8
LEASING OF REAL PROPERTY POLICY

The Finance and Administration Committee recommends receipt of the following report dated August 13, 2009, from the Commissioner of Corporate Services.

1. RECOMMENDATION

It is recommended that:

1. Regional Council approve the Leasing of Real Property Policy (*Attachment #1*) attached to this report.

2. PURPOSE

The purpose of this report is to seek Regional Council's approval for a policy concerning the procurement of leased real property in support of the Region's provision of services to the public. In addition it addresses renewal of leases.

At its April 23, 2009 meeting, Regional Council requested staff to develop a policy to govern the procurement of leased real property and directed that the policy incorporate a competitive process, similar to a request for proposals process.

3. BACKGROUND

York Region has a Strategic Accommodation Plan

In 2005, Regional Council approved a Strategic Accommodation Plan for the Region. The plan sets out a preference to own, rather than lease, space for Regional staff to deliver services. There are cases however when the option to lease is preferable. These situations can include:

- Space requirements may be relatively small, making ownership not feasible;
- Underlying program funding from sources outside the Region may be temporary in nature;
- Expected shifting demographics over the mid-term may indicate a potential need to relocate the provision of services to other areas of the Region;
- The Region may be planning to develop owned accommodation in the mid-term making leasing an acceptable gapping strategy;
- Ownership in a condominium setting may be undesirable due to limited control over property ownership decisions;

- The Region may already lease space in a property within the geographic search boundaries. Adding additional rental space for compatible functions may reduce overall costs and add to program delivery efficiencies;
- There may be limited appropriate space available for purchase within any geographic area at a point in time.

Current process of securing leased space

Currently, when a Regional Department requires space, it budgets for the amount in the upcoming annual budget. The department provides its space requirements to the Property Services Branch (PSB) which will commence a property search within the geographic area specified by the department.

PSB conducts a market search of available property for purchase and lease, often through the use of brokers who are intimately aware of accommodation space available in the designated geographic area. It should be noted that there is no cost to the Region for the brokerage services as this cost is paid by the landlord. PSB will determine the availability and suitability of purchasing space based on the criteria provided, in consultation with the department.

If it is determined that leasing the space is the preferable option, PSB will review the search results obtained by the broker and create a shortlist. PSB will then coordinate a site tour with the department staff to determine the suitability of the space. Once a suitable space has been identified PSB will have the space inspected to determine any deficiencies. Any property under consideration is required to meet all applicable health and safety legislation and applicable building and energy codes.

Finding suitable leased space is a lengthy process

Acquiring leased space and having it ready for occupancy can be a lengthy process. The search for the property and resulting negotiations with an identified landlord can take approximately six months. It is during this stage of this process that Regional Council approval is sought to allow the Region to enter into a lease agreement with a landlord and subsequently to finalize lease documentation. Once this is obtained the next stage is to have space plans drafted, approvals secured and leasehold improvements and renovations undertaken. This work can take up to six months. No leasehold improvements are undertaken until Council approval is granted, and leasing costs are not incurred until occupation, with the possible exception of legal costs to examine the materiality.

A conditional offer to lease secures the space until Council gives final approval

This conditional offer to lease outlines the space and location criteria as well as financial (base and additional rent) and non-financial (operating responsibilities) aspects.

The process for seeking Council approval of the conditional offer can take up to two months. Landlords are unable to lease the space during that time. If Regional Council directs that the offer be re-examined this leads to increased delay and can negatively affect the Region's relationship with the broker/landlord community. The new policy will help address this uncertainty and related costs or lost opportunities.

4. ANALYSIS AND OPTIONS

The two options considered are "status quo" or a new approach.

The proposed policy will have client department seek Regional Council authorization for new leased space as part of annual budgets

Client departments will request approval from Regional Council to establish a new service location or relocate existing services as part of the annual budget process prior to having PSB search for a property. The request in the annual business plan should at minimum contain the following:

- A description of the service or support functions to be carried out in the property;
- A rationale for the size requirement of the space;
- The requested term of the lease;
- The type and class of the property being sought. (Some Regional operations may require higher end Class A office space. Others may be seeking store front property with ample parking; whereas off-site storage facilities may only require lower Class C warehouse space.)
- The geographic area in which the property should be located to service the client if there is a client, and if access to transit is needed for the client.
- An explanation of how the lease request meets the Region's broader Strategic Accommodation objectives.
- The estimated all-in cost for the lease transaction, including base rents, additional rents, leasehold improvement costs and furniture.

