

# Corporation of the City of Windsor

## Complaint Investigation Report Lancaster Plane

Prepared as of February 7, 2020

### **Limitations and responsibilities**

This report was developed in accordance with our engagement letter addendum dated January 24, 2020 and is subject to the terms and conditions included therein.

Our work was limited to the specific procedures and analysis described herein and was based only on the information made available at the time we prepared the report. Accordingly, changes in circumstances after the date of this Report could affect the findings outlined herein. We are providing no opinion, attestation or other form of assurance with respect to our work and we did not verify or audit any information provided to us. This information has been prepared solely for the use and benefit of and pursuant to a client relationship exclusively with the Corporation of the City of Windsor. PwC disclaims any responsibility to others based on its use and accordingly this information may not be relied upon by anyone other than the Corporation of the City of Windsor.



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# Executive summary

## Allegation information

A complaint was received by the Auditor General which led to an investigation of the following three allegations by Internal Audit under the direction of the Auditor General:

<b>Allegation #1</b>	Lancaster Bomber stabilizers were loaned to British entity per City Council and were due to be returned but do not appear to be returned (complainant alleged value in excess of \$750,000).
<b>Allegation #2</b>	City is providing rental space to Canadian Historical Aircraft Association (CHAA) who is restoring the Lancaster Bomber on behalf of the City but restoration is not done, not sure when it will be done and may be missing parts.
<b>Allegation #3</b>	When lease came due on CHAA space were the lease provisions followed? - i.e. other proponents tried to get space but were denied; however, the incumbent did not follow process.

## Background

The City of Windsor owns a Lancaster Bomber ("Lancaster") owned which is currently being restored by CHAA under a stewardship agreement between CHAA and the City. The Stewardship Agreement includes provision for CHAA to seek funds up to a set limit related to lease, utilities, etc costs incurred. Under the Stewardship Agreement, CHAA is responsible for the fundraising and expenditures involved in restoring the Lancaster. CHAA is involved in other historical aviation activities and leases land from, and remits lease payments to YQG. The Lancaster is located on the CHAA lands leased from YQG. Below is a table summarizing the Stewardship Limits, Payments to CHAA and YQG Lease Funds received.

Year	City Reimbursement Maximum (for Years Noted)	CHAA Claim/City Funds Paid (for Years Noted)	CHAA Lease Payments to YQG (for Years Noted)
2007-2016	\$ 347,500	\$324,154	\$170,524
2017-2019	\$150,000	\$156,919	\$60,889
2020 - 2026 (Projected)	\$350,000	<=\$350,000*	\$206,997**
<b>Total (Actual and Projected)</b>	<b>\$ 847,500</b>	<b>&lt;=\$831,073</b>	<b>\$438,410</b>

\* Calculated assuming all expected funds are dispersed - historical amounts have proven to be lower than the upset limit.

\*\* The Auditor General used the current lease rates to project the future lease payments as there is a lease renewal in progress

The net cash outflow to the City has been \$249,660 and is projected to be \$392,663 in total.

Further, the costs to restore the Lancaster to date, as reported by CHAA, are \$700,000<sup>1</sup> excluding the cost of materials which CHAA received from various sponsors. Forecasted cost to complete are \$5 to 15 Million<sup>2</sup>. These forecasted restoration costs are if the stewardship agreement is not in force. The stewardship agreement limits the City funding contributions to the restoration to a much lower level by leveraging the volunteer/training labour, bartering mechanisms and fundraising capacities provided by CHAA.

<sup>1</sup> The Auditor General does not have the right to Audit the records of CHAA as it is not a City agency, board, commission or grant recipient. The reported amounts are presented as disclosed by the external party.

<sup>2</sup> As reported by the independent consultant in their report presented to City Council - May 2016.

## Investigation approach

For each allegation we developed investigative procedures. Details of our activities may be found in the Summary of procedures and results section later in this report

## Scope limitation

Two scope limitations were noted during this review:

1. Impacting Allegation #2: As the investigators are not aeronautical engineers, and given the age of the plane, it is not possible for us to ascertain if parts are actually missing.
2. Impacting Allegation #3: We are not able to determine whether the City of Windsor (CoW or the City) received a written consent from CHAA for lease extension prior to lease term expiry or not.

