

**Subject: Update on the Ottawa Light Rail Transit Public Inquiry and
Recommended Next Steps**

File Number: ACS2022-CMR-OCM-0001

**Report to Finance and Economic Development Committee on 1 November 2022
and Council 9 November 2022**

Submitted on October 25, 2022 by Steve Kanellakos, City Manager

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Ward: Citywide

**Objet : Mise à jour – Enquête publique sur le réseau de transport en
commun par train léger sur rail d'Ottawa**

Dossier : ACS2022-CMR-OCM-0001

**Rapport au Comité des finances et du développement économique
le 1er novembre 2022**

et au Conseil le 9 novembre 2022

Soumis le 25 octobre par Steve Kanellakos, directeur municipal

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Quartier : À l'échelle de la ville

REPORT RECOMMENDATIONS

**That the Finance and Economic Development Committee recommend City
Council:**

- 1. Receive the information related to the City of Ottawa's work on the Ottawa Light Rail Transit (OLRT) Public Inquiry, including as follows:**

- a. **The City's opening statement (Document 1);**
 - b. **The City's closing submission and recommendations (Document 2); and**
 - c. **Direct staff to bring the OLRT Public Inquiry's final report and recommendations, together with a companion report outlining staff's response to the Public Inquiry report, to the appropriate Standing Committee and Council, as soon as practicable, as outlined in this report;**
2. **Direct the City Clerk to undertake the following with respect to amending the Records Management Policy and associated policies, procedures and practices, and provide updates in the 2022-2026 Governance Review report on the approach the Clerk will take to:**
 - a. **Establish a process to develop measures to ensure that Information Management and routine and active disclosure are considered at the start of, during and at the close of all major City projects through measures such as project-specific document management architecture, staff training, clear obligations and accountabilities for recordkeeping and public disclosure when external contractors are used, and having access to a dedicated Information Management resource, as described in this report; and**
 - b. **Consult with the Information and Privacy Commissioner of Ontario and work with Information Technology Services as part of a process to establish clear guidelines and processes with respect to temporary records, including transitory records created on instant messaging and social media platforms related to City business, for both staff and elected officials and on both personal and corporate devices and accounts, as described in this report;**
3. **Direct the Chief Financial Officer, in consultation with other City departments, to consider the lessons learned and any final recommendations from the OLRT Public Inquiry related to internal project governance and communications for major projects as part of the ongoing review of the City's Business Case and Project Management Policy and Project Management Framework, as described in this report; and**
4. **Receive the lessons learned information from Transit Services and direct staff**

to include the preliminary recommendations described in this report, in staff's companion report to the OLRT Public Inquiry's final report, refined as necessary, and considered for potential implementation along with any recommendations from the Public Inquiry's final report.

RECOMMANDATIONS DU RAPPORT

Que le Comité des finances et du développement économique recommande au Conseil municipal :

- 1. de prendre acte des renseignements au sujet des travaux de la Ville d'Ottawa relativement à l'Enquête publique sur le train léger sur rail d'Ottawa (TLRO), comprenant ce qui suit :**
 - a. la déclaration d'ouverture de la Ville (document 1);**
 - b. les conclusions et les recommandations de la Ville (document 2);**
 - c. la demande au personnel visant à présenter, au comité permanent concerné et au Conseil dès que possible, le rapport final et les recommandations de l'Enquête publique sur le TLRO ainsi qu'un rapport complémentaire exposant la réponse du personnel au rapport de l'Enquête publique, comme le propose le présent rapport; et**
- 2. de demander au greffier municipal de prendre les mesures suivantes en ce qui concerne la modification de la Politique de gestion des documents ainsi que des politiques, procédures et pratiques connexes, et de fournir des mises à jour dans le Rapport sur l'examen de la structure de gestion publique 2022-2026 concernant l'approche que prendra le greffier pour :**
 - a. établir un processus pour mettre au point des mesures qui garantiront la prise en considération de la gestion de l'information et de la divulgation courante et active dès le début, tout au long et à la fin de tous les grands projets de la Ville, telles qu'une architecture de gestion des documents propres aux projets, une formation du personnel, une définition claire des obligations et responsabilités en matière de tenue des documents et de divulgation publique lorsqu'il y a recours à des entrepreneurs externes, et un accès à une ressource en gestion de l'information, comme le propose le présent rapport;**

- b. consulter le commissaire à l'information et à la protection de la vie privée de l'Ontario et travailler avec les Services de technologie de l'information dans le cadre d'une démarche visant à établir des lignes directrices et des processus clairs en ce qui a trait aux documents temporaires, y compris les documents transitoires créés sur les plateformes de messagerie instantanée et de médias sociaux liées aux activités de la Ville, tant pour le personnel que pour les représentants élus, pour les appareils et comptes personnels et organisationnels, comme le propose le présent rapport; et**
- 3. d'enjoindre la cheffe des finances à examiner, en consultation avec les autres directions générales de la Ville, les leçons apprises et les recommandations finales de l'Enquête publique sur le TLRO liées à la gouvernance et aux communications internes pour les grands projets dans le cadre de l'examen en cours de la Politique sur les analyses de rentabilité et la gestion des projets et du cadre de gestion des projets de la Ville, comme le propose le présent rapport; et**
- 4. de prendre acte des leçons apprises présentées par les Services de transport en commun, et de demander au personnel d'inclure les recommandations préliminaires du présent rapport dans le rapport complémentaire du personnel qui accompagnera le rapport final de l'Enquête publique sur le TLRO, après les avoir peaufinées au besoin, pour que puisse être envisagée leur application parallèlement à celle des recommandations qui figureront dans le rapport final de l'Enquête publique sur le TLRO.**

EXECUTIVE SUMMARY

On November 17, 2021, Ontario Transportation Minister Caroline Mulroney announced that the Government of Ontario would launch a public inquiry into Stage 1 of Ottawa's Light Rail Transit (LRT) system. The Minister stated that the issues experienced on the Confederation Line were "unacceptable and disappointing."

At the time that the inquiry was called, Ottawa City Council had already initiated a number of legal actions against the Rideau Transit Group (RTG), a consortium of companies awarded the \$2.1-billion fixed-price contract to design and build Stage 1 of Ottawa's Confederation Line and maintain the system for 30 years. The members of the consortium – ACS Infrastructure Canada, EllisDon and SNC-Lavalin – were major multinational firms that had successfully delivered similar projects in cities around the

world.

However, in Ottawa, the system that RTG built performed well in its first three weeks of service before unreliability issues surfaced in multiple areas of its operations. Then, there were two separate derailments in August and September 2021. Prior to the Province announcing its inquiry, the City issued a Notice of Default to RTG on September 24, 2021, as a result of contractual Failure Points incurred due to the derailments. This Notice was in addition to a Notice of Default issued on March 10, 2020, as a result of contractual Failure Points and lack of availability of the System arising from the service issues in the winter of 2019/2020.

The March 2020 and September 2021 Notices of Default were issued because RTG failed to meet the basic performance and service level metrics set out in the Project Agreement arising out of the poor service in the fall and winter of 2019/2020 and the derailments in August and September 2021. Specifically with regards to the two derailments, collectively they led to system unavailability and Failure Points far above the contractual thresholds for default being incurred. In the September 2021 Notice of Default, the City exercised its contractual right to request that RTG provide a reasonable plan and schedule for remedying its defaults by October 1, 2021.

At a special City Council meeting on October 13, 2021, Council approved recommendations from the Finance and Economic Development Committee to direct staff to deliver a Notice of Dispute under the Project Agreement with respect to the RTG defaults in relation to the two derailments. Council also directed staff to proceed promptly to have the defaults confirmed through the contractual dispute resolution process in the Project Agreement including, as necessary, asking the Court to confirm the validity of the RTG defaults.

At the same meeting, Council approved Motion No. 61/15, which asked the City's Auditor General to undertake an audit of City staff's recommended approach that led to the procurement and implementation of the Stage 1 LRT system. The motion indicated that the Auditor General was an independent statutory officer who could undertake the review in a more timely and cost-effective fashion than a judicial review and also review confidential information related to the litigation without waiving Council's privilege. In addition, Council unanimously voted to have staff explore options to terminate the 30-year maintenance contract with Rideau Transit Maintenance (RTM), the RTG-affiliated LRT system maintainer, such that options and related information would be provided to Council after the outcome of the legal actions directed by Council was known and in a way that would not prejudice the City's legal position with respect to any disputes

between the City and RTG.

On December 17, 2021, the Government of Ontario [announced](#) that it had “appointed the Honourable Justice William Hourigan as Commissioner to lead the public inquiry into the commercial and technical circumstances that led to the breakdown and derailment of Stage 1 of the Ottawa Light Rail Transit (LRT) project.” The announcement indicated that Justice Hourigan would have a mandate “to look into the procurement, delivery and operations of the Ottawa LRT Stage 1 system.” Further to the establishment of the Public Inquiry, the Auditor General placed her investigation on pause until after the Commissioner made public his findings and recommendations.

The specific mandate for the Ottawa Light Rail Transit Public Inquiry (the “Inquiry” or the “Commission”) was set out by the Province in [Order in Council 1859/2021](#) (dated December 16, 2021), including as follows:

- Having regard to section 5 of the [Public Inquiries Act, 2009](#), the Commission shall inquire into the commercial and technical circumstances that led to the OLRT1 breakdowns and derailments, including:
 - a. The decisions and actions that were taken in determining:
 - i. the procurement approach the City selected for the OLRT1 Project;
 - ii. the selection of the Rideau Transit Group (“Concessionaire”); and
 - iii. the award of the alternative financing and procurement (AFP) contract for the OLRT1 Project to the Concessionaire;
 - b. Whether the City-led procurement process had an impact on the technical standards applied for the OLRT1 Project and the design, building, operation, maintenance, repair and rehabilitation of the OLRT1 Project;
 - c. Whether the AFP contract between the City and the Concessionaire (“Concession Agreement”) was adequate to ensure that the design, building, operation, maintenance, repair and rehabilitation of the OLRT1 Project was carried out in accordance with all applicable laws and industry standards, including performance and safety;
 - d. Whether the Concessionaire and its subcontractors did carry out the design, building, operation, maintenance, repair and rehabilitation of the OLRT1 Project in accordance with applicable laws and industry

standards; and

- e. Whether the City's oversight of the Concession Agreement and the OLRT1 Project, including its audit, evaluation, inspection and monitoring of the OLRT1 Project, was adequate to ensure compliance with the Concession Agreement and any applicable laws and industry standards. The above includes an inquiry into the decisions that led to the declaration that the OLRT1 Project had reached substantial completion and any associated testing carried out to support such declaration.
- The Commission shall perform its duties without expressing any conclusion or recommendations regarding the potential civil or criminal liability of any person or organization. The Commission shall further ensure that the conduct of the inquiry does not in any way interfere or conflict with any ongoing investigation or legal proceeding related to these matters.

A public inquiry response team was established by the City Manager immediately following the announcement, led by the Corporate Public Policy Advisor in the City Manager's Office, in concert with the City Solicitor. The seven-person team includes City staff from areas such as Legal, Information Management, Finance, Office of the City Clerk and Information Technology, as well as a liaison with Transit Services.

The team moved immediately to secure the external counsel that would represent and guide the City through the process, ensuring that the City's privilege with respect to the ongoing and likely concurrent litigation was protected. The City used a scoped procurement process, with the Request for Proposals going to several firms with public inquiry experience in the last week of December 2021 and proposals due back on January 14, 2022. Two bids were received and, following the evaluation, Singleton Urquhart Reynolds Vogel LLP was engaged on January 24, 2022.

Participants noted that the Commission's timelines, as established by the Ontario government, were aggressive – particularly given the scope of the Terms of Reference and the span of the Inquiry that went from June 2007 to the end of the public hearings. The Commission began the public part of its work on January 24, 2022, before receiving documents and conducting preliminary interviews in February 2022. Public hearings were held from June 13 to July 7, 2022.

The Inquiry was a massive undertaking for the Commission, the City and all participants. The Commission, which conducts most of its work from Toronto, received more than one million documents, heard 35 individual witnesses/witness panels in

public hearings in Ottawa and held an expert panel on public-private partnerships on July 28, 2022. The deadline for written closing submissions from parties was initially August 5, 2022, but was extended to August 12, 2022. On August 11, 2022, the Commission [announced](#) that the Commissioner had asked for and received more time to deliver its report and that the Commission “will be delivering its final report to Ontario’s Minister of Transportation **by November 30, 2022**” [emphasis added].

On August 15, 2022, when the City’s closing submission was sent to Council, Council was advised that in addition to the work by the City’s counsel, City staff had also identified a number of lessons learned through participation in the Inquiry. Council was further advised that City staff had started to prepare a report to Council on the staff work related to the Public Inquiry, including City costs, and expected to have additional recommendations for Council with respect to matters such as records management and a recommended process that would facilitate consideration of the Commission’s final report.

This is that report – and largely deals with process matters, recognizing that the Public Inquiry provides information over a finite time period and circumstances have changed since the close of public hearings and the evidentiary part of the Inquiry’s work. For example, the litigation between the City and RTG has proceeded over the same time period, though elements of the litigation have been hampered by the Court’s request to await the outcome of the Inquiry, as described below. The Inquiry did not directly deal with matters subject to the litigation (except as raised by counsel to some of the participants, such as RTG) and the Commissioner was careful to ensure that the City’s privilege with respect to the ongoing litigation was not breached by the work of the Inquiry.

On September 2, 2022, Council was advised in a memorandum from the Director, Rail Construction, that the hearing for the Application of the Notice of Dispute previously scheduled for August 30, 2022, was adjourned and was re-scheduled for November 15 to 17, 2022, and December 19, 2022 (understanding this could change). This was because the City tendered new evidence to address recent events affecting the System and RTG asked the Court for additional time to respond to the new evidence. The purpose of the adjournment was to allow RTG an opportunity to respond to the very narrow additional evidence provided by the City, but the Application judge also determined that he wanted to hear submissions in relation to the Inquiry in advance of making any decision with regards to the City’s Application. Therefore, the application judge added another day of hearing in December specifically to address the relevance of the Commission’s report. The City maintains its position that there are clear “Project

Co Events of Default” arising from RTG’s accrual of Failure Points in August and September 2021 and that the Commission expressly and intentionally did not address issues that are the subject of litigation. As such, it is the City’s position that the Commissioner’s report has no bearing on the litigation.

This report also considers various matters relating to the start of the 2022-2026 Term of Council on November 15, 2022. It is understood that neither the Commission nor the Court will consider whether or how the timing of their work relates to the upcoming change of term for City Council. Staff, however, recognizes that the release of the Commissioner’s final report provides some challenges with respect to how the report will be received by either the current or next City Council and how Council will be briefed on the status of the litigation.

In addition, the political and governance landscape for the City of Ottawa has changed from the time the Inquiry started its work. It became clear through the course of Ottawa’s municipal election period, which began in May 2022, that there would be a new Mayor for the 2022-2026 Council, and at least 11 new Members of Council. Due to the number of current Members of Council choosing not to seek re-election, the current Council entered into a so-called “lame duck” period as established by Section 275 of the *Municipal Act, 2001*. This means that certain actions of Council are restricted until the end of the current term, including:

- the appointment or removal of any officer of the municipality;
- the hiring or dismissal of any employee of the municipality;
- the disposition of any real or personal property of the municipality that has a value exceeding \$50,000 at the time of disposal; and
- making any expenditures or incurring any other liability that exceeds \$50,000.

The outcome of the election will be the most significant turnover of Council since before amalgamation. No Members of Council will have served continuously since before 2010, and only two Members elected in 2010 sought re-election. The overwhelming majority of the next Council will not have the depth of experience on the significant aspects of the LRT file that previous Councils had.

Briefing the new Council is further complicated by the term of office starting on November 15, 2022, rather than the December 1st start date of previous terms, due to changes in provincial legislation. This means that there are only three weeks between Voting Day (October 24, 2022) and the start of the new term to provide focused

orientation to newly elected Members of Council to help them be “day one” ready, as well as the practical issues of ‘onboarding’ them, hiring their staff and transitioning the offices (for both departing Members and the newly elected). There is limited time in that window to provide comprehensive issues briefings as well.

There has also been a significant change in governance and powers of the next Mayor and the City Council for Ottawa (and Toronto) established by [Bill 3](#), the *Strong Mayors, Building Homes Act, 2022*, which was introduced in the Ontario Legislature on August 10, 2022, and received Royal Assent on September 8, 2022. Bill 3 provides Mayors of the City of Toronto and the City of Ottawa with additional powers beyond those currently provided for in either the *City of Toronto Act, 2006* or the *Municipal Act, 2001*.

Provisions within the legislation provide both Mayors with powers that include:

- appointing and dismissing the Chief Administrative Officer/City Manager as well as various senior managers, and exercising general control and management of the municipality’s affairs for the purpose of ensuring its efficient and effective operation;
- appointing Chairs/Vice-chairs for “prescribed committees, or committees within a prescribed class of committees,” and establishing or dissolving such prescribed committees;
- bringing matters forward for Council consideration if the Mayor “is of the opinion that considering a particular matter could potentially advance a prescribed provincial priority”;
- vetoing certain by-laws approved by Council if the Mayor “is of the opinion that all or part of the by-law could potentially interfere with a prescribed provincial priority”; and
- proposing and preparing the municipal budget.

On October 3, 2022, the Ontario government issued proposed Minister’s Regulations to further define these powers, which are to be vested in the Mayor for the 2022-2026 City Council.

Each Council sets up its own governance mechanisms for its term of Council. This is largely accomplished through consideration of a governance review report, and includes establishing Committees of Council and their individual Terms of Reference, as well as the process for seeking membership on those Committees, selecting Chairs and Vice-Chairs and, since 2010, establishing budget directions. Traditionally, the governance

review report for the new term of Council is tabled at the last meeting of the retiring Council and is the first item of business of the first regular meeting of the new Council.

The last Council meeting of the current term is scheduled for November 9, 2022, leaving very little time for the Mayor-elect or new Councillors-elect to be consulted about their own governance recommendations with the knowledge of both the requirements of their current roles and the impact of Bill 3. The hearing for the Notice of Dispute matter is currently scheduled to begin on November 15, 2022, the same day the new Council takes office. At some point in this transitional time, the Commissioner is to release his final report on the OLRT Public Inquiry, likely before there is a Standing Committee struck to receive the report and receive public delegations, and before the Mayor and new Council have been fully briefed about the City's LRT system and the litigation.

