



# **Hamilton Light Rail Transit (LRT) Project Memorandum of Understanding (PED21176/CM21012/LS21034)**

# Council Direction

Council at its meeting of June 23, 2021 provided direction as follows:

*Staff be directed to meet with Metrolinx, the Ministry of Transportation and other governmental entities, as required, to prepare a Memorandum of Understanding (MOU) for the Hamilton Light Rail Transit project, and report back to the General Issues Committee as soon as possible with a draft MOU.*

# Steering Committee & Working Group

To develop the MOU, the City, Metrolinx and MTO established a Steering Committee as well as a Working Group.

City representatives on the Steering Committee:

- City Manager Janette Smith
- General Manager of Planning and Economic Development Jason Thorne
- General Manager of Corporate Services Mike Zegarac
- Solicitor Bryan Boodhoo

City representatives on the Working Group:

- General Manager of Planning and Economic Development Jason Thorne
- Solicitor Bryan Boodhoo
- Director of Financial Planning Administration Brian McMullen
- Manager of Budgets and Financial Policy Kirk Weaver
- Director of Transit Maureen Cosyn Heath

# Steering Committee & Working Group

## Metrolinx:

- Steven Levene, Chief Operating Officer, Rapid Transit
- Steven Hobbs, Chief of Staff, Office of the CEO
- Beatrice Herwats, Vice President, Head Sponsor, Rapid Transit
- Jia Shin, Director, Commercial Management (A, Rapid Transit)
- Joe Costigan Jr., Hamilton LRT Project Sponsor
- Dorothy Wahl, Associate General Counsel, Office of the CEO

## Ministry of Transportation:

- James Nowlan, Assistant Deputy Minister,
- Vrinda Vaidyanathan, Director, Capital Projects Oversight Branch
- Michael Brewer, Manager, Transit Capital Office
- Steven Ball, Team Lead, Transit Capital Office
- Natalie Strachan, Senior Policy Advisor, Transit Capital Office
- Marci Warcop, Senior Policy Advisor, Transit Capital Office

# Approach to MOU

Memorandum of Agreement (MOA) was entered into between the City and Metrolinx on March 8, 2016 for the previous iteration of the Hamilton LRT Project.

Guiding principles for the current MOU:

- retain structure, format and intent of original 2016 MOA as much as possible
- it will be a public document and written in plain language to ensure clarity
- focus on overarching principles for delivery of the project, with detailed agreements to be developed at a later date

MOU seeks to begin where the previous LRT Project left off and is therefore based on:

- 2017 Environmental Project Report completed under the Transit Procurement Approval Process (TPAP) approved by Council in March 2017 and by the Minister in August 2017
- 2018-2019 Project Specific Output Specifications (PSOS) that were developed jointly by the City and Metrolinx and that were provided to proponents as part of the RFP process

# Overview of Memorandum of Understanding (MOU)

# Key Differences

Key differences between 2016 MOA and the current recommended MOU:

- Ministry of Transportation is now a party to the agreement
- MOU is written as a commitment of all three parties to the LRT Project
- Metrolinx will become the sole proponent for the project under the Transit Procurement Approval Process (TPAP)
- Metrolinx will perform its own real estate transactions
- More detail as it relates to matters such as roles and responsibilities, material design changes, City infrastructure works, inspections, and permitting and approvals

# MOU Overview

## PROJECT DELIVERY

(similar to previous 2016 MOA)

- Metrolinx will own the LRT Project.
- Procurement model is to be determined by Metrolinx.
- Metrolinx has contractual responsibility for design, construction, maintenance and operations as well as for acquisition of the real property required for the Project, and public consultation.
- Project Agreements will include robust contract management and enforcement mechanisms, which may include liquidated damages.



**See section:  
3.2**



**See section:  
5.1**



**See section:  
3.2**



**See section:  
5.1**



# MOU Overview

## CAPITAL COSTS

(similar to previous 2016 MOA)

- Province will be responsible for capital costs (as well as land acquisition costs). Includes all work outlined in the prior iteration of the PSOS.
- City would be expected to contribute for new work only if it was not anticipated in the original PSOS and only if the work is already in a City approved and funded budget.
- City responsible for costs of any “Additional City Infrastructure” requested by the City.



