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TO: Chair and Members of the Finance and Corporate Services Committee

DESTINATAIRE : Présidence et membres du Comité des finances et des services organisationnels

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**SUBJECT: Update on the City of Ottawa's response to the proceedings of the  
Ottawa Light Rail Transit Public Inquiry**

**OBJET : Retour sur la réponse de la Ville à la procédure d'enquête publique sur le  
réseau de train léger sur rail d'Ottawa**

## PURPOSE

This memorandum provides the Finance and Corporate Services Committee with a final update regarding City staff's work to respond to the proceedings (i.e., summonses and other procedural requests) of the Ottawa Light Rail Transit (OLRT) Public Inquiry.

As Members are aware, on November 30, 2022, the OLRT Public Inquiry (the "Commission") released its final report with respect to the commercial and technical circumstances that led to the Stage 1 breakdowns and derailments of the light rail system. In the months prior to releasing the final report, the Commission issued summonses, requested information and documents, conducted informal and formal interviews, and held public meetings and hearings.

The Commission's activities required significant amounts of document production, preparation, monitoring and other actions by the City of Ottawa and its witnesses. The City's response to the proceedings was facilitated through a dedicated staff team that worked with external legal counsel. Details of the staff team's work were provided to Council in the report titled, "[Update on the Ottawa Light Rail Transit Public Inquiry and Recommended Next Steps](#)," which Council considered on November 9, 2022.

As the Commission's activities are now complete and the staff team has closed out its work on the OLRT Public Inquiry, this memorandum includes information regarding the following matters:

- Measures implemented to provide the Office of the Auditor General (OAG) with ongoing access to information should it conduct any future review(s) of the light rail system;
- A Records Management Plan established to document the records management approach and processes implemented by the inquiry response team, and the long-term records management strategy for related records; and
- The City's final costs of responding to the OLRT Commission.

It should be noted that Transit Services staff are separately preparing a companion report that will respond to the findings set out in the OLRT Commission's final report, further to direction issued by Council on November 9, 2022. The staff companion report, as well as the Commission's final report, will be tabled with the Light Rail Sub-Committee by the end of Q2 2023 to be formally considered, and provide an opportunity for public delegations. The report is to then rise from the Light Rail Sub-Committee to Council for consideration. Based on the recommendations of the Commission and staff report, specific items may be referred by Council to the appropriate Standing Committees for consideration and follow up. Furthermore, in Q2 2023, the City Clerk will provide an update on recommendations pertaining to recordkeeping that were approved by Council on November 9, 2022.

## BACKGROUND

On November 17, 2021, the Government of Ontario announced that it would launch a public inquiry into Stage 1 of the City of Ottawa's LRT system. The Honourable Justice William Hourigan was appointed as Commissioner to lead the inquiry into the commercial and technical circumstances that led to the breakdown and derailments on Stage 1 of the LRT project. The specific mandate for the Ottawa Light Rail Transit (OLRT) Public Inquiry was set out by the Province in [Order in Council 1859/2021](#), dated December 16, 2021.

The provincial announcement followed City Council's approval on October 13, 2021, of 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. Following the Province's announcement of a public inquiry, the Auditor General issued a memorandum to Council on December 22, 2021, 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.

On January 19, 2022, the City received its first formal correspondence from the provincial OLRT Commission. This included two summonses that 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 broad in scope and required records dating as far back as June 2007.

The City's response to the public inquiry process was conducted by an eight-member staff public inquiry response team established by the former City Manager. The response team was led by the Corporate Public Policy Advisor in the City Manager's Office, in concert with the City Solicitor, and included staff from Legal Services, Information Technology Services, the Information Management Branch, the Office of the City Clerk, Economic Development Services and Transit Services. The public inquiry response team also supported the City's responsiveness to OLRT-related requests from the City's Auditor General. The team has since facilitated the City's response to the federal Public Order Emergency Commission relating to the Freedom Convoy protests

in early 2022, and activities undertaken by the Auditor General in relation to those protests.

### **The City's response to the Ottawa Light Rail Transit Public Inquiry proceedings**

The full scope of staff's work in responding to the OLRT Commission is set out in the staff report titled, "[Update on the Ottawa Light Rail Transit Public Inquiry and Recommended Next Steps](#)." The staff team worked with an Executive Steering Committee composed of the former City Manager, the Director, City Manager's Office, and the General Manager of Transit Services, which made final decisions where required, understanding that there would be no discretion with respect to responding to the inquiry.