On October 5, 2022, Council considered some of the above-noted factors when it approved a motion that provided for the delay of the traditional tabling of the 2022-2026 Governance Review report at the last meeting of the outgoing Council until shortly after the new Council has taken office, on a schedule to be determined by the new Mayor. Further to Council's approval of the motion, staff is recommending in this report some additional processes that, if adopted, could assist Council in understanding and navigating the impacts of the Inquiry and litigation being brought forward during the time of transition, as follows:

- With respect to the Commissioner's report on the Public Inquiry, staff is recommending a process whereby staff would be directed to formally present the Commissioner's report and any recommendations, along with a companion report with staff's response, to the appropriate Standing Committee and Council as soon as practicable in the new term, after Standing Committees are established.
- As part of the staff work related to the Public Inquiry, City staff working to meet the Commission's summonses and requests identified gaps and potential for process improvements in the areas of records management and project management. It is recommended that the City Clerk be directed to establish a process to develop measures to ensure that Information Management and routine and active disclosure are considered at the start of, during and at the close of all major City projects. If this recommendation is approved, updates on the approach the Clerk will take would be brought forward in the 2022-2026 Governance Review report. In addition, the matter of the City's classification and treatment of "temporary records" was raised during public hearings at the

Commission, specifically in relation to instant messages that are considered temporary records as they do not meet the test for mandatory retention being part of official City business. Staff is recommending the City Clerk be directed to consult with the Information and Privacy Commissioner of Ontario (IPC), who provides oversight over Ontario's access and privacy laws, and work with Information Technology Services as part of a process to establish clear guidelines and processes with respect to such records. Updates on the approach the Clerk will take would be brought forward in the 2022-2026 Governance Review report.

- It is recommended that the Business Case and Project Management Policy and the Project Management Framework currently under review should look at enhancing communications guidance, specifically with Council for large projects.
- In addition to whatever the Commissioner may recommend, and considering the previous independent reviews and resulting recommendations as well as best practices and lessons learned that have been implemented to date, staff is proposing seven additional improvements for large-scale infrastructure projects in the future. Staff recommends that these preliminary recommendations be further refined and considered for potential implementation in the proposed staff companion report, along with any recommendations from the OLRT Public Inquiry's final report.

Nothing in these recommendations binds the next Council. Rather, staff is recommending a process that, if approved, will allow work to begin in those areas for Council consideration in the new term.

With respect to the information in this report regarding staff's work related to the Public Inquiry, it is important to understand that the City is required to maintain privilege over solicitor-client communications relating to the LRT. In addition, pursuant to confidentiality undertakings required to be executed by all witnesses and counsel, the City is prohibited from disclosing the contents of documents obtained from the Commission that have not been made public exhibits. Therefore, the update provided in this report focuses on the high-level interactions between the City and the Commission, noting the specific requirements that drove costs, and on the City's positions taken in public filings and documents made public exhibits.

To date, the City has spent \$4.5 million to respond to the Commission, which includes almost \$3.5 million in legal fees and approximately \$893,000 for database and file

transfer services. The remainder is for City costs related to Information Technology services, fit up for secure space and overtime, as necessary.

The City has been clear that it looks forward to the Commission's final report, and hopes that the recommendations will enable the City and its public and private sector partners to deliver better transit for the people of Ottawa, while holding the companies who failed to meet their contractual obligations to account. It hopes that the Commissioner's findings will provide additional clarity around the problems that challenge the Confederation Line.

The OLRT Public Inquiry is, by its nature, a look back – a point-in-time, hindsight view of what remains a dynamic set of challenges with the City of Ottawa's Confederation Line. To illustrate, following the conclusion of the public hearings, Council was informed in a memorandum from the General Manager, Transit Services, on July 23, 2022, that "out of an abundance of caution" a number of trains were removed from service for additional inspections after an operator reported vibrations and problems with a wheel hub assembly were subsequently found on the operator's train. On July 24, 2022, a lightning strike damaged a portion of the overhead catenary system, halting service until repairs were completed. The Commission indicated in a response to a media inquiry that it did not expect to call evidence related to the new technical challenges, notwithstanding their relevance to the broad mandate of the Commission and evidence tendered by various witnesses about the current state of the System.

Therefore, the Public Inquiry is neither a beginning nor the end of external reviews of the City's LRT systems. From the City's perspective, it is the latest of a series of independent third-party reviews of Stage 1 of the Confederation Line and staff believes it will reinforce what was learned through the challenges experienced in the early stages of the system.

As of the writing of this report, work on improving the City's light rail transit system continues. In August 2022, RTG completed annual track and maintenance activities over a two-week period to improve customer ride quality and to ensure the long-term sustainability and reliability of the system. OC Transpo's relationship with RTM continues to strengthen. Together, both parties have been successful at managing both planned and unplanned maintenance work and related service impacts. As well, OC Transpo continues to work with Transportation Resource Associates (TRA Inc.) on a full remediation plan, including return-to-service commitments, enhancing OC Transpo processes and oversight, and reviewing rail industry best practices and implications for Stage 2, where applicable.

RÉSUMÉ

Le 17 novembre 2021, la ministre des Transports Caroline Mulroney a annoncé que le gouvernement de l'Ontario lancerait une enquête publique sur l'Étape 1 de l'aménagement du réseau de transport en commun par train léger sur rail d'Ottawa (TLR). La ministre a déclaré que les problèmes survenus à la Ligne de la Confédération étaient « inacceptables et décevants ».

Le Conseil municipal d'Ottawa avait déjà engagé des mesures contre le Groupe de transport Rideau (GTR), un consortium d'entreprises auquel a été octroyé un contrat à prix fixe de 2,1 milliards de dollars pour la conception et la construction de l'Étape 1 de la Ligne de la Confédération d'Ottawa et pour l'entretien du réseau sur 30 ans. Les membres du consortium, ACS Infrastructure Canada, EllisDon et SNC-Lavalin, étaient des entreprises multinationales qui avaient réalisé avec succès des projets de ce type dans diverses villes au monde.

Cependant, à Ottawa, le réseau construit par le GTR a bien fonctionné au cours des trois premières semaines de sa mise en service, puis s'est avéré non fiable dans plusieurs aspects de ses opérations, le point culminant étant deux déraillements distincts en août et en septembre 2021.

Avant l'annonce de l'enquête publique par le gouvernement provincial, la Ville remettait un avis de défaut au GTR le 24 septembre 2021, en raison de points de défaillance cumulés à cause des déraillements. Cet avis s'ajoutait à celui du 10 mars 2020. L'avis de défaut de septembre 2021 a été remis au GTR parce que le consortium n'avait pas respecté les paramètres de base de performance et le niveau de service définis dans l'accord de projet suivant les déraillements, ces deux déraillements ayant entraîné la fermeture du réseau et l'accumulation des points de défaillance.¹

Dans l'avis de défaut de septembre 2021, la Ville exerçait son droit contractuel de demander au GTR de lui remettre un plan et un calendrier d'exécution raisonnables afin de remédier aux défaillances avant le 1^{er} octobre 2021.

Dans une réunion extraordinaire du Conseil tenue le 13 octobre 2021, les membres du Conseil approuvaient les recommandations du Comité des finances et du développement économique chargeant le personnel de remettre un avis de litige au GTR concernant ses manquements en vertu de l'accord de projet. Le Conseil a

¹ Comme indiqué dans la note de service remise au Conseil du 5 octobre 2021 préparée par le directeur des Services de construction du TLR.

également demandé au personnel d'utiliser la procédure de résolution de différends inscrite dans l'accord de projet afin de confirmer les manquements et, au besoin, de s'adresser au tribunal pour confirmer la validité des manquements du GTR.

Au cours de cette même réunion, le Conseil a approuvé la motion n° 61/15 demandant à la vérificatrice générale de la Ville de procéder à l'examen de l'approche recommandée par le personnel qui avait mené à l'approvisionnement et la mise en œuvre de l'Étape 1 du TLR. La motion précisait que la vérificatrice générale était titulaire indépendante d'une charge créée par la loi et pouvait donc mener ce type d'examen plus rapidement et à meilleur coût qu'un comité judiciaire; elle pouvait également examiner des renseignements confidentiels liés au litige sans nuire au privilège du Conseil. De plus, le Conseil a adopté à l'unanimité une résolution chargeant le personnel d'examiner différentes options pour résilier le contrat d'entretien de 30 ans conclu avec Rideau Transit Maintenance (RTM), l'entreprise affiliée au GTR responsable de l'entretien du TLR. Ces options ainsi que des renseignements connexes seraient fournis au Conseil une fois l'issue des recours juridiques du Conseil connue et de manière à ne pas nuire à la position légale de la Ville dans tout litige avec le GTR.

Le 17 décembre 2021, le gouvernement de l'Ontario annonçait avoir « nommé l'honorable juge William Hourigan à titre de commissaire pour diriger l'enquête publique sur les circonstances commerciales et techniques qui ont mené à la panne et au déraillement de la phase 1 du projet de train léger sur rail (TLR) d'Ottawa ». Dans l'annonce il était indiqué que le juge Hourigan avait pour mandat « d'examiner l'approvisionnement, la livraison et l'exploitation de la phase 1 du réseau de TLR d'Ottawa ».

Suivant l'établissement de cette enquête publique, la vérificatrice générale a interrompu son examen jusqu'à ce que le Commissaire rende publiques ses conclusions et recommandations.

Le mandat précis de l'enquête publique sur le train léger sur rail d'Ottawa (« l'enquête » ou la « Commission ») a été défini par le gouvernement provincial en vertu du [Décret 1859/2021 du Conseil exécutif de l'Ontario](#) (16 décembre 2021) et comportait les éléments suivants :

- En vertu de l'article 5 de la [Loi de 2009 sur les enquêtes publiques](#), la Commission enquêtera sur les circonstances commerciales et techniques qui ont mené à la panne et au déraillement au titre du projet TLRO1, notamment :
 - a. Les décisions prises et les actes posés en vue de déterminer :

- i. L'approche retenue par la Ville en matière d'approvisionnement pour le Projet TLRO1;
 - ii. Le choix du Groupe de transport Rideau (le « concessionnaire »);
 - iii. L'octroi au concessionnaire du contrat sur la diversification des modes de financement et d'approvisionnement (DMFA) pour le Projet TLRO1;
 - b. La question de savoir si le processus d'approvisionnement mené par la Ville a entraîné des répercussions sur les normes techniques appliquées au Projet TLRO1 à la conception, à la construction, à l'exploitation, à l'entretien, à la réparation et à la remise en état relatifs au Projet TLRO1;
 - c. La question de savoir si le contrat sur la DMFA conclu entre la Ville et le concessionnaire (l'« entente de concession ») était adéquat pour garantir que la conception, la construction, l'exploitation, l'entretien, la réparation et la remise en état relativement au Projet TLRO1 soient conformes à toutes les lois et normes de l'industrie applicables, notamment en ce qui a trait au rendement et à la sécurité;
 - d. La question de savoir si le concessionnaire et ses sous-traitants ont procédé à la conception, à la construction, à l'exploitation, à l'entretien, à la réparation et à la remise en état relatifs au Projet TLRO1, conformément aux lois et aux normes de l'industrie applicables;
 - e. La question de savoir si la supervision de l'entente de concession et du Projet TLRO1 par la Ville, notamment la vérification, l'évaluation, l'inspection et la surveillance que la Ville a effectuées relativement au Projet TLRO1, était adéquate pour garantir la conformité à l'entente de concession et aux lois et aux normes de l'industrie applicables. Ceci comprend une enquête sur les décisions qui ont mené à la déclaration portant que le Projet TLRO1 était substantiellement achevé et que les essais associés au projet à l'appui de cette déclaration ont été effectués.
- La Commission s'acquittera de ses fonctions sans formuler de conclusions ou de recommandations concernant la responsabilité civile ou criminelle de toute personne ou de tout organisme. La Commission veillera à ce que la conduite de l'enquête ne porte aucunement atteinte au déroulement de toute autre investigation ou instance judiciaire en cours liée aux mêmes questions.

Immédiatement après l'annonce de l'enquête, le directeur municipal a formé une équipe pour répondre aux demandes de renseignements du commissaire. L'équipe était dirigée, de concert avec l'avocat général, par la conseillère en politique publique municipale du Bureau du directeur municipal. L'équipe de sept membres comprend des membres du personnel de la Ville des Services juridiques, de la Gestion de l'information, des Finances, du Bureau du greffier municipal et des Technologies de l'information, ainsi qu'un agent de liaison des Services de transport en commun.

L'équipe a immédiatement retenu les services d'un conseiller juridique externe afin de représenter la Ville et de la guider tout au long de la procédure et d'assurer la protection de ses privilèges eu égard au litige en cours et vraisemblablement mené en parallèle. Pour ce faire, la Ville a eu recours à un processus d'approvisionnement à portée déterminée. Au cours de la dernière semaine de décembre 2021, une demande de propositions a été acheminée à quelques entreprises possédant de l'expérience dans le domaine des enquêtes publiques. Les propositions devaient être retournées à la Ville le 14 janvier 2022. Deux soumissions nous sont parvenues et, suivant leur évaluation, le 24 janvier 2022, la Ville a retenu les services de Singleton Urquhart Reynolds Vogel LLP.

Les participants ont remarqué que les échéanciers de la Commission établis par le gouvernement de l'Ontario étaient serrés, compte tenu notamment de la portée du mandat et de l'ampleur de l'enquête qui couvrait la période de juin 2007 jusqu'à la fin des audiences publiques. La Commission a lancé le volet public de ses travaux le 24 janvier 2022 avant de recevoir des documents et de mener des entrevues préliminaires en février 2022. Les audiences publiques se sont déroulées du 13 juin au 7 juillet 2022.

Cette enquête s'est avérée une tâche colossale pour la Commission, la Ville et tous les participants. La Commission, dont la plupart des travaux se déroulent à Toronto, a reçu au-delà d'un million de documents, elle a entendu 41 témoins dans le cadre d'audiences publiques à Ottawa et le 28 juillet 2022, elle a réuni un comité d'experts pour discuter des partenariats publics-privés (PPP). Initialement, la date limite accordée aux parties pour soumettre leurs observations finales écrites était le 5 août 2022, mais elle a été prolongée jusqu'au 12 août 2022. Le 11 août 2022, la Commission [annonçait](#) qu'à la demande du commissaire, plus de temps lui avait accordé pour remettre son rapport et que « la Commission [remettrait] son rapport final à la ministre des Transports de l'Ontario avant le **30 novembre 2022** » [caractères gras ajoutés].

Le 15 août 2022, au moment de lui transmettre les observations finales de la Ville, le personnel a informé le Conseil qu'outre le travail entourant le litige, le personnel avait dégagé un certain nombre de leçons de sa participation à l'enquête et a également informé le Conseil qu'il avait commencé à préparer un rapport pour le Conseil décrivant le travail des employés de la Ville en lien avec l'enquête publique, y compris les coûts engagés par la Ville. Le personnel prévoyait formuler d'autres recommandations pour le Conseil en ce qui concerne des aspects comme la gestion des dossiers et l'établissement d'une procédure qui faciliterait l'étude du rapport final de la Commission.

Voici ce rapport qui traite en grande partie des questions de processus, reconnaissant que l'enquête publique fournit de l'information sur une période déterminée et que la situation s'est transformée depuis la fin des audiences publiques et du volet des travaux de l'enquête consacré à la preuve.

Par exemple, le litige opposant la Ville et le GTR s'est poursuivi au cours de la même période et il demeure au moment de la rédaction du présent rapport. L'enquête n'a pas traité de questions faisant l'objet du litige et le commissaire a pris soin durant les travaux de la Commission de ne pas nuire au privilège juridique de la Ville. Le 2 septembre 2022, le Conseil municipal a été avisé dans une note de service du directeur du programme de construction du TLR que les audiences sur la demande d'avis de litige prévues se tenir le 30 août étaient ajournées et sont actuellement prévues pour le 15 au 17 novembre 2022 (il est entendu que cela pourrait changer). Et ce, parce que la Ville présentait de nouvelles preuves et que le GTR demandait au tribunal plus de temps pour répondre à cette nouvelle preuve. Le but de l'ajournement était de donner au GTR la possibilité de répondre à la preuve supplémentaire très limitée fournie par la Ville, mais le juge saisi de la demande a également décidé qu'il souhaitait entendre les arguments relatifs à l'enquête publique. La Ville soutient qu'il existe des manquements clairs de la part du GTR découlant de l'accumulation de points de défaillance en août et septembre 2021 et que la Commission n'a expressément et intentionnellement pas abordé des questions qui font l'objet du litige.

Le présent rapport examine aussi diverses questions relatives au début du mandat du Conseil 2022-2026 le 15 novembre 2022. Il est entendu que ni la Commission ni le tribunal ne tiennent compte de l'incidence de leurs travaux sur le changement prochain du mandat du Conseil. Il reste que le personnel est conscient que la publication du rapport final du commissaire présente un certain nombre de défis quant à la façon dont l'actuel Conseil ou le prochain recevront ledit rapport. Par ailleurs, l'audience sur l'avis de litige tombe le premier jour du mandat de 2022-2026 du Conseil, ce qui signifie que

le nouveau Conseil n'aura pas été informé des tenants et aboutissants du litige avant le début de l'audience. Le calendrier du litige est indépendant de la volonté de la Ville.

De plus, le paysage politique et la gouvernance de la Ville d'Ottawa ont changé depuis le temps où la commission a entrepris ses travaux. Au cours de la période électorale municipale à Ottawa, qui a commencé en mai 2022, il est apparu qu'il y aurait un nouveau maire pour le mandat du Conseil de 2022-2026 et au moins onze nouveaux membres du Conseil. Étant donné le nombre de membres actuels du Conseil qui ne se présentent pas à nouveau, l'actuel Conseil est entré dans une période dite d'interrégime, dont les modalités de fonctionnement sont prévues à l'article 275 de la *Loi de 2001 sur les municipalités*. C'est dire que certaines actions du Conseil sont restreintes d'ici la fin du mandat actuel, notamment :

- la nomination ou la destitution d'un fonctionnaire de la municipalité;
- l'engagement ou le congédiement d'un employé de la municipalité;
- la disposition d'un bien meuble ou immeuble de la municipalité dont la valeur dépasse 50 000 \$ au moment de sa disposition; et
- l'engagement d'une dépense ou la constitution d'une autre dette s'élevant à plus de 50 000 \$.

Le résultat de l'élection représentera le taux de roulement le plus important d'un Conseil municipal depuis la fusion municipale. Aucun membre du Conseil n'aura servi de façon ininterrompue depuis 2010 et seulement deux membres élus en 2010 se sont présentés de nouveau. Une majorité écrasante des membres du nouveau Conseil n'aura pas la connaissance des membres de conseils précédents entourant des aspects importants du dossier du TLR.