## Summary of procedures & findings

Based on the procedures we executed and the results of our testing, we did not detect evidence to support the allegations. A summary of our analysis of each allegation is included below (further details are included in the Summary of Procedures and Results section of this report).

With regards to allegation #1 (*Lancaster stabilizers were loaned to British entity per City Council and were due to be returned but do not appear to be returned*) we noted that:

The stabilizers were sent to the Royal Air Force of the United Kingdom (RAF) and are currently in the possession of the RAF. The loaned stabilizers were dispatched based on the approval of the Council. While the stabilizers are not currently in Windsor, this is in accordance with the agreement in effect between the City of Windsor and The Secretary of State for the United Kingdom of Great Britain and Northern Ireland. The stabilizers are scheduled to be returned by June 30, 2021. The Senior Responsible Owner (SRO), commissioned officer at RAF Coningsby has confirmed there are no expected challenges with the timeline for the RAF to return the stabilizers, that the stabilizers are in the possession of the RAF and provided photos of the stabilizers.

With regards to allegation #2 (*City is providing rental space to Canadian Historical Aircraft Association (CHAA) who is restoring the Lancaster on behalf of the City but restoration is not done, not sure when it will be done and may be missing parts*) we noted that:

The City is providing rental space to Canadian Historical Aircraft Association (CHAA). CHAA is restoring the Lancaster using funds raised by the CHAA. The City provides funding to CHAA up to \$50,000 per annum to cover lease and other utility type costs, not to fund restoration activities. The restoration is in progress and a 3rd party has provided perspective on that restoration indicating that, while significant work remains, the restoration elements communicated to City Council correspond to the condition of the aircraft and are in line with its intended use. Two key components of the restoration are (1) available funds and (2) volunteer time. With both of these items being hard to forecast the City would be challenged to define a formal restoration timeline or plan. As for missing parts, our focus was on the specific allegation in #1 (stabilizers). As the investigators are not aeronautical engineers and the age of the plane it is not possible for us to ascertain if parts are actually missing. However, two mitigating factors were noted: 1. an independent review of restoration progress engaged by management and the stewardship agreement that was in force and that both parties show behaviours of operating under. As such, parts, if missing, would still need to be provided by CHAA as part of the restoration to the intended use - if they were to be missing.

We noted that while historically there was a legal agreement between CHAA and the City as to the restoration and stewardship elements there is currently no formal agreement in place. Both parties appear to be operating as if the original 10 year agreement was extended.

With regards to allegation #3 (*When lease came due on CHAA space were the lease provisions followed - i.e. other proponents tried to get space but were denied however incumbent did not follow process*) we noted that:

Based on the contract wording, City communication of rate for 5 years (2015-2019) and the lessee rental payment it appears that the 3rd and final extension is in force with the lessee and the City would not have been in a position to rent the space to another party until lease term completion. In the event the lease extension is not activated lease terms revert to a month to month basis and entering into alternative space use solutions would be at the discretion of the City (with terms and covenants appropriately met) which it did not exercise. In this analysis, we were not able to locate a copy of the lessee intent to extend the lease agreement as part of the City records. Given the evidence noted, it appears that an inforce lease is in place between the City and CHAA and the property was not available for other lessors to consider, or in a more conservative interpretation - that a lease was in force on a month to month basis and the City and lessee were not interested in changes to the existing arrangement.

# Summary of procedures & results

## Allegation #1

Lancaster stabilizers were loaned to British entity per City Council and were due to be returned but do not appear to be returned.

