



**CITY OF HAMILTON**  
**CITY MANAGER'S OFFICE**  
**Legal Services Division**  
**and**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Light Rail Transit Office**

<b>TO:</b>	Mayor and Members Light Rail Transit Sub-Committee
<b>COMMITTEE DATE:</b>	May 2, 2016
<b>SUBJECT/REPORT NO:</b>	Light Rail Transit (LRT) Property Acquisitions – Real Estate Services Protocol (PED16113/LS16011) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Helen Vastis (905) 546-2424 Ext. 2622 Paul Johnson (905) 546-2424 Ext. 6396
<b>SUBMITTED BY:</b>	Janice Atwood-Petkovski City Solicitor City Manager's Office
<b>SIGNATURE:</b>	Jason Thorne General Manager Planning and Economic Development Department

**RECOMMENDATION**

- (a) That the City of Hamilton enter into the Real Estate Services Protocol with Metrolinx, setting out the services to be provided by the City to Metrolinx to acquire real property required for the Hamilton Light Rail Transit (LRT) project, all funded by Metrolinx substantially in the form attached as Appendix "A" to Report PED16113/LS16011; and
- (b) That the Mayor and Clerk be authorized and directed to execute the Real Estate Services Protocol, and any other ancillary documents, with content approved by the General Manager of Planning and Economic Development, in a form satisfactory to the City Solicitor.

## **EXECUTIVE SUMMARY**

On March 8, 2016 the City of Hamilton and Metrolinx entered into a Memorandum of Agreement (MOA) which will guide project development until the time that more detailed definitive agreements are in place. The Real Estate Services Protocol is a detailed definitive and legally binding agreement that has to be put in place before any real property can be acquired for the LRT project. Highlights of the Real Estate Services Protocol are included in this report and the full agreement is attached as Appendix “A” to Report PED16113/LS160011. It is recommended that the City of Hamilton enter into this agreement.

The model and structure that is being proposed by Metrolinx, for the provision of full realty acquisition services to the project, is the model that Metrolinx has in place with the City of Toronto for their LRT projects, in particular, the Eglinton Crosstown LRT. It is also important to note that Metrolinx is agreeing to cover all of the costs for providing the services, and all of the costs in the event that the services are terminated. This mitigates any financial risk to the City.

The key terms and conditions of the Real Estate Services Protocol proposed by Metrolinx are as follows:

1. The City will act as an independent consultant to Metrolinx. The services will be performed by persons designated by the City from time to time. Such persons will be employees of the City and not employees or agents of Metrolinx. Such persons will take direction and instructions from Metrolinx and look after the interests of Metrolinx in completing the acquisitions on their behalf. Metrolinx will fund all required resources to implement the Protocol.
2. Title to the acquired lands will be taken in the name of Metrolinx.
3. This protocol only governs properties being acquired from third parties. It does not govern City-owned lands that may be transferred to Metrolinx.
4. No property negotiations are to take place by the City until a written request is received from Metrolinx.
5. The City is to provide full realty acquisition services such as:
  - a) Obtaining appraisals for each property;
  - b) Obtaining surveys for each property as required for property acquisitions, expropriations, easements and other interests to be acquired by Metrolinx;
  - c) Undertaking property acquisition negotiations; and
  - d) Performing property acquisition for purchases and expropriations.
6. If necessary, Metrolinx will be using their Expropriation powers. The City will not be the expropriating authority nor the approving authority.

7. The timelines for the services will be prescribed by Metrolinx.
8. Metrolinx must approve all binding commitments made to a property owner.
9. Metrolinx will pay for all third party costs incurred by the City to perform the services.
10. Metrolinx will pay for staff costs, rental and office costs, furniture and equipment costs and all other necessary related costs.
11. Metrolinx or the City may terminate this agreement without cause upon 30 days written notice – further, if either party defaults in the performance of its obligations then the other party may terminate this agreement.
12. Metrolinx is responsible for all environmental due diligence.

