

Proposed Amendments to the LRT Governance Board Bylaw

1. *Project Description*

The LRT Project definition is restricted to the procurement, development, design and construction of the Southeast to West LRT. The actual project has evolved, through approval of the P3 procurement method by Council. A more proper description of the LRT Project should consider the P3 delivery method as well as the removal of the West component of the line.

2. *Mandate and Duties*

The Board's mandate is described as "oversight" of the LRT Project. The word "oversight" can mean a number of different things and makes it difficult for the Board to determine what its role is, relative to Council and Administration. Is the Board an approving body? Is it an audit body? Is it a vehicle for public consultation? To supervise how the Administration exercises its delegated authorities? The Board does not have a clearly defined purpose. Administration believes that the Board's mandate is to provide due diligence with respect to the LRT Project. Accordingly, it is recommended that the Mandate and Duties be revised to better describe this role.

3. *Board Composition*

Administration believes that the composition of the Board is appropriate and that no changes to the Bylaw are required at this time.

4. *Board Reporting to Council*

Almost all of the tender-calls, sole-source contracts, agreements, settlements, judgements, leases, land acquisitions and land dispositions relating to the LRT Project which have been entered into following the establishment of the Board have been within the City Manager's authority. The only agreement which exceeded the City Manager's Authority is the agreement for the Owner's Engineer services. The only other agreement which is anticipated to exceed the City Manager's authority is the Project Agreement with the P3 Contractor to be awarded by tender-call. With this in mind, the semi-annual report mandate of the Board is duplicative of the City Manager's current reporting. In order to reduce this duplication and provide a more meaningful reporting function from the Board to Council, the current semi-annual report could be replaced with an annual report which lists only those matters which have been approved by the Board. This report could include a summary of other activities or reports considered by the Board in order to provide Council more information about Board activities.

5. *Board Authority*

The Board's authority with respect to approval of the Project Agreement and the procurement leading up to the award requires clarification. Although s. 9 (c) of the Bylaw provides the Board with the authority to award tender calls which exceed the delegated authority of the City Manager, this authority is limited to expenditures and revenues being included in an approved budget passed by Council. Although the capital component of the LRT Project could be included in an approved capital budget, the City is required pursuant to s. 242 of the MGA to approve operating budgets on an annual basis. With this in mind, the operations and maintenance component of the P3 Project Agreement would fall outside of the Board's authority under the current Bylaw.

In order to clarify the Board's role with respect to the procurement process for the LRT Project, the Board's authority should be clarified to confirm the Board's authority to approve the following components of the tender-call for the P3 Project Agreement:

- RFQ document (submission requirements, evaluation criteria, RFQ process),
- Selection of shortlisted RFQ Respondents,
- RFP document (submission requirements, evaluation criteria, RFP process),
- P3 Project Agreement, and
- Award of P3 Project Agreement to the Preferred Proponent (provided that capital and operating expenditures are within the financial strategy approved by Council).

The Board does not require the authority related to land and settlement of claims. Most of the agreements relating to land for this project will be within the City Manager's authority. Since the settlement of claims could have implications which extend beyond the LRT Project, it is recommended that any of this authority be exercised through Executive Committee.

6. Policies and Directives

The Board is required to familiarize itself with Council policies if it is employing a delegated authority from Council. Administrative Directives and Procedures are operational in nature and issued by the City Manager under his authority to manage the City's Administration. Administrative Directives are not binding on Council or Council Committees. It is recommended that references to Administrative Directives be removed from section 7.

7. Simplified Procedures

The procedures in the Bylaw work in conjunction with the Procedures and Committees Bylaw which is paramount to other bylaws. Many of the procedures were added to this bylaw to make its procedures analogous to those used by Council Standing Committees. It may be possible to simplify the procedures if desired.

8. Finance and Administration

The City Manager is already required to perform the matters in the first three sections of this part. The first three items of this section should be deleted and replaced with the standard provisions from other Council committee bylaws as necessary.

There is an amending bylaw going forward to extend the date for the review in order to provide Administration and the Board with more time to consider the Bylaw in light of the evolution of the Project. Most Council committees continue until the end of the mandate of the Council that established them. The current LRT Project Schedule anticipates that the procurement for the LRT Project would be completed in the first quarter of 2016. Accordingly, it is recommended that the Bylaw expire at that time.

It should be noted that this Board, like all Council committees, serve at the pleasure of Council and it is difficult for such a body to evaluate its own powers, duties and functions without input from Council on what Council would like the Board to consider on such a review. The review of the Bylaw should be undertaken with this consideration and the Bylaw revised accordingly.