### Procedures and results:

#	Procedure	Results
1.1	Acquire evidence as to who owns the Lancaster asset	<p>IA inquired with the management team regarding evidence as to who owns the Lancaster plane. Management indicated that the City owns the plane. Evidence such as City Clerk documents, council approval to set up restoration bank accounts, media coverage and length of possession were used to corroborate the City's statement of ownership.</p> <p>IA obtained documents from the City Clerk and noted</p> <ul style="list-style-type: none"> <li>• There is a City Council resolution providing management the approval to purchase the Lancaster Bomber in May 1964.</li> <li>• There is a City Council resolution approving the creation of a bank account for use in restoration of the Lancaster Bomber.</li> <li>• The City has had possession of the Lancaster Bomber since 1964.</li> <li>• The Lancaster Bomber is housed at the YQG airport in space leased to the Canadian Historical Aircraft Association (CHAA).</li> </ul> <p>Anecdotal evidence was also noted through internet research where media sources and the City indicate that the City owns the aircraft in question.</p> <p>IA visited the CHAA facility on January 10, 2019 and confirmed the existence of the Lancaster plane. Pictures of the plane were taken at this time.</p>
1.2	If the City is the owner, what is the expected use/plan	<p>IA inquired with the management team regarding the expected use/plan of the Lancaster plane. Management indicated that the purpose and intent was to ensure the Lancaster's preservation and restoration as a community aircraft heritage for exhibit purposes only.</p> <p>IA inspected the agreement between CoW and CHAA for the preservation and restoration of the Lancaster plane. IA noted from the agreement:</p> <ul style="list-style-type: none"> <li>• The plane was originally deteriorated and in unstable condition, hence wasn't suitable for exhibit</li> <li>• The preservation and restoration plan was divided into specific phases namely: Assessment, Forward Fuselage and initial Restoration Tasks, Fuselage Centre Section Reconstruction, Fuselage Reconstruction, Outer-wings and other components. and Final Assembly.</li> <li>• The document states clearly that the restoration and preservation is for the Lancaster to improve in condition for exhibit purposes as a community heritage (the plane is not intended to fly..</li> </ul>
1.3	Acquire evidence of who decided to send stabilizers to the UK.	<p>IA inquired with management as to the CoW Lancaster's stabilizers status and location. Management indicated the following:</p> <p>The stabilizers have been sent to the Royal Air Force (RAF) in the UK for potential use in flying one of the RAF's operational Lancasters which requires a pair of</p>

	Inspect council minutes where the stabilizer item was debated/decided.	<p>stabilizers. The CoW's Lancaster is not flight worthy, and the restoration plan is for exhibition/display (not flight), hence operational stabilizers were not critical to the restoration. Council approved the dispatch of stabilizers to the RAF. There is an agreement between CoW and the RAF for the stabilizers exchange.</p> <p>IA inspected the agreement between CoW and The Secretary of State for the United Kingdom of Great Britain and Northern Ireland which was signed in June 2018 and noted:</p> <ul style="list-style-type: none"> <li>the stabilizers were to be picked up by the RAF at their own expense and would be transported to the RAF base to be installed on a RAF Lancaster plane</li> <li>the stabilizers from the RAF Lancaster plane would be removed and then sent to CoW in place of the originals no later than June 30, 2021</li> </ul> <p>IA also inspected the Council resolution from March 23, 2016 where the stabilizers dispatch was discussed and noted:</p> <ul style="list-style-type: none"> <li>directions for the Executive Director of Recreation and Culture were to enter into a contract with the RAF to exchange the RAF stabilizers with CoW's with all associated cost to be borne by the RAF.</li> </ul>
1.4	Acquire evidence that stabilizers were moved in accordance with the Council approval	<p>IA inquired with management as to what evidence might exist to demonstrate the stabilizers for the Lancaster Bomber were moved in accordance with Council approval and that they reached their destination. Management indicated that:</p> <ul style="list-style-type: none"> <li>There was a Report to Council which summarized the matter and a subsequent approval/resolution for sending the stabilizers to the UK. Management had received confirmation from the RAF that the stabilizers had been received.</li> </ul> <p>IA inspected the Council Report CoW Lancaster Bomber FM212 dated March 23, 2016 and noted that the Council directed the Executive Director of Recreation and Culture to enter into a contract with the UK RAF to exchange the RAF stabilizers with CoW's with all associated cost to be borne by the UK RAF.</p> <p>IA inspected correspondence from UK RAF Brize Norton Base indicating that the stabilizers from the Windsor based Lancaster Bomber had been safely received at the base dated August 07, 2018.</p>
1.5	Acquire evidence as to expected/agreed to return date of stabilizers and validate that they have been returned, if due before Dec. 31, 2019.	<p>IA inquired with the management team regarding when stabilizers were to be returned and the management team explained that the return of the UK based Lancaster stabilizers is set for no later than June 30, 2021 as per the agreement.</p> <p>IA inspected the Agreement between The CoW and The Secretary of State for the United Kingdom of Great Britain and Northern Ireland which was signed by the City Clerk and CAO of the CoW on June 12 and June 13 of 2018. It was also signed by Kerri Mann on behalf of the Secretary State for Defense on September 20, 2018. IA noted:</p> <ul style="list-style-type: none"> <li>the agreement indicates that The Secretary of State for the UK is to package and transport the UK Lancaster Stabilizers to the Canadian Historical Aircraft Association in the CoW by no later than June 30, 2021</li> </ul>
1.6	If not returned as of Dec. 31, 2019, acquire contact 3rd party and request written confirmation of receipt, existence, good	<p>IA inquired directly with the named contact at RAF Coningsby (via email) dated Dec 12, 2019 requesting confirmation of the receipt of Windsor based Lancaster stabilizers and receipt of the UK based Lancaster stabilizers expected return date.</p>