Property Services will inform the client department of these estimated costs based on recent transactions and information available in the current marketplace.

Property Services Branch conducts search for space after budgets are approved

Upon approval by Regional Council PSB will conduct a search for the property. Typically, PSB through its use of knowledgeable and experienced brokers and other tools such as the MLS database is able to comprehensively canvas available lease opportunities within defined geographic limits. These agents/brokers do not get paid unless their property is selected. In those cases where the Director of Property Services believes all potential properties may not be canvassed, he may recommend that PSB place advertisements in electronic or print format for the required space, using a Request for Quotations process, similar to that set out in the Region's Purchasing By-law.

PSB staff will conduct an analysis of the list of potential leased properties to ensure they meet the class, size, locational and other criterion authorized by Regional Council. Several circumstances that will be taken into consideration when evaluating lease sites include but are not limited to; zoning provisions; landlords history with the Region; landlords with whom litigation is in progress or imminent.

PSB will then determine a cost comparison of the potential properties based on basic rent, additional rents, and estimated leasehold costs. Part of this comparison may be based on visual inspection of the properties under consideration. If any visual or more extensive testing determines the property does not meet legislated health and safety standards, minimum Regional accommodation standards or minimum building and energy codes, the property will not be further considered.

In year requests for leased premises may occur on an occasional basis

On an exceptional basis a program may receive unexpected in-year funding from external sources such as the Provincial or Federal governments. In these situations the affected department will seek approvals through their normal committee process. The report should contain the same information as would normally go to Council during the budget review process.

Director of Property Services will negotiate lease with lowest, compliant proponent

Starting with the property which has the lowest expected cost to the Region, where the property has met all program requirements, standards and criteria, and where the cost is within the authority limits authorized by Regional Council, the Director of Property Services, utilizing the appropriate PSB staff will negotiate, based upon the offer to lease, the final terms and provisions of a lease agreement with the landlord, which will be subject to review by Legal Services.

Delegated Authority to Execute Leases

Material leases over $250,000.00 per year or where the net present value of the lease is calculated to be more than $2.0 million must fall under the Region's Capital Financing and Debt Policy and provincial legislation and be reported upon by the Treasurer and be considered by Regional Council for final authority. This also applies to lease renewals.

However, it is proposed that the Chief Administrative Officer be authorized to execute leases where the annual rent payments will be under this threshold.

It is recommended that for leases with annual rent payments under $100,000 per year that the Commissioner of Corporate Services be authorized to enter into lease agreements on behalf of the Region. This also applies to lease renewals.

An example of this would be a 3,000 sq. ft. storage facility on Enford Road, in Richmond Hill, which is leased on behalf of York Region Transit. The annual gross rent is $24,000.

The Commissioner's exercise of this authority would be reported upon annually to Regional Council.

5. FINANCIAL IMPLICATIONS

This proposed leasing policy will ensure that the Region obtains leased space in the most cost-effective and timely manner. Using brokers is an efficient and cost effective search method to locating suitable space. The use of advertising in local media varies, but may not be required except in unusual circumstances thereby keeping costs low.

6. LOCAL MUNICIPAL IMPACT

The proposed leasing policy will allow Regional Council to provide input and direction on establishing new regional program and service locations. Local municipalities will be aware early of the potential impact on their residents and users of Regional services.

7. CONCLUSION

A policy for securing leased real property will ensure the procurement is done in an effective, expeditious and transparent manner, respecting the Region's Strategic Accommodation Plan, client/customer requirements and best price.

For more information on this report, please contact Barry Crowe, Director, Property Services at Ext. 1684.

The Senior Management Group has reviewed this report.

(The one attachment referred to in this clause is attached to this report.)

