

City Council

Notice of Motion

MM39.14	ACTION			Ward:All
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Accountability and Transparency in Transit Planning: Judicial Inquiry into Information Provided to Councillors regarding the Scarborough Subway Extension and the Scarborough Light Rail Line at the July 2016 Council Meeting - by Councillor Josh Matlow, seconded by Councillor Kristyn Wong-Tam

** Notice of this Motion has been given.*

** This Motion is subject to referral to the Executive Committee. A two-thirds vote is required to waive referral.*

Recommendations

Councillor Josh Matlow, seconded by Councillor Kristyn Wong-Tam, recommends that:

1. City Council apply to the Superior Court of Justice under Section 215 of the City of Toronto Act to establish a Judicial Inquiry, similar to the Toronto Computer Leasing Inquiry presided over by Justice Bellamy, to investigate the information provided to Council regarding the Scarborough Subway Extension and the Scarborough Light Rail Transit project in the lead-up to, and at, the July 2016 meeting of City Council.

Summary

Transit planning in Toronto is dysfunctional.

Our City has far too often neglected evidence-based transit priorities while approving proposals that serve the fewest people for the most money. The existing system has become overcrowded. The Spadina Extension and the Sheppard subway line have monopolized scarce resources, leaving most residents of Scarborough, North York and Etobicoke with long bus rides before being able to access rapid transit. These bloated projects are plagued by low ridership, requiring significant subsidies.

Now, City Council is on the verge of setting a new precedent by neglecting the public trust, and with such a gross misexpenditure of public finances.

In 2013 Council moved away from a 7-Stop LRT line in Scarborough that would have the same top speed as a subway, travel in its own corridor, and be fully-funded by the province. In its place, Council was presented with a Scarborough Subway Extension in July 2016 that is proposed to have 1-stop with an estimated cost of \$3.35 billion dollars and is projected to serve only 7,300 residents during the morning rush hour – less than some bus routes.

Council decided to move forward with the Scarborough Subway Extension at the July 2016 meeting of Council based on information in a staff report and Toronto Transit Commission briefing note that appear to have contained inaccurate, misleading, or incomplete information.

Briefing Note

1. On July 4, 2016, a briefing note produced by the Toronto Transit Commission appeared on CP24 regarding the possibility of moving forward with the Scarborough LRT. The contents of the briefing note were cited numerous times by Staff and Councillors during the Council meeting of July 12, 2016.
2. Against Council procedure, the Toronto Transit Commission only shared the note with the office of the Mayor and the Toronto Transit Commission Chair.
3. The briefing note did not say that the Scarborough LRT was a project of Metrolinx, nor did it say that Metrolinx would be responsible for the cost of the Scarborough LRT as per the still in force Master Agreement.
4. The Briefing note incorrectly inflated the cost of the Scarborough LRT by assuming that the start of construction would have to wait until work on the Eglinton Crosstown was completed at Kennedy. However, an April 25, 2012 Metrolinx Board Report states that Metrolinx was explicitly planning to start at the north end of the line first to speed up construction time.
5. The Toronto Transit Commission stated that they believed that construction required for the Scarborough LRT at Kennedy Station was the "critical path" of the project, meaning that the construction would take longer at Kennedy than the rest of the other construction elements. The Toronto Transit Commission did not check this information with Metrolinx.
6. The same 2012 Metrolinx Board Report, states that, at the time, the Eglinton Crosstown was expected to be completed in 2020 and the Scarborough LRT's completion date was 2019. These construction timelines required that work occur simultaneously at Kennedy Station to facilitate both projects.
7. Further, paragraph 90 of the Auditor General's report on the briefing note states that the Auditor General contacted Metrolinx staff during their investigative process to determine if changes could have been made to accommodate starting the build of an Scarborough LRT at Kennedy Station. Metrolinx advised that:

“There would have been many critical path items on the project (e.g. tunneling, stations), therefore it is not accurate to say that it was a major element on the project. The Kennedy Station was designed to accommodate an extension into Scarborough. If the City decided to proceed with LRT the design would need to be modified. The design was in early stages in 2016, and this likely could have been accommodated.”
8. Paragraph 100 of the Auditor General's report states that Bruce McQuaig, former Metrolinx Chief Executive Officer, emails Andy Byford, former Toronto Transit Commission Chief Executive Officer, on June 29 to ask him how the Toronto Transit Commission arrived at the \$3B cost estimate for the Scarborough LRT.

- Mr. McQuaig tells Mr. Byford that the starting figure of \$1.8B should be reduced by \$320M. Despite the individual responsible for the Scarborough LRT telling Mr. Byford that he was incorrect, Mr. Byford did not change the cost estimate to reflect this information despite ample opportunity.

- He didn't issue a correction when the briefing note was leaked to CP24.