	condition and expected return date. Request photos as well.	<p>The Senior Responsible Owner (SRO) for the Tailplanes project at RAF Coningsby, a Wing Commander, responded on Dec 16, 2019, and indicated that the Windsor Lancaster stabilizers were safely received previously and that the return timeline was still valid as per the agreement with no known concerns. The SRO indicated however that the original stabilizers from the Windsor Lancaster will be returned in the same condition as they were received instead of the those originally planned and documented in the agreement - i.e. the stabilizers to be removed from the UK Lancaster in place of the Windsor Lancaster stabilizers.</p> <p>IA inspected the photo of Windsor Lancaster stabilizers sent by the SRO.</p> <p>Further, IA checked The Royal Canadian Airforce website for further corroboration of the RAF location, personnel and communication taxonomy.</p> <p>IA was also able to locate two personnel communicated with in this investigation - confirming their association/role with RA.</p> <p>We noted that one is a Master Aircrew member of the Battle of Britain Memorial Flight team located at the RAF Coningsby in Lincolnshire. This contact passed IA's request for confirmation on to the SRO at RAF Coningsby.</p>
1.7	Determine if there insurance sources/back up plans should the stabilizers be damaged or lost while in transport or offsite locations.	<p>IA inquired with the management team regarding insurance sources/back up plans if any should the stabilizers be damaged or lost while in transit. Management indicated that it is documented in the agreement with RAF that anything unfortunate occurs to the Stabilizers, the RAF will need to source and purchase replacements or repair the damaged stabilizers.</p> <ul style="list-style-type: none"> <li>IA inspected the agreement between CoW and RAF and noted in section 6 of the agreement "Destruction of Stabilizers during transportation" indicates that in event of the destruction of stabilizers, the RAF will be responsible for purchasing a pair of stabilizers at its own expense to return to the City.</li> </ul>

**Conclusion:** The stabilizers were sent to the Royal Air Force of the United Kingdom (RAF) and are currently in the possession of the RAF. The loaned stabilizers were dispatched after the approval of the Council. While the stabilizers are not currently in Windsor, this is in accordance with the agreement in effect between the City of Windsor and The Secretary of State for the United Kingdom of Great Britain and Northern Ireland. The stabilizers are scheduled to be returned by June 30, 2021. The SRO at RAF Coningsby has confirmed there are no expected challenges with the timeline for the RAF to return the stabilizers, that the stabilizers are in the possession of the RAF and provided photos of the stabilizers.

**Allegation #2:**

City is providing rental space to Canadian Historical Aircraft Association (CHAA) who is restoring the Lancaster on behalf of the City but restoration is not done, not sure when it is to be done and may be missing parts.

