

Subject: City Manager's Delegated Authority with Respect to Stage 1 and Stage 2 Light Rail

File Number: ACS2023-TSD-TS-0001

**Report to Light Rail Sub-Committee on 29 March 2023
and Council 12 April 2023**

Submitted on March 20, 2023 by Wendy Stephanson, Interim City Manager

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Ward: Citywide

Objet : Pouvoirs délégués du directeur municipal relativement à l'Étape 1 et à l'Étape 2 du projet de train léger sur rail

Dossier : ACS2023-TSD-TS-0001

**Rapport au Sous-comité du train léger le 29 mars 2023
et au Conseil le 12 avril 2023**

Soumis le 20 mars par Wendy Stephenson, Directrice municipale par intérim

Personne ressource : Steve Box, Directeur, Bureau du directeur municipal

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Quartier : À l'échelle de la ville

REPORT RECOMMENDATION(S)

That the Light Rail Sub-Committee and Council receive this report for information.

RECOMMANDATION(S) DU RAPPORT

Que le Sous-comité du train léger et le Conseil municipal prennent connaissance de ce rapport pour information.

BACKGROUND

On February 22, 2023, Council approved a motion (Motion No. LRSC 2023-01-01) directing the Interim City Manager to bring forward a report on the Delegated Authority which has been delegated to the City Manager with respect to Stage 1 and Stage 2 Light Rail.

The motion also directed the Interim City Manager to provide the LRT Sub-Committee with regular updates on the use of Delegated Authority with respect to the Stage 1 and Stage 2 LRT Project Agreement amendments.

The motions states:

THEREFORE BE IT RESOLVED that the Light Rail Sub-Committee recommend Council direct the Interim City Manager to bring forward to Council a report on the Delegated Authority which has been delegated to the Interim City Manager with respect to the Stage 1 and Stage 2 Project Agreements that would permit Council to receive a briefing on the current use and application of delegation of authority on Stage 1 and Stage 2 of the LRT; and

BE IT FURTHER RESOLVED that the LRT Sub-Committee receive regular updates on the use of the Delegated Authority from the Interim City Manager with respect to Stage 1 and Stage 2 LRT Project Agreement amendments and direct the Interim City Manager to bring forward to Council for approval any material amendments related to the Stage 1 and Stage 2 LRT Project Agreements.

This report responds to that motion and provides a briefing to the LRT Sub-Committee and Council on the background and history of previous delegations of authority used to date and how that authority was delegated to staff.

DISCUSSION

Following the directions within the Council-approved motion LRSC 2023-01-01, the purpose of this report is to inform the Light Rail Sub-Committee (LRSC) and Council of the delegations of authority granted to the City Manager and senior management by Council with regard to Stage 1 and 2 Light Rail, along with the corresponding accountability mechanisms.

The motion provided clear language as to the necessity of these directions:

- As part of Ottawa's Stage 1 light rail project, Council delegated to the City Manager the authority to negotiate, approve, execute, deliver, amend and extend the Project Agreement (PA) and associated ancillary agreements for the project.
- On October 13, 2021, Council directed staff to deliver a Notice of Dispute under the PA with respect to Rideau Transit Group (RTG) Defaults, have the Defaults confirmed through the contractual dispute resolution process in the PA including, as necessary, asking the Court to confirm the validity of the RTG defaults and report back to Council on the outcomes of these actions.
- On March 9, 2022, Council approved Motion 29/2 directing staff to issue a Notice of Default to RTG in accordance with the PA and ask for a remedial plan and schedule for remediation of its defaults, and delegated the authority to the City Manager to take any other actions required.
- The LRT Public Inquiry released its final report in November 2022 and concluded that the City lessened the PA requirements for accepting the system at Revenue Service Availability and changed the PA requirement for total number of trains on the line to open the system.
- To address potential changes to the delegated authority for LRT, the Delegation of Powers Policy provides that all delegation of powers and duties may be changed by Council at any time.

