

MEMO / NOTE DE SERVICE



To / Destinataire	Mayor and Members of Council	File/N° de fichier: LRT2
From / Expéditeur	Don Herweyer GM, Planning, Real Estate & Economic Development Dept.	
Subject / Objet	<u>By-law approving the expropriation of interests in property required for the Stage 2 Light Rail Transit Project</u>	Date: June 9, 2023

PURPOSE

This Memorandum details the requirement for a by-law to authorize the expropriation of the following property interests required for the Stage 2 Light Rail Transit Project (the “**Stage 2 LRT Project**”):

- A drainage easement over part of property municipally known as 985 Trim Road (the “**Drainage Easement**”);
- A road widening of Scott Street along the frontage of property municipally known as 100 West Village Pvt and the associated private roadway (the “**Road Widening**”) (Collectively referred to as the “**Property Interests**” and both as further described in Document 1 and Document 2).

BACKGROUND

On March 8, 2017, City Council directed the Corporate Real Estate Office (CREO) to proceed with the acquisition of the property interests required to facilitate the construction, use and maintenance of the Stage 2 LRT Project and related works. Since that time, a variety of properties and property interests have been acquired through negotiation and expropriation. As the Stage 2 LRT Project progresses through construction, additional property requirements have been identified, including the Property Interests.

Efforts were made to negotiate agreements to provide for the conveyance of the Property Interests to the City; however, these were unsuccessful.

On June 8th, 2022, Council approved By-law 2022-177, which authorized the making of an application for approval to expropriate property interests which included the Drainage Easement and Road Widening (the “**Application By-law**”), following which staff proceeded to provide notice to property owners as required by the *Expropriations Act* as described below. The statutory notification process has now been completed with respect to the Property Interests with no further steps required prior to authorizing the registration of a plan of expropriation.

In order to ensure that the Property Interests are secured in time to meet current timelines for the Stage 2 LRT Project, Staff recommends that Council enact the By-law attached to this memorandum (Document 1). Attached at Document 2 are reference plans which have been deposited in the land registry office in order to provide a legal description of the Property Interests.

DISCUSSION

Section 6(1) of the Municipal Act, 2001, S.O. 2001, c. 25 states that the power of the City to acquire land “includes the power to expropriate land in accordance with the Expropriations Act.” Section 4 of the *Expropriations Act* requires an expropriating authority, in this case the City, to receive “approval of the approving authority”, in this case, Council, before expropriating any land.

Following the adoption of the Application By-law, the City followed the public notification process set out in Section 6(1) of the *Expropriations Act* by serving Notices of Application for Approval to Expropriate (“Notice of Application”) on the registered owners of the relevant properties and by publishing the Notice of Application once a week for three consecutive weeks in English and French newspapers.

Within 30 days of the service of the Notices of Application or the first publication of the notices, persons entitled to receive the Notice of Application are entitled to request a hearing of necessity, being an inquiring into whether the proposed expropriation by the City is “fair, sound and reasonably necessary” for the purposes of the Stage 2 LRT Project. While the City did receive one request relating to the Drainage Easement, that request has since been withdrawn without the need to proceed with an inquiry. There is therefore no legal impediment to approving the application to expropriate the Property Interests.

In accordance with Section 9 of the *Expropriations Act*, Council, as the approving authority, must confirm its approval of the expropriation of the Property Interests through the adoption of a by-law. The draft By-law attached at Document 1 to this memorandum has been prepared for this purpose.

After receiving Council’s approval through the enactment of the By-law attached at Document 1, Staff will proceed with the registration of expropriation plans on title and will serve Notices of Expropriation, Election and Possession in accordance with sections 9, 10 and 39 of the *Expropriations Act*.

Offers of compensation under Section 25 of the *Expropriations Act* (the “**Offer**”) will be presented within three months of the registration of the expropriation plan. The amount offered will be based on an appraisal of the market value of the Property Interests and damages for injurious affection (if any) prepared by an independent, third-party appraisal firm. A copy of the appraisal report will be presented with the Offer.

The expropriation of the Property Interests does not mean the City will cease negotiations with property owners. Staff will continue efforts to achieve a negotiated resolution in all property acquisition matters.

Councillors' Concurrence

The concurrence of Councillor Luloff (Ward 1) and Councillor Leiper (Ward 15) has been obtained prior to including the draft by-law in the Council Agenda.

FINANCIAL IMPLICATIONS

The current approved capital authority for the Stage 2 Light Rail Transit Project (Capital Project #907926) includes an allocation for property acquisition and related expenditures. Staff have estimated costs associated with the draft by-law, including costs associated with expropriation, and have concluded that such costs can be met within the approved budget allocation.

If you require further information with respect to the information in this memorandum, please feel free to contact either Peter Radke, Acting Director, Corporate Real Estate Office, at extension 12551, or myself at extension 28311.



