimate10 transactions / year of $100,000 + in value.
- Acquisition and expropriation transactions are estimated to increase due to the number of capital projects moving forward. Estimate is 15 transactions / year of $100,000 + in value.
- Estimated average time to review each transaction = 24 hours.
- Sale & acquisition = 25 transaction/year @ 24 hours/transaction @$400/hour = $240,000.
- Lease activity is estimated to remain stable. Estimate is 5 transactions/year of $100,000+ in value.
- Estimated average time to review each transaction = 15 hours.
- Leases = 5 transaction/year @ 15 hours/transaction @$400/hour = $30,000.
- Random sample of 5 other transactions @ 20 hours/transaction @$400/hour = $40,000.

Other Considerations
• Level of resources is scalable based on number of transactions reviewed. • Different experts within the firm awarded the contract could be engaged to review different types of real estate transactions. • Contracted firms may have additional resources available thereby improving turnaround time when multiple transactions are closing in a short period of time. • Reviewing transactions at the end of the process and just prior to completion may result in complications as any issues identified maybe difficult to resolve at that point in the process and could result in delays.

Model 2- Contracted Staff Perform Comprehensive Review of Significant Transactions

Description

- A contract with a qualified external party would be awarded for a concurrent review of significant real estate transactions. The review would be performed at key stages of the transaction. Criteria in addition to the $100,000 transaction value would be developed and agreed to by the IFC, Director of Planning, Property & Development Department and City Auditor.
- Concurrent review allows for identification of policy, financial and/or technical issues that may not have been apparent to the real estate team.
- The IFC provides an independent, real-time opinion on fairness throughout the transaction processes and provides an independent report on whether the concluded process has or has not met all the requirements for fairness, openness and transparency.
- Criteria for evaluating fairness, openness, transparency, and compliance with Council policy for the different types of real estate transactions would be developed and agreed to by the IFC, Director of Planning, Property & Development Department and City Auditor.
- The IFC would submit a report on each transaction reviewed to the appropriate governing body prior to political approval.

Costs

Approximately $550,000.

- Assume 5 year contract with an estimated rate of $400/hour.
- The estimated number of transactions to be reviewed by type of real estate transaction is based on consultation with the Director, Planning, Property & Development Department, analysis of historic transaction volumes and a projection of future activity.
- Estimates on the level of effort required to complete the concurrent review and compliance review of different types of real estate transactions is based on consultation with the Director, Planning, Property & Development Department and the professional judgment of Audit Department staff. These hours also include development of a report for the appropriate governing body. The level of effort estimate is based on a routine transaction; complex transactions would require additional effort.
- It is estimated that the number of land sales will remain relatively flat as the portfolio of property for sale has decreased. Assume 10 transactions / year of $100,000 + in value.
- Acquisition and expropriation transactions are estimated to increase due to the number of capital projects moving forward. Estimate is 15 transactions / year of $100,000 + in value.
- Estimated average time to review each transaction = 50 hours.
- Sale & acquisition = 25 transaction/year @ 50 hours/transaction @$400/hour = $500,000.
- Lease activity is estimated to remain stable. Estimate is Assume 5 transactions/year of $100,000+ in value.
- Estimated average time to review per transaction = 25 hours.
- Leases = 5 transaction/year @ 25 hours/transaction @$400/hour = $50,000.

Other Considerations

- Level of resources is scalable based on number of transactions reviewed.
- Different experts within the firm awarded the contract could be engaged to review different types of real estate transactions.
- Contracted firms may have additional resources available thereby improving turnaround time when multiple transactions are closing in a short period of time.
- The primary benefit to performing a concurrent review is that the IFC is able to review and provide comment as the transaction progresses. This approach allows for identified issues to be resolved in a timelier manner. The IFC is able to discuss issues with the Planning, Property & Development Department who is then able to discuss and resolve those issues with the client, if applicable.
- The downside to this approach is that reviewing transactions as they progress may create process lags as the IFC would require time to review at key milestones. This could create time delays that some clients may find unacceptable. This could also extend the time from when the transaction is initiated to when it is presented to the appropriate governing body.
- Highest cost model to implement.