ATTACHMENT 1

York Region

STATUS
Council Approved Y N
CAO Approved: Y N

TITLE: Leasing of Real Property Policy	**NO.:** **Approval Date: _____________, 2009**

POLICY STATEMENT:

A policy providing the framework for the approval and execution of real property leases for Regional purposes.

APPLICATION:

To all Regional Employees who are responsible for the procurement of leased real property in support of the Region's provision of services to the public.

PURPOSE:

This policy provides a framework for the procurement of leased space for Regional purposes and the approval and execution of leases for such purposes. This policy reflects the Region's commitment to ensuring that a competitive process is in place when the Region secures leased space. This policy must be considered in conjunction with the Region's Capital Financing and Debt Policy and the York Region Strategic Accommodation Plan.

DEFINITIONS:

Additional Rent - an amount payable by a tenant to a landlord in accordance with a lease that is in addition to basic rent, for items such as common area maintenance, taxes, landlords insurance, and any other costs not included in base rent.

Annual Lease Payment - an annual amount payable by a tenant to a landlord in accordance with a lease which includes Basic Rent and Additional Rent.

Basic Rent - an amount payable by a tenant to a landlord in accordance with a lease for the occupation of space.

Client Department – the Regional Department which requires accommodation to carry out its required operations.

Client Group – general public that require these services

Leasing payments - include any rental fee payable to a landlord.

Material Lease - any lease with annual lease payments greater than or equal to $250,000 per annum or which has a net present value greater than or equal to $2 million, for the term of the lease including possible extensions or renewals.

DESCRIPTION:

Preamble
Regional Council approved a York Region Strategic Accommodation Plan in 2005. As outlined in that Plan, the Region's general preference will be to purchase accommodation for the provision of services to the public. However, on a case by case basis, overriding considerations may make the leasing of accommodation space more feasible.

Acquiring and readying leased accommodation for Regional purposes is a lengthy process which can take up to a year or more depending on the complexity of the acquisition. Typically, the search for a suitable property and the consequent leasing negotiations can take approximately six months. Another approximate six months can be spent on drafting plans, securing approvals, and constructing leasehold improvements.

All accommodation considered for lease by the Region shall meet the Region's property standards as approved from time to time by the Region's Property Services staff. All accommodation leased by the Region shall meet all applicable health and safety legislation and at a minimum shall conform to all applicable building and energy codes.

It is the Region's position that the process to procure accommodation space will be made widely available to landlords within the geographic area of search.

Requirements for New Accommodation – For material leases having leasing payments of $250,000 or more per year

To comply with requirements under the *Municipal Act, 2001*, the Region has defined those leases which have lease payments equal to or greater than $250,000 or which have a net present value of $2 million or more, as determined by the Regional Treasurer, as "material leases". The Region's *Capital Financing and Debt Policy* approved by Regional Council in 2006 and amended in 2008 requires that all material leases be analyzed for specific risk factors and reported upon separately to Regional Council for approval. All other requirements as outlined in this policy for leases with annual payments between $100,000 and $250,000 apply to this category of material leases save that the Commissioner of Finance shall adhere to the reporting requirements set out in the Region's *Capital Financing and Debt Policy* for material leases. The delegation of authority to execute material leases on the Region's behalf will be governed by the authority given by Regional Council in each instance.

Requirements for New Accommodation – For leases (excluding material leases) having leasing payments between $100,000 and $250,000 per year

The client department will be required to submit a report to Regional Council approving the procurement of the space. The report will include a summary of the property criteria essential to the provision of services or support being provided.

