



## **ACTION REQUIRED**

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Date: October 16, 2017  
To: TTC Board  
From: Auditor General  
Subject: Auditor General's Report – Review of Complaint Regarding the June 29, 2016  
Toronto Transit Commission Briefing Note

The subject report, is forwarded to the TTC Board for review and consideration.

Original signed by Chrisanne Finnerty

Head of Commission Services

## **Auditor General's Office – Review of Complaint Regarding the June 29, 2016 Toronto Transit Commission Briefing Note**

**Date:** October 13, 2017  
**To:** TTC Board and Audit Committee  
**From:** Auditor General  
**Wards:** All

### **SUMMARY**

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This report provides the Auditor General's findings primarily in relation to whether there was any political interference involved in the crafting and dissemination of a particular briefing note about large transit project options for the City of Toronto. The title of this particular briefing note is *"Issues Relating to Re-introduction of LRT Replacement for Line 3 (SRT)"*

We found:

- i. no evidence of any lack of integrity on the part of CEO Byford or other TTC personnel in its preparation.
- ii. no evidence of a systemic problem of political interference or staff being pressured by elected officials, including the Mayor and his office, in relation to the development of the ridership numbers and the preparation and distribution of the note.
- iii. in our view, the briefing note estimate was within an acceptable range given the stage of the project, the nature of a briefing note and the caveats contained therein. The briefing note highlights that the figures are *"estimates only,"* intended for a *"high level cost comparison"*. After evaluating the reasonableness of the figures, it is our view that even if construction on the SLRT could have begun several years earlier, the potential difference between the briefing note figures and our calculated escalated cost is within an acceptable range for estimates at that stage of completion.

We made recommendations to prevent similar situations from arising in the future. This report contains 3 recommendations along with management's response to each. Management accepts all recommendations.

## **RECOMMENDATIONS**

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The Auditor General recommends that:

1. The Board request the Chief Executive Officer, Toronto Transit Commission, to provide more clarity in relation to the assumptions being relied on when the information is used in briefing notes.
2. City Council request the City Clerk implement protocols defining when it is appropriate to share briefing notes, as well as an online public repository to house briefing notes, bulletins, announcements and similar communications issued by City divisions and agencies, similar to the one maintained by the City of Vancouver, and direct the City Manager to ensure that City divisions and agencies submit copies of any such correspondence to the City Clerk for the register.
3. The Board request the Chief Executive Officer, Toronto Transit Commission, to ensure its briefing note distribution protocols align with and integrate seamlessly with the City distribution protocols.

## **FINANCIAL IMPACT**

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The financial impact, if any, is not determinable at this time.

## **DECISION HISTORY**

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A briefing note was prepared in the context of the TTC presenting a report EX 16.1 entitled "Developing Toronto's Transit Network Plan to 2031" to Executive Committee and City Council on June 28 and July 12, 2016, respectively.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX16.1>

## **COMMENTS**

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The main complaint is that political interference resulted in inaccurate, incomplete and misleading information being provided to City Council about the costs of the Scarborough Subway Extension (SSE) compared to the Scarborough Light Rail Transit (SLRT) option. The complainant provides examples to support their assertion that misleading information was provided as a result of political interference. One of those examples is the briefing note. An analysis of other examples is included in the report.

The complainant asked the Auditor General's office to essentially do three things:

- i. to conduct "*an examination of the circumstances involved with the decisions to construct the SSE instead of the SLRT*". More specifically, the complainant alleges that the briefing note "*erroneously and deliberately inflated the price of the SLRT option by approximately \$1 billion.*"

ii. "to investigate whether the mayor, city council and city administrators have appropriately exercised their responsibility of stewardship over public funds" in making the decision that they made to proceed with the SSE option.

The report addresses how the briefing note came to be drafted, evaluates the reasonableness of financial and other information in the note, addresses possible pressures influencing the contents of the note, and considers the process used to distribute the note.

It is not the Auditor General's role to question the policy decisions of elected officials, nor is it the Auditor General's role to reopen City Council decisions. Therefore, the Auditor General did not investigate items 2 and 3. A value for money/performance audit to examine management practices, controls, and reporting systems to achieve Council's direction in a cost-effective manner is within the purview of the Auditor General, and may form part of a future audit.

Our investigation included our own staff, as well as a Senior Managing Director of an external reputable forensic firm to lead the investigation.

The Auditor General's report submitted to the TTC Board and the City's Audit Committee is provided as Attachment 1.

## **CONTACT**

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## **SIGNATURE**

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Beverly Romeo-Beehler  
Auditor General

## **ATTACHMENTS**

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Attachment 1: Auditor General's Report - Review of Complaint Regarding the June 29, 2016 Toronto Transit Commission Briefing Note

# **AUDITOR GENERAL'S REPORT**

## **Review of Complaint Regarding the June 29, 2016 Toronto Transit Commission Briefing Note**

**October 13, 2017**

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**Beverly Romeo-Beehler, CPA, CMA, B.B.A., JD, ICD.D, CFF  
Auditor General**



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## SUMMARY

1. This report provides the Auditor General's findings primarily in relation to a complaint about political interference in the crafting and dissemination of a particular briefing note about large transit project options for the City of Toronto. The title of this particular briefing note is *"Issues Relating to Re-introduction of LRT Replacement for Line 3 (SRT)"* (Exhibit 1).
2. This investigation was initiated by complaints from a citizen group (the complainant) received in January and February 2017 (Exhibits 2 and 3).
3. The main complaint is that political interference resulted in inaccurate, incomplete and misleading information being provided to City Council about the costs of the Scarborough Subway Extension (SSE) compared to the Scarborough Light Rail Transit (SLRT) option. The complainant provides examples to support their assertion that misleading information was provided as a result of political interference.
4. The briefing note was prepared for Toronto Transit Commission (TTC) Chief Executive Officer (CEO) Andy Byford and the Chair of the TTC Board, Councillor Josh Colle, ahead of TTC Board, Executive Committee and City Council meetings.
5. City Council had many studies, reports, presentations, information and deputations available when making transit decisions for Toronto over the past several years. In the complainant's view, Council's decision to proceed with a one stop subway *"was made in large part"* on the basis of the briefing note and that *"Council has committed billions toward a one-stop subway extension...without the benefit of an objective and complete comparison of costs, delivery dates and funding commitments...for the seven-stop LRT option"*.
6. The complainant asked the Auditor General's office to essentially do three things:
  - i. to conduct *"an examination of the circumstances involved with the decisions to construct the SSE instead of the SLRT"*. More specifically, the complainant alleges that the briefing note *"erroneously and deliberately inflated the price of the SLRT option by approximately \$1 billion."*
  - ii. *"to investigate whether the mayor, city council and city administrators have appropriately exercised their responsibility of stewardship over public funds"* in making the decision that they made to proceed with the SSE option.
  - iii. to investigate whether the SSE will achieve value for money.
7. This report addresses how the briefing note came to be drafted, evaluates the reasonableness of financial and other information in the note, addresses possible



pressures influencing the contents of the note, and considers the process used to distribute the note.

