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DATE: June 2, 2011

REPORT TITLE: **LONG TERM CARE HOMES ACT GOVERNANCE REQUIREMENTS**

FROM: Janette Smith, Commissioner of Health Services  
Patrick O'Connor, Regional Solicitor

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### **RECOMMENDATION**

**That the Members of Regional Council be appointed to serve as the Committee of Management for the homes established by the Regional Corporation in accordance with the *Long Term Care Homes Act, 2007*;**

**And further that the Regional Corporation's signing officers be authorized to execute a new lease and management agreement with Peel Housing Corporation for the leasehold and management by the Regional Corporation of 64 LTC beds at the Davis Centre, of which the Peel Housing Corporation is the licensee under the *Long Term Care Homes Act, 2007*.**

### **REPORT HIGHLIGHTS**

- The *Long-Term Care Homes Act* has financial and legal implications for all LTC homes.
- The *Long-Term Care Homes Act* uniquely impacts the Davis Centre as a result of a Council resolution in September 2010 that the LTC home license for the Davis Centre be issued to the Peel Housing Corporation.
- Consistent with previous legislation governing municipal LTC homes, it is appropriate that Council continue to serve as the Committee of Management.
- A concurrent report to the Peel Housing Corporation recommends that the Committee of Management serve to provide similar oversight on behalf of Peel Housing Corporation for the Davis Centre.
- Staff has drafted a new lease and management agreement between the Regional Corporation and Peel Housing Corporation for the LTC beds at the Davis Centre.
- A future report to Council will outline the necessary reporting systems that will be put in place to support Council's obligations and responsibilities as the Committee of Management.

### **DISCUSSION**

#### **1. Background**

The Region of Peel operates 703 LTC beds across five homes in Caledon, Brampton and Mississauga: Vera M. Davis Centre (Davis Centre), Tall Pines, Malton Village, Peel Manor and Sheridan Villa. As previously reported to Council, the provincial government's new

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*Long-Term Care Homes Act, 2007* (the "Act") came into effect on July 1, 2010. The Act repeals the *Nursing Homes Act*, the *Charitable Institutions Act*, and the *Homes for the Aged and Rest Homes Act*, replacing these statutes with one system of governance for all long-term care (LTC) homes in Ontario. This new system of governance is designed to bring greater attention to quality and accountability to the sector.

Peel LTC is well-positioned to implement the requirements of the Act, as its homes are known for their high quality of care, accountability to residents and their families and operational transparency. However, the Act requires that the Region accurately measure and report on compliance of its LTC homes.

The Regional Corporation has entered into separate Long-Term Care Service Accountability Agreements with the Central West and Mississauga-Halton Local Health Integration Networks (LHINs). These three-year agreements establish the terms for funding and performance management, for Tall Pines, Malton Village, Peel Manor, and Sheridan Villa.

The situation with the Davis Centre is different, as it is licensed to the Peel Housing Corporation. Some information outlining the Davis Centre's unique circumstances are provided below, as these differences have implications for reporting and oversight under the Act. The Peel Housing Corporation has also provided a report to its Board of Directors on July 7, 2011 titled "*Long-Term Care Homes Act Duties of Directors of Peel Housing Corporation*". It outlines this requirement and relationship with the Region.

**a) The Davis Centre and Peel Housing Corporation Relationship**

As reported to Council in September 2010, the Davis Centre previously had 40 LTC beds licensed to the Peel Housing Corporation under the *Nursing Homes Act*, with the remaining 24 beds being licensed to the Region of Peel under the *Charitable Institutions Act*.

With direction from the Ministry of Health and Long-Term Care (MOHLTC), the Central West Local Health Integration Network (LHIN) required all 64 LTC beds at the Davis Centre be consolidated under one single license issued to the Peel Housing Corporation. Accordingly, Council resolved in September 2010 that the Davis Centre be licensed as a 64 bed LTC home under the Act, and that the LTC home license for the Davis Centre be issued to the Peel Housing Corporation.