Don Herweyer

Interim General Manager, Planning, Real Estate & Economic Development Department

cc: Senior Leadership Team
Peter Radke, Acting Director, Corporate Real Estate Office
Michael Morgan, Director, Rail Construction Program
Caitlin Salter-MacDonald, Program Manager, Committee and Council Services Branch

Encl.: Document 1: Draft by-law to approve the expropriation of the Property Interests.

Document 2: Reference Plans describing the Property Interests.

DOCUMENT 1

BY-LAW NO. 2023 – ____

A by-law of the City of Ottawa to approve the expropriation of certain property interests in the City of Ottawa for the purposes of the Stage 2 Ottawa Light Rail Transit System project

WHEREAS the City of Ottawa requires the property described in paragraphs 1 and 2 of Schedule “A” attached hereto, for the purposes of the Stage 2 Ottawa Light Rail Transit System project (the “**Stage 2 LRT**”) including but not limited to, facilitating construction, installation, use, including use by the public, maintenance, repair, inspection, renewal, replacement and removal of municipal infrastructure including roads, sidewalks, multiuse pathways, intersections, signals, signage, curbs, conduits, and all related municipal infrastructure and all related works and to enter and remain on the lands with all vehicles, machinery, workmen and material and all other improvements and works ancillary thereto as well as a permanent easement in property described in paragraph 3 of Schedule “A” for drainage and stormwater management systems including but not limited to the connection to, free flow and passage of stormwater in, on, over, under and through the lands and watercourse from time to time in such quantities of stormwater as may be required or desirable from time to time from all municipal lands and all municipal infrastructure, facilities, pipes and conduits from time to time and to enter and remain on the lands with all vehicles, machinery, workmen and material for the purposes of maintaining, repairing, cleansing, dredging, and together with easements in support of the foregoing uses at all times (collectively the “**Subject Property Interests**”);

AND WHEREAS pursuant to Section 6(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, the power of a municipality to acquire land under this or any other Act includes the power to expropriate land in accordance with the *Expropriations Act, R.S.O. 1990, c.E.26*, as amended (hereinafter referred to as the “*Expropriations Act*”) for these purposes;

AND WHEREAS a Notice of Application for Approval to Expropriate Land for the Subject Property Interests was served and published, as required by the *Expropriations Act*,

AND WHEREAS with the exception of one referral request which has now been withdrawn, the application has not been referred to a hearing of necessity by any of the owners of the Subject Property Interests and the applicable deadline for such has passed;

AND WHEREAS the City of Ottawa has been unable to reach an agreement with the registered owners to acquire the Subject Property Interests;

THEREFORE the Council of the City of Ottawa hereby enacts as follows:

1. THAT approval is hereby granted for the expropriation by the City of Ottawa

of the Subject Property Interests described in Schedule "A" attached to this by-law, for the above-described purposes.

2. THAT the City Clerk is hereby authorized to execute on behalf of City Council the Certificate of Approval and the Expropriation Certificate and all other notices and documents which are necessary to carry out the provisions of this By-law.

3. THAT the City Clerk is hereby authorized to cause the Expropriation Plan to be registered in the Land Registry Office for the Land Titles Division of Ottawa (No. 4) and thereby effect the expropriation of the Subject Property Interests.

4. THAT a Notice of Expropriation be served upon the registered owners together with a copy of the Expropriation Plan and a Notice of Election relating to the date of assessment of compensation.

5. THAT an appraisal report estimating the market value of the Subject Property Interests be obtained from an accredited appraiser.

6. THAT a Notice of Possession be served requiring possession of the Subject Property Interests at least three months after the date of service of said notice.

7. THAT the City of Ottawa is hereby authorized to enter and take possession of the expropriated lands described in Schedule "A" hereto on the day permitted under the *Expropriations Act*, or pursuant to any Court Order thereunder, or pursuant to any agreement entered into between the relevant owners and the City of Ottawa.

8. THAT, subject to any requirement for additional Council approval based on the estimated market value of any registered owner's interest in the Subject Property Interests, an offer of an amount in full compensation for the registered owners' interests in the Subject Property Interests, and an offer for immediate payment of 100% of market value as estimated by the expropriating authority, all in accordance with section 25 of the *Expropriations Act*, be served, together with a copy of the appraisal report on which the offer of compensation is based.

9. THAT the officers and authorized agents of the City of Ottawa be and hereby otherwise authorized and directed to do all things required arising from the authorizations provided for by this by-law.

10. THAT this by-law comes into force on the day it is passed.

ENACTED and PASSED this 14th, day of June, 2023.

