



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

Financial Issues Involving Metrolinx: Georgetown South, GO Transit Capital Expansion Contributions, and Union Station

Date:	March 1, 2015
To:	Executive Committee
From:	City Manager Deputy City Manager Cluster B and Deputy City Manager & Chief Financial Officer
Wards:	All
Reason for Confidential Information	This report involves the security of property belonging to the City or one of its agencies, boards and commissions.
Reference Number:	P:\2015\Internal Services\Cf\Ec15007Cf (AFS #20919)

SUMMARY

City staff have just concluded months long discussions with Metrolinx and Provincial officials regarding a number of financial matters involving the parties.

1. Georgetown South Project

Metrolinx is seeking payment from the City for a portion of the direct costs paid by Metrolinx to upgrade rail and municipal infrastructure in the Kitchener GO Rail corridor that includes both the Georgetown South Expansion Project and the Union Pearson Express (the “Georgetown South Project”) as specified in the Confidential Attachment. The payment requested by Metrolinx for the Georgetown South Project represents a share of capital costs paid by Metrolinx during the past few years that provided for new and expanded grade separations, reconstruction of road and rail bridges, and other improvements where City and railway infrastructure overlap. These improvements will permit more frequent rail service in the corridor including operation of the Union Pearson Express. Metrolinx believes the City is responsible to pay a portion of the work pursuant

to certain cost-sharing agreements and cost-sharing guidelines which Metrolinx believes are applicable to this work.

The City derived benefits from Metrolinx' investments in the Georgetown South Project. Municipal infrastructure, comprised of water, sewer and transportation assets, was upgraded to current standards and the economic life of those assets was renewed. The City also specified various streetscape and public realm improvements that exceeded Metrolinx' scope of work for the Georgetown South Project. Finally, the City derived a benefit from the construction of new grade separations that improve pedestrian and vehicular safety along a rail corridor that will see a significant increase in traffic including all day, two-way GO Rail service and operation of the Union Pearson Express. The City and Metrolinx have been discussing:

- the rationale for cost-sharing by the City in a Provincial project;
- the validity and relevance of the previous agreements, orders and guidelines that Metrolinx has relied upon in seeking payment from the City;
- the consequences to both parties if the City contests the application of the agreements, orders and guidelines; and,
- the value of benefits derived by the City including new and upgraded municipal infrastructure.

As of the date of this report, tentative agreement has been reached with Metrolinx on the terms and conditions of a cost-sharing agreement for work on the Georgetown South Project. This report and confidential attachment set out:

- the principles upon which a cost-sharing settlement may be reached;
- the rationale for determining the proposed amount and timing of payment by the City in respect of the Georgetown South Project;
- the precedent that this settlement might establish in respect of subsequent cost-sharing requests from Metrolinx for other rail corridors within Toronto, including the announced plans to increase the frequency of rail service and electrify rail operations.

2. GO Transit Capital Expansion Contributions

The City and other GTHA municipalities are required by statute to make annual contributions to GO Transit Capital Expansion based on a cost sharing formula. Under an arrangement with the Ministry of Transportation, the City pays a \$20 million annual installment in satisfaction of the required annual contribution, through to March 2017. The payment is not allocated to specific projects but forms part of GO Transit's (now Metrolinx's) sources of capital funding.

Staff have indicated to Provincial officials that the City has not included further capital contributions to GO Transit capital expansion in its 2015 – 2024 Capital Budget and Plan, and is seeking to renegotiate the balance of payments to the Province arising from the City's statutory and contractual obligations to contribute to GO Transit Capital Expansion as described in the Confidential Attachment.

3. Union Station Funding

Finally, this report provides an update regarding the Province's response to petitioning for additional funding related to cost sharing/ recovery for the Union Station project. The City requested the following from Metrolinx:

- \$15 million in respect of general cost escalation increases of \$80 million
- \$20 million in respect of the \$40 million cost increase for the North West Path

The Province has rejected both requests and will not increase its current contributions to the Union Station project.