Under previous legislation, both the Region of Peel and the Peel Housing Corporation held separate Long-Term Care Service Accountability Agreements with the Central West LHIN for their respective beds at the Davis Centre. In April 2011, the Region of Peel received notice of termination from the Central West LHIN for the 24 approved Regional LTC beds. Peel Housing Corporation received an amended Long Term Care Services Accountability Agreement from the Central West LHIN to cover all 64 beds at the Davis Centre. Signing officers for the Peel Housing Corporation returned signed copies of this amended agreement.

A final factor impacting the Davis Centre are the lease and management agreements with the Peel Housing Corporation, which have been in effect since the LTC home opened. In 2007 this lease and management agreement gave the Region of Peel full responsibility for the operation, maintenance and administration of the reserve fund of the Davis Centre. In September 2010 Council resolved that the Region of Peel continue to operate the Davis Centre on behalf of the Peel Housing Corporation.

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**LONG TERM CARE HOMES ACT GOVERNANCE REQUIREMENTS****2. Findings**

The *Long Term Care Homes Act, 2007* introduces a new system of governance that is designed to bring greater attention to quality and accountability to the sector. In so doing the Region must comply with a number of requirements.

**a) Council as 'Committee of Management'**

Provisions in the *Act* call for oversight of an approved municipal LTC home by a Committee of Management. Consistent with previous legislation governing municipal LTC homes, it is appropriate that Council continue to serve as the Committee of Management. Given the unique nature of the Davis Centre the report to the July 7, 2011 meeting of the Peel Housing Corporation, titled "*Long-Term Care Homes Act Duties of Directors of Peel Housing Corporation*" will also recommend that Council, in its capacity as Committee of Management, be requested to act in a similar capacity for the Davis Centre, on behalf of Peel Housing Corporation.

Councillors serving on a Committee of Management for the Region's approved LTC homes have a stewardship role to oversee the management of the home. Under the *Act*, a Committee of Management is responsible for items such as:

- Oversight of performance and operations;
- Governance and corporate maintenance;
- Strategic planning and mission;
- Executive supervision and evaluation;
- Oversight of risk management, finance and audit;
- Accountability and external relations;
- Compliance with applicable laws;
- Meeting the terms and conditions of funding; and
- Performance and quality.

With the *Act*, these duties become mandatory, such that they can attract civil liability for an individual director. The *Act* also makes it an offense not to meet the standard of care set out in the *Act* or to fail to ensure that legal obligations under the *Act* and its regulation are met.

Applying this standard to individual Councillors exposes them to an added level of potential personal liability that exceeds that under the *Municipal Act, 2001*, which provides Councillors with a defence based upon good faith.

A review of existing insurance coverage for Regional Councillors was completed by Risk Management. This review determined that Councillors are protected in their capacity as members on a Committee of Management for Regional LTC homes and as directors for the Peel Housing Corporation.

**b) Monitoring Compliance with the Act**

To ensure compliance with the *Act*, Regional Councillors serving as the Committee of Management will need to systematically monitor compliance with the *Act* and its regulation, as well as any relevant policies and practices. As a note, the *Act* holds that the licensee is responsible for compliance, meaning that the Peel Housing Corporation will need to ensure that the Region is in compliance with the lease and management agreement.

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Since many of the newly managed requirements for LTC homes are already being implemented in the Region's LTC homes, compliance is not anticipated to be a significant concern. Nonetheless, careful monitoring and reporting will be essential. Staff is currently developing a performance management and reporting tool to enable Council to adequately monitor and ensure compliance with the Act. An upcoming report to Council will provide further information on this monitoring system.

**c) New Lease and Management Agreement with Peel Housing Corporation**

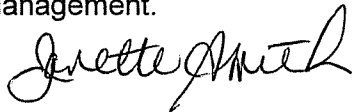
In response to the new legal status of the Davis Centre, staff has created a new lease and management agreement between the Region of Peel and the Peel Housing Corporation for the operation, maintenance and administration of the Davis Centre. There are no material changes between the existing agreement and this new agreement.