**See sections:  
3.8 to 3.10**



**See section:  
4.4**



**See section:  
9**

# MOU Overview

## OPERATING, MAINTENANCE & LIFE-CYCLE COSTS

(similar to previous 2016 MOA, new provision to add clarity regarding non-fare revenue)

- Province will be responsible for life-cycle costs. City will pay for Operation and Maintenance.
- City will be entitled to all fare box revenues and certain non-fare box revenues.
- LRT will be included as part of Hamilton's overall ridership for the purposes of gas tax calculations on substantially the same basis as bus ridership.



**See sections:  
3.8 and 4.1**



**See section:  
4.2**



**See section:  
4.3**

# MOU Overview

## PROJECT SPECIFIC OUTPUT SPECIFICATIONS (PSOS)

(similar to previous 2016 MOA, new provisions establish Province as TPAP proponent)

- Province will work collaboratively with the City to develop the PSOS, but are under Provincial control.
- The City will have the same extensive consultation and escalation rights it had previously, particularly for any changes from the prior PSOS. Public consultation would also be required for TPAP amendments. Metrolinx will have final decision-making authority on material changes.



**See sections:  
3.3 and 3.5**



**See section:  
3.5**

# MOU Overview

## OPERATOR

(similar to previous 2016 MOA with new detail added)

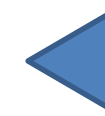
- Metrolinx retains final approval over the selection of the Operator, with significant input from the City.
- Any operator would be subject to performance standards set by Metrolinx through contract.
- City has the right to review materials having an effect on O&M costs and to participate in the RFP evaluation process for the selection of the Operator.
- Metrolinx will require Project Co to not cause the City to be in violation or breach of any of the City's collective agreements applicable to the Project.



**See recital C & sections:  
3.2(iv), 3.5, 7.1**



**See section:  
3.6**



**See section:  
7**



**See section:  
3.13**

# MOU Overview

## MUNICIPAL PERMITS & APPROVALS

(similar to previous 2016 MOA with new detail added)

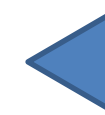
- As a Crown agent, Metrolinx is immune from many municipal requirements and is exempt from planning approvals. Nevertheless, the MOU includes provisions for the City to review site plan and design of major elements of the Project.
- For permits, licenses and approvals, Metrolinx will be treated on a similar basis as other third parties, but may seek expedited approvals or fee exemptions.
- Metrolinx may seek delegated authorities to City staff for certain permitting and approvals, but Council's right to delegate authority remains unfettered.



**See sections:  
1.1(i) and 4.10**



**See sections:  
4.5 and 4.8**



**See sections:  
1.1(ii) and 11.1  
to 11.5**

13

# MOU Overview

## AFFORDABLE HOUSING & COMMUNITY BENEFITS

(new)

- The critical importance of affordable housing and community benefits is acknowledged in the MOU.
- Commitment by the Province to work with the City and community stakeholders to endeavour to determine how best to support these goals.



**See recital G**

# MOU Overview

## REAL ESTATE

(similar to previous 2016 MOA)

- Metrolinx will own or have a real property interest in all City lands on which the Project infrastructure will be located.
- The City will transfer on corridor right-of-way lands to Metrolinx at a nominal fee. Metrolinx will pay fair market value to the City for off-corridor lands, and structures, if required.
- Metrolinx will endeavour to minimize the impact on tenants of real property it acquires and will voluntarily comply with municipal by-laws in how it manages and maintains (new).



**See recital C & section 10.5**



**See sections: 10.6**



**See sections: 10.1 and 10.2**

# MOU Overview

## BUILDING TRANSIT FASTER ACT

(new)

- MOU makes explicit reference to the Building Transit Faster Act (BTFA) and indicates that, upon the designation by regulation of the Project as a priority transit project under the Act, all provisions of the BTFA will apply.







**See recital F &  
section 2**



# MOU Overview

## OTHER MATTERS

- Communications – Parties to work together to establish a Public Communications Protocol.  **See section: 16**
- Traffic Operations (new) – It is made explicit that the City will retain its authority over traffic operations within and adjacent to the corridor.  **See section: 4.7**
- Customer Service (new) – Acknowledges the importance of a seamless customer experience for users of the LRT and the HSR transit system.  **See section: 3.14**
- Inspections – City has a right to review and inspect the construction of its infrastructure, and Metrolinx would pay for the cost of the City inspectors.  **See section: 6.1 and 7.3(v)**

# MOU Overview

## GOVERNANCE & DISPUTE RESOLUTION

(similar to previous 2016 MOA)

- Parties will establish a Project Steering Committee and an Executive Committee.
- Pending resolution of a dispute, Metrolinx may proceed with the disputed work, but it does so at its own risk.
- Parties will work together to establish a detailed dispute resolution protocol, which will become a schedule to MOU.