Criteria for establishing lease premises

The report should reference the following criteria:

- A description of the service or support functions to be carried out in the property;
- A rationale for the size requirement of the space based upon Regional accommodation standards;
- The requested start date and term of the lease;
- The type and class of the property being sought. Some Regional operations may require to be in higher end Class A office space. Others may be seeking store front property with ample parking; whereas off-site storage facilities may only require lower Class C warehouse space;
- The geographic area in which the property should be located. There are several factors which can influence the location of a property such as the location of the client group(s) to be served, access to transit, the type of service provided to the client group, availability of optic fibre and availability of parking;
- An explanation of how the lease request meets the Region's broader Strategic Accommodation objectives;
- Availability of existing Regional leased space that may provide opportunities for economies of scale and program efficiencies;
- The estimated all-in cost for the lease transaction, including base rents, additional rents, leasehold improvement costs and furniture. The Property Services Branch will inform the client department of these estimated costs based on recent transactions and information available in the current marketplace. The client department will also inform the Director of Business Planning and Budgets, of the Finance Department, if the estimated amount exceeds amounts already budgeted to allow for a revision of the Region's operating budget.
- In keeping with the Region's Vision 2026 strategies, the client department may wish to give priority to those facilities that incorporate energy efficient features in their buildings and operations.

The report will set out the recommended search process that ensures it is sufficiently competitive for their specific situation.

Leasing vis a vis ownership

As the approved Strategic Accommodation Plan promotes owning rather than leasing, the report should identify the reasons for pursuing the leasing option instead of acquiring the property. There are many variables which can affect whether a property should be leased, including:

- Underlying program funding from sources outside the Region may be temporary in nature;
- Expected shifting demographics over the mid-term may indicate a potential need to relocate the provision of the services to another area of the Region;
- The Region may be planning to develop longer term owned accommodation in the near to mid-term making leasing an acceptable gapping strategy;
- Space requirements may be relatively small making the ownership of an appropriate space unfeasible;
- Ownership in a condominium situation may be undesirable due to limited control over property ownership decisions;
- The Region may already lease space in a property within the geographic search boundaries. Adding rental space for compatible functions may reduce overall costs and add to program delivery efficiencies;
- There may be limited appropriate space available for purchase within an area at any point in time.

In the absence of any of the above demonstrated factors any accommodation requirement will be subject to a purchase/lease analysis. This policy only addresses those situations where it has been determined that procuring space by lease is appropriate having considered the goals and objectives of the York Region Strategic Accommodation Plan and, in particular, the feasibility of purchasing property.

Upon Council approval of the lease report, Property Services will search for sites

The Property Services Branch either on its own or through the use of real estate brokers will prepare a search for adequate and appropriate rental accommodation based on the space and location criteria approved by Regional Council.

Generally, the Region through its use of brokers and other tools such as MLS databases is able to comprehensively canvas available lease opportunities once Regional Council has approved search criteria. In most cases, nearly all landlords with available space matching the required criteria can be identified. In those cases where the report to Council has specifically requested and the Director of Property Services believes all potential properties may not be canvassed, a Request for Quotations will be advertised for the lease of the required space in appropriate electronic or print media.

Property Services staff will review the applications received after a stated closing time period. Property Services staff together with the client department will inspect the properties of those meeting the Region's minimum space, locational and property standards and criteria, including class of building approved by Regional Council and all applicable health and safety legislation, and building and energy code standards to determine overall suitability of the space and to estimate the costs of renovating the space to meet the client department's needs.

Further, Property Services staff will analyze the services being offered by landlords as part of the additional rent charge. Staff will determine the cost of any services which will need to be provided through separate contractual arrangements in the case where a landlord is not offering a service deemed necessary by the Region. All-in costs including base rent, adjusted additional rents, and expected leasehold costs to the Region for each potential proposal will be compared for all properties which meet the Region's specifications.

Property Services Branch will negotiate an Offer to Lease with the Proponent with the lowest all-in estimated price. If the parties are unable to successfully negotiate an Offer to Lease, then Property Services will proceed to the next lowest priced proposal and so on.

The Commissioner of Corporate Services shall have the delegated authority to execute leases that fall into this category.

Requirements for New Accommodation – For leases having leasing payments under $100,000 per year

The Commissioner of Corporate Services can enter into lease arrangements based on search parameters outlined by the Commissioner of the client department.

The Commissioner of Corporate Services will report back to Regional Council annually in a summary form on the transactions under which this authority has been exercised.

Renewal of Leases

The Commissioner of Corporate Services is authorized to exercise any renewals of lease provided that the renewal has been previously authorized by Regional Council as outlined in this policy and the client department has allocated funds within its Operating Budget for the leasing costs. Any other lease renewals will be subject to the same processes outlined in this policy for leasing new accommodation.