Model 3 – Audit Department Staff Perform Comprehensive Review of Significant Transactions

Description
• A position would be created within the Audit Department. • Criteria to determine if a concurrent review or a compliance review of a transaction would be developed and agreed to by the IFC, Director of Planning, Property & Development Department and City Auditor. • A concurrent review of some significant real estate transactions would be performed at key stages of the transaction. • Concurrent review allows for identification of policy, financial and/or technical issues that may not have been apparent to the real estate team. • For those transactions selected for concurrent review, the IFC would provide an independent, real-time opinion on fairness throughout the transaction processes and provide an independent report on whether the concluded process has or has not met all the requirements for fairness, openness and transparency. • A compliance review of significant real estate transactions not selected for concurrent review would be performed and completed just prior to political approval. • The IFC would submit a report on each significant real estate transaction to the appropriate governing body prior to political approval. • Criteria for evaluating fairness, openness, transparency, and compliance with Council policy for the different types of real estate transactions would be developed and agreed to by the IFC, Director of Planning, Property & Development Department and City Auditor. • A review of a sample of completed other real estate transactions would be performed annually along with submission of a summary report.
Costs
Approximately $150,580. • $125,500 WAPSO Exempt Grade 7 salary. • $20,080 Benefits. • $5,000 IT requirements, facility, administrative support.

Other Considerations

- A full time Audit Department staff person would be recruited and contracted with for up to 5 years. The reason for the term position is that the July 9, 2014 Council motion contained a clause that the IFC be reviewed by Council in 5 years.
- Evaluated to be the most cost effective model.
- The number of hours available for a full-time staff person allows for a combination of both the concurrent approach and a compliance review approach to be implemented.
- The ability to hire staff with the appropriate skill set to perform this role is unknown.
- Limited to a single staff person so delays may occur if multiple transactions are closing in a short period of time.
- Over time they would develop a more thorough understanding of related City processes and reporting relationships.
- The primary benefit to performing a concurrent review is that the IFC is able to review and provide comment as the transaction progresses. This approach allows for identified issues to be resolved in a timelier manner. The IFC is able to discuss issues with the Planning, Property & Development Department who is then able to discuss and resolve those issues with the client, if applicable.
- The downside to the concurrent approach is that reviewing transactions as they progress may create process lags as the IFC would require time to review at key milestones. This could create time delays that some clients may find unacceptable. This could also extend the time from when the transaction is initiated to when it is presented to the appropriate governing body.
- The other transactions reviewed at the end of the process just prior to completion may result in complications as any issues identified maybe difficult to resolve at that point in the process and could result in delays.

Recommendation

Creating a new term position within the Audit Department is evaluated to be the most cost effective option (model #3). This model also allows for both a concurrent review and a compliance review approach to the review of real estate transactions be implemented. This model appropriately balances the objective of providing Council with assurance on the execution of real estate transactions with a concurrent review of the most significant / complex transactions and a prior to approval compliance review of routine transactions against established criteria.

If the Audit Department is unable to attract qualified staff for the position then a subsequent report would be brought forward to Council to recommend another model be implemented.