- He didn't change the figure when a revised copy of the note was sent to the Mayor's office almost a week later.

9. There was no balancing information regarding the Scarborough LRT in the briefing note. An objective analysis of the SLRT should have included, at a minimum, information stating that:

- capital costs would be borne by Metrolinx;

- provides more stops for a lower cost;

- serves more priority neighbourhoods;

- could be built faster;

- more advanced stage of design than the subway; and

- would be in its own corridor and capable of travelling at the same top speed as a subway.

Misleading Scarborough Subway Extension Completion Timeline

10. The chart from the July 2016 Scarborough Subway Extension staff report states that the construction completion date (2025) is contingent upon Council choosing an alignment at that meeting in the third bullet underneath the chart. (*See Table 3 in Attachment 1 to this Motion.*)

11. The recommendation regarding the Scarborough Subway Extension before Council at the July 2016 meeting was: “3. City Council request the City Manager and the Chief Executive Officer, Toronto Transit Commission to remove from consideration the 3-stop McCowan Scarborough Subway Extension and continue to develop an Scarborough Subway Extension Express option, by conducting the following:

- a. retaining the services of a third-party rail transit construction and cost - estimation expert to undertake a risk assessment and detailed review of the Toronto Transit Commission's 5 percent design cost estimates for the McCowan corridor and other possible express subway alignment options”.

12. The staff report presented a completion date and cost that assumed a choice not even available to Council. The recommendation regarding the subway does not provide the option to choose an alignment. The March 2017 Scarborough Subway Extension staff report states that the line will now be completed in mid-2026.

Design Completion

13. During the Questions to Staff portion of the debate on EX 16.1 Developing Toronto's Transit Network Plan to 2031 at the July 12, 2016 Council meeting, Councillor Colle asks the Chief Project Manager for the Scarborough Subway Extension a question regarding the design completion status of the project:

Councillor Colle: "And where would the subway be at design percentage of design completion? Around 5 (per cent) I think I've heard?"

Chief Project Manager: "Uh, we're currently at about 5 per cent, yes."

14. The Chief Project Manager's answer is reinforced by the same chart provided in '11' from the staff report which states that the cost estimate provided was "developed at approximately 5 percent design". (*See Table 3 in Attachment 1 to this Motion.*)

15. These statements from City Staff contradict information provided by consultants after the July meeting.

16. In its Toronto Transit Commission Estimate Peer Review of the Scarborough Subway Extension dated November 4, 2016, Hanscomb provided the chart which shows the documentation that they used to base their peer review of the Toronto Transit Commission's work. Hanscomb notes that they were careful to base their review on the same documentation that the Toronto Transit Commission used. (*See Chart in Attachment 1 to this Motion.*)

17. The chart indicates that all of the documents were dated after the July 12, 2016 Council meeting except "Technical Memo + sketches 1-22" which relate only to the design of the station. Despite the name, the document only contains 3 sketches. All are hand-drawn.

18. Hanscomb's report states that the Scarborough Subway Extension was at 2-5 percent design with all of the documents that were received. That statement conflicts with the statements from City and Toronto Transit Commission Staff cited above that the subway was at 5 percent at the July 12, 2016 Council meeting given that the single completed document at that time was related to the design of the station only.

Taken together, the evidence suggests that critical information presented to Council by Staff regarding the Scarborough Subway Extension and the Scarborough LRT in staff reports, briefing notes, and on the floor of Council was at times inaccurate, misleading, or incomplete. This is deeply troubling given that a decision on a multi-billion dollar infrastructure project was based on the information provided.

Council must be able to rely on the City of Toronto's professional staff to provide advice and information that is neutral and accurate. It appears that these basic tests may not have been met when Councillors voted for the 1-stop Scarborough Subway on July 12, 2016. This Motion recommends that Council apply to the Superior Court of Justice under Section 215 of the City of Toronto Act to establish a Judicial Inquiry, similar to the Toronto Computer Leasing Inquiry presided over by Justice Bellamy, to investigate the information provided to Council regarding the Scarborough Subway Extension and the Scarborough Light Rail Transit project in the lead-up to, and at, the July 2016 meeting of Council.

The last time the City established a Judicial Inquiry, it was with regard to the MFP computer leasing scandal. The Bellamy Report resulting from that inquiry led to the establishment of our 3 accountability officers and other measures to safeguard the City's contracting process. Torontonians deserve the same type of assurances that decisions affecting billions of their tax dollars are spent on transit projects that use our scarce resources to support the most residents possible in getting to work or school and back, quickly and comfortably, so they can have more time with their friends and family.

Background Information (City Council)

Member Motion MM39.14

Attachment 1 - Table 3 and Chart referenced in Motion MM39.14

(<http://www.toronto.ca/legdocs/mmis/2018/mm/bgrd/backgroundfile-114303.pdf>)