Ground Leases

Ground leases will be subject to the same processes and authorities as outlined in this policy for leasing new accommodation, save and except where the ground lease is an integral part of a separate transaction in a capital project approved by Regional Council.

Nominal Leases

From time to time the Region may be offered leased property at a nominal payment rate. These lease arrangements will be subject to the same processes and authorities as outlined in this report for leasing new accommodation with lease payments under $100,000.

RESPONSIBILITIES:

Legal Services:

- Legal Services will review offers to lease and leases on behalf of The Regional Municipality of York.

- Legal Services will prepare lease agreements.

- As required, Legal Services will retain external legal counsel to review the lease, offer to lease, and negotiate the lease provisions.

Chief Administrative Officer (or designate):

- The Chief Administrative Offer is authorized to execute, on the Region's behalf, leases for accommodation where the annual rent payments will be under $250,000 per annum or where the net present value of the lease is calculated to be less than $2.0 million, and which meet the space and location criteria approved by Regional Council and the minimum property standards required by the Region, provided that the all-in lease costs are under the proposed costs indicated to Regional Council.

Commissioner of Corporate Services (or designate):

- The Commissioner of Corporate Services is authorized to execute, on the Region's behalf, leases for accommodation with annual rent payments under $100,000.

- The Commissioner of Corporate Services is authorized to exercise any renewals of lease of any amount provided that the renewal has been previously authorized by Regional Council and the client department has allocated funds within its Operating Budget for the leasing costs.

Commissioner of the Client Department (or designate):

- The Commissioner of the client department will prepare a report to Regional Council requesting approval to lease space with certain defined space and location criteria.

- The Commissioner of the client department will instruct the Director of Property Services to commence the search for leased space.

- The Commissioner of the client department will instruct the Director of Property Services to execute an offer to lease, when suitable space meeting the client department's requirements has been identified.

- The Commissioner of the client department will be responsible for ensuring that its Operating Budget Branch has allocated funds within the operating budget for the costs of leasehold improvements to the space, if necessary, and leasing costs, including the costs of external legal fees. If the estimated lease costs will exceed the amount budgeted, the Commissioner will inform the Director of Business Planning and Budgets, of the Finance Department.

Commissioner of Finance (or designate):

- The Commissioner of Finance will review lease/purchase analyses in conjunction with Property Services staff and report jointly with the Commissioner of Corporate Services as to whether a property should be purchased or leased.

- The Commissioner of Finance will comment on material leases as required by the *Municipal Act, 2001* and the Region's *Capital Financing and Debt Policy*.

Director of Property Services (or designate):

- The Director of Property Services will provide a client department an estimate of lease costs of any contemplated accommodation based on size requirements and average market costs to determine if the contemplated procurement on a leased basis could exceed an annual lease payment of $100,000.

- The Director of Property Services will provide the client department with a preliminary determination of the availability of purchase options, if required, for inclusion in a report to Regional Council requesting authority to conduct a search for accommodation space.

- The Director of Property Services will conduct appropriate searches for leased space based upon Regional Council approved search criteria and minimum property standards required by the Region.

- The Director of Property Services will, if the process requires in this policy, cause a Request for Quotations be advertised in appropriate electronic and print media concerning the procurement of leased space based on search criteria approved by Regional Council and minimum property standards required by the Region.

- The Director of Property Services is authorized to execute offers to lease for accommodation on the Region's behalf for accommodation which meets the space and locational criteria approved by Regional Council and the minimum property standards required by the Region and where the all-in lease costs are under the proposed cost as indicated to Regional Council. Offers to lease must be conditional upon Regional Council approval.

CONTACT:

A. General Inquiries

General inquiries regarding the policy are directed to the Director, Property Services, at Ext. 1684

APPROVAL INFORMATION

CAO Approval Date:	__________________, 2009		
Committee: Finance and Administration	**Clause**:		**Report No**:
Council Approval:	**Minute No**.	**Page**:	**Date: ___________, 2009**

YORK#1004658