In summary, staff's efforts and related activities included as follows:

- Securing external legal counsel through a scoped procurement process, and working with the external counsel that represented and guided the City through the process, ensuring that the City's privilege with respect to the ongoing and likely concurrent litigation was protected.
- Identifying the location, form and number of records, and ensuring that information in databases at the end of their lifecycle were migrated to a SharePoint site.
- Setting up the team's own records architecture in SharePoint and providing the Auditor General with full access.
- Providing the Commission with information regarding key personnel, including dozens of current and former City employees, consultants and vendors.
- Ensuring documents were retained, produced, reviewed and provided to the Commission in accordance with its procedures and requests.
- Facilitating information sessions for Members of Council and citizen Transit Commissioners with external counsel, as well as undertaking document production on a Member's behalf (with consent of the Member) if so desired.
- Identifying gaps in Information Management practices and processes, as well as internal project management, and bringing forward related recommendations as set out in the above-noted staff report.

In addition to the work of the staff team, 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.

External counsel engaged Deloitte in early February 2022 to undertake a significant document management function using the Relativity database required by the Commission. The City provided Deloitte with more than 1.8 million documents. Following review for duplications, relevance, 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. There were additional productions of 'as needed' or as requested documents prior to and during the public hearings, covering several hundred more documents.

The Commission's short timelines and the volume of work required meant that the legal team and City team worked long days, including all weekends, for a nine-week period. At the suggestion of the City's external counsel, additional external legal resources were engaged to support the (now former) City Manager and the (now former) Mayor in preparation for their testimony before the Commission. These efforts are reflected in the City's costs for the OLRT Public Inquiry as described in this memorandum.

On November 9, 2022, Council considered the above-noted staff report. Among other things, Council directed staff to bring the OLRT Commission'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. Council also approved recommendations with respect to recordkeeping that were undertaken by the City Clerk, as further discussed in the 2022-2026 Council Governance Review report.

## DISCUSSION

The staff public inquiry response team closed out its work on the OLRT Public Inquiry following the completion of the OLRT Public Inquiry proceedings and the release of the Commission's final report.

As described below, the closeout process included the implementation of measures to ensure that the Office of the Auditor General (OAG) has ongoing access to information that may be required for any further reviews. Staff also established a Records Management Plan that sets out the records management approach and processes used by the response team, and the long-term records management strategy for related records. In addition, accounting matters were finalized. Information is provided below regarding the City's costs to respond to the public inquiry proceedings.

### **Ensuring access to documents for the Office of the Auditor General**

As noted above, the OAG received access to internal SharePoint sites being used by the public inquiry response team. Records produced for external counsel were retained

and a process was put in place for the OAG to have access to the records as may be required.

City staff worked with external counsel and Deloitte to download the City's OLRT Public Inquiry documents from the Relativity site used for the Commission's purposes, and saved the documents in a secure manner. Staff advised the Auditor General of this download, which staff undertook in order to allow the City to decommission the Relativity site and save funds, should the OAG have a future need for the records related to any future audit.

It should be noted that the OAG has access to all City documents produced, including those documents not provided to the Commission due to privilege. The OAG was also advised about the Records Management Plan created by staff, as described below.

### **Records Management Plan**

Staff established a Records Management Plan for the OLRT Public Inquiry that sets out the records management approach and processes implemented by the response team, and the long-term records management strategy for related records.

With respect to records retention, the Records Management Plan provides that records of the City's response to the OLRT Public Inquiry will be retained permanently for the following reasons:

- This inquiry is the first in the City's history and the records of the City's response have historical value for future generations;
- The records have enduring business value. The records management approach has been used as a template for the Public Order Emergency Commission public inquiry and may be reused for similar inquiries/investigations in the future; and
- Records related to OLRT project stages are classified under the T13, T15 and T16 secondaries in the Corporate Records Retention Scheme, which have an active retention period of 10 years, an inactive retention period of 30 years and a final disposition of Permanent: Sent to City Archives. The retention period for inquiry records should be the same.

### **City costs relating to the Ottawa Light Rail Transit Public Inquiry**

The City spent approximately \$4.8 million to respond to the OLRT Public Inquiry. The total amount includes approximately \$3.6 million in legal fees and about \$913,000 for database and file transfer services. The remainder is for City costs related to Information Technology services, fit up for secure physical space and overtime, as necessary.

The total 2022 expenses related to the City's costs regarding the OLRT Public Inquiry will be reported through the 2022 Disposition of 2022 Tax and Rate Supported Operating Surplus/Deficit in Q2 of 2023.

## CONCLUSION

The City of Ottawa's response to the proceedings of the Ottawa Light Rail Transit Public Inquiry is now complete. The staff public inquiry response team has closed out its work on the provincial light rail public inquiry, but remains active with respect to the City's involvement in the proceedings of the federal Public Order Emergency Commission.

Separately, in accordance with Council's direction of November 9, 2022, Transit Services staff will bring the OLRT Commission's final report and a companion report outlining staff's response to the Commission report which will be tabled with the Light Rail Sub-Committee by the end of Q2 2023 to be formally considered and provide an opportunity for public delegations. The report is to then rise from the Light Rail Sub-Committee to Council for consideration. Based on the recommendations of the Commission and staff report, specific items may be referred by Council to the appropriate Standing Committees for consideration and follow up.

*Original signed by*

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