Delegations of Authority

Section 23.1 of the Ontario Municipal Act, 2001, S.O. 2001, c. 25 grants broad authorization to municipalities to delegate their powers and duties, subject to restrictions within the Act itself. Delegation of authority in the municipal context is well established as both a necessary and useful tool to allow the effective and efficient management of a city's affairs. It allows staff to exercise judgement where appropriate based on their professional training, accreditation, and expertise. The City of Ottawa manages routine delegations of authority through the Delegation of Authority By-law (By-law No. 2023-67) and requires that sub-delegations be recorded in writing and submitted to the Clerk's Office. For large capital projects like LRT Stage 1 and Stage 2, project-specific delegated authority is explicitly laid out in the reports adopted by Council. In compliance with the City's Delegation of Powers Policy, every delegation of authority is accompanied by a corresponding accountability and transparency mechanism to report back on when delegated authority has been exercised.

Stage 1 Light Rail Project

On December 19, 2012, Council approved the Design, Build, Finance and Maintenance of Ottawa's Light Rail Transit (OLRT) Project Report (ACS2012-ICS-RIO-0004) and delegated authority to senior City management to manage the project and execute agreements using the budget and funding sources that Council approved. A table providing a detailed breakdown of the delegation of authority for the Stage 1 project is attached as **Document 1 - Delegations of Authority - Stage 1**.

Authority was delegated to senior management to complete various property acquisitions, approve a number of Memoranda of Understanding (MOU) and Agreements with key project partners, and to update Council on business development and station integration negotiations.

The delegation of authority to staff was required to ensure that MOUs and agreements with external stakeholders (National Capital Commission, University of Ottawa, Infrastructure Ontario, etc.) could be carried out efficiently and within a reasonable timeline.

In December 2012, as part of the report to approve the Stage 1 LRT project – Design, Build, Finance and Maintain Ottawa's Light Rail Transit Project (ACS2012-ICS-RIO-0004) – a \$100 million multi-project contingency fund was approved by City Council to cover possible cost changes associated with the Stage 1 Project (\$2.13 billion), the Highway 417 Widening Project (\$226 million) and the OLRT Transition (\$63 million). The City Treasurer was delegated the authority to approve draws with respect to the Contingency Fund while the City Manager and the Deputy City Manager, Planning and Infrastructure were delegated the authority to approve program changes to other aspects of the OLRT project that required funding from the Contingency Fund, such as integrated station entrances or property settlements.

The OLRT Stage 1 Confederation Line was headed by an Executive Steering Committee (ESC) and was accountable to Council and provided oversight and coordination of the OLRT project. Members of ESC included the City Manager (Chair), General Manager, Transportation Services; Director, Rail Implementation Office; City Solicitor; City Treasurer; Infrastructure Ontario; Transit Infrastructure; Infrastructure Ontario and Transit Civil Infrastructure.

The City Treasurer was delegated the authority to approve draws from the OLRT Stage 1 Contingency Fund to provide for unforeseen costs and variations to the project. The same delegation granted the City Manager and the Deputy City Manager the authority

to approve program changes, some of which required funding from the Contingency Fund. For operational purposes, the Contingency Management Committee (CMC) was established to review and approve draws from the Contingency Fund and to ensure risks and cost changes were properly managed and accounted for. The CMC was comprised of the City Treasurer, the City Manager, and the Deputy City Manager, Planning and Infrastructure. Council was notified about its creation on May 12, 2015. In the City's 2016 organizational realignment, the role of Deputy City Manager was eliminated. The newly created General Manager, Transportation Services Department included oversight of the O-Train Construction Service Area, and therefore that position assumed the former Deputy City Manager's role on the CMC.

As part of the OLRT project, the Change Control Board (CCB) was established as part of the scope change management process to review all proposed changes. The CCB was responsible for reviewing all proposals for project changes, engaging relevant subject matter experts, determining the funding sources and facilitating the appropriate approvals. CMC's approval was only required for changes that required funding from the Contingency Fund; all other change requests approved by the CCB were funded by other means such as the OLRT Project Budget (\$2.13 billion).

2019 Audit of the Stage 1 Contingency Fund

The [Audit of the OLRT Stage 1 Contingency Fund](#) was included in the 2019 Audit Plan of the Office of the Auditor General and approved by Council on April 24, 2019. The audit focused on three objectives related to the Contingency Fund, including delegation of authority, the use of funds for Council approved purposes and spending within approved limits.