The City Manager seeks authority from City Council to:

- negotiate and execute an immediate settlement between the City and Metrolinx in accordance with the terms and conditions described in the confidential attachment;
- set aside funds for payment to Metrolinx in the 2015 – 2024 Capital Budget and Plan as described in the confidential attachment;
- apply the same cost-sharing principles in future negotiations in respect of other Metrolinx rail corridor improvements; and,
- affirm the suspension of future GO Transit Capital Expansion Contributions in the 2015 – 2024 Capital Budget and Plan, and direct the City Manager to continue to negotiate an end, or revision, to any legal obligations to make these contributions.

The City Manager will also be seeking to negotiate a new master agreement that resolves outstanding and addresses future joint City/Metrolinx transit capital expansion matters.

RECOMMENDATIONS

The City Manager, Deputy City Manager B and Deputy City Manager & Chief Financial Officer recommend that:

1. City Council authorize the City Manager to negotiate and execute a cost-sharing agreement with Metrolinx with respect to the Georgetown South Project and related construction by Metrolinx in the Kitchener GO Rail corridor, substantially

- in accordance with the terms listed in Appendix 1 to the Confidential Attachment, and such other terms and conditions as may be satisfactory to the Deputy City Manager, Cluster B and the Deputy City Manager & Chief Financial Officer, in a form satisfactory to the City Solicitor and to report back to Council if such an agreement cannot be reached.
2. City Council endorse the principles in Appendix 2 to the Confidential Attachment as the basis for negotiating a new standard form of crossing and grade separation agreement on all Metrolinx rail corridors in Toronto and authorize the City Manager (to the extent not already delegated to staff) to negotiate such agreements on these terms and such other terms and conditions as may be satisfactory to the Deputy City Manager, Cluster B and the Deputy City Manager & Chief Financial Officer, in a form satisfactory to the City Solicitor, subject to final Council approval.
 3. City Council amend the timing of expenditures related to the Georgetown South project in the 2015 - 2024 Capital Budget and Plan by accelerating the contribution currently funded evenly over a 10-year period to now occur over the first 5 years of the Capital Budget and Plan (2015 – 2019).
 4. City Council affirm the recommended suspension from the 2015 – 2024 Capital Budget and Plan of the three annual \$20 million GO Transit capital expansion contributions in 2015 through 2017, and direct the City Manager to continue to negotiate an end, or revision, to any legal obligations to make these contributions, in accordance with the rationale set out in the Confidential Attachment.
 5. City Council direct that the confidential information contained in the Confidential Attachment remain confidential as it is information relating to future contractual negotiations and the security of the property of the City.

Financial Impact

Provision for payment to the Georgetown South project is already included in the 2015 – 2024 Capital Budget and Plan. The financial impact of the proposed Georgetown South settlement on the Capital Budget provision is described in the Confidential Attachment.

The suspension of additional GO Transit Capital Contributions has already been incorporated in the budget, and the Province has agreed to defer collection of the 2015 until 2016 pending further discussions with the City.

The Union Station North West Path project recommended budget is based on the assumption that the Province will fund 50% of a \$40 million budgetary increase to the project identified in the 2013 Capital Budget process. As this is no longer the expected outcome, this report would increase the City's debt funded capital expenditures by \$20 million in 2016 and 2017, and not have an impact in 2015. Staff will however review

whether this additional debt can be recovered through expected retail lease revenues and will report back on impacts, if any, during the 2016 Budget process.

With respect to the unsuccessful attempt to get the Province to contribute \$15 million towards the general cost escalation of Union Station, this will not have a budget impact on the City. The Union Station budget and financing plan did not incorporate this provincial funding.