**Procedures and results:**

#	Procedure	Results
2.1	Acquire restoration strategy, plan and status.	IA inquired with the management team regarding the preservation, restoration plan and current status of the Lancaster plane. Management indicated that there exists a 10 year signed agreement (2006 - 2016) between CoW and CHAA which includes various aspects of preservation and restoration of the Lancaster to have it ready for exhibit purposes. Management also indicated that a third party consultant was hired in 2016 to independently evaluate the restoration. The consultant provided a satisfactory report and also estimated anticipated time of completion for restoration. Management represented that based on this information, the Council approved a 10 year extension for CHAA for complete restoration of the Lancaster. Currently there exists no renewal or addendum of the original agreement

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		<p>however the Council directions are being followed.</p> <p>IA inspected the Stewardship Agreement between CoW and CHAA dated Oct 30, 2006 signed by the CoW Mayor and CHAA president. IA noted:</p> <ul style="list-style-type: none"> <li>the agreement was made for preservation, care and restoration of the Lancaster plane.</li> </ul> <p>The plane is currently still undergoing restoration and we observed the current state - see 1.1 above.</p>
2.2	Determine form of agreement and compliance therewith for CHAA restoration of City asset.	<p>As per the above, there is currently no formal agreement in place between CHAA and the City of Windsor for the Lancaster restoration. Parties appear to be operating as if the original 10 year agreement was extended.</p> <p>IA inquired with the management team regarding agreement compliance by CHAA. Management indicated that CHAA provides monthly updates to management regarding the work done with regards to restoration as well as also provides an annual report which is further submitted for Council review. Management indicated that CoW management also visits CHAA 3-4 times a year for observation purposes and/or to attend events</p> <p>Management also indicated that a 3rd party consultant independently evaluated the work done by CHAA which provided a satisfactory report.</p> <p>IA inspected the progress report submitted by CHAA to management and Council in 2016. The report provided detailed updates with regards to restoration details as of Feb 2016 as per the agreement.</p> <p>IA also inspected the third party consultant evaluation report dated May 2, 2016 by a Chief Engineer, Canadian Warplane Heritage Museum. The report indicates that as per inspection/observation of the Lancaster plane, the details noted in the progress report by CHAA are accurate in detailing the work that has been completed to date. The repairs that have been made would be more than adequate for an aircraft that will be potentially run and taxied in the future.</p>
2.3	Understand lease and financing arrangements for site rental and fees.	<p>IA inquired with the management team regarding the leasing and financing arrangement with CHAA which is using YQG land for the Lancaster restoration. Management indicated that:</p> <ul style="list-style-type: none"> <li>There is an agreement between CoW and CHAA that exists with respect to leasing and financing. Council has agreed on a lump sum amount of \$50,000 in annual funding to CHAA for the payment with respect to land lease, insurance, utilities for facility etc. Management also indicated that the restoration cost is financed by CHAA via fundraising. Restoration costs are not part of the planned City funding.</li> </ul> <p>IA obtained the lease agreement and noted there is a lease from Jan 1, 2000 onwards for a term of five (5) years with an option of 3 further extensions for 5 years each, provided that the lessee sends a written notification regarding its intent to renew prior to lease end. This agreement was dated May 31, 2001 and signed by the Mayor of the City and CHAA president.</p> <p>IA also inspected the council resolution dated Aug 2, 2016 that approves the funding level for the Canadian Historical Aircraft Association to support the restoration as presented in Option Two of the administrative report – up to \$50,000/year (10 year agreement) subject to the development of a suitable Stewardship Agreement with the Canadian Historical Aircraft Association for the restoration of the Lancaster Bomber FM 212, which outlines expectations for restoration and reporting, projected timelines, and measurable results including benchmarks moving forward for a term to be reviewed and determined by the</p>

