



## **Office of the Auditor General**

### **Audit of Light Rail Transit (LRT) Land Negotiations and Purchases**

**Tabled at Audit Committee  
November 26, 2019**

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## **Acknowledgements**

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Original signed by:

Auditor General

## Executive summary

### Purpose

The Audit of Light Rail Transit (LRT) Land Negotiations and Purchases examined compliance of real property transactions for the O-Train Confederation Line transit (“Stage 1 OLRT”) project with the Ontario *Expropriations Act* and other acts, regulations, by-laws, policies and procedures as applicable.

The Audit of Light Rail Transit Land Negotiations and Purchases was included in the 2018 Audit Work Plan of the Office of the Auditor General (OAG), approved by City Council on November 22, 2017.

### Background and rationale

The Ottawa’s Light Rail Transit project (OLRT) is Ottawa’s largest single infrastructure project since the building of the Rideau Canal. The O-Train Confederation Line transit (“Stage 1 OLRT”) project, budgeted at \$2.1 billion, is the first stage in the City’s future rail network.

The Stage 1 OLRT project required the acquisitions of real properties which involved several expropriations. In addition, the City entered into agreements with property owners required for three downtown stations (Lyon, Parliament and Rideau) and their six entrances. Agreements were also signed with some institutions, Crown corporations and federal agencies and departments with respect to properties. A number of these agreements provide for the granting of temporary licenses to permit the construction of the project. In addition, some agreements assign the City a long-term easement of land.

Table 1 below illustrates the status of the Stage 1 OLRT real property transactions as of December 31, 2018.

Table 1: Real property transactions

<b>Transaction</b>	<b>Number</b>	<b>Open files</b>
Expropriation proceedings and/or negotiations to acquire property interests	74	18 (Owners of properties that have been expropriated have up to one year after the “revenue-service” date to make a claim)
Agreements with owners of property for three downtown stations and the six integrated entrances.	6	6 (expected to be concluded in 2019)
Agreements with institutions, Crown corporations and federal agencies and departments for required properties	17	13 (expected to be concluded within 6 months of revenue service)
<b>Total</b>	<b>97</b>	<b>37</b>

Several municipal and provincial acts provide the City the authority to acquire lands, including the *Municipal Act*, the Ontario *Expropriations Act* and the *City of Ottawa Act*, to name a few. This audit was to provide assurance that real property transactions for the Stage 1 OLRT project complied with the Ontario *Expropriations Act* and other acts, regulations, by-laws, policies and procedures as applicable. The Corporate Real Estate Office (CREO) provided oversight over the execution of the real property transactions to ensure such compliance.

We selected a sample of 15 of the real property transactions for testing. In our opinion this sample was adequate for us to provide reasonable assurance on extent of compliance for the 97 real property transactions.

## Findings

The audit focused on three key aspects, and key findings associated with each area are as follows:

### 1. Expropriation approval and proceedings

For all of the expropriations that we selected for testing, we found that the intention to expropriate was approved by Council, as required by the Ontario *Expropriations Act* and the City's expropriation process. In addition, in accordance with the City's expropriation process, Council approved the expropriations prior to the expropriation plan being registered and Notices of Expropriation, Election and Possession being served as per the Ontario *Expropriations Act*.

Furthermore, we found that agreement as to compensation was reached with the owners, and the following requirements of the Ontario *Expropriations Act* were met in all applicable instances:

- A Notice of Application for Approval to Expropriate Land was served to the owner by the City, and the notice was published once a week for three consecutive weeks in a newspaper having general circulation in the locality in which the lands were situated;
- A Plan of Expropriation, signed by the City and an Ontario land surveyor, was registered in the proper land registry office within three months after the expropriation approval, and the plan indicated whether the property is required for a limited time only or is only a limited estate, right or interest; and
- Notices of expropriation, election and possession were served after the plan registration date.

### 2. Real property compensation

For all of the real property transactions that we selected for testing for which a final settlement was concluded, we found compliance with the following requirements of either the Ontario *Expropriations Act* or the City's *Real Property Acquisition Policy*:

- The settlement was approved by the delegated authority;
- The settlement was based on market value and applicable eligible entitlements, as defined by the Ontario *Expropriations Act*;
- The variance between the appraised value and the acquisition price, was explained by eligible entitlements (e.g. moving expense) per the Ontario *Expropriations Act*;

- Market value was supported by an appraisal completed by an independent real estate professional or by a qualified City staff appraiser; and
- Where the estimated market value was \$750,000 or greater, a second appraisal was obtained and completed by an independent real estate professional.