Et il est d'autant plus compliqué d'informer le nouveau Conseil que le début de son mandat est le 15 novembre 2022 au lieu du 1^{er} décembre comme par le passé, en raison de modifications législatives. Ce qui signifie qu'on ne dispose que de trois semaines entre le jour du scrutin (24 octobre 2022) et le début du nouveau mandat pour orienter les membres du Conseil nouvellement élus et les aider à être prêts à exercer leur charge dès le « jour un », ainsi que pour leur transmettre l'information utile à leur intégration, à l'embauche de leur personnel et à la transition (autant celle des membres sortants que des membres nouvellement élus). Il n'y a pas beaucoup de temps au cours de cette brève période pour tenir des séances d'information sur certains des grands enjeux.

Il y a aussi eu des modifications importantes sur le plan de la gouvernance et des pouvoirs conférés au prochain maire et au Conseil municipal d'Ottawa (et de Toronto) en vertu du [Projet de loi 3](#) *Loi de 2022 pour des maires forts et pour la construction de logements*, déposé devant l'Assemblée législative de l'Ontario le 10 août 2022 et ayant reçu la sanction royale le 8 septembre 2022. Le projet de loi 3 accorde aux maires des villes de Toronto et d'Ottawa des pouvoirs additionnels à ceux que leur conférait déjà la *Loi de 2006 sur la cité de Toronto* ou la *Loi de 2001 sur les municipalités*. Les dispositions de la loi accordent aux deux maires des pouvoirs, notamment :

- nommer et destituer le directeur général/directeur municipal ainsi que divers cadres supérieurs, assurer la gestion et le contrôle généraux des affaires de la cité afin d'en garantir le fonctionnement efficace et efficient;
- nommer les présidents et vice-présidents des « comités prescrits ou des comités appartenant à une catégorie prescrite de comités » et créer ou dissoudre de tels comités ou Conseils prescrits;
- soumettre des questions à l'étude du Conseil si le maire « est d'avis que l'étude d'une question particulière pourrait faire progresser une priorité provinciale prescrite »;
- mettre son veto à certains règlements approuvés par le Conseil si le maire « est d'avis que tout ou partie d'un règlement municipal [...] pourrait faire obstacle à une priorité provinciale prescrite »;
- proposer et préparer le budget municipal.

Le 3 octobre 2022, le gouvernement de l'Ontario a publié un projet de règlement du ministre pour définir plus précisément ces pouvoirs qui incomberont au maire pour le mandat de 2022-2026 du Conseil municipal.

Chaque Conseil municipal définit les mécanismes de gouvernance de son mandat en s'appuyant dans une grande mesure sur un examen de la structure de la gestion publique. Le Conseil établit également les comités du Conseil et leurs mandats respectifs ainsi que la procédure en vue de recruter les membres de ces comités, de choisir leurs présidents et vice-présidents, et depuis 2020, d'établir les orientations budgétaires. Habituellement, l'examen de la structure de gestion publique pour le nouveau mandat du Conseil est déposé à la dernière réunion du Conseil sortant. Il s'agit du premier point à l'ordre du jour de la première réunion ordinaire du nouveau Conseil.

La dernière réunion du mandat en cours du Conseil se tiendra le 9 novembre 2022, ce qui laisse très peu de temps pour consulter le maire et les conseillères et conseillers nouvellement élus au sujet de leurs propres recommandations de gouvernance fondées sur une connaissance des exigences de leurs rôles respectifs ou des répercussions du projet de loi 3. L'audience entourant l'avis de litige devrait commencer le 15 novembre 2022, le jour même où le nouveau Conseil entre en fonction. À un moment donné pendant la transition, le commissaire publiera son rapport final sur l'enquête publique sur le TLRO. Ce sera vraisemblablement avant la mise sur pied d'un comité permanent pour recevoir le rapport et entendre des délégations publiques et avant que le maire et les nouveaux membres du Conseil soient pleinement informés du litige entourant le réseau du TLR de la Ville.

Le 5 octobre 2022, le Conseil a tenu compte des facteurs susmentionnés lorsqu'il a approuvé une motion prévoyant le report du dépôt traditionnel de l'examen de la structure de gestion publique 2022-2026 à la dernière réunion du Conseil sortant jusqu'à peu de temps après l'entrée en fonction du nouveau Conseil, selon un calendrier déterminé par le nouveau maire, À la suite de l'approbation de la motion par le Conseil, le personnel recommande la démarche suivante qui, si elle est adoptée, devrait aider le Conseil à gérer les répercussions de l'enquête et du litige qui feront surface durant la transition :

- En ce qui concerne le rapport du commissaire sur l'enquête publique, le personnel recommande que le personnel présente le rapport du commissaire et ses recommandations, accompagné d'un rapport contenant les réponses de la Ville, au comité permanent concerné et au Conseil municipal dès que possible au cours du nouveau mandat, une fois le comité permanent créé.
- Au moment de se préparer pour les assignations et de répondre aux demandes de renseignements dans le cadre de l'enquête publique, le personnel a constaté des lacunes tout comme des possibilités d'améliorer les procédures au chapitre de la gestion des dossiers et de la gestion des projets. On recommande de demander au greffier municipal d'établir un processus visant à mettre en place des mesures permettant de s'assurer que la gestion de l'information et la divulgation courante et active sont prises en considération dès le début, tout au long et à la fin de tous les grands projets de la Ville. Si cette recommandation est approuvée, toute mise à jour serait indiquée dans l'examen de la structure de gestion publique. De plus, la question de la classification et du traitement par la Ville des dossiers temporaires a été soulevée durant les audiences publiques de

la Commission, plus particulièrement la question des messages instantanés qui sont considérés comme des dossiers temporaires, ne correspondant pas aux critères de conservation obligatoire en tant que partie des activités officielles de la Ville. Le personnel recommande que le greffier de Ville soit chargé de consulter à cet effet la commissaire à l'information et à la protection de la vie privée de l'Ontario, qui supervise les lois sur l'accès à l'information et la protection de la vie privée en Ontario, et de travailler dans le cadre de l'examen de la structure de la gestion publique avec les Services de technologie de l'information dans le cadre d'un processus visant à établir des lignes directrices et des procédures claires en ce qui concerne de tels dossiers. Toute mise à jour concernant l'approche du personnel sera indiquée dans l'examen de la structure de gestion publique 2022-2026.

- On recommande que la Politique sur les analyses de rentabilité et la gestion des projets ainsi que le cadre de gestion de projets actuellement en cours d'examen cherchent à améliorer les directives en matière de communications, particulièrement avec le Conseil lorsqu'il s'agit de grands projets.
- Outre les recommandations que formulera le commissaire, et considérant les examens indépendants antérieurs et leurs recommandations, ainsi que les pratiques exemplaires et les leçons apprises appliquées à ce jour, le personnel formule sept autres recommandations pour les grands projets d'infrastructure. Il recommande de les parfaire et d'en considérer la mise en œuvre dans le rapport complémentaire du personnel parallèlement à l'étude des recommandations du rapport final de l'enquête publique sur le TLRO.

Ces recommandations ne lient d'aucune manière le prochain Conseil. Le personnel recommande plutôt une démarche qui, si elle est approuvée, permettra d'amorcer le travail dans ces secteurs d'activité afin que le Conseil puisse s'y pencher au cours de son prochain mandat.

En ce qui concerne l'information contenue dans le présent rapport concernant le travail effectué par le personnel en lien avec l'enquête publique, il est important de comprendre que les communications concernant le TLR demeurent protégées par le secret professionnel de l'avocat. De plus, conformément à l'engagement de non-divulgaration que tous les témoins et les avocats sont tenus de signer, il est interdit à la Ville de divulguer le contenu de documents obtenus de la Commission qui n'ont pas été rendus publics. Par conséquent, la présente mise à jour se concentre sur les interactions générales entre la Ville et la Commission, décrivant les aspects particuliers

qui ont entraîné des coûts, ainsi que les positions adoptées par la Ville lors de dépôts publics et dans les documents rendus publics.

À ce jour, la Ville a dépensé 4,5 millions de dollars pour répondre aux demandes de la Commission, ce qui comprend près de 3,5 M\$ en frais juridiques et environ 893 000 \$ pour la base de données et les services de transfert de fichiers. Le reste des coûts pour la Ville sont liés aux services de technologie de l'information et, au besoin, à l'aménagement d'espace et aux heures supplémentaires.

La Ville a clairement affirmé qu'elle attend avec impatience le rapport final de la Commission et qu'elle espère que les recommandations lui permettront à elle et à ses partenaires du secteur public et du secteur privé de livrer de meilleurs services de transport en commun à la population d'Ottawa tout en tenant responsables les entreprises qui n'ont pas respecté leurs obligations contractuelles. Elle espère que les conclusions du commissaire jetteront un nouvel éclairage sur les problèmes qui entravent le fonctionnement de la Ligne de la Confédération.

L'enquête publique sur le TLRO est, de par sa nature, un retour en arrière, une vue rétrospective d'un ensemble dynamique de difficultés rencontrées par la Ligne de la Confédération de la Ville d'Ottawa.

À titre d'illustration, suivant la fin des audiences publiques, le Conseil a été informé dans une note de service du directeur général, Services de Transport en commun, le 23 juillet 2022, que « par excès de prudence » plusieurs trains avaient été retirés afin d'effectuer des inspections additionnelles après qu'un opérateur eut signalé des vibrations; des problèmes avec l'ensemble roue/essieu ont subséquemment été détectés sur le train de l'opérateur. Le 24 juillet 2022, la foudre a endommagé une partie du système de suspension caténaire (SSC), interrompant le service jusqu'à ce que les réparations soient terminées. La Commission a indiqué dans sa réponse à une demande de renseignements des médias qu'elle ne prévoyait pas demander de preuves en lien avec de nouveaux problèmes techniques.

Par conséquent, l'enquête publique ne constitue ni le début ni la fin des examens externes du réseau de TLR de la Ville. Du point de vue de la Ville, il s'agit du plus récent d'une série d'examens de tiers indépendants portant sur l'Étape 1 de la Ligne de la Confédération, et le personnel est d'avis que cela renforcera les enseignements tirés des problèmes vécus dans les premières phases de la construction de ce réseau.

Au moment de la rédaction du présent rapport, le travail pour améliorer notre réseau de transport en commun par train léger se poursuit. En août 2022, le GTR a effectué des

travaux d'entretien annuels de la voie sur une période de deux semaines dans le but d'améliorer la qualité du trajet et le confort des usagers et d'assurer la durabilité et la fiabilité à long terme du réseau. Les relations d'OC Transpo avec RTM se raffermissent constamment. Ensemble, les deux parties réussissent à gérer à la fois les travaux d'entretien prévus et imprévus et leurs répercussions sur le service. Aussi, OC Transpo continue de travailler en collaboration avec Transportation Resource Associates (TRA Inc.) à un plan global d'atténuation, notamment au chapitre des engagements de retour au service, de l'amélioration des procédures et de la supervision d'OC Transpo et de la révision des pratiques exemplaires de l'industrie ferroviaire et de leur incidence pour l'Étape 2, s'il y a lieu.

BACKGROUND

On September 14, 2019, Stage 1 of the City of Ottawa's Confederation Line light rail transit (LRT) system began operations. The project had a budget of approximately \$2.1 billion and was constructed through a public-private partnership between the City and the Rideau Transit Group (RTG), a consortium of companies awarded the contract to design and build the system and maintain it for 30 years. The members of RTG – ACS Infrastructure Canada, EllisDon and SNC-Lavalin – were major multinational firms that had successfully delivered similar projects in cities around the world.

For the first three weeks of operations, the LRT ran well and by October 15, 2019, the system had already achieved more than three million rides². Initially, customers expressed satisfaction with Stage 1 – they were making the shift from bus-only rides to the LRT, and the parallel bus service that ran to help with the transition to LRT was removed. Then the system started to experience reliability issues. This unreliability was shown to be more than growing pains for a new system, and has continued over several years, frustrating City staff and City Council and causing significant problems for Ottawa transit riders. These operational challenges in turn led the City to deliver Notices of Default and then initiate legal actions against RTG, and contributed to the Province of Ontario's launch of a Public Inquiry into Ottawa's LRT system in the winter of 2021.

Specifically, starting in early October 2019, the Confederation Line began experiencing a series of problems. This included issues with vehicle unavailability, with a low of six trains on the line as well as multiple door jams and computer malfunctions; system availability, with broken overhead wires, faulty welds, track switch problems and issues with the catenary system; and lack of station reliability and useability, with design and

² As noted in an email to Council from the General Manager, Transportation Services, dated October 18, 2019.

odour concerns raised by passengers. These issues caused unpredictable service delays and challenged the reliability of the system, directly impacting customers. Efforts made by RTG to try to stabilize the system were not successful and, with contractual Failure Points at unacceptable levels, City Council voted unanimously on March 9, 2020, to direct staff to issue a Notice of Default to RTG in accordance with the Project Agreement. Council further directed staff to ask RTG to provide the City with a remedial plan and schedule for remediation of its defaults and rectification by March 31, 2020.

The Notice of Default was issued by the City on March 10, 2020, the day before the City's first confirmed case of COVID-19 was reported. RTG denied it was in default but delivered a Rectification Plan. City Council was advised at its meeting of April 8, 2020, that while RTG's Rectification Plan outlined a number of short-term and long-term solutions to address the issues, "the overall timeframe to achieve necessary service improvements was unclear"³. RTG was given until April 24, 2020, to revise its plan to the City's satisfaction. At a meeting on May 13, 2020, City Council was briefed on RTG's updated Rectification Plan, which was described as heavily qualified due to the potential anticipated impacts from the COVID-19 pandemic. The revised plan provided additional prioritization for the key technical elements that would drive performance [specifically, vehicle brakes, the overhead catenary system, switch heater failures, vehicle traction power (inductors, line contactors, circuit breakers), vehicle passenger doors, vehicle auxiliary power (CVS units) and vehicle HVAC]. Council was also advised that there remained an "unclear" overall timeframe to achieve necessary service improvements⁴. Staff noted they had ongoing concerns with the plan, but stated the City was working with RTG to accelerate the work as much as possible, while identifying additional elements of the plan that could be brought forward.

The COVID-19 pandemic had a significant effect on all transit services in terms of ridership and resourcing. For the LRT, starting in April 2020, peak period train levels were reduced to nine trains in response to the pandemic and to allow RTG additional opportunities to address outstanding issues. While the reduction in peak-hour trains created a situation where additional trains became available for maintenance, the ability of RTG to respond was also influenced by resource and supply chain impacts that RTG alleged arose from the pandemic, as noted in the staff presentation to Council on May 13, 2020. Over the course of that first summer with COVID-19, there were continued

³ Transportation Services Department presentation, "[Confederation Line Update: Rideau Transit Group Performance Plan: Update to Council](#)," April 8, 2020.

⁴ Transportation Services Department presentation, "[Confederation Line Update: Rideau Transit Group Performance Plan: Update to Council](#)," May 13, 2020.

changes and challenges for light rail in Ottawa: Bus and train service was reduced to match ridership and focused on those routes carrying essential workers, and to essential services. The LRT was temporarily closed several times for planned maintenance and slowed down due to heat issues. Cracked wheels were found in early July, reducing the daily fleet count to seven trains and a spare⁵. On July 10, 2020, the General Manager of Transportation Services told Council in a memorandum that the Transportation Safety Board (TSB) had advised that it would be launching a formal investigation into the cracked wheel issue. Later that month, the General Manager issued emails advising Council of additional system problems caused by incidents such as an immobile train and a technical issue with rail control consoles⁶. Council was also advised in a Response to Inquiry issued by the General Manager on July 17, 2020, that track alignment issues due to hot weather appeared to be a bigger problem than anticipated. While such heat-related issues “are not uncommon on rail networks, the effect on Line 1 is greater than expected and RTG is required to implement a permanent fix to the track,” the Response to Inquiry stated.

In August 2020, the Confederation Line ran the expected 15 trains for the first time. Over the fall of 2020, which was the beginning of the Confederation Line’s second year of operations, the General Manager of Transportation Services noted that reliability of the service had improved⁷. A third-party expert, Mott MacDonald, was engaged by the City’s external legal counsel, Singleton Urquhart Reynolds Vogel LLP, for the disputes with RTG to review the default rectification process. Work on items in the Rectification Plan proceeded. In December 2020, a TSB [Rail Safety Advisory Letter](#) was released regarding the cracked wheels. The letter suggested protruding jacking screws may have contributed to the cracks and recommended that the removal of certain wheels be expedited. At a Transit Commission meeting on December 16, 2020, staff advised that wheel replacements were proceeding, with 13 vehicles completed. Ridership over the fall was 28 per cent of what it had been in the previous year.

Work on Rectification Plan items continued into 2021. At a Transit Commission meeting on February 17, 2021, staff advised that service reliability had averaged 98 per cent over the preceding two months and work on wheel replacements was continuing. Due to the continued pandemic, ridership was still low. The City adjusted peak-period service

⁵ As noted in an email to Council from the General Manager, Transportation Services, dated July 4, 2020.

⁶ Such emails were issued on dates including July 16, 17 and 21, 2020.

⁷ Minutes from the Transit Commission meeting of October 21, 2020, state that the General Manager “noted that reliability had improved markedly, that follow-up work by independent experts had begun, and that despite new challenges presented by COVID-19, the department was achieving the objectives of its Council-approved work plan.”

to 11 trains for a prolonged time, beginning in March, to provide RTG with an opportunity to expedite work to continue to improve reliability and consistency on vehicles, train wheels, vehicle modifications, and other elements of the project. The Finance and Economic Development Committee (FEDCO) was briefed *in camera* on the status of ongoing claims disputes between the City and RTG on March 2, 2021, and again on May 18, 2021. Council received further confidential information in May 2021 regarding legal matters related to the sinkhole that occurred in 2016 during construction of the system.

Over the course of the spring and summer of 2021, work proceeded on the Rectification Plan items. Service reliability was averaging about 98 per cent, while ridership was approximately 20 per cent of the average due to the pandemic at the start of the summer, and at about 34 per cent into August as the City moved through the provincially mandated steps to reopening from the pandemic. Then, on August 8, 2021, an out-of-service train derailed on its way back to Belfast Yard. All safety protocols were implemented and train service was halted for inspection of the fleet. Following an investigation, RTG's subcontractor Alstom identified a problem associated with the axle bearing assembly and proceeded with required mitigation. Investigative work on the root cause analysis began immediately.⁸ Service resumed with five trains on August 14, 2021, 11 trains on August 15, 2021, and 13 to 14 trains for weekday peak periods as of September 2, 2021.