		Council.
2.4	Understand and assess City oversight process and status of restoration	<p>IA inquired with the management team regarding the City oversight process on restoration and found that CHAA provides monthly updates to the management followed by an annual report which is submitted for Council review. Management also indicated that during the year, the management team visits CHAA for observation and inspection and also attends the events held by CHAA.</p> <p>IA inspected the monthly, as well as yearly progress reports. During the review of the 2018 annual progress report submitted, IA noted that a month to month Jan - Dec summary update was documented with respect to restoration of Lancaster. The summary information included the repair, replacement of parts, and volunteer labor hours that were incurred.</p> <p>Further, a third party was noted as having corroborated the restoration status and efforts to the point in time of their assessment - see 2.2 above and 2.5 below..</p>
2.5	Determine progress on restoration	<p>IA inquired with the management regarding the progress for restoration. Management indicated that</p> <p>The City had hired an independent 3rd party to evaluate the progress of restoration. A report was provided by the consultant which noted satisfactory comments on the progress of restoration to date.</p> <p>IA inspected the third party consultant evaluation report dated May 2, 2016 by a Chief Engineer, Canadian Warplane Heritage Museum. The report mentioned that as per their inspection/observation of the Lancaster plane, the details noted in the progress report by CHAA are accurate in detailing the work that has been completed to date. The report stated that repairs that have been made would be more than adequate for an aircraft that will be potentially run and taxied in the future.</p>
2.6	Determine remaining restoration timeline/plan	<p>IA inquired with the management team regarding the remaining restoration timeline/plan. Management indicated that based on the consultant's evaluation report, there is significant work that still needs to be completed.</p> <p>Management indicated that since the final extension term ended on Dec 31, 2019, discussions have already begun with the CHAA Executive and Administration to determine the parameters and funding, including measurable outcomes and expectations of level of completion, and further extension for the continuation of the restoration project.</p> <p>Management indicated that a report will be prepared for Council for their direction on the current stewardship agreement and its extension.</p>
2.7	Assess the experience of the restoration team - do they have the experience to do the work.	<p>IA inquired management regarding the experience and capacity of the restoration team deployed at CHAA for Lancaster restoration. Management indicated that the restoration team involves volunteers including veterans, school groups, students, and residents who possess relevant backgrounds to the work and are also provided training by CHAA. Management mentioned that Council is aware of this and such information has been presented to the Council via Council report.</p> <p>IA inspected the Council report from 2016 and noted the above details mentioned in the report regarding the usage of volunteers including veterans, school groups, and residents for Lancaster restoration.</p> <p>The competencies of individual restoration personnel are beyond IAs capabilities to assess except that Council and CHAA are aware of the volunteer approach and an independent party has verified the general sufficiency of the restoration to date given the intended use.</p>

2.8	Determine City costs for this work.	<p>IA inquired with the management team regarding the restoration cost that the City has incurred. Management indicated that the cost of restoration is borne by CHAA via fundraising. This is explicitly mentioned in the agreement between CoW and CHAA. Therefore, the City does not bear any cost other than the lease rental and other utilities expense up to CAD 50,000 annually. The annual amount of \$50,000 was approved by Council in 2016. Prior to this approved amount from previous years was less than \$50,000 per annum.</p> <p>IA inspected the Stewardship Agreement and noted that it corroborates this approach. The agreement indicates that the City agrees that the public viewing of Lancaster plane may be used as a fund-raising approach.</p> <p>The City has not contributed costs directly to the restoration of Lancaster. Funding has been provided to the restoration entity for lease and other utility type expenses.</p>
2.9	Determine City investment in restoration (include rental fee waiver) plus forecasted cost to complete	<p>The City has not contributed costs directly to the restoration of Lancaster. Funding has been provided to the restoration entity for lease and other utility type expenses.</p>
2.10	Determine the funds released from the City to CHAA in the current lease period, the nature of the allocation and the Auditor General powers thereover.	<p>IA inquired with management regarding funds released from the City to CHAA in the current lease period and noted that for the current lease period i.e., 2015 to 2019, CoW has paid \$235,000. The annual amount of \$50,000 was approved by Council in 2016. Prior to this approved amount from previous years was less than \$50,000.</p> <p>IA inspected the Financial supporting documentation for the payments made to CHAA.</p> <p>The funds allocated from the City to CHAA are a City Operating line item. The funds are not administered via the grant process at the City and as such the Auditor General, under the associated powers outlined in the Municipal Act, does not have authority to conduct audit work related to the use of these funds by CHAA.</p>

**Conclusion:** The City is providing rental space to Canadian Historical Aircraft Association (CHAA). CHAA is restoring the Lancaster using funds raised by the CHAA. The City provides funding to CHAA up to \$50,000 per annum to cover lease and other utility type costs, not to fund restoration activities. The restoration is in progress and a 3rd party has provided perspective on that restoration indicating that, while significant work remains, the restoration elements communicated to City Council correspond to the condition of the aircraft and are in line with its intended use. Two key components of the restoration are (1) available funds and (2) volunteer time. With both of these items being hard to forecast the City would be challenged to define a formal restoration timeline or plan. As for missing parts, our focus was on the specific allegation in #1 (stabilizers). As the investigators are not aeronautical engineers, and given the age of the plane, it is not possible for us to ascertain if parts are actually missing. However, two mitigating factors were noted: 1. an independent review of restoration progress engaged by management and the stewardship agreement that was in force and that both parties show behaviours of operating under. As such, parts, if missing, would still need to be provided by CHAA as part of the restoration to the intended use - if they were to be missing.