This five-year agreement outlines the Region's responsibility to pay for all costs associated with taxes, leasehold improvement, and equipment and structural repairs and replacement, and the role of the committee of management as it relates to the Davis Centre (See Appendix I for a summary of the major terms and conditions. Copies of the agreement are also available in the Clerk's Division).

**3. Proposed Direction**

The *Act* introduces changes to the governance and substantive regulation of the LTC home sector in Ontario. Staff recommendations in this report seek to enable those LTC homes managed by the Region of Peel to adapt to these changes.

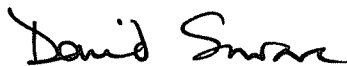
A future report to Council will provide further information on the system that will be used to monitor and support Regional Council's obligations and responsibilities as the Committee of Management.



Janette Smith  
Commissioner of Health Services



Patrick O'Connor  
Regional Solicitor

**Approved for Submission:**


D. Szwarc, Chief Administrative Officer

*For further information regarding this report, please contact Carolyn Clubine at extension 2647 or via email at [carolyn.clubine@peelregion.ca](mailto:carolyn.clubine@peelregion.ca)*

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c. Legislative Services

APPENDIX I

**Major Terms and Conditions of Lease and Management Agreement of the Vera M. Davis Community Care Centre  
June 2, 2011 Draft Agreement**

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- (1) Property: 80 Allan Drive, Bolton
- (2) Term: 5 years so long as the long-term care home licence for the Davis Centre is valid and in force and effect
- (3) Termination: Either party may terminate the agreement at any time during the term on 6 months written notice
- (4) Extension: Once for a further term of five years on the same terms and conditions
- (5) Use: Licensed long-term care home and community support services
- (6) Rent: Region to pay to Peel Housing:
  - (a) the costs of Peel Housing's insurance; and
  - (b) the realty taxes for the Davis Centre
  - both (a) and (b) to be adjusted on an annual basis to reflect the costs incurred by Peel Housing; and
  - (c) an overhead administrative fee in the amount of \$3000.00 per annum
- (7) Other Costs:
  - (a) other taxes, assessment to be paid by the Region
  - (b) all leasehold improvements, fixture and appliances to be maintained, repaired and replaced at the expense of the Region
  - (c) Region to repair and replace as it deems necessary as a reasonable and prudent landlord at its sole cost and expense structural, mechanical, electrical, heating, water, gas, sewer, forced-air, sprinkler and other utilities system or systems including all the Region's equipment, devices, appurtenances, installed at the Davis Centre and the chattels and equipment
- (8) Management Agreement:
  - (a) no management fee

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(b) Region to operate the Davis Centre in accordance with the requirements of the *Long-Term Care Homes Act, 2007* and will comply with and satisfy the terms and conditions of the Long-Term Care Service Accountability Agreement between the Local Health Integration Network and Peel Housing

(c) the committee of management for the four approved long-term care homes owned by the Region will perform the oversight functions for the Davis Centre

(d) the committee of management will report to Peel Housing's Board of Directors annually and on such other occasions as may be desirable to permit the directors to comply with their requirements under the *Long-Term Care Homes Act, 2007*

(e) Peel Housing to transfer all funds it receives under the Act to the Region

(f) both parties to comply with all applicable law to maintain the licence in good standing

(f) both parties to keep each other adequately informed of notices

- (9) Insurance: Both Peel Housing and the Region are required to maintain in force the applicable insurance policies in the appropriate amounts
- (10) Indemnity: The Region indemnifies Peel Housing for any claims arising from its use or occupation of the Davis Centre
- (11) Default: Peel Housing may re-enter upon non-payment of rent or non-performance of a covenant by the Region of the Region of -10 days after Rent due and 30 days after written notice of default
- (12) Assignment: Not assignable