Appendix A – Preliminary Listing of Review Criteria

	Acquisition	Sale	Expropriation	Land Transfer	City as Lessor	City as Lessee
Engagement of external real estate advisors and services was done in a transparent and fair process.	X	X	X	X	X	X
Information reported to Council and Committees of Council was complete and unbiased.	X	X	X	X	X	X
Adequate and unbiased appraisal performed	X	X	X	X		
Adequate consultations and communication with internal City stakeholders occurred.	X	X	X	X	X	X
The procurement process is open, fair and transparent.	X		X	X		X
Lease transactions contain flexibility.					X	X
Transactions follow applicable procedure manual or guidelines.	X	X	X	X	X	X
Comprehensive procurement process for larger transactions was undertaken.	X	X	X	X	X	X
Was there consideration of an environmental assessment?	X		X	X		
Evidence of user department secures appropriate authority for project	X	X	X	X	X	X
Competitive procurement process is conducted to determine eligible properties	X					
Land title search performed	X					
Appraisal is initiated/conducted	X					
Property inspection is conducted to determine impact on other City departments	X					
Understanding from user dept on project background was obtained	X					
All relevant information re: property is collected and analyzed	X					
Draft purchase proposal is prepared	X					
Purchase proposal is finalized and agreed to by the City and seller	X					
For non-Council approved projects, verify Council approval of signed agreement; For Council approved projects, verify proper delegation of authority occurred	X					
Request made to Legal Services to begin agreement finalization and Final agreement is completed by Legal	X					
Request made to Geomatics to complete required procedures	X	X				
Appropriate departments/individuals within the City of Winnipeg are notified of transaction	X	X	X	X	X	X
All relevant information is updated in the appropriate systems and databases	X	X	X	X	X	X
Does the Real Estate Division attempt to acquire the property prior to the expropriation process commencing?			X			
Council passes by-law and makes declaration of expropriation			X			
Notices of intended expropriation are released			X			
Objection Process - was there an objection? If so, was an inquiry officers report obtained?			X			
Council confirms expropriation			X			
Was 120 day policy achieved (Council declaration of expropriation and Council confirmation of expropriation)?			X			
Property owners' served with confirming order within 14 days of Council confirmation			X			
Notice of confirming order publicly released			X			
Declaration of expropriation is registered			X			
Notices are issued to individual property owners			X			
Notice of expropriation provided within 14 days of registration of declaration			X			
Appraisal conducted of properties confirmed for expropriation			X			

	Acquisition	Sale	Expropriation	Land Transfer	City as Lessor	City as Lessee
Offers of compensation are approved based on City delegated authority			X			
offer of compensation served within 120 days of registration of declaration of expropriation			X			
Negotiated settlement within the proper delegation of authority			X			
Procedure to identify property as surplus followed		X				
Evidence of property valuation conducted		X				
Property advertised for sale		X				
Evaluation criteria used to assess offers (done in an adequate, fair and transparent manner, clear, measurable criteria)		X				
Evidence of due diligence performed on the potential buyers		X				
all offers/details retained in file		X				
evidence supporting the rationale for the offer that was accepted		X				
Document City enforced land development conditions		X				
Communication from Ward Councillor received		X				
Appropriate approval received based on delegation of authority (document info provided to decision makers)		X				
Development Application Sub-Division Zoning ("DASZ") documented			X			
Official land transfer received			X			
Revised Statement of Adjustment issued			X			
Closure letter issued			X			
Appropriate approvals are in place to commence leasing process (Council, Administrative, etc.)						X
Appropriate procurement approach selected						X
Lease need publicly advertised						X
Evaluation criteria used to assess options (done in an adequate, fair and transparent manner, clear, measurable criteria)						X
Is there evidence supporting the rationale for the option that was selected?						X
Negotiations are made finalizing lease rate, tenant inducement / tenant improvements, etc.						X
Approval of the proposed lease of the recommended site based on delegated authority						X
Approval of lease agreement and review by Legal Services						X
Final lease agreement is consistent with approved terms						X
Process for determining property is available for lease followed					X	
Conduct appraisal. If no appraisal is conducted, document rationale					X	
Misc. Plan and tenant original request circulated to appropriate departments					X	
Draft terms and conditions are prepared and Terms and conditions approved by proposed tenant					X	
RIS/Briefing note prepared and Council approval received (if applicable)					X	
Written instructions provided to Legal Services to prepare formal agreement					X	
Evidence of Real Estate Division review of agreement					X	
Approval signatures and dates on lease agreement					X	