

MEMO / NOTE DE SERVICE



To / Destinataire Mayor and Members of Council File/N° de fichier: G00-11

From /
Expéditeur Marian Simulik
City Treasurer
Finance Services Department

Subject / Objet By-law approving the expropriation of Date: 19 September 2019
an easement in property required for
Stage 2 Light Rail Transit Project

Purpose

This Memorandum details the requirement for a by-law to authorize expropriation procedures for the following property interest required for the Stage 2 Light Rail Transit Project:

- A by-law approving the expropriation of a temporary easement in part of property municipally known as 855 Carling (the "Easement") 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 Light Rail Transit Project and related works. On March 27, 2019 Council approved by-law 2019-86, which authorized the making of an application for approval to expropriate certain property interests (the "Application By-law").

CREO staff has been in contact with the owner of the property which was included in the Application By-law, consistent with the City's Real Property Acquisition Policy but, to date, have been unsuccessful in concluding an agreement to provide for the acquisition of the required interests. In order to ensure that a temporary easement over part of property located at 855 Carling Avenue and included in the Application By-law is secured in time to meet current timelines established for the delivery of the Project, Staff recommends that Council enact the Approval of Expropriation By-law attached to this memorandum (Document 1). The Property Request Plan illustrating the lands to be the subject of the Easement is provided for reference purposes.

Discussion

Section 6(1) of the *Municipal Act, 2001*, 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.

In accordance with Section 6(1) of the *Expropriations Act*, Council must initiate the expropriation by directing staff to serve Notices of Application for Approval to Expropriate (“Notice of Application”), on the registered owners of legal interests in the lands to be expropriated. Notices of Application were served by registered mail to the owner of the property on April 16, 2019. Pursuant to the *Expropriations Act*, the notices were published once a week for three consecutive weeks in English and French newspapers having general circulation in the Ottawa Region. Publication of notices commenced April 19 and ended on May 10, 2019.

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 may request a hearing of necessity which must inquire if the taking of the lands or any part of the lands required by the City is “fair, sound and reasonably necessary” for the construction of the Stage 2 Light Rail Transit Project. The City has not received a request for a hearing of necessity in regard to the expropriation of the Easement identified in Document 1. Therefore, there is no legal impediment to the City approving the application to expropriate the Easement.

In accordance with Section 9 of the *Expropriations Act*, Council, as the approving authority, must confirm its approval of the expropriation of the Easement.

After receiving Council’s approval in the form of the Approval of Expropriation By-law, staff may proceed to register the required expropriation plans on title to the lands and to serve Notices of Expropriation, Election and Possession in accordance with sections 9, 10 and 39 of the *Expropriations Act*. The owner of the property identified in the Approval of Expropriation By-law will receive Notices of Expropriation, Election and Possession, in accordance with the *Expropriations Act*.

An offer of compensation under Section 25 of the *Expropriations Act* (the “Offer”) will be presented to the owner and any other person entitled to receive an offer within three months of the registration of the expropriation plan. The amount offered to the owner will be determined by an independent, third party appraisal firm and a copy of the appraisal report will be presented with the Offer.

It is important to note that the expropriation of the Easement does not mean the City will cease negotiations with the property owner. Staff will continue efforts to achieve a negotiated resolution in all property acquisition matters.

Mayor and Councillors’ Concurrence

The concurrence of the Mayor and Councillor Leiper (Ward 15) has been obtained prior to including both draft by-laws 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 these draft by-laws, 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 Peter Radke, Director (A), Corporate Real Estate Office, at extension 12551, or myself at extension 14159.

Marian Simulik
City Treasurer
Finance Services Department

Attach. 2

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