As the City entered its third year of Confederation Line operations, a westbound train derailed between Tremblay and Hurdman stations on September 19, 2021. All trains were removed from service and TSB officials investigated the cause of this second derailment, which was not caused by the axle bearing issues but rather was the result of human error and a failure by RTG to implement appropriate quality control/quality assurance measures – there was a failure to properly torque bolts following a repair.

On September 24, 2021, the City issued a new Notice of Default to RTG, in addition to the Notice of Default issued on March 10, 2020, which RTG had still not cured. The September 2021 Notice of Default was issued because RTG failed to meet the basic performance and service level metrics set out in the Project Agreement arising out of the derailments (incurring Failure Points above the threshold for default as a result) and

⁸ In a [Rail Safety Advisory Letter](#) later issued to the City on September 27, 2021, the TSB noted with respect to the August 8, 2021, derailment that the wheel had severed from the axle “due to a previously undetected catastrophic roller bearing failure and subsequent axle journal burn-off.” A memo from the City Manager to Council and the Transit Commission on September 28, 2021, stated that in parallel with the root cause investigation, the City would be using its rights under the Project Agreement to require RTG to explore solutions that would provide an early detection of bearing failures.

both events led to system unavailability and the erosion of system reliability⁹. In the September 2021 Notice of Default, the City requested that RTG provide a reasonable plan and schedule for remedying its defaults by October 1, 2021. In addition, among other actions, the City indicated it would undertake ongoing increased monitoring and notified RTG that all costs associated with the monitoring would be to RTG's account. The City also advised RTG that it was "investigating all of its options under the Project Agreement and at law."

The Notice of Default and the City's legal options under the Project Agreement were discussed at an *in camera* session of FEDCO on October 5, 2021. At a special City Council meeting on October 13, 2021, Council approved recommendations from FEDCO to direct staff to deliver a Notice of Dispute under the Project Agreement with respect to the RTG defaults. Council also directed staff to proceed promptly to have the defaults confirmed through the contractual dispute resolution process in the Project Agreement including, as necessary, asking the Court to confirm the validity of the RTG defaults.

At the same meeting, Council approved Motion No. 61/15, which asked the City's Auditor General to undertake an audit of City staff's recommended approach that led to the procurement and implementation of the Stage 1 LRT system. The motion indicated that the Auditor General was an independent statutory officer who could undertake the review in a more timely and cost-effective fashion than a judicial review and also review confidential information related to the litigation without waiving Council's privilege. In addition, Council unanimously voted to have staff explore options to terminate the 30-year maintenance contract with Rideau Transit Maintenance (RTM), the RTG-affiliated LRT system maintainer, such that options and related information would be provided to Council after the outcome of the legal actions directed by Council was known and in a way that would not prejudice the City's legal position with respect to any disputes between the City and RTG.

The new General Manager of Transit Services, Renée Amilcar, started on October 18, 2021 (the General Manager of Transportation Services who had been overseeing the system since October 2016, John Manconi, had retired from the City on September 30, 2021). RTG's return-to-service plan further to the derailment of September 19, 2021, was received by the City on October 15, 2021. The plan set out a partial return to service, with seven trains and a spare anticipated within the first two weeks of

⁹ As noted in a memo to Council issued by the Director, Rail Construction Services, on October 5, 2021.

November.

On November 2, 2021, the TSB issued a [Rail Safety Advisory Letter](#) regarding the September 2021 derailment, citing human error as the cause and stating that the incident “has demonstrated that there can be serious consequences resulting from the inconsistent and incomplete maintenance of safety-critical components on an LRV [light rail vehicle] in commuter passenger service.” On November 8, 2021, two LRT vehicles “came into contact with each other” in the maintenance yard, the Chief Safety Officer told Council in a memorandum, noting that the collision resulted in “some damage to the windshield glass, wipers, and exterior panels of both vehicles.” On November 12, 2021, the LRT began partial service after its 54-day closure and, on November 16, 2021, the General Manager, Transit Services, issued a memo to Council that stated replacement bus service was to end “due to consistent O-Train Line 1 service and low R1 replacement bus passenger volumes.”

On November 17, 2021, Ontario Transportation Minister Caroline Mulroney announced that the Government of Ontario would launch a public inquiry into Stage 1 of Ottawa’s LRT, stating that the issues experienced on the Confederation Line were “unacceptable and disappointing.” On December 16, 2021, the Ottawa Light Rail Transit Public Inquiry (the “Inquiry” or the “Commission”), to be led by the Honourable Justice William Hourigan (the “Commissioner”), was established by Order in Council 1859/2021, with a mandate to “inquire into the commercial and technical circumstances that led to the OLRT1 breakdowns and derailments.” The Order in Council required the Commission to “conclude its mandate and deliver a final report to the Minister of Transportation containing its findings and conclusions and including any recommendations on or before August 31, 2022 or, if the Minister of Transportation agrees in writing, no later than November 30, 2022.” The provincial inquiry would not be able to receive or address privileged matters related to the litigation.

On December 17, 2021, City Council was advised that a small, dedicated team of City staff from areas like legal, information management, finance, and Information Technology would work with the City’s external legal counsel and the Commission secretariat, as appropriate, to facilitate the work of affected past and present City staff to meet the requirements of the Commission’s work, and that expenses related to the work of this team would be reported to Council through FEDCO. The team would be led out of the City Manager’s Office, in concert with the City Solicitor.

On December 22, 2021, the City’s Auditor General issued a memorandum to Council advising she had paused her investigation into Stage 1 LRT in order to “... alleviate any

excess burden placed on the City's administration caused by two, very large, concurrent reviews of similar nature [and] ... also ensure we do not duplicate work performed by the Commissioner through the course of the provincial inquiry." The Auditor General indicated that she would determine at a later date, following the Commissioner's review, whether there were, "remaining areas of risk, if any, that may not have been reviewed." The Office of the Auditor General "would then apply City resources to areas we believe we can provide further value, all the while ensuring prudent use of taxpayer dollars," the memorandum stated.

Participants noted that the Commission's timelines established by the Ontario government were aggressive, particularly given the scope of the Terms of Reference. The Commission began the public part of its work on January 24, 2022, with a [press release](#) highlighting the launch of its website as well as the release of its Rules of Procedure and application process for standing and funding. As described in the Discussion section of this report, the Commission began receiving documents and conducting preliminary interviews in February 2022. Public hearings were held from June 13 to July 7, 2022. The Inquiry was a massive undertaking for the Commission, the City and all participants. The Commission, which conducts most of its work from Toronto, received more than one million documents, heard 41 witnesses in public hearings in Ottawa and held an expert panel on public-private partnerships on July 28, 2022. The deadline for written closing submissions from parties was initially August 5, 2022, but was extended to August 12, 2022. On August 11, 2022, the Commission [announced](#) that the Commissioner had asked for and received more time to deliver its report, and that the Commission "will be delivering its final report to Ontario's Minister of Transportation **by November 30, 2022**" [emphasis added].

The OLRT Public Inquiry is, by its nature, a look back – a point-in-time, hindsight view of what remains a dynamic set of challenges with the City of Ottawa's Confederation Line. By way of example, following the conclusion of the public hearings, on July 23, 2022, Council was informed in a memorandum from the General Manager, Transit Services, that "out of an abundance of caution" a number of trains were removed from service for additional inspections after an operator reported vibrations and problems with a wheel hub assembly were subsequently found on the operator's train. On July 24, 2022, a lightning strike damaged a portion of the overhead catenary system, halting service until repairs were completed. The Commission indicated in a response to a media inquiry that it did not expect to call evidence related to the new technical challenges. Given that Commission counsel had not focused on all details of every technical issue related to the Confederation Line over the course of the public hearings, this was not a surprise to

staff but did punctuate the fact that the Inquiry and its report was a rear-view mirror exercise, one of many that has been undertaken for Stage 1. The City hopes that its recommendations will provide Council, staff, RTG and the public with additional insight. This report provides an update to Council on the work undertaken by City staff and external counsel in response to the Commission.

While the public proceedings of the Inquiry are closed, the litigation between the City and RTG has continued over the same time period. As noted above, the Inquiry did not deal with matters subject to the litigation and the Commissioner was careful to ensure that the City's privilege with respect to the litigation was not breached by the work of the Inquiry.

On April 29, 2022, both City Council and the Commission were provided with a report that Mott MacDonald issued to the City summarizing its analysis and findings with respect to its independent expert review of the Line 1 Confederation Line, including a review of the Failure Points, the track and rail systems, the maintenance and storage facility and the vehicles. The report, which was also made available through the City's Public Disclosure [webpage](#), included a number of recommendations to improve the sustainability and reliability of the system, which will ultimately benefit transit customers. The Mott MacDonald findings confirm that RTG clearly exceeded the Project Agreement Failure Points thresholds, which validated the City's March 2020 and September 2021 Notices of Default. The report also found that RTG's Rectification Plan to respond to the March 2020 Notice of Default includes various actions that will improve the system once the plan is fully implemented.

On September 2, 2022, City Council was advised in a memorandum from the Director, Rail Construction, that the hearing for the Application of the Notice of Dispute previously scheduled for August 30, 2022, had been adjourned to November 15 to 17, 2022, and December 19, 2022. This was because the City tendered new evidence about the issues which had arisen in July 2022 described above (after the original court filing) and RTG asked the Court for additional time to respond to the new evidence, and the Applications judge also ordered a further hearing day in December because he wanted to hear submissions on whether or not the Commission's report in the Inquiry has any bearing on his decision. The City has maintained its position that there are clear "Project Co Events of Default" arising from RTG's accrual of Failure Points in August and September 2021 and that the Commission's report is not relevant to the issues in the application.

It is understood that neither the Commission nor the Court will consider whether or how

the timing of their work relates to the upcoming change of term for City Council. Staff, however, recognizes that the release of the Commissioner's final report provides some challenges with respect to how the report will be able to be received by either the current or next City Council and how Council will be updated on the status of the litigation.

Moreover, the political and governance landscape for the City of Ottawa has changed from the time the Inquiry started its work. It became clear through the course of Ottawa's municipal election period, which began in May 2022, that there will be a new Mayor for the 2022-2026 Council, and at least 11 new Members of Council. Due to the number of current Members of Council choosing not to seek re-election, the current Council entered into a so-called "lame duck" period as established by Section 275 of the *Municipal Act, 2001*. This means that certain actions of Council are restricted until the end of the current term, including:

- the appointment or removal of any officer of the municipality;
- the hiring or dismissal of any employee of the municipality;
- the disposition of any real or personal property of the municipality that has a value exceeding \$50,000 at the time of disposal; and
- making any expenditures or incurring any other liability that exceeds \$50,000.

The outcome of the election will be the most significant turnover of Council since before amalgamation. No Members of Council will have served continuously since before 2010, and only two Members elected in 2010 sought re-election. The overwhelming majority of the next Council will not have the depth of experience on the significant aspects of the LRT file that previous Councils have had.

Briefing the new Council is further complicated by the term of office starting on November 15, 2022, rather than the December 1st start date of previous terms, due to changes in provincial legislation. This means that there are only three weeks between Voting Day (October 24, 2022) and the start of the new term to provide focused orientation to newly elected Members of Council to help them be "day one" ready, as well as the practical issues of 'onboarding' them, hiring their staff and transitioning the offices (for both departing Members and the newly elected). There is no time in that window to provide comprehensive issues briefings as well.

Finally, there is a significant change in governance and powers of the next Mayor and

the City Council for Ottawa (and Toronto) established by [Bill 3](#), the *Strong Mayors, Building Homes Act, 2022*, which was introduced in the Ontario Legislature on August 10, 2022, and received Royal Assent on September 8, 2022. The legislation provides Mayors of the City of Toronto and the City of Ottawa with additional powers beyond those currently provided for in either the *City of Toronto Act, 2006* or the *Municipal Act, 2001*. Provisions within Bill 3, and anticipated Regulations, provide both Mayors with powers that include:

- appointing and dismissing the Chief Administrative Officer/City Manager as well as various senior managers, and exercising general control and management of the municipality's affairs for the purpose of ensuring its efficient and effective operation;
- appointing chairs/vice-chairs for "prescribed committees, or committees within a prescribed class of committees," and establishing or dissolving such prescribed committees;
- bringing matters forward for Council consideration if the Mayor "is of the opinion that considering a particular matter could potentially advance a prescribed provincial priority";
- vetoing certain by-laws approved by Council if the Mayor "is of the opinion that all or part of the by-law could potentially interfere with a prescribed provincial priority"; and
- proposing and preparing the municipal budget.

On October 3, 2022, the Ontario government issued proposed Minister's Regulations to further define these powers, which are to be vested in the Mayor for the 2022-2026 City Council.

Each Council sets up its own governance mechanisms for its term of Council. This is largely accomplished through consideration of a governance review report, and includes establishing Committees of Council and their individual Terms of Reference, as well as the process for seeking membership on those Committees, selecting Chairs and Vice-Chairs and, since 2010, establishing budget directions. Traditionally, the governance review report for the new term of Council is tabled at the last meeting of the retiring Council and is the first item of business of the first regular meeting of the new Council.

The last Council meeting of the current term is scheduled for November 9, 2022, leaving

very little time for the Mayor-elect or new Councillors-elect to be consulted about their own governance recommendations with the knowledge of both the requirements of their current roles or the impact of Bill 3. The hearing for the Notice of Dispute matter is currently scheduled to begin on November 15, 2022, the same day the new Council takes office. At some point in this transitional time, the Commissioner is to release his final report on the OLRT Public Inquiry, potentially before there is a Standing Committee struck to receive the report and receive public delegations, and before the Mayor and new Council have been fully briefed on the City's LRT system and the ongoing litigation.

Council considered some of the above-noted matters on October 5, 2022, when it approved a motion that provided for the delay of the traditional tabling of the 2022-2026 Governance Review report at the last meeting of the outgoing Council until shortly after the new Council has taken office, on a schedule to be determined by the new Mayor. Further to Council's approval of the motion, staff is recommending some processes in this report that, if adopted, could assist Council in understanding and navigating the impacts of the Inquiry, Bill 3, and the litigation being brought forward during the time of transition:

- With respect to the Commissioner's report on the Public Inquiry, staff is recommending a process whereby staff would be directed to formally present the Commissioner's report and recommendations, along with a companion report with staff's response, to the appropriate Standing Committee and Council as soon as practicable in the new term, after Standing Committees are established.
- As part of the staff work related to the Public Inquiry, City staff identified gaps and potential for process improvements in areas that the Public Inquiry did not hear evidence on, specifically regarding records management and project management. Staff is recommending processes that, if approved, will allow work to begin in those areas for Council consideration in the new term.
- In addition to whatever the Commissioner may recommend, and considering the previous independent reviews and resulting recommendations as well as best practices and lessons learned that have been implemented to date, staff is proposing seven additional improvements for large-scale infrastructure projects in the future. Staff recommends that these preliminary recommendations be further refined and considered for potential implementation in the proposed staff companion report, along with any recommendations from the OLRT Public Inquiry's final report.

As of the writing of this report, work on improving the City's light rail transit system continues. In August 2022, RTG completed annual track and maintenance activities over a two-week period to improve customer ride quality and to ensure the long-term sustainability and reliability of the system. OC Transpo's relationship with RTM continues to strengthen. Together, both parties have been successful at managing both planned and unplanned maintenance work and related service impacts. As well, OC Transpo continues to work with Transportation Resource Associates (TRA Inc.) on a full remediation plan, including return-to-service commitments, enhancing OC Transpo processes and oversight, and reviewing rail industry best practices and implications for Stage 2, where applicable.

DISCUSSION

As described in more detail in the previous section, the timing of the Commissioner's final report on the Ottawa Light Rail Transit (OLRT) Public Inquiry (the "Inquiry" or the "Commission") is challenging due to the transition from one term of Council to the next. This report provides information with respect to staff activities and expenses related to the Inquiry to the current Council, in whose term the work was done. As well, it makes process recommendations with respect to receiving the Commissioner's final report during a transitional period for Ottawa City Council. It also provides information and recommendations with respect to lessons learned by staff participating in the Inquiry process which, if adopted, would result in policy reports coming to the next term of Council.

It is important to understand that the City is required to maintain privilege over solicitor-client communications relating to the LRT. In addition, pursuant to confidentiality undertakings required to be executed by all witnesses and counsel, the City is prohibited from disclosing the contents of documents obtained from the Commission that have not been made public exhibits. Therefore, the update being provided in this report focuses on the high-level interactions between the City and the Commission, noting the specific requirements that drove costs, and on the City's positions taken in public filings and documents made public exhibits.

City participation in the Public Inquiry

- 1. Receive the information related to the City of Ottawa's work on the Ottawa Light Rail Transit (OLRT) Public Inquiry, including as follows:**
 - (a) The City's opening statement (Document 1); and**

(b) The City's closing submission and recommendations (Document 2)

Following the Ontario government's announcement on November 17, 2021, that it would hold a provincial public inquiry into Ottawa's Stage 1 LRT, the City Manager immediately established a small team dedicated to the task of facilitating the City's response to the inquiry, as well as to support the City's responsiveness to requests from the City's Auditor General, as her work as described in the Background section of this report was not supplanted by the provincial announcement.

The public inquiry response team is led by the Corporate Public Policy Advisor in the City Manager's Office, in concert with the City Solicitor. The seven-person team includes City staff from areas such as Legal, Information Management, Finance, Office of the City Clerk and Information Technology, as well as a liaison with Transit Services.

As this was the first time the City had been a party to a public inquiry and there was a likely need to prepare for rapid response to new and unforeseen situations, an Advisory Committee composed of the City Solicitor, the City Clerk and the Chief Procurement Officer was struck to provide advice and recommendations for such unknowns. An Executive Steering Committee consisting of the City Manager, the Director, City Manager's Office, and the General Manager of Transit Services, would make final decisions where required, understanding that there would be no discretion with respect to responding to the inquiry and there was expected to be a requirement for strict confidentiality. Further, there was the overarching concern about the City's ongoing litigation with the Rideau Transit Group (RTG) and how the coming inquiry could have an impact on the City's position in that litigation, as well as a desire to ensure that there would not be a negative impact on the Auditor General's work caused by the response team's efforts.

To this end, prior to the formal establishment of the public inquiry and its mandate, the early work of the team focused largely on identifying the location, form and number of records, as well as setting up the team's own records architecture in SharePoint and providing the Auditor General with full access. Where information databases for Stage 1 were at the end of their lifecycle, arrangements were made to prepare for the migration of the information from the legacy databases to a SharePoint site. Staff did some preliminary work on the statutory differences in authorities between a public inquiry and the Auditor General, to assist in document categorization and access – particularly as they related to litigation and privilege (for example, the Auditor General can have full access to privileged records without waiving Council's privilege). Physical space and

technology requirements for the response effort were identified, and a cost centre was established to track costs.