8. It is not the Auditor General's role to question the policy decisions of elected officials, nor is it the Auditor General's role to reopen City Council decisions. Therefore, the Auditor General did not investigate items ii and iii in paragraph 6. In relation to the complainants concern that a further business case was needed, after considering all the information that had come before it, Council decided a further business case study to compare the SSE and the SLRT was not needed. Council's decision will not be reopened by the Auditor General.
9. A value for money/performance audit to examine management practices, controls, and reporting systems to achieve Council's direction in a cost-effective manner is within the purview of the Auditor General, and may form part of a future audit.
10. Our investigation included our own staff, as well as a Senior Managing Director of an external reputable forensic firm to lead the investigation.

We found:

- i. no evidence of any lack of integrity on the part of CEO Byford or other TTC personnel in its preparation.
  - ii. no evidence of a systemic problem of political interference or staff being pressured by elected officials, including the Mayor and his office, in relation to the development of the ridership numbers and the preparation and distribution of the note.
  - iii. that in our view, the briefing note estimate was within an acceptable range given the stage of the project, the nature of a briefing note and the caveats contained therein. The briefing note highlights that the figures are "*estimates only*," intended for a "*high level cost comparison*". After evaluating the reasonableness of the figures, it is our view that even if construction on the SLRT could have begun several years earlier, the potential difference between the briefing note figures and our calculated escalated cost is within an acceptable range for estimates at that stage of completion.
11. These findings are described in further detail in the body of this report. We also made recommendations that will help prevent similar situations from arising in the future. The report includes some background information about the recent history of large-scale transit projects in the City of Toronto, which will help to put the complaint into context.

## BACKGROUND

12. In order to fully understand the contents of the briefing note and the complaint, which are contained in the next section, an overview of these two transit options is important.
13. The Scarborough Rapid Transit (SRT), Line 3, currently runs between McCowan Station and Kennedy Station, where there is an interchange with the Bloor-Danforth subway, Line 2. The SRT is an aging infrastructure in need of replacing. City Council approved its replacement with a seven-stop SLRT. A Master Agreement between the City, the TTC and Metrolinx, a provincial transportation agency, was signed in November 2012. It provided a legal framework for the delivery of the Toronto Light Rail Transit Program, a transit program that included the SLRT, Eglinton Crosstown LRT (ECLRT), Sheppard East LRT, and Finch West LRT.
14. On May 9, 2013, Toronto City Council voted 35-9 in favour of EX 31.3, motion 3, which states *"That City of Toronto City Council support the extension of the Bloor Danforth Subway Line from Kennedy Station to the Scarborough Town Centre and north to Sheppard Avenue"* demonstrating conditional support to overturn the decision to replace the Scarborough SRT, Line 3, with a seven-stop SLRT.
15. In 2013, Metrolinx, was in the process of planning and designing the SLRT. Metrolinx preferred the SLRT option to the proposed subway extension.
16. A June 28, 2013, letter from Metrolinx to the City Manager outlined the benefits of the SLRT:

*"As you are aware, Metrolinx and the Government of Ontario have made a historic investment of \$8.4 billion to deliver the largest transit expansion in the history of Toronto. The network of 52 km of light rail transit will provide Toronto commuters with comfort, convenience, reliability and speed. It will keep our economy strong, ease congestion, and provide passengers with easy connections with subways, buses and GO Transit.*

*The conversion and extension of the Scarborough RT to an LRT has been the policy of the TTC, the City and Metrolinx for a number of years. The upgraded and extended line will be operated on a fully grade-separated corridor, on its own right-of-way, separate from roads and streets. It will travel at speeds similar to subways. It serves a large population with its station locations along the existing corridor, as well as the extension to Sheppard Avenue. The line will meet forecasted levels of demand for the foreseeable future, and has room for growth beyond. It is part of a longer term plan to extend rapid transit further to other communities in Scarborough."*

17. The Metrolinx letter also set out procurement and cost implications to the City if the SLRT is replaced with a subway extension. The letter outlined sunk costs, a funding gap due to the increased cost of a subway, and other issues arising from Council's conditional support in May 2013. Breaking the Master Agreement resulted in the City of Toronto being responsible for some of the sunk costs incurred by Metrolinx. In January 2015, Metrolinx and the City negotiated a settlement in relation to the sunk costs Metrolinx incurred on the SLRT project, settling for \$74.8 million.
18. In July 2013, through *CC37.17, Scarborough Rapid Transit Options* Toronto City Council confirmed the City's support for a three-stop extension of Line 2, the Bloor-Danforth subway from Kennedy Station to Scarborough Town Centre and Sheppard Avenue East, subject to various conditions that included obtaining significant funding from other levels of government.
19. On October 8, 2013, through Report *CC39.5 Scarborough Rapid Transit Options: Reporting on Council Terms and Conditions*, Toronto City Council reaffirmed its SSE decision.
20. A September 2013 Draft Report by Metrolinx entitled "*Scarborough Town Centre – LRT vs. Subway Analysis*" provided an initial assessment on the relative merits of subway and LRT technology on the Kennedy station to Scarborough Town Centre corridor. It stated that the relative subway cost compared to SLRT "*is likely +\$1Bn*". The Draft Report also stated that peak passengers were forecast at 8,000 passengers in 2031, with assumed passenger flow uplift of 35 per cent, providing a maximum flow forecast of 11,000 passengers per peak direction per peak hour.
21. During the 2013 to 2016 period, the issue of whether Scarborough and the City of Toronto would be better served, and obtain better value, from the SSE or whether the SLRT is the better alternative remained a public and political issue.
22. The City Manager provided a report entitled "*Developing Toronto's Transit Network Plan to 2031, Phase 1*" dated March 3, 2016. The report included recommendations based on strategic, technical, financial, planning and business case analysis for each project in Toronto's transit network plan including SmartTrack/GO/RER (Rapid Express Rail) (including ECLRT), Relief Line, and the Scarborough Transit Network. City Council directed the Chief City Planner and Executive Director, City Planning to complete the review of corridor options and related work for the SSE. Council directed staff to report in June 2016 with an update and recommendations the various transit projects, including the SSE.
23. On Tuesday, June 21, 2016, in preparation for the upcoming June 28, 2016 Executive Meeting, Joan Taylor, TTC's Chief of Staff, circulated an email asking that a briefing note be prepared on the implications of reintroducing an SLRT into Scarborough "*assuming this is where some of the questioning will go at*