***Alternatives for Consideration – See Page 5***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

- Financial: Metrolinx is responsible for the payment of all third party costs, and City staffing costs, incurred by the City to perform the services. In the event of termination, Metrolinx will pay to the City the services performed to the date of termination and any irrevocable expenses committed by the City in respect of the services prior to the notice of termination.
- Staffing: The Real Estate Services Protocol requires dedicated staff hired by the City, to be funded by Metrolinx, to provide the services required under this agreement, in order to facilitate the acquisition of lands required for the delivery of the LRT project. The necessary staff resources will be hired on a two-year contract.
- Legal: Legal Services is involved in the review and negotiation of the Real Estate Services Protocol. The Real Estate Services Protocol is a legally binding contract. Metrolinx is agreeing to cover all of the costs for providing the services, and all of the costs in the event that the services are terminated. This mitigates any financial risk to the City.

**HISTORICAL BACKGROUND**

In May of 2015, the Government of Ontario announced investments to build Light Rail Transit (LRT) and a new GO Transit Station in the City of Hamilton. The \$1B allocated for LRT will be for the construction of a B-Line that will operate from McMaster University through the Downtown Core to the Queenston Traffic Circle. There will also be a connection north to the West Harbour GO station and potentially the waterfront, as well as a pedestrian corridor connecting the Hamilton Centre GO Station.

At the meeting of February 10, 2016 Council approved the following;

“That the City enter into a Memorandum of Agreement with Metrolinx which will guide the project development until more detailed definitive agreements are in place; and,

“That staff be authorized and directed to negotiate one or more detailed definitive agreements with Metrolinx respecting the LRT project.”

This Real Estate Services Protocol covers the following matters:

- Purpose
- Services
- Property Requisitions
- Appraisals
- Surveys
- Agreements of Purchase and Sale
- Expropriations
- Title and Off-Title Inquiries
- Land Transfer Tax
- Excess Lands
- Approval Process
- Record Books
- Environmental Due Diligence
- Payment for the Services and for Third Party Costs
- Consultants
- Termination
- Confidentiality
- Notices
- Miscellaneous Provisions

The main key terms and conditions are set out in the Executive Summary. The Real Estate Services Protocol will be a legally binding agreement.

The MOA indicated that the City will provide dedicated staff to facilitate real estate acquisitions in order to expedite the delivery of the LRT project.

This is the first of the detailed definitive agreements with Metrolinx respecting the LRT project. Metrolinx has worked together with the City to identify and clarify the services that are expected from the City.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

None.

## **RELEVANT CONSULTATION**

City Department consultation included staff from the Public Works and Planning and Economic Development Departments. Metrolinx was also consulted on this Report.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The Real Estate Services Protocol requires full realty acquisition services to be provided by the City to Metrolinx for the project. It will also set out the roles and responsibilities of each party. It is beneficial to have the City provide these services as staff have local knowledge of the real estate market, and this will allow the City to retain some local control and communication over the project. The model that is being followed is proposed by Metrolinx and is similar to the model used by Metrolinx with other LRT projects in Toronto, specifically the Eglinton Crosstown LRT.

The acquisition of real property is necessary and required in order to facilitate the development of the Light Rail Transit project. Without the land requirements, the LRT project cannot proceed.

It is recommended that the Real Estate Services Protocol be entered into and executed by the Mayor and Clerk and that staff begin providing the services that are required pursuant to this Protocol.

## **ALTERNATIVES FOR CONSIDERATION**

Should the City of Hamilton not wish to provide realty acquisitions services to Metrolinx then Metrolinx would undertake all realty acquisition services for the project through their offices. This alternative would not provide the same degree of local access to staff that would be available under the recommended model.

It is also possible to have the services set out in the Real Estate Services Protocol provided by an outside third party, or by several different outside parties, however, this will be much more costly than having these services provided for by the City or Metrolinx and, it may also result in delays in the delivery of the required lands. Metrolinx prefers that the City provide the realty acquisition services.

## **ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN**

### **Strategic Priority #1**

A Prosperous & Healthy Community

*WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.*

**Strategic Objective**

- 1.2 Continue to prioritize capital infrastructure projects to support managed growth and optimize community benefit.
- 1.3 Promote economic opportunities with a focus on Hamilton's downtown core, all downtown areas and waterfronts.
- 1.4 Improve the City's transportation system to support multi-modal mobility and encourage inter-regional connections.
- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

**Strategic Priority #3**

Leadership & Governance

*WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.*

**Strategic Objective**

- 3.1 Engage in a range of inter-governmental relations (IGR) work that will advance partnerships and projects that benefit the City of Hamilton.

**APPENDICES AND SCHEDULES ATTACHED**

Appendix "A": Real Estate Services Protocol

HV/PJ/cw