On December 17, 2021, the Government of Ontario [announced](#) that it had “appointed the Honourable Justice William Hourigan as Commissioner to lead the public inquiry into the commercial and technical circumstances that led to the breakdown and derailment of Stage 1 of the Ottawa Light Rail Transit (LRT) project.” The announcement indicated that Justice Hourigan would have a mandate “to look into the procurement, delivery and operations of the Ottawa LRT Stage 1 system.”

The specific mandate for the Ottawa Light Rail Transit Public Inquiry (the Inquiry or the Commission) was set out by the Province in [Order in Council 1859/2021](#) (dated December 16, 2021) as follows:

- Having regard to section 5 of the [Public Inquiries Act, 2009](#), the Commission shall inquire into the commercial and technical circumstances that led to the OLRT1 breakdowns and derailments, including:
 - a. The decisions and actions that were taken in determining:
 - i. the procurement approach the City selected for the OLRT1 Project;
 - ii. the selection of the Rideau Transit Group (“Concessionaire”); and
 - iii. the award of the alternative financing and procurement (AFP) contract for the OLRT1 Project to the Concessionaire;
 - b. Whether the City-led procurement process had an impact on the technical standards applied for the OLRT1 Project and the design, building, operation, maintenance, repair and rehabilitation of the OLRT1 Project;
 - c. Whether the AFP contract between the City and the Concessionaire (“Concession Agreement”) was adequate to ensure that the design, building, operation, maintenance, repair and rehabilitation of the OLRT1 Project was carried out in accordance with all applicable laws and industry standards, including performance and safety;
 - d. Whether the Concessionaire and its subcontractors did carry out the design, building, operation, maintenance, repair and rehabilitation of the OLRT1 Project in accordance with applicable laws and industry standards; and

- e. Whether the City's oversight of the Concession Agreement and the OLRT1 Project, including its audit, evaluation, inspection and monitoring of the OLRT1 Project, was adequate to ensure compliance with the Concession Agreement and any applicable laws and industry standards. The above includes an inquiry into the decisions that led to the declaration that the OLRT1 Project had reached substantial completion and any associated testing carried out to support such declaration.
- The Commission shall perform its duties without expressing any conclusion or recommendations regarding the potential civil or criminal liability of any person or organization. The Commission shall further ensure that the conduct of the inquiry does not in any way interfere or conflict with any ongoing investigation or legal proceeding related to these matters.
- Where the Commission considers it essential and at its discretion, the Commission may engage in any activity appropriate to fulfilling its duties, including:
 - a. Conducting research and collecting information, including conducting interviews and undertaking surveys;
 - b. Conducting inter-jurisdictional research to identify practices in other jurisdictions that are relevant to this inquiry;
 - c. Consulting with, or seeking submissions from, key stakeholders and sector experts;
 - d. Consulting with the general public, including consulting prior to making its rules or determining who may participate in the public inquiry; and
 - e. Receiving oral and written submissions.
- The Commission shall, as much as practicable and appropriate, refer to and rely on the matters set out in section 9 of the *Public Inquiries Act, 2009*. In particular, the Commission shall review and consider any existing records or reports relevant to its mandate. Further, the Commission shall rely wherever possible on overview reports submitted to or created or written by the inquiry. The Commission may consider such reports and records in lieu of calling witnesses.
- Pursuant to section 14 of the *Public Inquiries Act, 2009*, the Commission shall hold public hearings.

- The Commission may exercise the powers provided in section 13 of the *Public Inquiries Act, 2009*.
- The Commission shall, wherever practicable, rely on representative witnesses on behalf of institutions and may convene or consult, or both, with panels of representative witnesses to fulfill its mandate in a timely manner.
- In accordance with the *Public Inquiries Act, 2009*, the Commission shall obtain all records necessary to perform its duties and, for that purpose, may require the provision or production of information that is confidential or inadmissible under any Act or regulation, other than confidential information which is described in sections 19 and 27.1 of the *Auditor General Act*. Where the Commission considers it necessary, it may impose conditions on the disclosure of information to protect the confidentiality of that information.
- The Commission shall follow Management Board of Cabinet directives and guidelines and other applicable government policies unless, in the Commission's view and having regard to its mandate, it is not possible to follow them.
- The Commission shall promote accessibility and transparency to the public through the use of technology, including establishing and maintaining a website and holding virtual hearings where the Commissioner deems it appropriate.

The Province also established that the “Commission shall conclude its mandate and deliver a final report to the Minister of Transportation containing its findings and conclusions and including any recommendations on or before August 31, 2022 or, if the Minister of Transportation agrees in writing, no later than November 30, 2022.”

The announcement noted that Justice Hourigan has more than 25 years of experience in law and public service. He previously served as a judge of the Ontario Superior Court of Justice and was elevated to the Court of Appeal for Ontario in 2013. He was the former Chair of the Litigation Department at Fasken Martineau, and previously served as the Chief of Staff to the Attorney General for Ontario and as Counsel and Director of Issues Management for the Premier of Ontario.

Once the mandate was known, the City moved quickly to mobilize resources. As noted earlier in this report, the Auditor General had advised City Council that she was pausing her own investigation until after the Public Inquiry had reported, allowing City staff to focus exclusively on supporting the City's response to the Commission.

The first step was securing the external counsel that would represent and guide the City

through the process, ensuring that the City's privilege with respect to the ongoing and likely concurrent litigation was protected. The City chose a scoped procurement process, with the Request for Proposals going to several firms with public inquiry experience in the last week of December 2021 and proposals due back on January 14, 2022. Two bids were received. Following the evaluation, Singleton Urquhart Reynolds Vogel LLP was engaged on January 24, 2022, with Peter Wardle acting as the lead on the file. External counsel were responsible for:

- Establishing processes and protocols with the Commission's counsel;
- Providing document, management, storage and transfer services;
- Coordinating the City's response to all summonses received by City officials and staff, using the file exchange protocol the Commission established;
- Supporting any witnesses from the City that were interviewed or called to testify at the public hearings; and
- Working with the City's litigation team and Commission counsel to protect the City's legal privilege, including with respect to litigation.

On January 19, 2022, the City received its first formal correspondence from the Commission. This included two summonses dated January 18, 2022, which required the City to produce documents relating to the LRT project as well as information regarding City personnel and third parties involved in the LRT project. Other summonses were sent directly to the offices of Members of Council, as well as to various parts of the organization.

The summonses were comprehensive, requiring records dating from "June 1, 2007 and continuing through the present and concluding at the conclusion of the public hearings of this Commission, in the possession, custody or control of you personally, your office, City of Ottawa, including all predecessors, agents, outlets, servants or contractors, and present and former employees," in accordance with the Rules of Procedure, which were to be posted on the Commission's website in the near future. This was a huge scope, particularly given the timelines not only for the City to provide the records but for the Commission itself to review them.

On January 24, 2022, the Commission published its [Rules of Procedure](#) and the [Rules of Standing and Funding](#) to its website, which went live on the same day. The Commission also outlined the application for standing and funding process, with a

deadline for February 28, 2022. The Commission's Rules of Procedure required the City (and all participants) to provide records using a Relativity database, with specific metadata attached. It was also clear that the Inquiry would be run out of Toronto, apart from the public meeting and public hearing phase. COVID-19 protocols were still in place throughout the province.

On January 25, 2022, the City Solicitor provided the Commission with contact information for the City's lead external counsel and sent an email to Members of Council and the Senior Leadership Team advising that external counsel would coordinate the City's response to all summonses received by City officials and staff, using the file exchange protocol the Commission had established. Direct recipients of summonses from the Commission were advised to forward all summonses to the City Solicitor and Corporate Public Policy Advisor so that the City's external counsel could review all forwarded summonses and advise as to next steps on a general or individual basis, as appropriate.

On January 26, 2022, a productive, informal meeting took place between City staff (the City Solicitor and the Corporate Public Policy Advisor) and Commission counsel. In these discussions, the Commission was advised that staff believed there would be at least one million records for the City to consider for purposes of production to the Commission, almost all of which would have to be reviewed for privilege.

By way of comparison and to illustrate the challenge facing staff (and, one can presume, the Commission) stemming from the amount and scope of document production efforts under compressed timelines, the City of Hamilton's [Red Hill Valley Parkway Inquiry](#) (RHVPI) which began in 2019 and is investigating matters relating to the disclosure of a 2013 friction report regarding the Red Hill Valley Parkway in the City of Hamilton, has a similar scope to the OLRT Public Inquiry. The Terms of Reference for the RHVPI call for that Inquiry to obtain documentation and conduct public hearings to answer two dozen questions regarding the friction report and related matters between approximately 2007 and 2018. Some 14 months after the start of the RHVPI, the City of Hamilton announced on July 14, 2020, that it had completed its document production for the Inquiry. A later Council [report](#) provided to the General Issues Committee meeting of December 9, 2020, stated that, "The City completed its document production process on July 13, 2020, subject to requests for additional documents by Commission Counsel The City produced a total of 56,549 documents responsive to the Terms of Reference and the Commissioner's request for information, which consists of nearly 50 categories of documents."

Another [report](#) provided to the City of Hamilton's General Issues Committee meeting of April 6, 2022 – prior to the start of public hearings – advised that a database consisting of documents obtained by Commission counsel from participants to the Inquiry and other entities contained approximately 126,000 documents, including more than 72,000 documents produced by the City. The report noted that, “The City continues to respond to requests from Commission Counsel for additional documents or information, some of which arose in response to information obtained through the witness interview process. It is expected that additional documents will be included in the Inquiry Database.”

Document production

Timelines for document production for the OLRT Public Inquiry began in mid-January, with the first two summonses indicating a deadline of February 28, 2022.

From mid-to-late January, further to the summonses received from the Commission on January 19, 2022, and the meeting with Commission counsel, staff identified key personnel involved in the Stage 1 LRT project, including current and former City employees, consultants and vendors. Staff also began to retrieve documents to provide to external counsel for review and subsequent issuance to the Commission using their document protocol. The initial document run included Council and Committee minutes and reports, documents previously released in response to requests under the *Municipal Freedom of Information and Protection of Privacy Act*, previously issued third party reports, memos to Council, annual budget books, Executive Steering Committee agendas and minutes and all external communication products.

Fifteen years is a long span of time in municipal government. Many staff had retired or left the organization. Records had shifted from paper-based (which would require scanning by Public Inquiry team staff) to electronic. The Commission was advised of the challenges of locating retired staff and records from pre-2010. It was agreed that the City's first tranche of documents would be records that were already public and, therefore, not privileged in order to expedite the work of the Commission. It was also communicated that it was not physically possible for the City to produce all of the responsive documents in just a few weeks.

Deloitte was engaged by external counsel in early February 2022 to undertake the massive document management function using the required Relativity database. As the City began the document gathering and transfer exercise, there were technical challenges with traditional approaches due to the sheer volume and sizes of the files being transferred. After a period of trial and error, which challenged the City's network

capacity and required significant overtime for IT staff, it was determined that the safest, fastest and most efficient method of transfer for the bulk of the documents under the circumstances was through encrypted hard drives that were sent by secure courier from the City to Deloitte in Toronto. Smaller undertakings demanded by the Commission were able to be accommodated using SharePoint (at the City's request) later in the process.

The Commission issued [Procedural Order 1](#) on February 11, 2022, which required, among other things, that:

- All parties who had received summons must have made substantial production of relevant documents in their possession, power, or control by February 28, 2022; and
- Where a recipient of a summons had not produced all of the documents in their possession, power, or control by February 28, 2022, they were required to produce documents on a continuing basis as they became available. Further, they were required to notify the Commission in writing regarding their plan for production every two weeks until full production was made; and
- All documents in the possession, power, or control of the recipient of a summons were required to be produced to the Commission by no later than April 29, 2022.

The Commission reserved the right “to make further or additional demands during the Inquiry process regarding the production of documents, including making demands for specific documents or specific categories of documents as necessary.” It also reserved the right “to take such further steps at any time as it deems fit to ensure the timely production of documents and compliance with this order, including but not limited to applying for and executing search warrants, and refusing standing or revoking standing for a participant or imposing restrictions on a participant’s standing.”

Given the large volume of documents, layering on both the metadata and format requirements of the Commission and the need for a review for privilege of those documents, a document production plan was developed by external counsel, approved by the City and provided to the Commission. The production plan applied to all documents to be assembled by the City and all current and former City staff and current Councillors for whom the City had accepted service of any summons to produce documents. The plan set out matters relating to the intended scope of documentary discovery, compliance with the exchange protocol, confidentiality and privilege, and timing of document production. It included the following information:

- The City informed the Commission it expected to produce documents in the following categories (with a right to revise the list):
 - a. Planning phase;
 - b. Procurement phase;
 - c. Design and construction phase;
 - d. Operation and maintenance phase;
 - e. Minutes of City meetings during the relevant period (2007 to present); and
 - f. Disclosure in response to access to information requests made during the relevant period (2007 to present).

- With respect to confidentiality and privilege, the plan provided that:
 - The City reserved its rights to object to the disclosure of a document to other participants in the Public Inquiry and/or to the public at the hearing or otherwise on the grounds of confidentiality, pursuant to the Commission’s Rules of Procedure.
 - The City reserved its rights to object to the disclosure of any document, or part thereof, on the grounds of privilege and would comply with the requirements under the Commission’s Rules of Procedure for any claims of privilege.
 - Any inadvertent disclosure of a document or part thereof over which the City asserts privilege shall not be deemed a waiver of privilege.

The plan indicated that the City would produce documents “on a rolling basis,” starting with a first set of documents that was anticipated to include hundreds of thousands of documents. City staff pulled all of those records in the City’s custody and control using an eDiscovery tool, and provided the records to external legal counsel without viewing them. To ensure all records were captured, on February 24, 2022, the Corporate Public Policy Advisor issued an email to City staff who received individual summonses reminding them that, as the City does not have access to any records held outside of the City’s network or facilities, any relevant records that were in the possession of staff and not within the City’s facilities (e.g. gmail or home office) should be provided to project team staff, who would assist with sharing the documents with external counsel in response to the individual summonses.

A slightly different approach was taken to address the summonses for elected officials and the citizen members of the Transit Commission. On February 9 and 11, 2022, private virtual information sessions with external counsel were held with Members of Council, Members' staff and citizen members of the Transit Commission. Each day's session was scheduled for two hours. External counsel provided attendees with information regarding the Commission, summonses, the public inquiry process, obligations with respect to document retrieval, and timing. Attendees had an opportunity to ask questions. Members were advised that given the workload and challenges they faced with respect to truck convoy protests in the City at that time – as well as the timelines set by the Commission for the production of records – City staff were available to undertake document production on Members' behalf. With a Member's consent, City staff would pull responsive documents from emails and shared drives using keywords provided by external counsel.

As the information sessions for the elected officials/citizen Transit Commissioners were held in private and are not to be reported out, Members were provided with the following caution to ensure that no closed meetings provisions of the *Municipal Act, 2001* were inadvertently breached:

“Members are not to ‘materially advance’ the business or decision-making of the Council, its committees, or the Transit Commission, in contravention of the *Municipal Act, 2001*. In effect, while Members are permitted to ‘receive an update on recent activities’, you must not ‘discuss or debate that information as it relates to a specific matter that is or will be before’ Council, the Commission or one of Council’s committees. This also means that there should be no votes, reaching of agreements, providing direction or input to staff, or discussing or debating a proposal, course of action or strategy during these sessions.”

The City's Integrity Commissioner (who also investigates closed meeting complaints as the City's Meetings Investigator) and the City's Auditor General were invited to observe the information sessions, as they would be invited to any closed meeting of Council. Any invitees who did not attend the information session were issued a letter advising that staff would retrieve their responsive documents from emails and shared drives using keywords provided by external counsel. Staff then began working with Members of Council and citizen Transit Commissioners to secure permission, identify hard and/or soft copies of documents and any additional email addresses that should be searched. Members and citizen Transit Commissioners were also advised that any relevant records not within the City's facilities should be provided to project team staff, who would assist with sharing the documents with external counsel in response to the

individual summonses.

It should be noted that although the OLRT Commission was aware that City staff and elected officials were dealing with urgent needs arising from the truck convoy protests in the first three weeks of February, the expectation was that the Procedural Order timelines would be met. The first tranche of documents was provided to the Commission on February 14, 2022 (103,426 documents). The second tranche of documents was provided to the Commission on February 23, 2022 (44,845 documents). The third tranche of documents was provided to the Commission on February 28, 2022 (168,910 documents).

On March 8, 2022, the Commission directed the parties to include in their biweekly document production report proposals to narrow production. On March 11, 2022, the City proposed to narrow document production by producing emails from 10 key custodians over specific time frames. The Commission agreed with this approach. The Commission asked the City to include Teams chat messages from City platforms for key individuals during key time periods but at no time asked that the scope of production be widened to include messages from personal messaging applications or devices.

In addition to the initial summons and request for production plans, there were another four summons and six requests or notices prior to the public hearings, and three requests during the hearings.

In accordance with the Production Plan negotiated with Commission counsel, a total of 12 tranches of document production were made on at least a weekly basis until May 6, 2022. The City provided Deloitte with more than 1.8 million documents and, following review for duplications, removal of constituency records and privileged records, more than 570,000 City of Ottawa records were provided to the OLRT Commission by external counsel before public hearings began. As well, there were 18 more productions of 'as needed' or as requested documents prior to and during the public hearings, covering several hundred more documents. The volume of documents and pace of production were so aggressive, particularly considering that witnesses were being interviewed while documents were being produced, that the specific document requests from the Commission typically included the phrases, "Where this information has already been produced, identify the DocIDs," and, "Where such records have been disclosed, identify the DocIDs," in recognition of the fact that the specific information they were requesting may well have already been provided and they had not identified it yet.

Finally, during the public hearings, in response to a specific request from Commission counsel, the City produced several WhatsApp chats that reflected messages amongst City staff and consultants, and amongst senior City staff and certain elected officials, for certain key time periods.

The Office of the Auditor General received access to internal SharePoint sites being used by the City staff team to coordinate the response to the Commission. The records produced for external counsel were retained and a process is in place for the Office of the Auditor General to have access to the records when/as required. It should be noted that the Auditor General has access to all City documents produced, including documents not provided to the Commission due to privilege.

Key personnel, witnesses and informal and formal interviews

As noted above, the City received two summonses on January 18, 2022: One requiring the City to produce documents relating to the LRT project and another requiring the City to provide information regarding City personnel and third parties involved in the LRT project from 2007 until the present.