**See sections:  
17.1, 17.7 and  
17.8**

# MOU Overview

## CONFIDENTIALITY

(similar to previous MOA)

- Strict duty of confidentiality on certain aspects of the project.
- City staff may be required to sign a non-disclosure agreement to access certain confidential information or attend certain meetings.



**See sections:  
7 and 18**

# Staff Recommendations and Next Steps

# Provincial Approvals

The principles contained within the proposed MOU have been approved by the Metrolinx Executive Committee of the Board. They have also received relevant provincial government approvals.

The proposed MOU therefore can be considered as having the endorsement of the province and Metrolinx. Pending Council approval, Metrolinx and MTO are authorized to execute the MOU without the need for further approvals.

# Staff Recommendations

a) That the Mayor and City Manager be authorized and directed to execute the Memorandum of Understanding with Metrolinx and the Ministry of Transportation attached as Appendix “A” to Report LS21034/PED21176/CM21012;

 **Execute the MOU**

b) That the City Manager be given the delegated authority to negotiate and execute a Staffing Agreement with Metrolinx and the Ministry of Transportation, pursuant to the Memorandum of Understanding attached as Appendix A to Report LS21034/PED21176/CM21012 , to create any temporary or permanent FTEs associated with that Staffing Agreement, and to create an LRT Office as a Division within the Planning and Economic Development Department, provided there is no levy impact;

 **Establish a City LRT Office, funded by Province (no levy impact)**

# Staff Recommendations

c) That, upon execution by all parties of the Memorandum of Understanding attached as Appendix A to Report LS21034/PED21176/CM21012 , the City Manager be given the delegated authority to take any necessary steps to transfer the proponenty of the Transit Project Assessment Process (TPAP) for the Hamilton LRT Project to the Province, such that the Province will become the sole proponent of the TPAP for the LRT Project;



**Establish  
Province  
as sole  
TPAP  
Proponent**

d) That the Outstanding Business List Item requesting that the General Manager of Planning and Economic Development to meet with Metrolinx, the Ministry of Transportation and other governmental entities, as required, to prepare a Memorandum of Understanding (MOU) for the Hamilton Light Rail Transit project, and report back to GIC, as soon as possible, with a draft MOU be considered complete and removed from the General Issues Committee's Outstanding Business List.



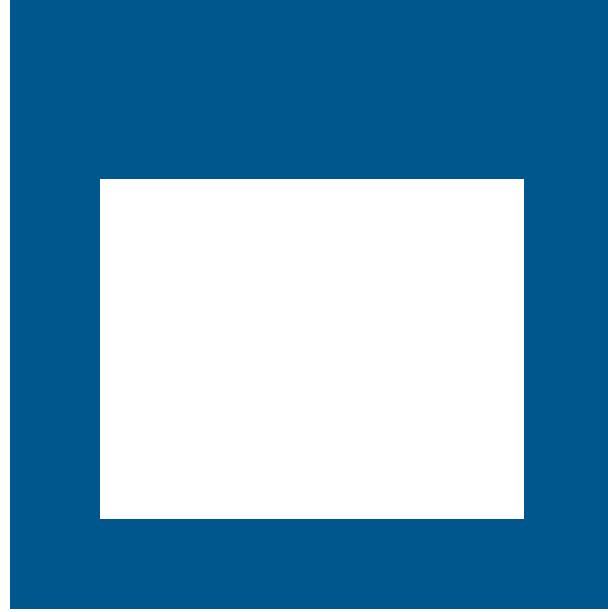
**Remove  
from OBL**

# Next Steps

If Council approves the staff recommendations, the priority immediate next steps would be as follows:

1. Finalize the “Staffing Agreement” with Metrolinx and establish the City’s LRT Office.
2. Assign TPAP proponency to Metrolinx.
3. Begin work to develop the various MOU Schedules.
4. Start preparations for “early works.”
5. Finalize the PSOS documents for the procurement process.





THANK YOU