*Executive Committee etc.” The email added that, with so many decisions made [since 2013] “...the note should identify any constraints and issues to reintroducing an LRT now (assuming it would replace a subway) or how it could be reintroduced at this point.”*

24. On June 27, the Deputy City Manager also asked for answers to a series of questions in preparation for the City's presentation before the Executive Committee. One of the questions was, *"If Council were to choose to go back to LRT instead of subway as RT replacement – what are implications? What has changed since the 2013 decision?"* City Staff advised that anticipating questions and developing answers prior to debates is not unusual. The question was forwarded to the TTC for their response.
25. TTC staff prepared a briefing note in June 2016, for the TTC CEO and the TTC Chair, entitled *"Issues Relating to Re-introduction of LRT Replacement for Line 3 (SRT)"*, in case questions were raised at the Executive Committee meeting scheduled for June 28, 2016. Although the note was prepared for that meeting, the briefing note was expanded to include cost escalation information and otherwise finalized on June 29, 2016.

26. The *"Background"* to the briefing note states that [Exhibit 1]:

*"The original proposal - to replace the aging Line 3 Scarborough (SRT) with a 7-stop LRT line, extending to Sheppard Avenue East, is shown in the attached schematic. This note summarizes the primary tasks that would have to be undertaken in the event that the LRT solution was re-introduced. It is intended to assist in the event of any questions on this matter at City Council. It is important to note that these figures are estimates only and have been escalated, as noted below." [Underlining added]*

27. The Agenda for the June 28, 2016 meeting of the City's Executive Committee outlined that:

*"City Council also directed additional analysis be undertaken in partnership with the Toronto Transit Commission (TTC) and Metrolinx to advance these projects for consideration at the June 2016 Executive Committee meeting. This report provides recommendations on the preferred options resulting from further technical, planning and initial business case analysis for SmartTrack/GO RER including Eglinton West LRT, the Scarborough Transit Network, and Relief Line. In particular this report recommends City Council approve the following options which further define the scope of each project:*

- *SmartTrack/RER Integration scenario with up to six new stations on the Stouffville/Lakeshore East GO corridor (Finch, Lawrence, Gerrard, and Unilever) and the Kitchener GO Corridor (Liberty Village and St. Clair West);*

- *An Eglinton West LRT extension with 8 to 12 stops between Mount Dennis and Renforth Gateway, as the western corridor for SmartTrack;*
  - ***Remove from further consideration the 3-stop SSE, and focus further business case analysis on a Scarborough Transit network solution that considers Express SSE options to Scarborough Centre and an extension of the Eglinton East LRT.***
  - *Approve the Pape-Eastern-Queen alignment for the first phase of Relief Line, and authorize City and TTC staff to prepare the Environmental Project Report (EPR) to move towards the Environmental Assessment (EA)/Transit Project Assessment Process (TPAP)."*
28. June 28, 2016, the Executive Committee discussed EX 16.1 "*Developing Toronto's Transit Network Plan to 2031*".
  29. June 29, 2016, the briefing note was finalized, and distributed more broadly to various parties. This process is discussed in detail in section D of this report.
  30. July 11, 2016, TTC's Board discussed entitled "*Developing Toronto's Transit Network Plan to 2031*". The briefing note was issued to board members prior to this meeting.
  31. July 12, 2016, item EX 16.1 came before City Council.
  32. In March 2017, City Council adopted EX 23.1 "*Next Steps on Scarborough Subway Extension*" that included many decisions to advance the SSE project.
  33. At the same meeting, a member of Council put forth a motion to have a "*...Business Case Analysis comparison of the Scarborough Subway Extension and the Scarborough LRT replacement of the Scarborough RT...*" This motion was voted down.

## **THE BRIEFING NOTE**

34. A core focus of our review was the briefing note because the complainant alleged that it was one of the main reasons for the decision to move to the one-stop SSE, and a prime example of political interference.
35. The purpose of the briefing note was to prepare the TTC's CEO, Byford, and the TTC Board Chair, Councillor Josh Colle, for the June 28, 2016, Executive Committee meeting and the July 12, 2016, City Council meeting. The briefing note (Exhibit 1) is entitled "*Issues Relating to Re-introduction of LRT Replacement for Line 3 (SRT)*". The City was presenting a report about potential options for Toronto's long-term transit network plan to 2031 at both meetings.

36. The briefing note was prepared in case the questions arose regarding the implications of reverting back to the SLRT option. The briefing note does not address the issue of the ultimate cost of the SLRT to the City of Toronto, as compared to the SSE, but neither was it meant to.
37. A briefing note is not expected to be at the level of detail of a report or a study. It is not intended to be a comprehensive and thorough analysis or study of alternative transit options. It is most often prepared in anticipation of questions. Council has the right to request studies, such as the business case analysis request referenced in paragraph 33.
38. The note is meant to be a summary to outline “*the primary tasks that would have to be undertaken in the event that the LRT solution was re-introduced*”. It states that the environmental assessment for the SLRT, which was approved in 2010, must be updated to address:
- A complete redesign of the environmental assessment (EA) of the SLRT connection at Kennedy Station
  - New ridership forecasts
  - A review of potential conflicts with GO/RER (Rapid Express Rail)
  - An assessment of SLRT maintenance and storage facility (MSF) options
  - The closure of Line 3
  - The need to re-examine bus terminal concepts at stations
  - An updated schedule and updated capital cost figure
  - A plan for a public meeting about amending the EA
39. The note also includes an ‘Order of Magnitude Comparison’, which states:

*“The October 2013 Council report indicated the Province had announced \$1.8B (\$2010) for construction of SRT as LRT, to Sheppard. Of the \$1.8B, the Province committed \$1.48B (\$2010) to the SSE. As a minimum, staff believe the \$1.8B should be the starting point, which would have to be updated through proper design to address the changes noted above.*

*To facilitate a high level cost comparison of the current subway estimate to the costs of an LRT at this time, the \$1.8B was escalated to an end of 2025 opening (2% per year from 2011 to 2013 and 4% per year from 2014 to mid-2023), adding SRT Life Extension and SER Shutdown service.*

<i>\$1.8B escalated</i>	<i>\$2.7B</i>
<i>SRT Life Extension</i>	<i>.108</i>
<i>SRT Shutdown</i>	<i>.171</i>
<i>-----</i>	
<i>Total</i>	<i>\$2.979B”</i>