We noted that while historically there was a legal agreement between CHAA and the City as to the restoration and stewardship elements there is currently no formal agreement in place. Both parties appear to be operating as if the original 10 year agreement was extended.

**Allegation #3:**

When the lease came due on space CHAA rented the contract provisions were not followed. Other proponents tried to get space but were denied, however the incumbent did not follow the process to retain leased space.

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**Procedures and results:**

	Procedure	Results
3.1	Acquire lease agreement (current and prior).	<p>IA inquired with the management team regarding the lease arrangement between CoW and the CHAA. Management indicated that:</p> <ul style="list-style-type: none"> <li>• This is the 3rd and final term of lease extension as per the original agreement which has ended on Dec 31, 2019</li> <li>• There is no new lease agreement signed after each extension, however there is to be notice from the lessee as to the desire to renew and rate confirmation from the City to the lessee.</li> <li>• Current management is not aware of any written notice received from CHAA for its intent/request for extension as per agreement (should have been received by Sep/Oct of 2014 for the 3rd and final renewal).</li> <li>• Lease and other utilities payments are made by CHAA directly to YQG as per article 3.02 of the agreement. YQG collects the payment as recipient of lease payments from CHAA.</li> </ul> <p>We witnessed a letter from YQG to CHAA for 3rd and final extension stating updated annual rate. However, we noted that the agreement was not updated to address the legal names of current parties - as per the original agreement, Serco Aviation Inc was named as the recipient of lease payments from CHAA. Serco Aviation Inc. was the name prior to the change to YQG.</p> <p>IA obtained the lease agreement and noted that the lease is between CoW and CHAA starting January 1, 2000 for a term of five (5) years with an option of 3 further extensions for 5 years (up to 2019). Extensions require that the lessee sends a written notification of its intent to renew three months prior to lease end date. The lease agreement was dated May 31, 2001 and signed by the Mayor of the City and CHAA president. IA noted that the following:</p> <ul style="list-style-type: none"> <li>• the Lessee shall have and hold the Leased Premises from and after the 1st day of January, 2000 for a term of five years and then to be fully complete and ended, subject to any right to extend provided for herein.</li> <li>• If the Lessee shall hold over after the expiration of the Term, as same may be extended, with the consent of the Lessor, such holding over shall be constructed to be a month to month tenancy.</li> </ul>
3.2	Acquire evidence that all terms are met for lease renewal were adhered to. Review evidence for last renewal to determine if sufficient notice was given in accordance with contract.	<p>IA inquired with the management team regarding the written notice by CHAA showing its intent for lease extension. Management indicated that such evidence of written notice by lessee was not available. While management was not able to provide evidence of written notice of intent to extend the lease from the lessor as part of the City records. Management was able to present a letter which we observed from YQG to CHAA for 3rd and final extension indicating the updated annual rate. This indirectly implies that YQG and the City had a basis for issuing the letter and implies the final 5 year extension was agreed to by the City/YQG. The lessee's payment of the monthly rent corroborates their intent to renew.</p> <p>Management also notes that in the event that notification was not provided the contract indicates that the agreement reverts to a month to month lease arrangement.</p> <p>As such, the lease agreement appears to be in the 3rd and final extension period for 5 years.</p>
3.3	Determine if other parties could have leased the space when contract terms were not met.	<p>Management is of the view that the lease remains active and therefore the space is not usable by other parties until the lease agreement is formally terminated.</p> <p>While the notice of intent to exercise the contract term extension was not available in City records, management's view appears to be reasonable given that the space is currently occupied by a named lessee, there is a 5 year rate renewal letter issued by the City, the lessee is paying rent in</p>

		accordance with said letter and there is a month to month provision in the contract.
3.4	Assess if other proponents applied for space and were properly considered.	<p>The party alleging this complaint provided evidence that they approached the City with a plan and desire to rent the space which CHAA occupied.</p> <p>Based on the contract wording, rate indication and rental payment it is management's view that the 3rd and final extension is in force with the lessee and the City would not have been in a position to rent the space to another party until lease term completion. If the interpretation of the term extension was incorrect the lease terms would revert to a month to month basis and entering into alternative space use solutions would be at the discretion of the City (with terms and covenants appropriately met) which it did not exercise.</p>

