

Subject: For-Profit Leasing Report**APPROVALS:****Jamie Doyle**_____
Director_____
Chief Administrative Officer**Recommended Motion:**

THAT the For-Profit Leasing Report be accepted as information.

Summary:

This report provides an overview of how the Regional Municipality of Wood Buffalo (Municipality) currently leases municipal Real Property to "for profit" entities or persons. This report is for information only.

Background:

On April 13, 2021 Council passed the following motion:

“THAT Administration review and bring forward a report on May 11, 2021 that addresses the current Municipal for-profit leases and for-profit leasing procedures with a recommendation or options that can be considered by Council. Such report to consider the option of selling facilities to remove the Municipality from landlord-lessee relationships.”

In response, Administration has prepared this Council Report which provides a high-level overview of the Municipality’s operations with respect to for-profit leasing activities and the context within which it operates.

Why is the RMWB a For Profit Landlord?

The Municipality has come to own real property and interests in real property through various mechanisms. Much of the Municipality’s land inventory was "gifted" as a result of the Amalgamation of Improvement District No. 143 and the City of Fort McMurray in 1995. In addition, land that might be available for leasing may be added or subtracted in the following ways:

Purchase: Municipal Departments require land for operational needs. In some instances, buildings or facilities are acquired that are not immediately necessary but

have come as part of a land assembly. Rather than have a building sit vacant, it may be prudent to lease such property to recover costs.

Project Motivation: Lands such as the Snye Point Park building or Syncrude Athletic Park have been assembled and buildings constructed for sporting, exhibition, or other public purposes. Where a contemplated use no longer exists or there has been a change in intended use, leasing the facility could be an appropriate interim use.

Land Assembly: Over the last 20 years, the Municipality has undertaken ambitious land assemblages "for valid municipal purposes" as directed by the Council of the day. Such land assemblies often come with viable commercial buildings or structures that can generate rent while the proposed project is otherwise in abeyance. Examples include the buildings currently occupied by the Red Cross and the A&W Restaurant along Franklin Avenue.

How does the RMWB Lease Property?

Lease Agreements are prepared in accordance with the Land Administration Standard Operating Procedures (SOP) and the Chief Administrative Officer Bylaw (CAO Bylaw).

The Municipality can solicit offers of interest to lease property or a party may approach the Municipality with the request to lease a property. In both cases, a Lease Agreement will be considered following a review process as per the Municipality's Land Administration Branch's SOP.

The processing steps include receiving, reviewing, and assessing the request to determine if a Lease Agreement is warranted and feasible. If there are no municipal purposes for which the real estate is currently required, Land Administration Branch will verify all information submitted by the applicant and draft a circulation notice for review by internal and external stakeholders.

Although the CAO Bylaw states that the Chief Administrative Officer may approve the terms of a contract if its term is less than 20 years, it has been standard practice to follow Land Administration Branch's SOP. The SOP states that, if the lease request is for a term greater than 5 years, Council approval is required.

In the event the request is for a term shorter than 5 years, as per the SOP, Land Administration Branch would process the lease without Council approval.

In either case, Land Administration Branch would request a draft Lease Agreement from the Legal Services Department. Once the draft Lease Agreement is received, it is reviewed internally by the applicable stakeholders and sent to the requester for review and comments. Once both parties agree to the terms and conditions, the Lease Agreement is executed.

CAO Bylaw

In accordance with section 20 of the CAO Bylaw No. 17/021, "the Chief Administrative

Officer must not approve the terms of a Contract or execute a Contract Document that commits the Municipality to acquire or dispose of a fee simple interest in land or to grant a leasehold interest for a term longer than 20 years until the Council has been informed of the essential terms of the intended transaction and the rationale for it.” As noted above, Administration's current practice is to take any lease for a term greater than 5 years to Council for approval.

Early termination

While early termination of any Lease Agreement by the Municipality is possible, unless the tenant has breached a fundamental term of the lease, termination prior to the end of a contractual lease term may expose the Municipality, as landlord, to a claim for damages by the tenant. Depending on the balance of the term remaining in the Lease Agreement, the profitability of the tenant's use, and the cost of relocating the use, the damages could be significant to the organization.

How Would the RMWB Discontinue Leasing Properties?

Should Council determine that real estate assets leased to "for profit" entities are to be sold or otherwise disposed of or simply not re-let, the existing tenancies will need to either expire or be terminated prematurely. Where a tenant is forced to either close their business or relocate because of early termination, the current lease documents do not exempt the Municipality, as landlord, from an action for damages for breach of the contractual expectation of "quiet possession". As noted previously, the potential damages claimed may be significant as the tenant may see lost profits on the premises for the balance of the lease term.

Rationale for Recommendation:

Land Administration Branch provides this report for Council's information. No action is recommended at this time.

Strategic Priorities:

Responsible Government