Information regarding key personnel including dozens of current and former City employees, consultants and vendors was provided to the Commission on or about February 1, 2022, though staff did not have contact information at that point in time for a number of staff who had retired or left the City.

The Commission conducted three kinds of interviews. The first were informal interviews with key individuals, and were not transcribed. The second were the formal, transcribed interviews, with the transcripts forming part of the Participants' Database and the public record. The third were the interviews held as part of the public hearings, discussed in a later section.

For each set of interviews, City witnesses were provided support from the City's external counsel. This support included document review, preparatory meetings and being present to ensure the City's privilege was not breached. The formal interviews and public hearings involved follow-up undertakings and production for a number of City witnesses. Preparations took up to several days for each witness.

The informal interviews took place from early February through to March 22, 2022. Seven witnesses from the City were questioned by Commission counsel over this period, three of whom were former employees. No documents were presented to the witnesses during these interviews.

On March 7, 2022, the Commission released its decision on Standing and Funding (dated March 3, 2022). Full Standing was granted to the City of Ottawa, the Amalgamated Transit Union 279, Alstom Transport Canada Inc., the Ontario Infrastructure and Lands Corporation, Morrison Hershfield, the Province of Ontario, Rideau Transit Group Engineering Joint Venture, Thales Canada Inc., Transport Action Canada, Ottawa Light Rail Transit Constructors, Rideau Transit Group General Partnership, and Rideau Transit Maintenance General Partnership. STV Incorporated was granted full Standing later in the process (on May 16, 2022).

On March 24, 2022, the Commission issued [Procedural Order 2](#), which addressed, among other things, document production and confidentiality and privilege claims. The Commissioner ordered that participants would not receive access to the Participants' Relativity Database of documents "unless and until material production has been completed. Whether material production has been met will be determined by the Commission." The order also set out a process with respect to confidentiality and privilege claims. It further included deadlines for bringing confidentiality and privilege claims for records held back by producing parties or identified as being the subject of a confidentiality application or privilege claim.

The formal, transcribed interviews of witnesses, including those with Standing, began in April and continued into May. The City witnesses were Sam Berrada, Stephen Blais, Coun. Riley Brockington, Troy Charter, Claudio Colaiacovo, Steve Cripps, Coun. Diane Deans, Duane Duquette, Rock Fortier, Lorne Gray, Richard Holder, Coun. Allan Hubley, John Jensen, Steve Kanellakos, Kent Kirkpatrick, John Manconi, Coun. Catherine McKenney, Coun. Shawn Menard, Mona Monkman, Michael Morgan, Matt Pieters, Brandon Richards, Nancy Schepers, Marian Simulik, Chris Swail, Mayor Jim Watson, Gareth Wood, citizen Transit Commissioner Sarah Wright-Gilbert. One of the City's key witnesses, the former Manager of LRT Construction, died at the end of March and had been too ill to be interviewed (Rideau Transit Maintenance suffered a similar loss of one of their key people, also at the end of March). Almost no documents were presented to the witnesses during these interviews, the exception being specific documents the City had located and provided to Commission counsel.

The transcripts for all witnesses were placed, along with the documents the Commission deemed relevant, in a Participants' Database. Access to the Participants' Database was provided on May 6, 2022 (just over a month from the commencement of the public hearings), although not all documents had been put in the database at that time.

On May 11, 2022, the Commission announced that its public hearings would be held in Ottawa from June 13, 2022, to July 8, 2022, at the University of Ottawa's Faculty of Law – Common Law Section, in the Ian G. Scott Courtroom. The Commission also announced that, prior to the hearings, it would hold two public meetings on May 25 and 26, 2022, at the Shaw Centre in Ottawa from 7 to 9 pm, to allow people to share their views on the breakdowns and derailments of the Ottawa Light Rail Transit System.

At this point, the challenges inherent in the compressed timelines and broad scope for the Commission became evident. In a meeting with participants on May 19, 2022, the Commission confirmed that the hearings would be conducted from 9 am to 9 pm each hearing day. On May 24, 2022, the City received the witness and issues list for the first time. As the City (and presumably all parties) began to prepare for the examinations on an expedited basis, efforts were hampered by the fact that very few transcripts of interviews of non-City witnesses were available through the Participants' Database (at that point, only 16 witness transcripts were in the database in total, including City witnesses). Counsel for the City requested Commission counsel make arrangements for transcripts to be delivered to all counsel directly. On May 27, 2022, just two weeks before the hearings started, participants received the time allocations for witnesses for the first time, leaving very little time to prepare.

Public meetings

The Commission held its public meetings at the Shaw Centre on May 25 and 26, 2022, as planned. Opening statements were provided by the Commissioner and Commission counsel both nights. At the May 25th meeting, six of 14 registered speakers attended. After the speakers list was exhausted, the Commissioner called for anyone who wished to speak and one additional person came forward. Speakers included members of Ottawa Transit Riders and two candidates in the municipal election.

At the May 26th meeting, Commission counsel also provided presentations regarding [public inquiries](#) and an [overview of the Commission's work](#). The Commission indicated at the public meetings that it had interviewed more than 90 witnesses, collected more than one million documents, and identified more than 10,000 relevant documents. The Commission also noted it had retained experts in P3 projects and technical matters related to building and operating large infrastructure projects. There were 16 speakers, many of whom spoke about issues they experienced as riders.

The City's external counsel were not involved in the public meetings. Their focus was on preparing the opening statement for the City and on preparing for the public hearing

phase.

Public hearings

To prepare for the public hearing phase, the secure temporary offices used by the Public Inquiry team were set up for external counsel to use for preparing witnesses and appearing virtually at the hearing. A staffing schedule for the public hearings was created to cover in-suite support as well as to monitor the hearings and provide quick responses to any matters required by external counsel, staff and/or the Commission. External counsel worked both in Ottawa and in Toronto, as needed.

On June 6, 2022, the Commission issued [Procedural Order 4](#), which provided, among other things:

- that all records identified as relevant by the Commission and made available to participants by way of the Participants' Database would be deemed to be in evidence and may be used by the Commission, including in its final report;
- that Overview Reports and records referenced within them would be posted on the Commission's website as they became available, and would be deemed to have been entered as exhibits to the public hearings and form part of the evidentiary record after being posted;
- that transcripts of formal witness interviews would be posted on the Commission's website beginning on June 6, 2022, or as soon as possible thereafter, and would be deemed to have been entered as exhibits to the public hearings and form part of the evidentiary record once posted;
- that documents referenced in the witness interviews would be deemed to be exhibits to those interviews and made available on the website; and
- that, pursuant to the Rules of Procedure, witness interview transcripts would be made available to participants at least one week ahead of being posted on the Commission's website to allow participants the opportunity to make a claim of privilege in respect of any portion of the transcript.

The City's opening statement, attached as Document 1, was provided to the Commission on June 6, 2022, and issued to City Council on June 10, 2022, once it had been posted to the Commission's website. The opening statement sets out the basic facts, from the City's perspective, of issues related to the procurement of Stage 1, the design and construction phase, and the maintenance period, including the wheel-

cracking, derailments, and issues of faulty design, manufacturing and/or maintenance.

Public hearings began on June 13, 2022, and finished on July 7, 2022. As noted above, the Commission timelines, scope, volume and timeliness of document production were challenging for both external counsel and the City staff supporting them. As counsel were working on the City's opening statement, they were also preparing the City's 13 witnesses and getting ready to cross-examine the other 22 witnesses within the strict examination times prescribed by the Commission. Privilege reviews and additional document production demands occurred throughout the process, together with weekly requests from the Commission for the City to confirm any privilege or confidentiality claims over documents identified as relevant by Commission counsel (including documents produced by other participants), all of which had very quick turnaround times.

This pace and volume of work meant that the legal team and City team worked long days, including all weekends, for a nine-week period. Additional external legal resources were brought in to work with the City Manager and the Mayor. As well, the City team was beginning its work for the Public Order Emergency Commission relating to the truck convoy protests¹⁰. The City's costs for the OLRT Public Inquiry, described later, reflect this effort.

The last public hearing was on July 7, 2022. On July 28, 2022, the Commission held an [expert panel on public-private partnerships](#). Participants included:

- Bent Flyvbjerg – Professor and Chair of Major Programme Management Emeritus at the University of Oxford's Saïd Business School, as well as the Villum Kann Rasmussen Professor and Chair of Major Program Management, IT University of Copenhagen;
- Matti Siemiatycki – Director of the Infrastructure Institute at the School of Cities, University of Toronto, and Professor in the Department of Geography & Planning; and
- Anne Stafford – Professor of accounting and finance at the Alliance Manchester Business School.

¹⁰ On April 25, 2022, the Prime Minister announced the establishment of the Public Order Emergency Commission, which is the independent public inquiry required by statute following the invocation of the *Emergencies Act* in response to the February 2022 blockades and occupations in locations across Canada, including Ottawa, Windsor, Coutts and Emerson.

External counsel were not permitted to question the panel directly but were permitted to pose written questions to the panel. That said, very few of these questions were asked of the panel.

Closing submission and final report

Following the close of the hearings, external counsel began work on the City of Ottawa's closing submission. The Commission initially advised that August 5, 2022, would be the deadline for participants to submit written closing submissions, but on August 3, 2022, the Commission advised the City's external counsel that the deadline for final written submissions had been extended to August 12, 2022.

On August 11, 2022, the Minister of Transportation granted the Commission with an extension to deliver its final report after August 31, 2022, as permitted under the Commission's mandate. The Commission has received authorization to deliver the report by no later than November 30, 2022. The report will include the Commissioner's findings, conclusions and recommendations.

On August 12, 2022, external counsel submitted the City's written closing submission to the Commission. The closing submission, attached to this report as Document 2, outlines the City's strong desire to hold to account the private contractors responsible for the historic and ongoing failures in the design, construction and maintenance of the LRT. The City's external counsel focused on the Commission's core mandate, which is to identify the circumstances and contributing factors that led to several problems with the Stage 1 LRT, including several breakdowns and derailments.

The submission notes that, although the project was completed on budget unlike the majority of similar projects, taxpayers and transit riders have continued to bear the burden of private sector failures in the operations of the Confederation Line. The submission makes a number of recommendations, including:

- An independent review of performance, deductions and the administration of the payment mechanism could be conducted in the first year of service.
- The Project Agreement should have more specific requirements for early engagement by the maintainer.
- The City should clearly communicate with Council when it plans to report and about what, at the outset of a project.
- The process for funding and cost sharing of megaprojects should be reorganized

to reflect the complexity of the project and to account for procurement and delivery risks.

On August 15, 2022, the City's closing submission was sent to Council, once all parties' closing submissions had been made public by the Commission. Council was advised that, in addition to the work by the City's counsel, City staff had identified a number of lessons learned through participation in the Inquiry. Council was further advised that City staff had started to prepare this report to Council on the staff work related to the Public Inquiry, including City costs. In addition, staff expected to have additional recommendations for the current Council and the next Council with respect to matters such as records management and a recommended process that would facilitate consideration of the Commission's final report given the timelines related to the transition between Council terms.

City costs relating to the Public Inquiry

To date, the City has spent \$4.5 million to respond to the Commission, which includes almost \$3.5 million in legal fees and approximately \$893,000 for Deloitte's database and file transfer services. The remainder is for City costs related to Information Technology services, fit up for the secure space and overtime, as necessary.

By way of comparison, a [report](#) to the City of Hamilton's General Issues Committee provided the costs for the ongoing Red Hill Valley Parkway Inquiry (RHVPI) as of June 30, 2022. The RHVPI is a judicial inquiry pursuant to Section 274 of the *Municipal Act, 2001*, initiated by a resolution of Hamilton City Council, meaning that the City of Hamilton pays for all costs. This report indicated that the City of Hamilton's costs were \$6.3 million for external counsel, and \$18 million overall. That report stated the overall costs of the RHVPI for the City of Hamilton are expected to be between \$26 million and \$28 million.

City staff is currently working with external counsel and Deloitte to download the City's OLRT Public Inquiry documents from Relativity and save them to the City server. This will allow the City to decommission the Relativity site and save funds. Staff is consulting with the Auditor General on this download, and is also developing a longer-term storage and archiving plan.

Next steps and directions to staff in anticipation of the final report

- (1) (c) Direct staff to bring the OLRT Public Inquiry's final report and recommendations, together with a companion report outlining staff's**

response to the Public Inquiry report, to the appropriate Standing Committee and Council, as soon as practicable, as outlined in this report

The City has been clear that it looks forward to receiving the Commission's final report, and hopes that the recommendations will enable the City and its public and private sector partners to deliver better transit for the people of Ottawa, while holding the companies who failed to meet their contractual obligations to account. It hopes that the Commissioner's findings will provide additional clarity around the problems that continue to challenge the Confederation Line. From the City's perspective, the final report will be the latest of a series of independent third-party reviews of Stage 1 of the Confederation Line and staff believes it will reinforce what was learned through the challenges experienced in the early stages of the system.

It will be important for Council to receive the Commission's report formally, as part of the record. It would be standard for staff to prepare a companion report outlining their response to the Commission's findings, with up-to-date information (noting that any review is a point-in-time, hindsight view and that time and circumstances invariably change) and a recommended path forward for Council to consider.

The Background section of this report notes challenges associated with Council receiving this report during a transition between terms of Council, particularly where staff would recommend both the Commission's final report and staff's companion report be addressed first at a Standing Committee to allow for public delegations. As such, staff is recommending that both reports be brought forward formally as soon as practicable once Standing Committees are up and running and the new Council has received its briefings and approved its governance.

As described later in this report, over the course of the Public Inquiry process, City staff working on the Public Inquiry identified gaps in Information Management practices and processes, as well as internal project management. The Commission may be unlikely to focus heavily on these matters, but that staff believes Council may want to have these gaps addressed. Recommendations are included for work to begin on improving those processes for consideration in the upcoming term of Council, as described below.

As well, Transit staff listened to the hearings, and read documentation that they had never seen from other participants. In addition to whatever the Commissioner may recommend, and considering previous independent reviews and resulting recommendations as well as best practices and lessons learned that have been

implemented to date, staff is proposing seven additional improvements for subsequent large-scale infrastructure projects in the future. As described later in this report, staff recommends that these preliminary recommendations be further refined and considered in the proposed companion staff report for potential implementation along with any recommendations from the OLRT Public Inquiry's final report.

Information Management and routine disclosure/active dissemination for major City projects and guidelines for temporary records

- 2. Direct the City Clerk to undertake the following with respect to amending the Records Management Policy and associated policies, procedures and practices, and provide updates in the 2022-2026 Governance Review report on the approach the Clerk will take to:**
 - a. Establish a process to develop measures to ensure that Information Management and routine and active disclosure are considered at the start of, during and at the close of all major City projects through measures such as project-specific document management architecture, staff training, clear obligations and accountabilities for recordkeeping and public disclosure when external contractors are used, and having access to a dedicated Information Management resource, as described in this report; and**
 - b. Consult with the Information and Privacy Commissioner of Ontario and work with Information Technology Services as part of a process to establish clear guidelines and processes with respect to temporary records, including transitory records created on instant messaging and social media platforms related to City business, for both staff and elected officials and on both personal and corporate devices and accounts, as described in this report**

Records that provide evidence of the conduct of City business can be in any medium or format. Subsection 1(1) of the *Municipal Act, 2001* defines a “record” as “**information however recorded or stored**, whether in printed form, on film, by electronic means or otherwise, and includes documents, financial statements, minutes, accounts, correspondence, memoranda, plans, maps, drawings, photographs and films” [emphasis added].

The City has a legal obligation to create and retain records of its business activities in accordance with 122 federal and provincial laws and regulations, including:

- Subsection 254(1) of the *Municipal Act, 2001*, which provides that, “A municipality shall retain and preserve the records of the municipality and its local boards in a secure and accessible manner”; and
- Section 4.1 of *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), which requires that, “Every head of an institution shall ensure that reasonable measures respecting the records in the custody or under the control of the institution are developed, documented and put into place to preserve the records.” It should also be noted that MFIPPA provides that one of the statute’s key principles under Subsection 1(a) is that “information should be available to the public.”

The *Records Retention and Disposition By-law* (By-law No. 2021-183) provides the City with the legal authority to create, manage and dispose of records. Every Official Business Record is classified under the Corporate Records Classification Scheme, which identifies categories of Official Business Records, as well as how long they are retained and how they are to be disposed. Retention periods are based upon legislative and regulatory requirements and/or business requirements as identified by the program area.

In addition to the by-law, the Records Management Policy approved by the City’s Senior Management Team on June 6, 2003 (and subsequently updated on many occasions) clarifies the City’s expectations and requirements regarding the creation and lifecycle management of records in the custody or under the control of the City. The policy defines responsibilities, authorities and relationships in order to establish and maintain a records management discipline at the City. This is to ensure that information can be made available for decision-making, program and service delivery, and requests for the release of records under MFIPPA, while being protected and disposed of (retained and preserved or destroyed) in accordance with relevant legislation, regulations and policies. In 2016, the Information and Privacy Commissioner of Ontario (IPC), issued a guidance document that recommended institutions, “Implement policy that requires staff to keep written records of decisions about your institution’s business.” This “duty to document” has been incorporated into the Records Management Policy.

In addition to the by-law and policy with respect to records management, the overarching principle in the Council-approved Routine Disclosure and Active

Dissemination Policy is to advance the view that information held by the City of Ottawa should be made available to the public, and any exceptions to this principle should be limited and specific. The policy speaks to routine disclosure and active dissemination as activities designed to provide greater access to government information. Routine disclosure is the routine or automatic release of certain records in response to informal rather than formal requests under MFIPPA. Active dissemination is the periodic release of certain records in the absence of a request, such as the periodic posting of operational records to ottawa.ca.

The Routine Disclosure and Active Dissemination Policy identifies the requirement for City departments to develop plans for routinely releasing or automatically making available certain records to the public, noting that, “In order to ensure that an appropriate balance exists between ease of access to information and protection of privacy and of Confidential Information, City departments will adhere to the requirements of MFIPPA in respect of exemptions to disclosure for Personal Information, proprietary third-party information, and other confidential information.”

Further to these statutory requirements and policy provisions, staff recommend Council direct the City Clerk to undertake the following matters and include updates in the 2022-2026 Governance Review report on the approach to be taken.

Establish a process to develop measures to ensure that Information Management and routine and proactive disclosure is considered throughout major City projects

Large projects such as Stage 1 of the OLRT project can generate more than one million records, as demonstrated in the retrieval process for the Public Inquiry. While information use and management is subject to policies such as the Records Management Policy, there are no specific guidelines that expressly provide direction regarding the policy’s application to major City projects, particularly where external consultants are used to a significant degree.