The Auditor General concluded that the Contingency Fund was used for its approved purpose and found that adequate processes were in place to review, approve and monitor the expenditure of these funds. However, the audit noted that the criteria for changes which required the consent of the Mayor and Ward Councillor were broadly defined and there was an opportunity to clarify these criteria in the delivery of the Stage 2 Project. Through the management responses process, staff have confirmed that this clarification has taken place with regard to Stage 2.

Stage 2 Light Rail Project

On February 27, 2019, Council approved the Stage 2 Light Rail Project - Contract Award of Ottawa's Stage 2 Light Rail Transit Projects and Related Matters (ACS2019-TSD-OTP-0001). With that approval, Council delegated authority to senior City

management to manage the project and execute agreements, using the budget and funding sources that Council approved. A table of the delegation of authority for the Stage 2 project is attached as **Document 2 - Delegations of Authority - Stage 2**.

The DOA is used for the specific agreements that are detailed in this report, for example, property acquisitions through Corporate Real Estate Office (CREO). Another example is when technical changes are made to the Project Agreement/Project Specific Output Specifications. These are handled by the Rail Construction team with limited reporting on these scope changes. The changes are approved internally to the project team as part of a Change Control Board process. In instances where there are fundamental changes, these are escalated to the Mayor and Ward Councillor for their approval.

For the Stage 2 LRT project, Council receives information through a variety of channels, including:

- Quarterly memo updates;
- Quarterly presentations to Finance and Economic Development Committee and Light Rail Sub-Committee;
- Biweekly construction updates;
- Updates through newsletters and notifications;
- Memos on project progress and project milestones;
- Memos on external appointments for oversight; and
- Audits and third-party reviews.

Reporting back on the use of Delegated Authority

As required by the City's Delegation of Powers Policy, staff have reported to Council on the use of delegated authority related to the Stage 1 and Stage 2 project agreements through annual budgets, the Stage 2 LRT Contingency Funding report (ACS2022-FSD-FIN-0009), individual acquisition reports, semi-annual delegated authority reports, and quarterly project updates to the former Finance and Economic Development Committee that outline any changes to the project. Following Council's adoption of the 2022-2026 Council Governance Review (ACS2022-OCC-GEN-0030), quarterly updates are now going to the Light Rail Sub-Committee.

OLRT Public Inquiry Recommendations

Recommendations 60-62 and 76 of the OLRT Public Inquiry Report make specific reference to delegations of authority and the duty of public servants to ensure that Council is kept properly informed so as to exercise meaningful oversight over critical decisions made by City staff. City staff are reviewing these recommendations as part of the development of the City's Action Plan to respond to the 103 recommendations made by the OLRT Public Inquiry and will bring that Action Plan to the LRT Sub-Committee before the end of Q2 2023. The action plan will also take into consideration the discussion at the LRT Sub-Committee about enhancing reporting on delegated authority.

FINANCIAL IMPLICATIONS

There is no financial implication with the recommendation in this report.

LEGAL IMPLICATIONS

There are no legal impediments to receiving this report for information.

ACCESSIBILITY IMPLICATIONS

Accessibility has been integral to the development and expansion of Ottawa's light rail transit network. Transit Services staff will ensure that all applicable accessibility legislation, standards, and guidelines are complied with during the exercise of any delegated authority related to Stage 1 and Stage 2 light rail projects.

TERM OF COUNCIL PRIORITIES

This report has no direct impacts on the City's strategic priorities or directions identified for the current Term of Council.

DISPOSITION

The Interim City Manager will provide updates to the LRT Sub-Committee on the use of Delegated Authority with respect to Stage 1 and Stage 2 LRT Project Agreement amendments and bring forward for approval to Council any material amendments related to those agreements.

The Interim City Manager and senior City management will continue to provide updates on progress addressing recommendations from the OLRT Public Inquiry until such time as the LRT Sub-Committee and Council consider them to be fully addressed.

Supporting Documentation

Document 1 – Delegations of Authority – Stage 1

Document 2 – Delegations of Authority – Stage 2