Every real property transaction that we tested, for which a final settlement was concluded, was based on market value and applicable eligible entitlements. There were no instances where other considerations were included in the transaction that would have needed approval by Council or the delegated authority.

### **3. Environmental obligations**

Every real property transaction that we selected for testing met the environmental requirements defined in the City's *Real Property Acquisition Policy* and the Ontario *Environmental Assessment Act*.

## **Conclusion**

The audit concluded that real property transactions for the Stage 1 OLRT project were executed in compliance with the Ontario *Expropriations Act* and other acts, regulations, by-laws, policies and procedures, as applicable.

## Detailed audit report

### Introduction

The Audit of Light Rail Transit (LRT) Land Negotiations and Purchases was included in the 2018 Audit Work Plan of the Office of the Auditor General (OAG), approved by City Council on November 22, 2017.

### Background and context

The Ottawa's Light Rail Transit project (OLRT) is Ottawa's largest single infrastructure project since the building of the Rideau Canal. The O-Train Confederation Line transit ("Stage 1 OLRT") project, budgeted at \$2.1 billion, is the first stage in the City's future rail network. The Confederation Line runs 12.5 kilometres from Blair Station in the east to Tunney's Pasture in the west, with a 2.5 kilometres underground tunnel through the downtown. In total, there are 13 stations on the line, with four being underground. It also includes a maintenance and storage facility at the Belfast Yard.

On May 25, 2011, Council approved that staff begin the expropriation process for the project. The Corporate Real Estate Office (CREO) was responsible to oversee the real property transactions.

The Stage 1 OLRT project required the acquisitions of real properties which involved several expropriations. In addition, the City entered into agreements with property owners required for three downtown stations (Lyon, Parliament and Rideau) and their six entrances. Agreements were also signed with some institutions, Crown corporations and federal agencies and departments with respect to property. A number of these agreements provide for the granting of temporary licenses to permit the construction of the project. In addition, some agreements assign the City a long-term easement of land.

As of December 31, 2018, the status of the Stage 1 OLRT real property related transactions was as follows:

- The City initiated expropriation proceedings and/or negotiations to acquire property interests from approximately 74 property owners. Final compensation remains to be settled in approximately 18 of the expropriations. The reason these transactions are not finalized is that owners are allowed up to one year after any

damage occurs to file damage claims.<sup>1</sup> The City will be pursuing final determinations of compensation over the course of 2019.

- The City has entered into a complex framework of agreements with owners of the six properties required for three downtown stations (Lyon, Parliament and Rideau) and the six entrances. These agreements provide for the integration, construction, acquisition of property interests and ongoing operations of the integrated station entrances. Final terms and conditions of these six agreements are still in negotiation and are expected to be completed when the City takes possession of the finished stations from RTG and prior to commencing full revenue operation of the Confederation Line.
- The City has also entered into approximately 17 agreements with institutions, Crown corporations, and federal agencies and departments for real property required for the project. 13 of these agreements are still open and are expected to be completed by the end of 2019. A number of these agreements provide for temporary licenses to permit construction. These agreements are pending completion of the LRT, at which point the City will be able to conclude the specific details of the property requirements. Some of these agreements assign the City a long-term easement of land.

## Audit objective and criteria

The objective of the audit was to provide assurance that real property transactions for the Stage 1 OLRT project complied with the Ontario *Expropriations Act* and other acts, regulations, by-laws, policies and procedures as applicable.

Criteria listed below have been developed from material gathered from planning interviews and document review, including the City's *Real Property Acquisition Policy* and the Ontario *Expropriations Act*.

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<sup>1</sup> Section 22 (1) of the *Expropriations Act* identifies the following requirements for injurious affection claims, "A claim for compensation for injurious affection shall be made by the person suffering the damage or loss in writing with particulars of the claim within one year after the damage was sustained or after it became known to the person, and, if not so made, the right to compensation is forever barred".

## **Expropriation approval and proceedings**

- 1.1 Expropriation approval and proceedings comply with the Ontario *Expropriations Act*, and includes the following:
- a) The intention to expropriate and the proposed expropriation are approved by City Council;
  - b) Expropriation proceedings commence with a Notice of Application for Approval to Expropriate Land being served to the owner by the City, and the notice is published once a week for three consecutive weeks in a newspaper having general circulation in the locality in which the lands are situated;
  - c) A Plan of Expropriation, signed by the City and an Ontario land surveyor, is registered in the proper land registry office within three months after the expropriation approval, and the plan indicates whether the land is required for a limited time only or is only a limited estate, right or interest; and
  - d) Where a plan has been registered and no agreement as to compensation has been made with the owner, notices of expropriation, election and possession are served after the plan registration date.

