Winnipeg

Real Estate Management Review
Status of Audit Recommendations
2015 Qtr 3

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Audit Department

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History

On September 27, 2012, Winnipeg City Council passed a motion that an external and objective Real Estate Management Audit be conducted, going back a minimum of 5 years, which will review the processes and policies used for all major land Acquisition, Sales, Transfers and External leasing activities, including all transactions where commissions or management fees were paid with City of Winnipeg funds.

On December 7, 2012 a contract to conduct the Audit was awarded to Ernst & Young.

On July 2, 2014 EY Reported to Audit Committee and EPC. The *Real Estate Management Review* contained 17 recommendations.

On July 9, 2014 Council had a special meeting to deal with the *Real Estate Management Review* and adopted 21 recommendations (see Appendix 1).

On January 7, 2015 the Executive Policy Committee requested the City Auditor to provide a written report to its January 21, 2015 meeting, detailing the status of recommendations contained in the audits on the *New Fire Paramedic Stations Construction Project*, the *Winnipeg Police Service Headquarters Construction Project* and the *Real Estate Management Review*, which recommendations have been implemented and which are yet to be implemented.

This is the status report on the 17 implementation of the recommendations from the *Real Estate Management Review*. Where applicable, documentation supporting the implementation of the recommendation was reviewed by the Audit Department to confirm implementation has occurred.

Summary of Audit Recommendations

How was the Status of Audit Recommendations report produced?

The Audit Department forwards a template of the audit recommendations to the Public Service who provides status updates on the implementation of the recommendations. The completed templates are forwarded back to the Audit Department for review and compilation. The status report presents the Public Service's representations as to the status of recommendations implemented, in progress or not to be implemented at the end of 2015 Qtr 3. The Audit Department summarizes the status of implementation and prepares a brief overview for Audit Committee. Documentation supporting the implementation of recommendations is reviewed by the Audit Department to confirm implementation has occurred. For recommendations in progress, an implementation strategy and timeframe is provided. For recommendations not to be implemented, an explanation is provided.

AUDIT REPORT	RECOMMENDATIONS				TARGET DATE FOR COMPLETION			
	Total	Complete	Percent Complete	Not to be implemented	4th Qtr 2015	1st Qtr 2016	2nd Qtr 2016	3rd Qtr 2016 or later
Real Estate Management Review	17	1	6%	2	1	-	13	-

Audit Observations

- At the end of 2015 Qtr 3, 14 recommendations are in progress:
    - Recommendation 16 (Update Industrial Park Policy) is targeted for implementation in the 4th quarter of 2015.
    - 13 of the remaining recommendations are targeted for implementation in the 2nd quarter of 2016 or later. These are:
        - 1 Develop a real estate transaction management framework
        - 2 Establish PPD directive for more complete reporting and provide checklist to assist with disclosures
        - 3 Establish appraisal guidelines
        - 4 Engage Materials Management more consistently to ensure openness, fairness and transparency of procurement processes
        - 7 Establish guidelines when negotiating and establishing commission rates with external real estate brokers
        - 8 Retain documentation of internal communication in the transaction file
        - 9 All significant agreements and contracts should be reviewed by Legal Services. Standard templates for all Real Estate transactions should be developed.
        - 10 Develop standardized index and checklist for transaction files and standardized approach for document retention
        - 11 Guidelines should be established for a comprehensive procurement process for significant lease or acquisition transactions over a certain size
        - 13 Perform market analysis for establishing lease rates
        - 14 Develop tracking mechanism
        - 15 Restrict the use of personal email accounts for City business and establish policies for removal of City files offsite
        - 17 Develop an ESA procedure