The note includes the following caveat: "*It is important to note that these figures are estimates only and have been escalated, as noted below.*" [Underlining added]

## THE LAUNCH OF OUR INVESTIGATION

40. In October 2016, some news articles reported that the briefing note prepared by the TTC may have provided misleading information about the costs of the SSE compared to the SLRT. The articles suggested that the information in the note was influenced by politicians. The TTC's Chief Executive Officer, Byford, considered that suggestion to be false.
41. Byford informed us that he promptly contacted Toronto's Ombudsman and requested an investigation into the allegations, confident that his reputation and the reputation of the TTC would be cleared. The Ombudsman declined Byford's investigation request.
42. On January 19, 2017, a citizen advocacy group submitted a formal complaint to the City of Toronto's Ombudsman, essentially requesting, in our view, the same thing as Byford had: an investigation to confirm that the briefing note was not misleading and not politically influenced (Exhibit 3). The Ombudsman referred the complainants to the Auditor General because the bulk of the allegations related to alleged wrongdoing about financial matters, which fall under the Auditor General's jurisdiction. Those matters are within the jurisdiction of the Auditor General.
43. Wrongdoing refers to serious actions that are contrary to the public interest including, but not limited to: fraud, theft of City assets, waste, mismanagement of City resources or assets in a willful, intentional or negligent manner that contravenes a City policy or direction by Council, violations of the City's conflict of interest provisions, and breaches of public trust.
44. If the briefing note was prepared to deliberately mislead Council, it would be a breach of the public's trust.
45. In discussions with the Auditor General, the complainant clarified that:

*"We had not considered the situation that we complained of to be one of 'wrongdoing', which appears to be defined in the Public Service Bylaw as financially-related transgressions of a deliberate nature. We see the situation we complained of as a more systemic problem, involving political interference by elected officials."* [Underlining added]
46. The complainants then submitted a formal complaint to the Auditor General (Exhibit 2), with similar allegations, but with more detail. Their main concern was that political interference resulted in inaccurate, incomplete and misleading

information being provided to City Council. Further, that City Council relied on this information to make its decisions about whether it would choose the SSE or SLRT. The complainants wrote:

*"We believe that from the outset there has been political interference in the process of providing factual information and evidence for Council to make decisions on this matter, in terms of the content of the information, who receives what when and how it is conveyed. [underline added] It appears to us that the mayor's officer has influenced the information and evidence that has been presented to council and has interfered with the council's democratic processes in order to achieve an outcome in line with his political preferences." [Underlining added]*

47. According to the complainants, Council's decision to proceed with a one-stop subway was "*made in large part on the basis of a June 29, 2016, briefing note prepared by TTC Staff*".

48. The complainants wrote:

*"The Subway model's abandonment of the current SRT stations means that people who live near and use those stations are also abandoned. Much of the housing in these areas was built explicitly because of the proximity to the stations. If the subway is built the people who live there will have to use busses or drive and may see the value of their properties decline."*

## **MAIN ALLEGATIONS REGARDING POLITICAL INTERFERENCE**

49. We examined four examples where in the complaint, and during the investigation, there were suggestions that staff provided misleading information to council because of political interference:

1. Ridership numbers
2. Stage of completion of Kennedy Station
3. Briefing note content
  - a. Was the Kennedy Station on the critical path?
  - b. Was using a cost escalation to compare the SLRT to the SSE reasonable?
  - c. What is the estimated cost impact, including the impact of starting at the North end of the SLRT?
4. Briefing note preparation and distribution process



50. With respect to items 3 and 4 above, this report addresses how the briefing note came to be drafted, evaluates the reasonableness of financial and other information in the briefing note, addresses possible pressures influencing the contents of the briefing note, and considers the process used to distribute the briefing note.
51. The full complaint that was submitted to the Auditor General is contained in Exhibit 2.

## FINDING DETAILS

### A. RIDERSHIP NUMBERS

52. The complainants stated that key Council advisors, like the TTC CEO, Byford, and Jennifer Keesmaat, the former Chief Planner and Executive Director, City Planning Division, had changed their advice to Council over time as a result of political pressure. They noted:

*"We ... believe that whether or not a situation existed during the decision process where staff feared reprisal and were thus unable to share their expertise or whether it was the case that expert knowledge was neither wanted nor welcome, the end result was the same: priorities and solid planning methodology were jettisoned, evidence was manipulated and decisions were made on shaky foundations."*

*"... the evolution of these experts (referring to Keesmaat and Byford) to being subway supporters is indicative of how elected officials required the facts be manipulated to fit their proposals rather than basing decisions on facts".*  
[underlining added]

53. One example where the complainant believes that key advisors were politicized was in the preparation of transit ridership numbers. A question was raised regarding why the numbers changed from around 9,500 to 14,000 passengers per hour in peak direction (pphpd). According to the complainant:

*"Initially it wasn't clear where the ridership numbers to justify the subway came from. Not from Keesmaat or Byford...so who threw the number out? In order to get it past Keesmaat and Byford, the pressure to use the numbers would have had to come from the top."* [Underline added]

The complainants wrote:

*"[Keesmaat] revealed that she had been surprised by the 14,000 figure that did not come from her department and that TTC CEO ... claimed that the TTC had not increased the figures. [Keesmaat] later explained that the new numbers came from revised population estimates, an assumption that all*

*planned transit lines will be complete and an assumption of increased frequency of trains...”*

54. The primary concern identified to us was that the ridership numbers for the SSE increased from 9,500 peak passengers per hour in the peak direction (pphpd) to 14,000, an increase that was identified as favouring the SSE over the SLRT alternative.
55. We reviewed the source of these ridership forecasts and the main changes in assumptions in order to evaluate the potential that staff were politically influenced when providing these numbers.
56. Ridership numbers for the SSE were presented as 9,500 peak passengers per hour in the peak direction based on an August 2006 Report entitled “Final Report Scarborough RT: Strategic Plan – Study Report”. The 9,500 pphpd was based on Official Plan projections of growth in population and employment to 2021, extrapolated to 2031. The 9,500 pphpd was based on a proposed subway extension with two stops, ending at the Scarborough Town Centre.
57. A January 21, 2013, TTC Report illustrated a possible three stop subway extension to Sheppard Avenue East and it projected that the line would “*carry passenger volumes upwards of 9,500 pphpd in the busiest hour of travel.*” [underlining added]. No new ridership forecast was presented and the projection continued to rely on the 2006 TTC Report.
58. In July 2013, the City Manager and the CEO of the TTC, issued Report CC37.17 presenting potential financial, planning and other implications of pursuing the extension of Line 2, the Bloor-Danforth subway instead of the SLRT. The report acknowledges that the SLRT option has received more extensive study and that the lack of time to consider all assumptions introduces risk into considerations of transportation network and land use implications. It also states that further work is required “*to accurately report on forecast subway ridership as it relates to network planning considerations*”.
59. The July 2013 City Staff Report, in reliance on the January 2013 TTC Report, projected peak hour ridership in 2031 of 9,500 to 14,000 pphpd for the subway extension of Line 2, as compared to 8,000 pphpd for SLRT. The section of the Staff Report addressing ridership included the caveat that:

*“A more recent preliminary assessment undertaken by City Transportation Planning staff has resulted in a higher number of approximately 14,000 persons/hr (peak direction) reflecting more current transit network and land use forecasting assumptions. The lack of time to consider all of the necessary assumptions in further detail is reflected in the high degree of variability in the ridership projections for a subway.”*

60. The same section of the City Staff Report addressing ridership also included the caveats and assumptions that, for the 14,000 pphpd, assumes the downtown relief line is in place by 2031. The Staff Report stated that *“There are several other key assumptions that would normally be tested further to understand the full consequences of a subway option on accommodating future travel patterns on the transit network.”* The ranges were thus highlighted as being preliminary.
61. Since 2013, the Planning Division has been able to perform more due diligence to confirm the ridership numbers.
62. A memorandum from Keesmaat, dated October 9, 2015, provided a response to a councillor's inquiry concerning ridership forecasts. The response includes the following:
- “The ridership figure of 14,000 riders provided at that meeting was accurate based on the assumptions and information available at the time...”*
- “The reference to “upwards of 9,500 passengers” reflects the fact that there is a range with a reported lower limit. However, the updated ridership forecast must be established using the City’s new forecasting model, and is work that has yet to be completed.”*
63. The memorandum included attachments detailing the underlying assumptions that have led to different ridership forecasts. The different assumptions provide more support for the 14,000 ridership number. The 14,000 ridership number is more current as it is prepared in 2013 versus 2006. The number was deemed to be more appropriate because it was prepared by City Planning, versus TTC. It was based on broader considerations included in the City’s modelling, such as a 2031 forecast year, versus 2021 extrapolated linearly to 2031, updated population and employment forecasts, different frequencies of service, and different rapid transit networks existing in 2031.
64. The input assumptions and forecasts were presented as part of an attachment to the response from the Keesmaat to a councillor and are included below in Table 1.

**Table 1: Input Assumptions and Forecasts to SSE Ridership Forecasts – 2013 versus 2006**

	<b>Study Year 2013</b>	<b>Study Year 2006</b>
Ridership forecast (morning peak hour, peak direction)	14,000	9,500
Prepared by	City Planning	TTC
Year forecast prepared	2013	2006

Purpose of forecasts	"Feeling Congested?" review across 25 transit projects	Unknown
Forecast year	2031	2031 (2021 linearly extrapolated)
City population forecast	3.08 million	2.80 million
City employment forecast	1.83 million	1.70 million
SSE terminus station	Sheppard Avenue	Scarborough City Centre
Transfer at Kennedy?	No	No
Frequency of subway service on the subway extension	Same as the frequency of service on the Bloor-Danforth line west of Kennedy station	Half the frequency of service on the Bloor-Danforth line west of Kennedy station
2031 rapid transit network includes:	Toronto-York-Spadina Subway Extension, Eglinton Crosstown LRT, Sheppard LRT, Finch LRT	Toronto-York-Spadina Subway Extension, Sheppard Subway extended from Don Mills Station to Scarborough City Centre

65. We also reviewed correspondence from Keesmaat to others regarding ridership numbers. A March 8, 2016, letter, for example, addressed the difference in assumptions between the 9,500 and 14,000 pphpd. Her response included information related to ridership numbers published in 2016 by Professor Eric Miller of the University of Toronto, who was retained by the City of Toronto to prepare ridership forecasts for SmartTrack. The response stated (page 4):

*“The scope of his work included forecasting SSE ridership both with and without SmartTrack, for 2031 and 2041 horizon years, using updated land use and transit network assumptions. Four alternative SSE corridors were tested. Ridership ranges from 13,700 to 17,700 by 2031.”*

66. In addition, Keesmaat provided a letter to Councillor Matlow dated March 30, 2016, about concerns he raised about ridership projections for the SSE as compared to ridership on existing subway lines at a March 9, 2016, Executive Committee meeting. This letter provided comments on comparisons raised by Matlow but also highlighted comparisons of ridership forecasts for the SSE to the first 3 or 4 subway stops of Line 2, the Bloor-Danforth subway in Etobicoke.
67. The response also highlighted the improvements in ridership forecasting models over time and the positive peer review results the ridership forecasting model has received.
68. An audit of the accuracy of ridership numbers was not part of the scope of this review. Our focus was to determine whether the explanations provided for the different forecast pphpd numbers and ranges are reasonable from our layman’s perspective and whether there was any indication that the higher numbers were included because of political pressure.

69. We found no indication that ridership forecast numbers were manipulated. Proper caveats were used in 2013 to reflect that the 14,000 pphpd was a preliminary estimate. With additional work, the Planning Division has confirmed that 14,000 was a reasonable estimate.<sup>1</sup>
70. Keesmaat verified that all statements made in this section of this report are accurate. She also advised us that there was no politicization of herself or the Planning Division staff to adjust the ridership numbers.
71. We conclude Keesmaat's advice was given on the basis of her professional judgement.

## **B. RESPONSES RELATING TO THE STAGE OF COMPLETION OF KENNEDY STATION**

72. Similarly, there were questions raised by an interviewee about the Deputy City Manager's (DCM) response in the July 12, 2016, Council meeting. The DCM described the level of completion of Kennedy Station as *"some elements are at 5 and some are at 10% completion"*.
73. We saw that on March 21, 2017, Councillor Matlow wrote to the City Manager concerned that the DCM's response was *"seemingly at odds with the information presented by Metrolinx"*. Councillor Matlow cited Metrolinx's April 2012 Board Report said *"the longest portion of the line, between Kennedy and McCowan, was at 30% design completion."* Given that this issue arose several times during our investigation we looked at it to assess if the information being conveyed was accurate, and if not, was there any indication that it was being politically influenced.
74. We noted that in response to Councillor Matlow's letter, the City Manager provided more detailed information in his March 27, 2017, letter to Councillor Matlow wherein he quoted the exact wording of Metrolinx's 2012 Board Report.
75. Councillor Matlow's letter and the City Manager's response was included as part of Council's briefing materials for the March 28, 2017, Council debate on Council item EX23.1 *Next Steps on the Scarborough Subway Extension* debate.
76. The DCM confirmed to us that while responding to questions on the floor of Council in July 2016, he provided the best information that he could recall. When more clarity was sought by Councillor Matlow, the City Manager provided more detailed information in his March 27, 2017, letter.