## **Compensation**

- 2.1 The final settlement of the real property acquisition is approved by Council or the authorized delegated authority, and it is based on market value and applicable eligible entitlements as defined by the Expropriations Act, unless other considerations as approved by Council or the delegated authority are included in the transaction.
- 2.2 The current market value is supported by an appraisal completed by an independent real estate professional or by a qualified City staff appraiser. Where the estimated market value is \$750,000 or greater, a second appraisal is required.
- 2.3 Where there is a variance between the appraised value and the acquisition price excluding eligible entitlements as defined by the Expropriations Act, the variance is explained.

## **Environmental obligations**

- 3.1 An environmental pre-screening is completed to identify potential contamination issues associated with the real property.

## Scope

The audit examined compliance aspects of real property transactions and focused on expropriation approval, proceedings, compensation and environmental obligations.

The period in scope was from May 25, 2011 to December 31, 2018. The scope encompassed all real property transactions for the Stage 1 OLRT project, including those that were not yet completed as of December 31, 2018.

## Audit approach and methodology

The audit was designed and conducted in accordance with the requirements of the City's Audit Standards to ensure that sufficient and appropriate audit procedures were conducted, and evidence gathered to provide reasonable assurance of the accuracy of audit findings and conclusions, as they existed at the time of the audit.

The audit methodology included the following activities:

- Identify and review the Ontario *Expropriations Act* and other acts, regulations, by-laws, policies and procedures as applicable;
- Interview key staff members;
- Conduct walkthroughs of processes and identify key controls; and
- Test of a sample of 15 real property transactions as detailed in Table 2 below to confirm compliance with the Ontario *Expropriations Act* and other acts, regulations, by-laws, policies and procedures as applicable.

Table 2: Sample of real property transactions

<b>Transaction</b>	<b>Completed</b>	<b>Open</b>	<b>Total</b>
Expropriation proceedings and/or negotiations to acquire property interests	11	1	12
Agreements with owners of property for three downtown stations and the six entrances	-	1	1
Agreements with institutions, Crown corporations and federal agencies and departments for required properties	1	1	2
<b>Total</b>	<b>12</b>	<b>3</b>	<b>15</b>

The audit fieldwork was substantially completed by April 30, 2019.

## Audit observations

### Expropriation approval and proceedings

#### Expropriation approval

Section 4 (1) of the Ontario *Expropriations Act* states that an expropriating authority shall not expropriate land without the approval of the approving authority.

Furthermore, the City's established expropriation process requires approval by Council of the intention to expropriate prior to a "Notice of Application for Approval to Expropriate Land" being served to the owner by the City. In addition, according to the City's expropriation process, Council approval is required prior to registering the expropriation plan and serving the "Notices of Expropriation, Election and Possession" as per the Ontario *Expropriations Act*.

We expected to find that the intention to expropriate and the proposed expropriations would be approved by Council. Only 12 of the 15 samples tested were required to comply with the *Expropriations Act*, because these properties were expropriated. The remaining three samples were agreements and not expropriations. Therefore, they did not need to comply with the *Expropriations Act*. Our test of selected expropriations revealed that the intention to expropriate and the proposed expropriation of selected real properties were approved by Council in all twelve applicable instances.

## Expropriation proceedings

The Ontario *Expropriations Act* provides specific requirements with respect to expropriation proceedings, including:

- Section 6 (1) – Upon applying for an approval under section 4, an expropriating authority shall serve a notice of its application for approval to expropriate upon each registered owner of the lands to be expropriated and shall publish the notice once a week for three consecutive weeks in a newspaper having general circulation in the locality in which the lands are situate
- Section 9 (1) – Where a proposed expropriation has been approved under this *Expropriations Act* or under the *Ontario Energy Board Act, 1998*, the expropriating authority shall register, within three months after the granting of the approval, in the proper land registry office a plan of the land signed by the expropriating authority and by an Ontario land surveyor, and thereupon, but not otherwise, the land vests in the expropriating authority
- Section 9 (2) – Where the land is required for a limited time only or only a limited estate, right or interest therein is required, the plan registered under this section shall indicate by appropriate words thereon that the land is taken for such limited time only or that only such limited estate, right or interest therein is taken, and, by the registration in such case, the land for such limited time or such limited estate, right or interest therein vests in the expropriating authority
- Section 10 (1) – Where a plan has been registered under section 9 and no agreement as to compensation has been made with the owner, the expropriating authority may serve the owner, and shall serve the registered owner, within thirty days after the date of registration of the plan, with a notice of expropriation of the owner's land
- Section 10 (2) – Where a plan has been registered under section 9, the registered owner may elect to have the compensation to which the owner is entitled assessed,
  - (a) where there has been an inquiry, as of the date the notice of hearing was served
  - (b) as of the date of the registration of the plan; or
  - (c) as of the date on which the owner was served with the notice of expropriation