Date: November 2015

Recommendations In Progress – 2015 Qtr 3 Updates

No.	Recommendation	Update – 2015 Qtr 3
16	Update Industrial park policy The Real Estate division should prepare a report for SPCPD's consideration to update the policy for the valuation and sale of industrial park land. This policy should specifically address the frequency of valuations and how transactions are dealt with that occur during a change in value.	The existing Industrial Land Policy was written in a manner whereby Recommendation #16 could not be incorporated into the policy with an update. As a result, a new Industrial Land Policy was created and a lengthy legal review was required to ensure the new Policy did not contradict any existing city policies. The new Industrial Land Policy has been submitted into RIS for the November 25, 2015 Council meeting. If the new Policy is approved by Council, Recommendation #16 will be completed and implemented. Implementation Date: 2015 Qtr 4
1	Develop a real estate transaction management framework A framework (or similar) would serve a number of purposes and meet the needs of various internal City and external stakeholders. The framework would: ► Provide guidance and direction to personnel involved in real estate transactions ► Demonstrate to City Council, senior management and the general public that appropriate policies, directives, guidelines, standards, instructions, etc. are approved and implemented Based on EY's review of other Canadian municipalities, the following are elements for consideration in establishing a public sector real estate transaction framework: 1. Governance structure 2. Policy, directives, and guidelines 3. Transactions 4. Performance management 5. Reporting, monitoring, and audit	Phase I of the RETMF extended slightly longer than anticipated due to summer availabilities and the project is approximately six weeks behind schedule. However, EY is optimistic that the Q1 2016 completion date for Phase II will be met. Phase I has nearly been completed, with the Phase I deliverable (i.e. best practices) to be provided at the same time as the draft deliverable for Phase II (i.e. draft framework/recommendations) during Q4 2015. Accomplishments since the last update include: consultations between EY and the Real Estate Division/Property Management Branch in Q3 2015, supply of documentation/policy/templates/etc. to EY for review in Q4 2015 and a workshop will occur in Q4 2015 to discuss recommendations and best practices. Consultations provided clearer direction for EY which will likely result in a more useful and robust Phase I deliverable. Implementation Date: 2016 Qtr 2

No.	Recommendation	Update – 2015 Qtr 3
2	Establish PPD directive for more complete reporting and provide checklist to assist with disclosures a) Establish a PPD directive to outline alternatives, evaluations, and supporting analyses for decision making that will facilitate more complete reporting. The checklist noted in Recommendation 1, outlining key elements, will assist in improved disclosures. b) A review should continue to be undertaken of the submission prior to it being put forward to assess that the information is complete and accurate. This may involve a review of the transaction file to verify that key information is included in the Administrative Report. If input from other departments (i.e. Finance, Legal Services, etc.) is included, a review by that department of the final submission should be undertaken to ensure accuracy of information submitted. c) When it may not be advisable to share information publicly to respect privacy and the City's bargaining position, consideration should be given to establishing protocol for discussing such matters in a Council seminar or through other means, with the results of the discussions documented in summary notes or the transaction file.	See Q3 2015 update for Recommendation # 1 above. Implementation Date: 2016 Qt 2
3	Establish appraisal guidelines a) Establish guidelines regarding the requirement for appraisals b) Timing of appraisals and updates c) Consistency between assumptions d) Explanation for significant differences e) Documentation	See Q3 2015 update for Recommendation # 1 above Implementation Date: 2016 Qtr 2

No.	Recommendation	Update – 2015 Qtr 3
4	Engage Materials Management more consistently to ensure openness, fairness and transparency of procurement processes. Guidelines should be established outlining when to engage the Materials Management. Consideration can be given to size, complexity, and other characteristics of a transaction (leases, acquisitions, etc.) or retention of broker or advisory services. By utilizing the services of Materials Management more consistently, the Real Estate division would benefit from additional support and expertise and potentially improve the oversight and accountability of real estate procurement processes.	See Q3 2015 update for Recommendation # 1 above. Implementation Date: 2016 Qtr 2
7	Establish guidelines when negotiating and establishing commission rates with external real estate brokers a) Establish guidelines on commission rates to be paid on real estate transactions, ensuring they are reflective of industry standards, and comparable to the conventions of other municipalities for transactions of a similar nature. The level of transparency and rationale should increase relative to the magnitude of the transaction. b) Commission rates for large transactions should be negotiated rather than applying the commission rate that was set for a much lower transaction value. This may result in lower fees.	See Q3 2015 update for Recommendation # 1 above. Implementation Date: 2016 Qtr 2

No.	Recommendation	Update – 2015 Qtr 3
8	Retain documentation of internal communication in the transaction file a) The Real Estate division is in the process of developing a formal checklist for transactions, including verification of Councillor consultation. EY agrees with the Real Estate division's initiative to implement a formal checklist to ensure that consultation with the Ward Councillor occurs and results are retained in the file. b) Copy of Circular letters should be retained in the transaction file. If a Circular Letter was not issued, a valid justification for not doing so should be included in the file. When a circular letter is not retained in the file, there is no means to confirm that the appropriate parties have been notified.	See Q3 2015 update for Recommendation # 1 above . Implementation Date: 2016 Qtr 2
9	All significant agreements and contracts should be reviewed by Legal Services. Standard templates for all Real Estate transactions should be developed. All significant agreements and contracts should be reviewed by Legal Services. Consideration should always be given to adherence to standard City terms and conditions for the provision of services. Standard City templates which do not already exist, such as leasing transactions where the City is the lessee, real estate consultant agreements, should be developed and approved by Legal Services. Significant changes to the standard terms should be approved by Legal Services. This will limit contact risk to the City.	See Q3 2015 update for Recommendation # 1 above. Implementation Date: 2016 Qtr 2