Based on document retrieval and production experiences during the OLRT Public Inquiry, staff recommend that the City Clerk be directed to establish a process to develop measures to ensure that information management and routine and active disclosure are considered at the start of, during and at the close of all major City projects. This may include, for example, developing an approach to establish project-specific document management architecture and ensure training of staff, clear obligations and accountabilities for recordkeeping when external contractors are used,

as well as having access to a dedicated Information Management resource.

Specifically, based on lessons learned from the recent document retrieval and production process, staff propose that some preliminary matters to consider in developing any approach or recommendations may include but not be limited to:

- Ensuring the project team reviews the City's Records Management Policy and procedures at the beginning of the project. Mandatory training for all members of the project team should include Records Management Fundamentals and SharePoint Basics, provided by the Information Management Branch. This training should be repeated/refreshed as part of the onboarding process for new project staff;
- Ensuring that a manager is accountable for meeting the records management requirements of the project. The manager should resource an adequately sized, experienced Information Management team that can plan, guide, support and monitor compliance to recordkeeping practices throughout the project. The Information Management Branch should assign a dedicated resource, such as an IM Analyst, to provide guidance and support to the project;
- Developing an Information Governance plan that identifies key official business records, the functional groups that create and use them, the technologies being used and a graphic/flowchart of how information will move between them;
- Developing a comprehensive Records Management Plan that includes:
 - Project team organizational charts and roles and responsibilities documents for all project stakeholders. Updates should be included to show the evolving governance structure of the project over time;
 - Documented protocols for reporting on project status, the review and approval processes for documents and naming/numbering standards;
 - Acceptable use directives, procedures and best practices for social media platforms, messaging apps (i.e. WhatsApp, Facebook messenger), information sharing and storage apps (i.e. Dropbox, Google Docs Smartsheet), the use of personal devices and personal email accounts for conducting City business;
 - A procedure for retaining content on devices such as laptops and cellphones that are to be reassigned or recycled by IT Services;

- An employee/consultant departure checklist to ensure that all project records have been captured or reassigned as appropriate; and
 - Migration plans to repatriate City records and data from third-party sites/applications at the close of the project;
- Including recordkeeping and disclosure requirements in the statement of work for any large-scale projects being managed by consultants. Identify the specific records to be delivered – such as meeting minutes and reports, the frequency and format. Include any disclosure requirements for project-related contracts or documentation, keeping in mind the need to adhere to the requirements of MFIPPA in respect of exemptions to disclosure for personal information, proprietary third-party information, and other confidential information.
- Work with the Access to Information and Privacy (ATIP) Office to review project-related documents that could be released through routine disclosure and active dissemination, and ensure such records are noted in departmental routine disclosure and active dissemination plans on ottawa.ca;
- Implementing a ‘records ready’ SharePoint hub and sites for the project in consultation with IT Services and Information Management. The information architecture should include:
 - A central repository, such as a SharePoint library, for memoranda, presentations and updates to Committee and Council;
 - A central repository for executive/senior management decisions and approvals; and
 - Central repositories for meeting minutes, action items and supporting documents for management teams, operational teams, stakeholder meetings, consultant meetings, etc.;
- Posting memoranda, presentations and updates to Committee and Council and a redacted version of the project agreement to a public-facing website such as ottawa.ca or a project-specific site; and
- Keeping readable and detailed records of corporate organizational charts and supporting documentation of reorganizations affecting project governance, with the relevant information retained through the Human Resources department.

The measures described above may improve transparency and accountability by further enhancing the means by which documents relating to a major project are readily available for the purposes of decision-making, project delivery and MFIPPA requests. Should Council approve the direction to the City Clerk regarding this matter, updates on the approach the Clerk will take would be brought forward for consideration and/or information through the 2022-2026 Governance Review report.

Consult with the Information and Privacy Commission of Ontario (IPC) and working with Information Technology Services as part of a process to establish guidelines and processes with respect to transitory temporary records such as instant messages

The Records Management Policy provides that the City has two types of records: Official Business Records (OBRs) and temporary records. OBRs are “work-related decisions and actions including emails, charts, presentations, briefing notes, etc.” that show:

- what happened,
- when,
- who was involved,
- what was decided or recommended and by whom.

The Records Management Policy further provides that, “OBRs provide evidence of City decisions and decision-making, policies, procedures, services, operations (including transactions, activities, etc.). OBRs must be captured and classified in RMS [Records Management System for physical records] or BIMS [Business Information Management System for electronic records], if they are not already captured in SharePoint Online or other City business-specific system.”

On the other hand, the policy provides that temporary records “are of limited usefulness and can be destroyed immediately or when no longer needed,” further noting that a temporary record:

- is of limited usefulness, created or received by staff in carrying out their activities;
- has no value beyond an immediate and minor action and are not required to meet legal or fiscal obligations;
- is often created in preparation of a subsequent OBR (e.g. a draft of a completed

report); and

- does not provide evidence of decision-making or work-related operations (including transactions, activities, etc.).

City staff's responsibilities under the Records Management Policy include identifying all OBRs they create and receive in their business activities, capturing them in corporate recordkeeping systems or an appropriate business application and disposing of temporary records in a timely fashion and in accordance with their sensitivity. Staff are not to keep OBRs in shared drives, OneDrive, Outlook or on removable storage devices. Responsibilities of City managers include ensuring staff know and adhere to the Records Management Policy and procedures, have the training and resources to manage records effectively and are supported by documented plans and procedures.

In 2016, the IPC issued guidance relating to instant messaging. The IPC strongly recommended that "institutions prohibit their staff from using instant messaging tools ... unless they can be set up to retain and store records automatically." This recommendation was incorporated into the Records Management Policy as follows [emphasis added]:

"Messaging applications and social media platforms are not recordkeeping systems and should not be relied upon to be the sole documentation of key decisions. Messaging applications include, but are not limited to: text messaging, Teams Chats, Jabber, Twitter, etc.

If you communicate key decisions, based on your role and delegated authority, via messaging applications or social media platforms, you must save the decisions as OBRs in BIMS or SharePoint Online. Depending on the application you are using, there may be technical solutions available (such as screen grabs) that will allow you to capture the decision. **An alternative is to simply document the decision elsewhere in a more formal setting (such as in an email, memo or meeting minutes), then make sure that record is captured in BIMS or SharePoint Online."**

Staff note that many informal updates or discussions conducted on instant messaging or social media platforms are transactional and do not meet the test to be retained as OBRs under the policy. While records of such interactions may be interesting as they provide "fly on the wall" insight into day-to-day interactions between staff and elected officials, they more closely meet the definition of a temporary record than an OBR.

During public hearings at the OLRT Public Inquiry, discussions between staff and elected officials on the WhatsApp instant messaging platform were the subject of numerous questions by Commission counsel. However, the City and its representatives noted that records of those discussions were not considered OBRs and had not necessarily been retained. For example, the City's closing submission to the Commission stated as follows [emphasis added]:

"The WhatsApp messages from 2019 could be described as informational and did not involve decision-making, rather, a quick way of getting information back and forth to individuals. These were **temporary records which are transitory in nature, as they do not involve decision-making and as a result do not need to be kept**. WhatsApp is an information sharing forum.

It follows that no one involved in the WhatsApp messaging had any obligation to retain them under the City's policy. ..."

The nature of how people work has changed since the pandemic. Casual check-ins that used to be accomplished by dropping by someone's office or by a quick phone call are now done remotely, as regular business has not returned and may not return to what it was. Given the general interest that may be generated from such transitory records and keeping in mind the fact that they are not classified or required to be retained as OBRs, staff believes it may be useful to consult with the IPC regarding any guidance that Office may wish to provide with respect to the treatment of transitory records. This is not just a "City of Ottawa" issue. Any information received from the IPC could then be used by the Office of the City Clerk, working with Information Technology Services, as part of a process to develop guidelines and processes with respect to the retrieval, retention and disposal of such records, including the potential establishment of measures such as retention periods with respect to the length of time that transitory instant messages are stored on the City's technology systems and on handheld devices.

By way of background, a similar situation in which it was useful to receive further interpretation of legislative provisions from a provincial oversight entity arose with the separate matter of minutes for *in camera* Council meetings and additional guidance provided by the Ontario Ombudsman. In the 2010 closed meeting investigation report titled, "[Town of South Bruce Peninsula – 'Open Conflict'](#)," the Ombudsman – whose mandate includes investigating complaints about closed meetings for a number of municipalities – set out best practices for minutes of closed meetings that provided further guidance to provisions of the *Municipal Act, 2001* that require the recording of meeting proceedings "without note or comment." The Ombudsman's decision noted that

“... while the Act prohibits notes or comments from being included in the official record, this does not mean that the subjects discussed in a meeting should not be referred to.” The decision set out a list of eight matters that should be included in a meeting record of a closed meeting, such as “where the meeting took place,” “when the meeting started and adjourned,” and “who chaired the meeting.” Through the 2014-2018 Council Governance Review, Council formally adopted using the Ontario Ombudsman’s best practices with respect to recording *In Camera* minutes, after using the best practices on an informal basis in the months leading up to the governance review report.

Staff believes similar guidance from the provincial office that oversees Ontario’s access and privacy laws could assist in shaping the City’s approach to the retention of transitory temporary records such as instant messaging chats. It is therefore recommended that the City Clerk be directed to consult with the IPC and work with Information Technology Services as part of a process to establish clear guidelines and processes with respect to temporary records, including transitory records created on instant messaging and social media platforms related to City business, for both staff and elected officials and on both personal and corporate devices and accounts. If Council approves this direction, updates on the approach the Clerk will take would be brought forward as part of the 2022-2026 Governance Review report.

Internal project governance and communications for major projects

- 3. Direct the Chief Financial Officer, in consultation with other City departments, to consider the lessons learned and any final recommendations from the OLRT Public Inquiry related to internal project governance and communications for major projects as part of the ongoing review of the City’s Business Case and Project Management Policy and Project Management Framework, as described in this report**

The City of Ottawa executes several hundred projects annually that range in size, scope and complexity. Given the scale of investment managed by the corporation and the risks for stakeholders and taxpayers that may be associated with such projects, it is important that the City continually review and improve its policies and processes with respect to project planning, management, and delivery. Among other benefits, such reviews can assist in ensuring a consistent and transparent approach is applied to project management.

Several lessons learned relating to internal project governance and communications

were identified through the OLRT Public Inquiry process. Staff believes that these lessons learned, some of which were provided to the Commission as recommendations in the City's closing submission, would provide an opportunity to further strengthen the project management regime at the City and may complement any relevant recommendations that may be forthcoming in the Commission's final report.

By way of background, the need for consistency and standardization in the City's project management practices and decision-making was identified as an organizational priority in 2013. On November 13, 2013, Council considered a Councillor's report titled, "[Analysing the City's Approach to Business Case Developments](#)," and directed staff to examine how a more standardized Business Case approach could be developed for the City. The report noted that, "Strengthening the consistency in the application and approach of economic and business case analysis will aid Council and staff in making informed, cost-effective and risk-aware resource allocation decisions." It further stated that a more consistent corporate approach to economic and business case analysis would enhance due diligence, transparency and accountability, long-term and short-term fiscal responsibility, and project management control for minor and major projects.

In January 2014, senior management approved a new Project Management Policy. As noted in the report titled, "[Corporate Business Case Approach](#)," which was considered by Council on April 9, 2014, the policy contained specific criteria that would necessitate senior management monitoring (e.g. contains significant financial, operational or reputational risk, involves a public policy or activity that crosses organizational boundaries or impacts the public across all wards within the City, etc.). The policy also provided criteria for staff to ensure escalation of the project to their senior manager if changes in scope, schedule or budget were anticipated.

In 2017, the City's senior management approved replacing the Project Management Policy with a broader Business Case and Project Management Policy. The newer policy is applicable to all City projects and contractual arrangements for project work identified and delivered by City staff, or on behalf of the City. It is supplemented by a Project Management Framework, which further defines the City's project management approach to establish, manage and deliver City projects. The Framework includes a set of principles, practices and deliverables based on the industry standard Project Management Body of Knowledge (PMBOK), as well as best practices developed by the City's departmental stakeholders.

The purpose of the Business Case and Project Management Policy and the Project Management Framework is to ensure that the appropriate systems, processes and

controls for managing projects are in place to support the achievement of project and program outcomes while limiting the risks associated with projects to stakeholders and taxpayers. The policy describes the essential elements in the management of projects at the City so that:

- Clear and approved justification for the need, and confirmation of funding, has been documented;
- The appropriate governance and control is established at the onset of any project including steering committee, project sponsor(s), project manager(s) and business owner, as required;
- There is appropriate authorization and acceptance at specified milestones or gates prior to progressing to the next step or phase of the project;
- Projects are effectively resourced and managed within the limitations of scope, quality, resources (time and budget) and risk;
- Changes are identified, managed, documented and approved prior to implementation;
- Stakeholder communication is inclusive; and
- Lessons learned from previously completed projects are reviewed and remain top of mind for future projects.

The policy sets out core element requirements for all projects that include a review of lessons learned from previous projects, business case, project charter, project management plan, mechanism to manage change, status reports and project close-out. With respect to the fundamental elements of project management, the policy notes that, “The level of effort for implementation, detail provided, and rigor applied, depends on a variety of factors including size (dollars/time), level of complexity (i.e. design), associated risks (impacts and opportunities), and level of sensitivity (i.e. political, community and/or stakeholder impacts). In most cases, sound judgement and experience based on information known will be used to determine the level of effort required.”

Considering lessons learned from the OLRT Public Inquiry

The City’s Corporate Administrative Policy Framework requires that all corporate policies and procedures be reviewed at least every four years. In keeping with this

requirement, the Finance Services Department has begun a comprehensive corporate review of the Business Case and Project Management Policy and the Framework as part of the Finance Services Department 2022 policies and procedures workplan. It is anticipated that the full review will be completed by Q2 2023.

Given the timing of the review, the recent experience of the Public Inquiry and the anticipated release of the Commission's report, staff believes there is an opportunity for Council to direct the Chief Financial Officer to work with other City departments to consider as part of the review the lessons learned from the Inquiry with respect to internal project governance and communications, as well as any additional recommendations outlined in the Commission's final report.

Generally, staff responsible for gathering and reviewing documentation for the Inquiry noted that common and consistent project management practices could have been implemented more thoroughly throughout the life of the project. Further, as outlined in the City's closing submission provided to the Public Inquiry, staff concluded a project of this size and complexity could have benefited from more standardized practices in the areas of internal project governance and communications. While it is not yet clear what the Commission may recommend, implementation of the lessons learned set out below may assist in improving documentation, standardization, governance and communication with respect to major projects at the City.

Internal project governance

The City's closing submission to the OLRT Public Inquiry suggested that for its major projects, the City's internal governance structure needs to take a lifecycle approach, rather than just being in place for construction. The closing submission stated that, "Governance should begin at the earliest planning phase of a project and continue through implementation and ultimately into operations. A lifecycle approach will help ensure that project objectives and risks cover the entire life of the project and not only its implementation."

With respect to an internal governance model for a project, the closing submission recommended as follows:

"The City should more clearly articulate an internal governance model for managing decision-making with respect to Projects taking into account best practice principles, including the recommendations in the Bellamy Report about the proper role of Council, the Mayor, Committee Chairs, and Staff in procurement decisions, and undertake further education of Councillors and City

Staff as to the nature and role of delegated authority, the manner in which Council can amend or vary delegated authority, and municipal best practices in reporting to and oversight by Council so that key players share a common understanding of the respective roles and best practices.”

The closing submission noted that the City has implemented various best practice principles with respect to an internal governance model for project management decision-making, such as ensuring “a single point of accountability at each level for the success of the Project to enable clarity of leadership and timeliness of decision-making,” and minimizing “layers of the governance structure (increasing flatness) to influence the ability to escalate issues quickly.”

Further to the closing submission, staff believes that a well-documented lifecycle approach that includes continuous monitoring and performance management processes, staff resources for record keeping, and record transition plans would help to ensure that project-related risks and objectives follow the entire life of the project and not only its short-term implementation. It is also suggested with respect to internal governance models for decision-making that development or enhancement of decision-making templates, including decision-making logs, terms of references, and meeting minutes should also be considered.

In addition, staff notes that the Inquiry demonstrated that in some cases, there was a lack of standard job descriptions for functional roles. The clarification of individual roles and responsibilities should be enhanced within the project management framework. Clearly defined roles and responsibilities for each functional job description, which take into consideration the project’s size, scope and complexity, should feed into each project’s governance framework.

Communications

Regarding communications, the City’s closing submission stated as follows [emphasis added]:

“... [T]he City appreciates that Councillors want to receive regular updates and the quality and nature of the information received is important to them. Staff need to be aware of potential ambiguities and lack of clarity in reporting on highly technical issues and need to ensure that adequate opportunities are given for Council to ask questions and receive fulsome answers. This does not mean that Councillors should be making operational decisions about technical matters such as pass/fail criteria in a Commissioning process. Councillors do not have the skill

set to be involved in decision making in such matters.

However, when a project involves a new system, it is particularly important for Councillors to be given sufficient information so that they can understand what decisions are being made under delegated authority and why.”

The closing submission recommended as follows:

- The City should clearly communicate to Council when it plans to report and about what, at the outset of a project.
- Council should consider and evaluate the reporting framework over the life of a project as appropriate and make any changes to that delegated authority that need to be made.
- Council should clearly communicate its expectations to City staff.

In addition, staff on the Public Inquiry team believes there is a need to develop more robust stakeholder engagement plans, which include thorough reporting standards and processes, at the outset of all major projects. These plans would help ensure broad consultation and thorough communications to all external and internal stakeholders, including the general public, consultants, suppliers and vendors, contractors, Members of Council, employees, City departments, and other levels of government.

Staff also notes the need for more detailed communication strategies and change control processes at the outset of all major projects. Changes throughout the planning, implementation and delivery phases of major projects are inevitable. Developing communications strategies and project-specific change control processes at the outset of major projects ensures that the needs of project stakeholders are identified and considered throughout the duration of projects. It is also suggested that processes and procedures be developed for communicating project estimates as they mature.

Staff believes that consideration of the lessons learned – along with any additional recommendations brought forward in the Commission’s final report – would lead to improved documentation and standardization of project management processes and controls for major projects. Amending the Project Management Framework to enhance internal governance models and templates for managing decision-making throughout the lifecycle of major projects would ensure that key players share a common understanding of the respective roles and best practices (though City staff do not

believe that the exercise of delegated authority with regards to Stage 1 was inconsistent or inappropriate). Further, more robust plans and consistent practices related to communications and stakeholder relations, including the development of stakeholder engagement plans, communication strategies, and change control processes at the outset of major projects would result in clearer, more transparent, communications that meet the needs of all stakeholders.