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<sup>1</sup>We recognize that ridership forecasts have changed because of the decision to move to a one-stop subway. We did not audit the new ridership numbers. The focus of our review related to the complainants concerns outlined in paragraph 54.

77. To further evaluate the reasonableness of information being conveyed to Council, we asked Metrolinx to confirm their understanding of the design level in 2013. Metrolinx advised that, in 2013, the SLRT project “*would have been at reference concept design (RCD) phase at this point, which would have been approximately 10% design (at most).*”

78. We further inquired with Metrolinx regarding a report tabled at their April 2012 Board meeting, where the following percentage completion related to the SLRT was presented to the Board.

*“Scarborough RT This project involves the replacement of the Scarborough RT with a LRT and its extension from McCowan to Sheppard. The total length of the project is 9.9 kilometres and it is forecasted to carry approximately 10,000 pphpd, within the capacity of a LRT. Major project delivery milestones to date for the Scarborough RT include completion of design for the replacement of the SRT to 30 percent and completed design for Kennedy Station to 10 percent. Design for the extension component of the SRT, between McCowan and Sheppard will need to be restarted” [Underlining added]*

79. Metrolinx clarified that their reference to the design level, explained in the paragraph above, was based on overall AFP (Alternative Financing and Procurement) criteria for the project as a whole, whereas the concept design for specific aspects of the SLRT would have been at different percentages of completion, as set out in the Metrolinx board meeting in April 2012.

80. We conclude that at the Council Meeting, the DCM shared what he thought to be correct. When a question was raised to clarify the level of completion, the City Manager provided relevant and timely clarifications. Council was provided with full information prior to the March 28, 2017 debate.

81. We found no evidence of staff trying to mislead Council.

## C. QUESTIONS ABOUT TIMING, CRITICAL PATH AND STARTING AT THE NORTH END

82. The complainants raised allegations that certain parts of the briefing note were prepared to deliberately mislead Council. Some of these allegations centered around information relating to the timing of construction, critical path elements and cost escalation. A critical path is the sequence of events in a project that if any are delayed will delay the entire project.

83. The “Timing” section of the briefing note states that:

*“From the point Council directs staff to proceed with an LRT solution, a very rough estimate would be that it would take approximately 12 to 18 months to present a revised plan to obtain Council and MOE approval. This is very much dependent upon the time required to identify, and obtain acceptance of, a new connection at Kennedy Station.*

*The construction at Kennedy Station is the key element on the critical path for the LRT and depending if the preferred design is above or below grade, construction could range from approximately 3.5 to 5 years. If staff are directed to proceed in July 2016 and assuming construction cannot begin before the ECLRT work at Kennedy is completed in 2021, a quick preliminary evaluation suggests the LRT could be operational in early 2026 to late 2027.*  
[Underlining added]

84. The overall timing set out in the briefing note is based on the following factors:

- i. That Kennedy Station is the key element on the critical path for the SLRT and thus that starting at the northern end of the SLRT would not reduce the time to complete the project;
- ii. That construction cannot start until the ECLRT work at Kennedy Station is completed; and
- iii. That the construction will take from approximately 3.5 to 5 years to complete.

### C.1. Was Kennedy Station on the critical path?

85. The briefing note states that:

*“The most complex aspect of the conceptual design work on the LRT was the connection at Kennedy Station. The recommended solution, shown in the attachments in plan and cross-section views, consisted of a large one-way loop with the LRT station directly on top of the Eglinton Crosstown LRT (ECLRT) station. As Metrolinx’s plans for the ECLRT were finalized after Council approved subway technology in October 2013, they did not make any*

*provision for the LRT connection. This LRT connection is now physically precluded by the current ECLRT plans and an entirely new design would have to be developed.”*

86. Gary Carr, the Project Manager for the SSE, Rick Thompson, the Chief Project Manager of the SSE, and Byford all advised that they believed that Kennedy Station was the key element on the critical path for the SLRT. They also all advised that although work could commence on the north end of the SLRT, starting at the north end would not speed up the construction too much because Kennedy Station was a critical element.
87. Thompson shared with us a cross-section drawing of the ECLRT, dated April 2016, that shows the location of the ECLRT track and concourse at Kennedy Station in 2016 when the briefing note was prepared. He compared this drawing to the cross-section attached to the briefing note, where the SLRT would have been located directly above the ECLRT concourse. Thompson outlined the implication of the relocated ECLRT concourse to re-accommodate the SLRT on the overall Kennedy Station site and highlighted the planning difficulties. It was Thompson's understanding of the ECLRT Alternative Financing Procurement (AFP) contract that Metrolinx would not allow any work by other parties to be completed at Kennedy station until the ECLRT was completed.
88. TTC's informed us that they made the assumption that construction could not start until the ECLRT interchange at Kennedy Station was completed was based on prior TTC interactions with Metrolinx. Examples were given to support how TTC arrived at this assumption, including a 2015 situation where TTC sought an alternate surface configuration for the ECLRT. Metrolinx's Vice President of Rapid Transit, Capital Projects Group advised in writing that such changes this late in the bid process would have "*a severe and unacceptable impact*" on the AFP. Metrolinx noted that "*the bids are now in*" and:

*“Upon a review with our procurement and legal specialists we have concluded that a scope change of this magnitude and complexity, this late in the process, would have a severe and unacceptable impact on this AFP Project triggering serious stakeholder, regulatory and commercial issues potentially putting the entire procurement at risk. Metrolinx; therefore, is not in a position to entertain this change.” [Underlining added]*

*“Please be assured that Metrolinx is committed to cooperate with the TTC as a partner in the implementation of the ECLRT but remain unable, at this stage of our procurement process, to consider alternatives to the design that would jeopardize the timely and feasible implementation of the project.”*

89. We understand that the letter relates to changes during a procurement process, rather than implementing a change order after the contract has been put in place. However, it was provided as one example and part of the rationale as to why TTC



was under the impression that reverting back to the SLRT could not be reasonably entertained until after the ECLRT was in place. TTC's emails corroborated that they were based on this understanding.