No.	Recommendation	Update – 2015 Qtr 3
10	Develop standardized index and checklist for transaction files and standardized approach for document retention a) A standardized index and checklist should be developed to facilitate more consistent document retention and file organization. A checklist will help ensure procedures are not inadvertently missed. The City should consider a centralized option for document sharing across all related departments. All relevant documents to a real estate transaction should be accessible by PPD and their file documentation should contain support for all critical documents. A system of this nature could consist of a central database of documents, with access granted to certain aspects of the system as necessary for given departments (for example all final legal documents from real estate transactions would be accessible by Legal Services and PPD).	See Q3 2015 update for Recommendation # 1 above. Implementation Date: 2016 Qtr 2
11	Guidelines should be established for a comprehensive procurement process for significant lease or acquisition transactions over a certain size Guidelines should be established for undertaking a comprehensive procurement process (including an open market process) for leases \ or acquisitions of a significant dollar size or complexity in order to determine the best options and rates for the City.	See Q3 2015 update for Recommendation # 1 above. Implementation Date; 2016 Qtr 2

No.	Recommendation	Update – 2015 Qtr 3
13	Perform market analysis for establishing lease rates When entering into a lease agreement, an analysis should be performed of various comparable properties in the area to determine market rates. External data should be obtained to corroborate estimates and validate the lease is consistent with market rates (incorporating all aspects of occupancy costs). The Public Sector Comparator tool or other comprehensive model should be used in order to determine whether a proposed arrangement is cost effective for the City.	See Q3 2015 update for Recommendation # 1 above . Implementation Date: 2016 Qtr 2
14	Develop tracking mechanism Develop a formal tracking mechanism to flag delays and highlight where additional actions or decisions may be required. Establishing protocols and milestones that trigger follow up when certain transactions have reached various stages will assist in reducing delays in the process. This will identify when follow-up action is required. Consideration of levels of management that should be notified at what stages should be included as part of this monitoring. Management has indicated that a directive is being established whereby expropriations more than two years in process will be reported to the CFO and CAO to determine whether to conclude a settlement or to proceed to LVAC.	See Q3 2015 update for Recommendation # 1 above. Implementation Date: 2016 Qtr 2
17	Develop an ESA procedure An ESA procedure should be developed that determines when an ESA is required for an acquisition, the rules for the engagement of the assessor, the qualifications necessary to review an ESA and how to determine if a more in depth ESA is required.	See Q3 2015 update for Recommendation # 1 above. Implementation Date: 2016 Qtr 2

No.	Recommendation	Update – 2015 Qtr 3
15	Restrict the use of personal email accounts for City business and establish policies for removal of City files offsite To reduce the risks associated with sending sensitive data through unsecure emails, consideration should be given to restricting City employees to send or copy sensitive data through unapproved methods such as personal email accounts. Consideration should be given to updating policies relating to use of City email, such as Administrative Directive No. IT-002 (Management of Electronic Mail), to include policies around use of personal emails for City business. All City information, particularly confidential and sensitive information contained the in real estate transaction files should be held in a secure, City premise to reduce the risk of sensitive information being misplaced or stolen. A department policy should be implemented to restrict files from going offsite (or if it's deemed necessary to do so, have appropriate sign-off by senior resource to authorize).	Corporate Support Services has revised Administrative Standard No. IT-002 and included the following paragraph: "As part of ensuring email communications comply with all usage, storage and retrieval protocols in this Standard as well as the Employee Code of Conduct, employees shall not use personal email accounts to conduct City of Winnipeg business." The revised Standard is available on CityNet. The policy for removal of City files offsite will be addressed as part of the RETMF. While Recommendation #15 is beyond the scope of work for the RETMF, in the opinion of the PP&D Real Estate Division, the appropriate place for the policy would be within the RETMF. The Real Estate Division has created a policy and asked EY to allow for the inclusion of the policy within the Framework. Implementation will coincide with Phase II of the RETMF. Implementation Date: 2016 Qtr 2

Recommendations Implemented – Previous Quarters

No.	Recommendation	Implemented
12	Incorporate flexibility into lease terms Where possible leases should include shorter base terms with options to renew, or cancellation clauses should be included to protect the City's interest and provide flexibility in lease agreements.	2014 Qtr 3