CITY CLERK

MAYOR

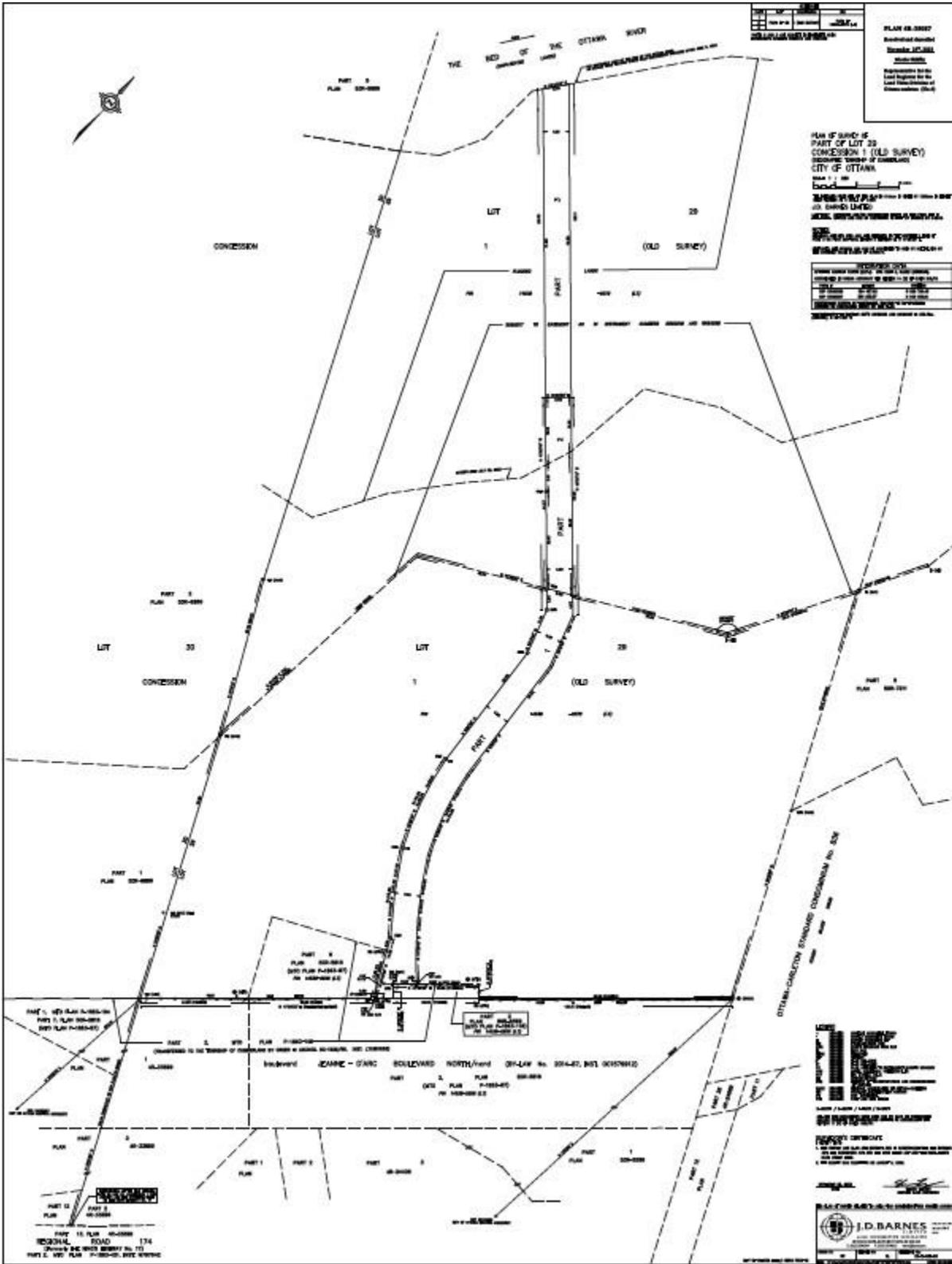
SCHEDULE "A"

All right, title and interest in the following lands:

1. Part of PIN 04021-0261(LT) PART OF BLOCK 13, PLAN 4M-1185, designated as PART 1 ON PLAN 4R-34853; CITY OF OTTAWA
2. Part of PIN 04021-0263(LT) PART OF BLOCK 15, PLAN 4M-1185 designated as PART 2 ON PLAN 4R-34853; CITY OF OTTAWA.

An estate, right or interest, in the nature of a permanent easement in the following lands:

3. Part of PIN 14538-0072(LT) PART LOT 29 CONCESSION 1 (OLD SURVEY) designated as Parts 1, 2 AND 3 ON PLAN 4R-35087; PARTS 2 AND 3 S/T RR5001B AND RR5426B; CITY OF OTTAWA



PLAN No. 00-0007
 Registered Number
 Original No. 00-0007
 Date of Issue
 Subject to the Land Registry Act and the Regulations made thereunder.

PLAN OF SURVEY OF
 PART OF LOT 33
 CONCESSION 1 (OLD SURVEY)
 BEING TOWNSHIP OF CARLETON
 CITY OF OTTAWA
 Scale: 1:500
 BEARING DISTANCE (M) BEARING DISTANCE (M)
 BEARING DISTANCE (M) BEARING DISTANCE (M)

PLAN OF SURVEY
 J.D. BARNES
 Surveyor
 Ottawa, Ontario