and, where the election is not made within the prescribed time, the owner shall be deemed to have elected to have the compensation assessed as of the date of the registration of the plan

- Section 39 (1) – Where land that has been expropriated is vested in an expropriating authority and the expropriating authority has served the registered owner with a notice that it requires possession of the land on the date specified therein, the expropriating authority, subject to any agreement to the contrary and if no application is made under subsection (3), shall take possession of the land on the date specified in the notice.

We expected to find that the above expropriation proceedings as per the *Ontario Expropriations Act* would be applied. Our test of selected expropriations found that agreement as to compensation was reached with the owners, and the above requirements of the *Ontario Expropriations Act* were met in all 12 applicable instances.

## **Real property compensation**

### **Delegated authority**

According to City's *Real Property Acquisition Policy*, City approval is required for projects acquiring acquisition of real property, except where the total cost of the acquisition does not exceed the threshold of delegated authority.

The City's *Real Property Acquisition Policy* also indicates that the Deputy City Manager, Planning and Infrastructure Portfolio, Director of Real Estate Partnerships and Development Office (REPDO), Manager of Realty Services, Manager of Realty Initiatives and Development, and/or the Program Managers of (REPDO), by way of a Delegated Authority Approval Report and in accordance with the provisions of the Delegation of Authority By-law 2009-231, as may be amended from time to time, have the authority to approve the acquisition of real property in accordance with the provisions of that By-law.

Furthermore, on May 25, 2011, Council approved a delegation of authority to the City Manager to approve real estate transactions having a value of up to \$2 million including offers under the Ontario *Expropriations Act*.

On November 9, 2011, Council approved that should staff identify an opportunity to settle an expropriation claim in excess of \$2 million and where that opportunity could be lost in the time it takes to proceed through Committee and Council in accordance with the current process and where there are sufficient funds in the OLRT capital account, staff be delegated the authority to settle all or part of a claim with the concurrence of the Ward Councillor and the Mayor; and that staff report the details of all such settlements to the Finance and Economic Development Committee (FEDCO) at the next meeting.

On March 28, 2012, Council approved the *OLRT Design Improvements-Update* report, which authorized unlimited delegation authority to the Deputy City Manager Planning and Infrastructure, to advance all real estate transactions or offers under the Act, for property required for the OLRT project, where they are in accordance with the requirements of the *Real Property Acquisition Policy* and the concurrence of the ward Councillor and the Mayor.

We expected that for the 12 sample items that had been finalized, we would find that the final settlement had been approved by Council or the authorized delegated authority. We found that all 12 applicable real property transactions were approved by way of a Delegated Authority Report and in accordance with the provisions of the Delegation of Authority as noted above.

### **Integrated stations**

Council approved a budget of \$2.1 billion for the Stage 1 OLRT project, including a contingency of \$100 million. A Contingency Management Committee, composed of the City Manager, General Manager, Transport Service Department and City Treasurer, was set up to review and approve draw requests against the contingency funds.

The process in place with respect to the approval of the real property transactions relating to the integrated stations is described below, and it was confirmed by way of our examination of one selected integrated station real property transaction.

The original agreement with the contractor had five street entrances, and one integrated entrance. Delegated Authority Reports were issued for approval of the revised plan that included three integrated stations with six entrances.

This change in the plan resulted in additional funding being requested. The source of funding for this change was the LRT Contingency Fund, as approved by the Contingency Management Committee. The committee also approved delegation to the CREO Director the authority to manage within the overall envelope of integrated station funds. This authorization enabled management to move funds from integrated stations

that were under budget to those that were over budget.

### **Market value and entitlements**

The City's *Real Property Acquisition Policy* states that real property shall be acquired on the basis of market value, and where applicable, entitlements, as defined by the Expropriations Act, unless other considerations are included in the transaction and approved by Council.