Once the review of the Business Case and Project Management Policy and Project Management Framework is complete and approved by the Chief Financial Officer, the revised policy will be communicated to all City staff via internal newsletters, management communications, and through the City's internal network. The existing project management training offered through the City's Learning Centre will be revised to align with the revised policy. Training and guidance will be promoted and made available to all City staff to strengthen organizational-wide understanding, adoption and application of the business case and project management approach.

Transit Services lessons learned for LRT and new preliminary recommendations

- 4. Receive the lessons learned information from Transit Services and direct staff to include the preliminary recommendations described in this report, in staff's companion report to the OLRT Public Inquiry's final report, refined as necessary, and considered for potential implementation along with any recommendations from the Public Inquiry's final report**

The City of Ottawa's experience with planning, procuring and delivering Stage 1 has been subject to many lessons learned reports, audits and independent studies, with recommendations applied to future light rail stages. In total, 23 reviews have been completed, with one in progress. Lessons learned continue to be applied to operations, as well as with regards to Stage 2.

As described below, findings and key recommendations from completed reviews were implemented in the planning, procurement, and delivery of the Stage 2 project that is underway further to Council's approval in 2019. In addition, new projects completed in other municipalities after Stage 1 in Ottawa led to innovations and improvements that were applied to Stage 2 as industry best practices.

Staff continue to use the knowledge gained from the City's experience to improve light rail now and into the future. Based on what staff learned from their participation in the OLRT Public Inquiry, staff is proposing some additional high-level preliminary

recommendations to be considered for further improvement. A summary of these recommendations is also provided below.

Lessons learned reviews and other best practices implemented for Stage 2

The Stage 2 Confederation Line Project was introduced as a component of the City of Ottawa's 2013 Transportation Master Plan (TMP). Following Council's approval of the TMP, the City established the O-Train Planning Office and engaged an Owner's Engineer team to begin preliminary design ahead of the formal procurement process. As part of these efforts, the City initiated an independent review of the Stage 1 project procurement in 2015 to identify opportunities to improve the Stage 2 project. The outcomes of this review were provided in the report titled, "[Lessons Learned from Confederation Line & Stage 2 Implementation Implications](#)," which Council considered on March 8, 2017, as part of the staff report titled, "[Stage 2 Light Rail Transit Implementation – Project Definition and Procurement Plan](#)." The former report outlined key recommendations for the Stage 2 Project Agreement and procurement model. All recommendations were implemented, and include as follows:

- Improving risk transfer by proactively incorporating some key retained risks through a better early works and investigations programs and better aligning risks with current market conditions such that they are reflected in the project base scope;
- Strengthening the penalty regime related to the notification of project completion, and to better incent and discipline contractor behavior;
- Changing the public art process to create clearer language in the Project Agreement, provide more opportunities for public engagement, and establish a process whereby the Public Art Program can communicate directly with the winning proponents;
- Engaging property experts at an early stage of the planning process to identify potential challenges with specific alignments relating to property acquisition;
- Maintaining continuity and experience within the Transportation Services Department by transitioning key personnel from Stage 1 to the Stage 2 team;
- Improving the communications obligations, such as including the Communications Director in working groups and having a communications lead onsite;

- Identifying and incorporating bundled projects to create financial savings and schedule efficiencies;
- Improving Mobility Matters by providing incentives to ensure limited restrictions during construction;
- Including contract provisions for maintaining pathways and other active mobility connections during construction;
- More efficiently meeting temporary property requirements for construction while better protecting the adjacent community and natural features from impacts where possible;
- Identifying certain liquidated damages that the private sector partner is subject to in the event a key individual is lost to the project and cannot be replaced (subject to certain practical exceptions such as death of such individual);
- Implementation of earned value construction progress payments as opposed to the milestone concepts found in Stage 1; and
- Better risk sharing between the public sector and private sector as it related to utility relocation delays through the identification and base lining of a utility regime and schedule to properly allocate risk.

Since the Confederation Line 1 LRT project, several new LRT Ontario projects were initiated, including Hurontario, Finch, Eglinton Crosstown and Region of Waterloo. Every new project finds innovations and improvements. As a result, additional industry best practices were also applied to the Stage 2 Project Agreements and to the delivery of the Stage 2 project, including:

- Establishing the Rail Construction Program office, an integrated team of project management, design, engineering and construction professionals who monitor, oversee and ensure that the Stage 2 extensions are executed in full compliance with the requirements of the respective Project Agreements;
- Co-location of the City's construction oversight team with the construction project teams at each of the Stage 2 construction sites and a resident inspector in the Brampton Alstom facility to ensure there is active City presence overseeing the work and direct assistance in resolving issues in real-time;
- Establishing a comprehensive internal governance model for managing decision-

making with respect to the Project in accordance with overarching best practice principles;

- Refinement of the technical requirements for Stage 2, including the requirement for 21 days of trial running and the addition of a pass/fail criteria, as outlined in the December 16, 2021, memorandum to Council from the Director, Rail Construction Program, with respect to, “O-Train Light Rail Transit Line 1 and Line 2 Comparison”;
- Incorporating more robust requirements for system engineering, systems assurance, and the reliance on CENELEC EN standards, which provide clarity around processes for systems integration and safety certification timing and testing and verification;
- Incorporating more robust quality assurance and oversight requirements within the Stage 2 Project Agreements, including the requirement for a detailed Integrated Management System (IMS) that outlines the overall system and management oversight processes that our private sector partners will follow to ensure compliance with the respective Project Agreements;
- Retaining the requirement of an Independent Safety Auditor to audit and confirm all safety requirements ahead of revenue service, and to provide advice to the City on the readiness of the integrated system from a safety perspective;
- Incorporating the requirement for a new System Integration Verifier in the Project Agreements who will assist in confirming system integration requirements at Substantial Completion;
- Retaining the requirement of an Independent Certifier in the Project Agreements to actively review the progress of works on site and authorizing the payments for works completed;
- Expanding the requirements in the Project Agreements relating to operator training and on-track time; and
- Implementing specific technical improvements to the existing and future expanded Line 1 system, including gas switch heaters and new connectivity projects.

Following the approval of the Stage 2 project by Council in March 2019, several audits and independent, third-party reviews have been undertaken related to Stage 1 and

Stage 2 projects. A summary of recommendations from these audits and reports is provided below.

- On November 26, 2019, the Audit Committee received the report from the City's Auditor General titled, "[Audit of Stage 2 Light Rail Transit Project Procurement](#)." The report, which was included in the report titled, "[Office of the Auditor General \(OAG\) – Annual Report and detailed audit reports](#)," and considered by Council on December 11, 2019, recommended that the City:
 - Publish Request for Proposal (RFP) documents redacted to remove sensitive or commercially confidential information;
 - Select technical evaluation participants with sufficient relevant P3 experience in a procurement evaluation setting. Alternatively, guidance provided to lesser experienced participants through the training documentation and in-person sessions will be augmented to avoid confusion about scoring given the nature and complexities inherent in P3 type procurements;
 - Consider using a phased bid compliance process clearly stated in the RFP to provide an opportunity to bidders to modify their submissions as part of the technical evaluation process, to provide missing or insufficient bid information in order to comply with mandatory requirements and avoid an unnecessary non-compliance determination;
 - Where authority is delegated to staff by means other than express delegations included in the *Procurement By-law*, ensure the delegation of authority recommendation includes clear reporting protocols and specifies what will be shared with Council and what will not be shared to avoid misunderstanding; and
 - Ensure the reporting mechanism of (perceived or real) wrongdoing, fraud, or waste, is properly understood by all participants. This may be achieved by including the Fraud and Waste Policy in the training material provided to participants.

The City has implemented the aforementioned recommendations, including most recently with the new Ottawa Public Library project.

- On November 26, 2019, the Audit Committee received the report from the City's Auditor General titled, "[Audit of Light Rail Transit \(LRT\) Land Negotiations and](#)

[Purchases](#),” which recommended that staff engage property experts at an early stage of the planning process to identify potential challenges with specific alignments relating to property acquisition. This recommendation has been implemented. The audit report was included in the report titled, “[Office of the Auditor General \(OAG\) – Annual Report and detailed audit reports](#),” which was also considered by Council on December 11, 2019.

- On November 24, 2020, the Audit Committee received the report from the City’s Auditor General titled, “[Audit of Ottawa Light Rail Transit \(OLRT\) Stage 1 Contingency Fund](#),” which recommended that staff define what constitutes a “significant change” to approved designs and document such guidance for consistent application and determination when consent from the Mayor and Ward Councillor is required. This recommendation has been implemented as part of the Stage 2 project. The audit report was included in the report titled, “[Office of the Auditor General \(OAG\) – Annual Report and detailed audit reports](#),” which was considered by Council on December 9, 2020.
- On July 21, 2021, Council considered the report titled, “[Independent Reports on LRT Stage 2 Lessons Learned and LRT Stage 3 Procurement Options Analysis and Project Governance Best Practices](#).” The following recommendations are outlined in the report, which the City has committed to implementing on future projects:
 - Develop a procurement disclosure schedule for the Request for Qualifications (RFQ), redacted RFP main body and redacted Project Agreement. Certain schedules containing sensitive information may be removed entirely, as required. The disclosure deadlines should occur after the conclusion of the procurement process to protect the fairness and competitiveness of the process;
 - Prioritize the selection of technical evaluators with a combination of relevant technical (i.e. light rail) and P3 experience. If it is not possible to select evaluators with the appropriate combination of technical and P3 expertise, targeted training should be provided and the inclusion of an evaluation facilitator with extensive P3 and major projects experience could be considered;
 - Provide specific training to evaluators around the submission requirements and evaluation criteria. The RFP should be clear about how

requirements are linked to scoring, and guidance around these links should be provided to evaluators. The City could also consider adopting a scoring guidance manual or document that is derived directly from the RFP document to clarify boundaries between scores and relevant considerations based on the project's objectives;

- Plan regular project updates as part of the delegation of authority to inform Council on the procurement and project progress;
 - Include clear reporting lines to escalate issues internally with a designated person responsible for taking action as required;
 - Analyze the optimal evaluation approach and technical/financial weightings for the project being procured to help ensure alignment between the evaluation framework and the overall project objectives. If the City maintains the compliance review and technical evaluation approach, the City should ensure that roles and responsibilities for each team are well understood; and
 - Provide P3 procurement training to Council, as required, to help ensure comprehension of the process and rationale behind decisions, including variation in budget and adjustments in scope.
- On April 29, 2022, the City released the [Mott MacDonald Ottawa LRT Independent Review Report](#), which not only confirmed the validity of the City's March 2020 and September 2021 Notices of Default to Rideau Transit Group (RTG), but also outlined a number of technical recommendations to further to enhance the customer experience and long-term viability of the Line 1 system. The City has requested that RTG and Rideau Transit Maintenance (RTM) implement the technical recommendations included in the report.
 - Further to Council's approval on January 26, 2022, of the Finance and Economic Development Committee report titled, "[Motion – Trillium Line – Peer Review](#)," the City initiated a peer review of the Stage 2 Trillium Line extension in order to assess infrastructure design and construction, commissioning and training strategy, and organizational readiness. The Trillium Line Peer Review is currently being undertaken by Systra and RATP Dev. The City will provide the outcomes of the peer review to Council.

Operations lessons learned

Since the start of operations in September 2019, the City has retained oversight over the operations and maintenance of the Line 1 Confederation Line system. This work includes conducting due diligence oversight of RTG and its maintenance subcontractor RTM to verify that each is performing maintenance activities in compliance with the terms of the Project Agreement. As part of this oversight, the City has developed a transparent and collaborative working relationship with RTG and RTM, and its subcontractors including Alstom, to identify, track and resolve issues with a focus being placed on service delivery. Specifically, since the September 2021 derailment, the City and its Independent Safety Expert, TRA Inc., have instituted daily and weekly meetings with RTG, RTM and Alstom to bring together the key stakeholders to better manage service affecting issues. While the City has made efforts to promote collaboration between the parties and reach resolutions efficiently, RTG is still struggling to provide the level and quality of maintenance services required under the Project Agreement. In addition, there was another significant issue with the axle bearing assembly on July 23, 2022, which may be related to the August 2019 derailment.

Beyond its work with RTG and RTM, City staff also remain engaged in Transit Services requirements during operations, including documenting the work order summary, significant issues, and major activities in a monthly report. Staff also compile the results of all inspections, document reviews, monitoring and audits in quarterly reports as well as an annual report for review by the Director, Transit Operations, and Chief Safety Officer. This report provides a summary of the key trends, major issues, remedial action plans, preventative actions, and opportunities for improvement.

The oversight of the Line 1 system is also ensured through the Light Rail Regulatory Monitor and Compliance Officer Annual Report to Council, regular Safety Management System and Security Management System Audits, and through the development of an Oversight Plan using industry best practices and standards, and with input from industry expertise, including TRA Inc. and other independent consulting firms, to support the City's self-regulatory model for oversight and compliance monitoring.

Finally, the City's Transit Services Department has recently made organizational changes to better respond to issues to ensure an optimal customer experience. These changes include the creation of a Director, Engineering Services service area to provide in-house engineering expertise to support the technical business needs of the department, and a new Deputy Chief Safety Officer, who will support the Chief Safety Officer and provide additional oversight to continuously improve the safety and security of Ottawa's transit system.

New preliminary recommendations

In consideration of the independent reviews and resulting recommendations and best practices and lessons learned that have been implemented to date, and further to information that has come to light through the OLRT Public Inquiry process, staff have proposed seven additional improvements below for subsequent large-scale infrastructure projects in the future. These improvements reiterate some of the recommendations set out in the City's closing submission to the Public Inquiry (see Document 2). Subject to any direction from Council, these preliminary recommendations will be further refined and considered for potential implementation along with any recommendations from the OLRT Commission's final report:

1. Funding and partnership agreements

Federal and provincial funding and contribution agreement amounts should be calibrated to reflect the refined project budgets during the procurement process rather than being tied to early-stage environmental assessment estimates, to properly reflect the complexity of these projects and to account for procurement and delivery risks.

2. Procurement requirements

The City of Ottawa should write to the Province of Ontario to request an assessment of the impact of the Canadian content requirements for light rail vehicles on light rail transit projects and to assess whether the policy has had unintended consequences on market competition and project delivery in Ontario.

3. Systems integration

All subsequent Project Agreements should require robust processes including the use of EN Standards to properly address requirements for systems engineering and systems integration on complex light rail transit systems.

4. Project schedule

All subsequent Project Agreements should provide that a reliable Recovery Schedule must be delivered, even after a Delay Event is alleged. The failure to deliver a credible schedule, even if it does not meet the original delivery dates, should have secondary consequences in the Project Agreement.

5. Trial running criteria

All subsequent Project Agreements should clearly articulate specific pass/fail criteria for

trial running at the outset of the project to ensure clarity and enforceability of outcomes during the implementation of the project. Additionally, the duration and content of the trial running period needs to be expanded to include a quantifiable demonstration of system reliability and maintenance capability.

6. Maintenance requirements

All subsequent Project Agreements should be very prescriptive for key individuals during the maintenance period and include key roles such as a Project Co Chief Safety Officer, Technical Director, Track Supervisor, and other key functions that are known to be industry best practices for staffing a complex light rail transit operation.

7. Governance and oversight

All subsequent Project Agreements should require independent, third-party oversight for the first year of maintenance service to certify the monthly payments, arbitrate disputes between Project Co and Owner over monthly payments on a fast-track basis, and to report publicly on performance and payments to Council.

Conclusion

This report is being presented at a dynamic time in the City. The recommendations are staff's best efforts to provide value-added process options such that work can begin now, and put the next Council in the best position to determine the path forward without undue delay.

Nothing in this report binds the future Council, but will allow them to have fulsome, evidence-based discussions following the release of the Commissioner's report.

FINANCIAL IMPLICATIONS

There are no financial implications with this report. The total 2022 expenses related to the City's cost of the LRT Public Inquiry will be reported through the 2022 Disposition of 2022 Tax and Rate Supported Operating Surplus/Deficit in early quarter two of 2023.

LEGAL IMPLICATIONS

There are no legal impediments to approving the recommendations in this report.

While the current Council remains within the "restricted acts" requirements of Subsection 275(3) of the *Municipal Act, 2001*, the recommendations in this report do not involve making any new expenditures and may be considered by the current Council,

subject to those limitations.

The new term of Council will commence on November 15, 2022, in accordance with the *Municipal Elections Act, 1996*.

The Province has recently enacted the [Strong Mayors, Building Homes Act, 2022](#) (“Bill 3”) which received Royal Assent on September 8, 2022.

As a result of Bill 3, a new Part [PART VI.1](#) will be added to the *Municipal Act, 2001* which sets out special powers and duties of the head of Council. This new [PART VI.1](#) will come into force on a day that is yet to be proclaimed by the Lieutenant Governor. Further, section [284.2](#) provides that the Minister of Municipal Affairs and Housing may by Regulation designate the municipalities to which this Part applies. Proposed regulations were recently issued for comment and would designate the City of Ottawa as a municipality to which the changes apply, effective for the new term of Council.

The 2022-2026 Governance Review report will provide an update and identify any required or anticipated changes to municipal governance and regulatory tools such as the *Procedure By-law* and *Delegation of Authority By-law*.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a City-wide report.

ADVISORY COMMITTEE(S) COMMENTS

There are no comments or recommendations from any Advisory Committee(s).

CONSULTATION

As this is a process report, no specific consultation was conducted. That said, staff monitored the public meetings and public hearings conducted by the OLRT Public Inquiry. This report also provides a recommended process whereby public comments would be received when staff bring the OLRT Public Inquiry’s final report and recommendations, together with a companion report outlining staff’s response to the Public Inquiry report, to the appropriate Standing Committee as soon as practicable.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report. Accessibility impacts will be brought forward in future reports, as required.

RISK MANAGEMENT IMPLICATIONS

There are no risk implications.

RURAL IMPLICATIONS

There are no specific rural implications associated with this report.

TERM OF COUNCIL PRIORITIES

This report supports the actions under Council's strategic priority of Integrated Transportation.

SUPPORTING DOCUMENTATION

Document 1 – City of Ottawa's opening statement to the OLRT Public Inquiry

Document 2 – City of Ottawa's closing submission and recommendations to the OLRT Public Inquiry

DISPOSITION

Subject to City Council's approval of recommendations in this report, staff will implement the approaches and undertake the work set out in the report with respect to the 2022-2026 Governance Review report, the review of the City's Business Case and Project Management Policy and Project Management Framework, and the OLRT Public Inquiry final report and companion staff report.