90. We contacted Metrolinx staff during our investigative process to determine if changes could have been made to accommodate starting the build of an SLRT 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.”*

91. Metrolinx further commented that:

*“An added complication would be the impact of Kennedy Station redesign on the active ECLRT AFP contract. This could adversely affect the cost and schedule of the Metrolinx contract. That being said it has always been Metrolinx’s position that the Scarborough LRT was the best solution.”*

92. Metrolinx also advised that:

*“Design changes would have to occur to accommodate this, along with contractual changes, which would have financial impacts. We cannot comment further on the legal restrictions associated with these changes.”* [Underlining added]

93. We concluded that although the briefing note describes required changes to Kennedy Station, it did not reference that Metrolinx would have been open to discussions about accommodating a return to the SLRT, albeit with possible significant financial and legal implications.
94. We further accept that, from all the information provided to us, the TTC personnel responsible for drafting the briefing note believed that Kennedy Station was on the critical path and that starting at the north end, although possible, would not reduce the overall time to complete the SLRT. Thus, it was TTC Staff's view that work would have needed to wait until the ECLRT work at Kennedy was completed in 2021 to begin construction of the SLRT to align at Kennedy Station.
95. In our opinion, on a balance of probabilities, it is reasonable to conclude that Kennedy Station could be redesigned prior to finalizing the design and constructing the changes to the station required by the ECLRT, and thus construction would not be delayed until the ECLRT construction at Kennedy

Station was completed. We considered the impact of this possibility in the next section.

## **C.2. Was preparing the cost escalation (Order of Magnitude) reasonable?**

96. The briefing note stated that the cost escalation it included was *“to facilitate a high level cost comparison of the current subway estimate to the costs of an LRT at this time...”*
97. Thompson was on vacation during the preparation of the draft briefing note. He advised us that, on his return to work on June 27, 2016, he reviewed the contents of the briefing note and proposed including the cost escalation to allow a more consistent comparison of its project costs to those of the SSE. The note was forwarded to CEO Byford, with the comment that *“it may be useful in responding to questions.”*
98. The escalation calculation was sent to Byford by Thompson in emails dated late in the day on June 27 and early on June 28. Byford appears to have referenced some of this information in response to questions at the Executive Committee with the caveat that the costs would need to be properly examined.
99. The order of magnitude/cost escalated comparison appears to have been added on June 29<sup>th</sup> to the briefing note. The calculations were at a high level and added at the last minute to the briefing note, in addition to the inclusion of a sentence to the Background section of the briefing note stating that, *“It is important to note that these figures are estimates only and have been escalated, as noted below.”* [see Exhibit 1]
100. Bruce McCuaig, Metrolinx's former CEO, confirmed to us that he was not involved with the preparation of the briefing note. On June 29<sup>th</sup>, he contacted Byford and asked how he arrived at \$3 billion for the SLRT. Emails showed that on June 29<sup>th</sup> McCuaig advised TTC of his view that Kennedy Station costs (\$320 million) would need to be netted out of the \$1.8 billion starting cost.
101. Susan Reed Tanaka, Chief Capital Officer for the TTC, emailed Byford later that day to explain why the \$1.8 billion was used as a starting figure.

*“The original \$1.8 (billion) was based on SRT as LRT, and included modifications to Kennedy. (When the decision was made to move to the subway, it) ...eliminated the need to modify Kennedy, the Province reduced the funding by \$320 M, to \$1.48 (billion). If we were to revert to an LRT, an SRT connection at Kennedy would have to be reintroduced, so \$1.8M was used as a starting point and inflated based on current schedule projections.”*
102. The TTC escalated the \$1.8 billion to \$2.7 billion to account for inflation in the construction sector because the project would be completed over time (known as Year of Expenditure dollars), which is consistent with the methodology TTC used

to escalate the cost of the SSE. The TTC then added costs to extend the SRT until the SLRT was functional, and costs to shut down the SRT, for a total estimated cost of \$2.979 billion to reintroduce the SLRT. We verified that the escalation calculations were consistent with escalation calculations used for the SSE and other TTC projects.

103. When the briefing note was forwarded to the Mayor's office, Brad Ross, Executive Director, Corporate Communications, commented that, "*The caveats around numbers and assumptions can't be emphasized enough.*"
104. Keesmaat advised that she considered the order of magnitude comparison appropriate and helpful as the SLRT costs were in 2010 dollars whereas the subway extension costs were escalated to an end of 2025 opening date.
105. We conclude that the decision to prepare a cost escalation for the SLRT was reasonable.

**C.3. What was the impact on the cost escalation if construction on the LRT started earlier – including if construction could start at the north end?**

106. The cost escalation assumed the SLRT would be operational at the end of 2025 based on a 2021 ECLRT finish and 3.5 to 5 years of construction, with escalation to mid-2023, which is the midpoint of a 5 year construction period assuming the ECLRT was completed in early 2021.
107. The "Timing" section of the briefing note states that "*...a quick preliminary evaluation suggests the LRT could be operational in early 2026 to late 2027.*" This section assumes a longer construction period of from 5 to 7 years, again assuming the ECLRT was completed in early 2021.
108. The escalation information was based on information provided by Thompson. Thompson calculated the escalation at \$2.77 billion (which he rounded down to \$2.7 billion), a calculation consistent with the methodology set out in the briefing note and used in the calculation of the escalation of the price of the SSE.
109. The calculation was based on the assumption stated in the briefing note "*assuming construction cannot begin before the ECLRT work at Kennedy is completed in 2021*".
110. If we accept Metrolinx's view that Kennedy Station design and construction could have been renegotiated to accommodate the ECLRT and SLRT at the same time it likely would have reduced the timing and thus the escalation by approximately \$150 to \$250 million. We recognize that there may be other potential savings such as the cost to extend the SRT, which would not need to be kept in operation as long.
111. We further considered what the impact would be if the starting point for the escalation was \$1.48 billion rather than \$1.8 billion, a reduction of \$320 million in

2010 dollars. It is important to note that the \$1.48 billion this does include the added, possibly significant costs that result from changes that have occurred since 2013. Given that ECLRT is currently being constructed and that the SLRT loop at Kennedy was not protected, it is reasonable to assume that on a balance of probabilities, substantial costs could be expended, including: the cost to redesign Kennedy Station to accommodate the SLRT, legal costs to re-negotiate the agreement with Metrolinx for Kennedy station access, change order costs with the contractor constructing the ECLRT, and ECLRT contract delay costs. These additional costs would offset, at least in part, the \$320 million.