Section 13 (2) of the *Ontario Expropriations Act* indicates that where the land of an owner is expropriated, the compensation payable to the owner shall be based upon,

- a) the market value of the land (section 14);
- b) the damages attributable to disturbance, including damages to tenants (section 18);
- c) damages for injurious affection (section 21); and
- d) any special difficulties in relocation, including business loss, (section 19).

but, where the market value is based upon a use of the land other than the existing use, no compensation shall be paid under clause (b) for damages attributable to disturbance that would have been incurred by the owner in using the land for such other use.

In addition, as specified in the *Ontario Expropriations Act*, determining compensation is expected to take into consideration the following aspects:

- alterations, additions and construction undertaken by the expropriating authority (section 11)
- separate interests in the land (section 16)
- interests of security holders (section 17)

We expected to find that the final settlement of real property transactions would be based on market value and applicable eligible entitlements as required by the City's *Real Property Acquisition Policy* and the *Ontario Expropriations Act*. We found that all 12 selected real property transactions for which a final settlement was concluded, were based on market value and applicable eligible entitlements. There were no instances where other considerations were included in the transaction that would have needed approval by Council or the delegated authority.

The City's *Real Property Acquisition Policy* requires that all real property acquisitions be supported with a current market value appraisal. The appraisal is to be completed by an independent real estate professional or by a qualified City staff appraiser. The City's *Real Property Acquisition Policy* also indicates that where the estimated market value is

\$750,000 or greater, a second appraisal is required, one of which is to be undertaken by an independent real estate professional. Appraisal reports are to be based on the "Highest and Best Use" of the property, in accordance with current standards of practice within the real estate industry.

We expected to find that market value appraisals would be conducted for all selected real property transactions for which a final settlement was concluded, and that, they would be completed in compliance with the guidelines noted above. We found that for all 12 selected real property transactions for which a final settlement was concluded, the market value was supported by an appraisal completed by an independent real estate professional or by a qualified City staff appraiser. Where the estimated market value was \$750,000 or greater, a second appraisal was required and completed by an independent real estate professional.

The City's *Real Property Acquisition Policy* indicates that where there is a variance between the appraised value and the acquisition price, that variance shall be explained in the approval report.

We expected to find that where there was a variance between the appraised value and the acquisition price, the variance would be explained in the approval report if it was unrelated to eligible entitlements. Every real property transaction that we tested, for which a final settlement was concluded, had a variance between the appraised value and the acquisition price. However, all of the variances were explained by eligible entitlements per the Ontario *Expropriations Act* (e.g. moving expenses), therefore no further explanations were required under the City's *Real Property Acquisition Policy*.

## **Environmental obligations**

The City's *Real Property Acquisition Policy* indicates that the City shall complete an environmental pre-screening on all real property to be acquired to identify potential contamination issues associated with the real property. The pre-screening includes a search of the Disposals and Environmental Remediation Unit's records, a Historical Land Use Inventory search and a search of the City's Drawing Centre on Geo Ottawa for any relevant historical environmental reports.

As per the City's *Real Property Acquisition Policy*, when the acquisition is for the entire fee simple interest (i.e. a total buyout), a Phase I Environmental Site Assessment (ESA) is to be conducted. If the acquisition is of a lesser interest, but there is evidence that further assessment is required, the Program Manager, Disposals and Environmental

Remediation may require a Phase I ESA to be completed. All such ESAs shall be completed in accordance with the Canadian Standards Association and site remediation criteria, as set out by provincial regulations. Whenever possible or appropriate, acquisition agreements may provide for the indemnification of the City by the vendor for environmental conditions.

We expected to find that an environmental pre-screening would be completed to identify potential contamination issues associated with the real property. For all 15 selected real property transactions, we found that environmental pre-screening was completed.

In addition, the Ontario *Environmental Assessment Act*, Regulation 231/08 requires that an environmental project report be submitted to the Ministry of the Environment for transit projects.

We therefore expected to find that an environmental project report would have been submitted to the Ministry of the Environment as required by the Ontario *Environmental Assessment Act*. We found that these environmental impacts were properly reported and submitted. An Environmental Assessment was undertaken for the Downtown Ottawa Transit Tunnel (DOTT) Project and approved by Council on January 13, 2010 and subsequently approved by the Ontario Ministry of the Environment on August 17, 2010. Note that while the title of the Environmental Assessment refers to the downtown tunnel, it actually covered the entire span of all 13 stations, the maintenance and storage facility and some extra length at both ends of the tracks.