DECISION HISTORY

At its meeting on March 8, 2011, City Council passed a Member's Motion to request the Provincial Government, through the Minister of Transport, to expedite efforts to electrify the rail corridor (the Kitchener corridor) that would be used by the Air Rail Link:
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.MM5.5>

At its meeting on April 12, 2011, City Council authorized the Deputy City Manager, Cluster B, to execute a construction protocol, and take certain other actions that would support the relocation and reconstruction of the City's infrastructure in conjunction with improvements being made by Metrolinx along the Kitchener (Georgetown South) corridor:
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX4.5>

City of Toronto Support of the GO Transit Capital Growth /Enhancement Program, Policy and Finance Committee Report 9, dated November 22, 2004 and adopted by the City Council on November 30, Dec 1 and 2, 2004.
<http://www.toronto.ca/legdocs/2004/agendas/council/cc041130/pof9rpt/c1004.pdf>

ISSUE BACKGROUND

Metrolinx and the City are working together to implement heavy rail and light rail transit projects across the city. Regional Express Rail and SmartTrack are the latest expressions of long-term initiatives that involve collaboration to plan, design and construct these complex projects.

One Metrolinx project that has been underway for the past five years involved expanding and upgrading commuter rail infrastructure in the Kitchener (Georgetown South) corridor (the "Georgetown South Project").

The City has provided technical advice to Metrolinx on matters dealing with the convergence or overlap of rail and municipal infrastructure. In particular, the City has been consulted on all matters involving:

- the restoration, relocation and reconstruction of the City's infrastructure that was impacted by the Georgetown South Project (the "Existing Infrastructure");
- the construction of new grade separations or facilities that formed part of the Georgetown South Project (the "New Infrastructure"); and
- additional elements outside the scope of the Georgetown South Project that were requested by the City and approved by Metrolinx (the "Additional Infrastructure").

Although the Georgetown South Project is a Provincial initiative, some portions of the project were constructed in locations that are jointly owned or occupied by the City. In particular, the City owns:

- rail bridges constructed over City streets;
- buried infrastructure that run under the rail corridor (e.g., transmission watermains and sewers); and
- road right-of-way that crosses the rail corridor.

At locations where rail and municipal infrastructure overlap, the parties responsibilities for construction, maintenance and reconstruction can typically be found in:

- utility crossing agreements (the "Agreements"); and
- orders issued by the Board of Railway Commissioners or the Canadian Transportation Agency (the "Orders").

For railways that are federally regulated, the Canadian Transportation Agency (the "CTA") has issued guidelines for cost-sharing for grade separations (although the Agency has deviated from these guidelines where it considers it appropriate to do so) (the "Guidelines").

Metrolinx has made a claim for cost-sharing for the Georgetown South Project based on its interpretation of the Orders and Agreements, assuming that the City would bear some portion of the cost. Where these documents are silent on how the costs are to be apportioned for grade separations, Metrolinx relied on the CTA Guidelines by taking the position that these represent an accepted industry standard for cost allocation. At no time, however, did the City acknowledge a duty or responsibility to bear a portion of those costs with the exception of Additional Infrastructure, which was negligible. In discussions with the City, Metrolinx presented an amount that it believes represents the City's share of costs to construct the Georgetown South Project (refer to the Confidential Attachment). That figure is composed of:

- the cost to relocate or reconstruct Existing Infrastructure impacted by the Georgetown South Project (the "Existing Infrastructure Costs");
- a portion of the cost to construct New Infrastructure including rail crossings and grade separations (the "New Infrastructure Costs"); and
- the cost of supplementary work that was requested by the City but not required by Metrolinx to complete the Georgetown South Project (the "Additional Infrastructure Costs") which together are the "Requested Cost-Sharing Amount".

Metrolinx has indicated that if and when additional work is performed along the same rail corridor it may seek additional contributions from the City.