Recommendations Not To Be Implemented

No.	Recommendation	Comment
5	Establish guidelines on retention of external real estate brokers. Guidelines should be established on when external real estate brokers are to be engaged as well as defining explicitly what services will be provided as part of their engagement. The following should be considered: ► Requirement to document the basis for why external resources are required ► If additional services are required that were not contemplated in an original procurement document (due to transaction size, complexity of the transaction, or service not contemplated by an RFQ, RFP, EOI, EOIQ), a separate procurement process should be initiated for those transactions / services ► Specific documentation, identification and inclusion in final contracts if certain items are contemplated to be paid for even if a transaction did not close	As supported by discussion at the October 9, 2012 Standing Policy Committee on Property and Development (SPCP&D), the Public Service no longer utilizes an external Real Estate Broker Program. If directed to reinstate the Program at some future date, guidelines on the retention of external real estate brokers will be established and integrated into the Real Estate Management Framework. - While there is no formal SPC direction to not renew the RFQ for real estate services and discontinue the use of the External Real Estate Broker Program, the issue was discussed at the Oct 9, 2012 SPC on P&D. The conclusion was that the Public Service did not require formal direction to take this action (of discontinung this program) but SPC concurred with the plan to do so and await the outcome of the "audits". An MP3 file of that conversation is attached. - the discussion at the Oct 9, 2012 SPC also resulted in direction that the Winnipeg Public Service report back in thirty (30) days, with an analysis of the feasibility of terminating the current contracts for property management services for the former Canada Post Building (266 Graham Avenue) and the former Dominion Bridge property (1460 Dublin Avenue), with the intent of potentially managing these services internally or any other options available - http://www.winnipeg.ca/CLKDMIS/ViewDoc.asp?DocId=12186&SectionId=&InitUrl=

No.	Recommendation	Comment
6	Establish guidelines to document real estate brokers' roles Guidelines should be established and consideration given to the following: ► Any work being completed by an external broker should be under specific contracts which have been subject to legal review ► If any perceived conflict could arise given involvement by the broker for other parties beyond the City in a given transaction, approval of that involvement by the City would be required and a Confidentiality Agreement put in place. Policy on the appropriate level of authority to approve this circumstance should be established	As supported by discussion at the October 9, 2012 Standing Policy Committee on Property and Development (SPCP&D), the Public Service no longer utilizes an external Real Estate Broker Program. If directed to reinstate the Program at some future date, guidelines on the retention of external real estate brokers will be established and integrated into the Real Estate Management Framework. - While there is no formal SPC direction to not renew the RFQ for real estate services and discontinue the use of the External Real Estate Broker Program, the issue was discussed at the Oct 9, 2012 SPC on P&D. The conclusion was that the Public Service did not require formal direction to take this action (of discontinung this program) but SPC concurred with the plan to do so and await the outcome of the "audits". An MP3 file of that conversation is attached. - the discussion at the Oct 9, 2012 SPC also resulted in direction that the Winnipeg Public Service report back in thirty (30) days, with an analysis of the feasibility of terminating the current contracts for property management services for the former Canada Post Building (266 Graham Avenue) and the former Dominion Bridge property (1460 Dublin Avenue), with the intent of potentially managing these services internally or any other options available - http://www.winnipeg.ca/CLKDMIS/ViewDoc.asp?DocId=12186&SectionId=&InitUrl=

Additional Recommendations Adopted by Council

No.	Recommendation	Status	
18	a) Forward the full Ernst and Young "Real Estate Management Review" to Manitoba Justice for review; b) Request that Manitoba Justice respond to the request through the City of Winnipeg Auditor to Council.	Complete	City Clerks sent the Report to Manitoba Justice on July 18, 2014. On August 15, 2014 the Department of Justice informed the City Auditor that the matter has been referred to the Royal Canadian Mounted Police to review.
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 review 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.	In progress	A Report of the Implementation of an Independent Fairness Commissioner was presented to Audit Committee in the June 2015 and received as information. A job description was drafted and has been forwarded to the Labour Relations & Total Compensation branch for review and rating. It is anticipated a recruitment process will be undertaken in the 4th Quarter of 2015.
20	That the City Auditor be delegated authority to acquire an external agency, other than Ernst and Young, to oversee the implementation of all the recommendations from Ernst and Young's report by the Public Service in a timely and efficient manner, to report back to Council on the implementation of the recommendations via the Auditor's Report to Council.	On-going	The Audit Department issued RFP 750-2015 to engage a third party to oversee the implementation of all the recommendations from the Ernst and Young's report. The submission deadline was September 22, 2015. A contract was awarded to Deloitte & Touche.