**Conclusion:** Based on the contract wording, City communication of rate for 5 years (2015-2019) and the lessee rental payment management is of the view that the 3rd and final extension is in force with the lessee and the City would not have been in a position to rent the space to another party until lease term completion. In the event the lease extension is not activated lease terms revert to a month to month basis and entering into alternative space use solutions would be at the discretion of the City (with terms and covenants appropriately met) which it did not exercise. In this analysis, we were not able to locate a copy of the lessee intent to extend the lease agreement as part of the City records. Given the above evidence it appears that an inforce lease is in place between the City and CHAA and the property was not available for other lessors to consider, or in a more conservative interpretation - that a lease was in force on a month to month basis and the City and lessee were not interested in changes to the existing arrangement.

# Recommendations

Finding	Recommendation & Action Plan
<p><b>1. Document formal agreement for restoration arrangement with CHAA</b></p>	
<p><b>Observation</b> There is currently no formal agreement in place between CHAA and the CoW as to the restoration and stewardship elements. Both parties however appear to be operating as if the original 10 year agreement was extended.</p>	<p><b>Recommendation</b> Management should ensure legal documentation is maintained between CoW and CHAA as to the restoration and stewardship elements.</p> <p><b>Management action plan:</b> Administration will review documentation on an annual basis triggered as the annual Lancaster year end report moves forward to Council.</p> <p><b>Responsible party:</b> Executive Director of Recreation and Culture</p> <p><b>Due date:</b> Q4 2020</p>

Finding	Recommendation & Action Plan
<p><b>2. Ensure contract compliance by retention of relevant documentation</b></p>	
<p><b>Observation</b> The final extension of the lease term expired on Dec 31, 2019 for which we found no evidence of renewal or extension as per the agreement terms (due 3 months prior to the lease end date). Management was unable to locate a copy of the lessee intent to extend the lease agreement.</p>	<p><b>Recommendation</b> Management should facilitate the systematic retention of relevant documentation to ensure compliance with the agreement.</p> <p><b>Management action plan:</b> YQG will do the following:</p> <p>Prepare and follow an internal 'Lease Management Plan' that will diarize and identify all Leases held with the Corporation, with lease particulars requiring long lead times, including renewal periods.</p> <ul style="list-style-type: none"> <li>• Contact lessees far in advance of deadlines to establish the intention of the lessee with respect to any extensions and/or renewals.</li> <li>• Request, in writing, the intention of the lessee and correspond back to the lessee, in writing, to create a document record of any extensions and/or renewals or termination.</li> </ul> <p><b>Responsible party:</b> Director of Finance, YQG</p> <p><b>Due date:</b> Q4 2020</p>

# Appendix A: Limitations and responsibilities

## Limitations inherent to the Internal Auditor's work

### Internal control

Internal control systems, no matter how well designed and operated, are affected by inherent limitations. These include the possibility of poor judgment in decision-making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.

### Future periods

Our assessment of controls is for the period specified. Historic evaluation of effectiveness is not relevant to future periods due to the risk that:

- the design of controls may become inadequate because of changes in operating environment, law, regulation or other; or
- the degree of compliance with policies and procedures may deteriorate.

### Responsibilities of management and Internal Auditors

It is management's responsibility to develop and maintain sound systems of risk management, internal control and governance and for the prevention and detection of irregularities and fraud. Internal audit work should not be seen as a substitute for management's responsibilities for the design and operation of these systems.

We endeavour to plan our work so that we have a reasonable expectation of detecting significant control weaknesses and, if detected, we shall carry out additional work directed towards identification of consequent fraud or other irregularities. However, internal audit procedures alone, even when carried out with due professional care, do not guarantee that fraud will be detected.

Accordingly, our examinations as internal auditors should not be relied upon solely to disclose fraud, defalcations or other irregularities which may exist.

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