GO Transit Capital Expansion Contributions

The City and other GTHA municipalities are required by statute to make annual contributions to GO Transit Capital Expansion based on a cost sharing formula. Under an arrangement with the Ministry of Transportation, the City pays a \$20 million annual installment in satisfaction of the required annual contribution, through to March 2017. The payment is not allocated to specific projects but forms part of GO Transit's (now Metrolinx's) sources of capital funding.

The recommended 2015 – 2024 Capital Budget and Plan does not include City contributions for the years 2015 through 2017. The rationale for this approach is described in the Confidential Attachment.

Union Station North West Path project

This project has been subject to 50/50 cost sharing with Metrolinx. Scope changes and cost over runs added \$40 million to the project in 2012. Since that time the City has been seeking confirmation of an additional contribution from Metrolinx for a 50% share of the budget adjustment.

Union Station Revitalization Cost Escalation

Staff reported in 2013 that the cost estimate for completing the Union Station project had increased by \$80 million. Council directed staff to attempt to recover \$25 million from the Federal government and \$15 million from the Province.

COMMENTS

Rationale for a Cost-Sharing Settlement with Metrolinx

There are several rail corridors that run through Toronto, which are owned by Federally-regulated railways (CN Rail and CP Rail) and a Provincial transportation agency (Metrolinx). Unlike many forms of utilities that may occupy a portion of the City's road right-of-way, rail corridors are primarily owned in fee-simple by the railways and Metrolinx.

Municipal infrastructure such as underground utilities and roads intersect with and cross rail corridors. It is often the case that municipal infrastructure was installed after the rail corridors were built, which resulted in municipal infrastructure crossing railway lands subject to terms and conditions imposed by the land owner (i.e. the railway). In the general circumstance described above, railways were entitled to establish the financial terms under which municipal infrastructure would cross their lands. Those terms were invariably favourable to the railways and often required the municipality to:

- pay the initial capital cost to install their infrastructure on railways lands;
- pay the cost to maintain, upgrade and rebuild that infrastructure in the future; and
- pay an annual administration or license fee to cross the railway lands.

Federal regulation of railways that operated nationally meant that railway lands were subject to the jurisdiction of the Board of Railway Commissioners or its successor the Canadian Transportation Agency. The CTA provided national guidelines for cost-sharing for grade separations that may be applied to the crossing of rail corridors, and served as a body to resolve disputes between parties that were subject to its jurisdiction.

It is within the context of this framework that Metrolinx and the City each reviewed the various Agreements, Orders and Guidelines to assess enforceability and applicability of the documents to the work completed for the Georgetown South Project. The Confidential Attachment advises of the rationale for the proposed settlement based on the City's assessment of these documents. Additionally the Confidential Attachment outlines proposed principles designed to provide a basis for future negotiations.

Municipal Contributions to GO Transit Capital Expansion

The City and other GTHA municipalities are required by statute to make annual contributions to GO Transit Capital Expansion based on a cost sharing formula. Under an arrangement with the Ministry of Transportation, the City is required to pay a \$20 million annual installment in satisfaction of the required annual contribution, through to March 2017. The payment is not allocated to specific projects but forms part of GO Transit's (now Metrolinx's) sources of capital funding. The recommended 2015 – 2024 Capital Budget and Plan does not include City contributions for the years 2015 through 2017. The rationale for this approach is described in the Confidential Attachment. This report seeks explicit Council endorsement of the approach taken in the Budget.

Union Station project

Staff have been in discussions for additional provincial contributions toward Union Station for over two years. The City was seeking 50% of the \$40 million cost increase for the North West Path, and \$15 million from the Province, and \$25 million from the federal government towards the \$80 million general cost increase for the Revitalization project. All requests have been denied.

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SIGNATURE

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ATTACHMENTS

Confidential Attachment
Appendix 1- Proposed Key Terms – Cost-Sharing Metrolinx Investments in the
Georgetown South Project
Appendix 2 – Proposed Principles for Future Cost-Sharing with Metrolinx for all Utility
Crossings and Grade Separations

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