112. The briefing note was prepared at a time when the Kennedy Station would need redesign but where it had previously reached the 10% design stage milestone. At this design level, the 2012 cost estimates appear to be Class 4 estimates according to the AACE Cost Estimate Classification System, with an accuracy range of -30% to +50%.<sup>2</sup> TTC calculated the escalated cost to be \$2.7 billion. Although we didn't complete an extensive analysis, we conducted a reasonableness assessment assuming construction could have started around 2018, assuming a cost reduction from Kennedy Station costs being borne by the ECLRT project, and assuming additional costs as set out above. In our view, based on these assumptions the estimate is likely still within the expected range of accuracy for early stages of design, a Class 4. Even if we use a stage of completion of 30%, the estimate still appears to be within a Class 3 estimate range.
113. We agree that including a cost escalation/order of magnitude comparison was appropriate. We also note that the TTC provided supportable reasons for proceeding as they did. In hindsight, engaging with Metrolinx may have better informed the calculations. This is a go-forward lesion. After factoring in the impact of starting with a lower cost base and starting construction earlier, and after considering there would be possibly significant offsetting costs, however, our view is that the impact is still within a Class 4 and a Class 3 estimate range.

#### **Recommendation:**

- 1. The Board request the Chief Executive Officer, Toronto Transit Commission, to provide more clarity in relation to the assumptions being relied on when the information is used in briefing notes.**

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<sup>2</sup> AACE International – Cost Estimate Classification System – *As Applied in Engineering, Procurement, and Construction for the Process Industries - Recommended Practice No. 18R-97*. This same classification system was the benchmark used in the Initial Business Case for the SSE.

## **D. ALLEGATIONS ABOUT STAFF BEING POLITICIZED BY PREPARING A BRIEFING NOTE**

114. The complainant raised that it was important to know who requested the briefing note. They wrote "*It seems to us that no one but the mayor would have the authority to make this request.*" They also allege political interference in the content and in the manner in which it was presented to Council.

### **D.1 Who requested the briefing note?**

115. Any councillor can request a briefing note on any topic. Making a request to staff for a briefing note is not considered politicization of staff.
116. According to section 136 of the *City of Toronto Act*, it is staff's role to undertake research and to provide advice to City Council. The *Toronto Public Service Bylaw*, section 192-3D, requires the public service to maintain political neutrality, which according to the City's website means ensuring, amongst other things:

*"that business-related information is provided equally to all Members of Council. This does not preclude us from assisting individual Councillors in problem-solving or responding to requests for information."* [Underlining added]

117. Also, it would not be unusual for staff to anticipate questions in this area. From the first day that we can see the briefing note being prepared, it is clear that the briefing note was being prepared for the CEO and the Chair of the TTC Board in anticipation of questions that might be asked at Executive Committee. That said, as the Chair of the TTC's Board and the Mayor, as the CEO of City Council, it would be reasonable to have made such an information request.
118. Preparing for potential questions is a normal part of staff duties. We have no information to suggest came from a Member of Council. However, even if such a request did come from a Member of Council, we would not consider this to be political interference because it is a normal part of staff's obligation to respond to requests for information by council members.

### **D.2. How was the content of the briefing note developed?**

119. In addition to the requirement for staff to maintain integrity and political neutrality under the *Toronto Public Service Bylaw*, the *Code of Conduct* for Members of Council highlights that the role of public service is to provide neutral and objective advice to members of council.

*The Code of Conduct for Members of Council states that "members should be respectful of the role of staff to provide advice based on political neutrality and*

objectivity and without undue influence from any individual member or faction of the council." [underline added]

120. The TTC's Code of Conduct Policy states that:

*"9.3 It is every employee's responsibility to ensure that all information collected, produced or obtained in the course of their duties and responsibilities, whether in reports, memos, oral communication or electronic format, is as accurate as possible. No employee shall willfully mislead other employees, contractors, management or the public about any issue of Commission concern." [Underlining added]*

121. During our review we analyzed thousands of pages of emails, reports and interviews. The preparation of the briefing note appears to be consistent with staff operating in a neutral and normal manner. We saw no evidence of any request to change the content of the briefing note by a Member of Council or their staff or any attempt to provide misleading information.

122. The former Director of Communications, Amanda Galbraith, confirmed that she has no knowledge of any involvement of the Mayor's Office in drafting the briefing note. The Mayor's Chief of Staff affirmed the same thing. Similarly, TTC CEO Byford confirmed that the Mayor's Office staff was not involved in the preparation of the note, and that the Mayor's Office neither influenced nor tried to influence the note's contents. This is consistent with our interviews and document review during this engagement.

123. Had we found evidence that a Member of Council tried to interfere with staff's professional obligations and duties, the Auditor General would have referred the matter to the Integrity Commissioner. No such evidence was found. No referral has been made.

**D.3. Were there deficiencies in the dissemination of the briefing note to councillors?**

124. In our view, some questions have arisen in this case because of the events surrounding the distribution of the briefing note.

125. Toronto Public Service Value of maintaining neutrality includes ensuring that business related information be *"provided equally to all Members of Council."* It was the TTC's responsibility to distribute the briefing note properly.

126. The DCM had an early draft of the briefing note in his briefing materials for the June 28, 2016, Executive Committee meeting, along with a PowerPoint presentation by the City on *Developing Toronto's Transit Network Plan to 2031*. The DCM's version did not include the cost escalation information. Byford had an email from Thompson containing the cost escalation information, and this

information was subsequently added to the briefing note, prior to the Executive Committee meeting.

127. When the briefing note was completed, it was sent to Galbraith on June 29, 2016 at 6:21 pm to assist with understanding the impact of reintroducing an SLRT. As an attachment to an email from Brad Ross, Executive Director, Corporate Communications for the TTC, the body of which stated that:

*“Attached is a BN [briefing note] to help understand the issue of reintroducing an LRT into the current SRT corridor. The caveats around numbers and assumptions can’t be emphasized enough. Amanda / Kristen – please share with Mayor, Chair and Chris as you see fit.”*
128. Galbraith responded: *“Hey thanks for this, it’s really helpful. Can we discuss what you’re doing with this?”*
129. On June 30, 2016, an email from Galbraith to Ross with the subject line “Re: BN” stated that she would like to *“discuss possibly distributing this info more widely”*.
130. Ross advised the investigators that he was informed by the Mayor’s Office that they had circulated the briefing note to all City councillors. He recalled that he would have most likely received this confirmation verbally.
131. On June 15, 2017, Galbraith advised us that, after reviewing relevant emails we provided to her, she does not have a clear recollection of the distribution process. However, she told us that if she had confirmed this to Ross then it would have been distributed to all councillors. She advised that it was *“not uncommon for the Mayor’s office to send emails to councilors on major issues.”*
132. An email dated July 4, 2016, from Ross to Galbraith attached the briefing note and stated *“Want to ensure you have the latest”*. This version of the briefing note corrected the spelling of “Issues”. However, the briefing note included only one attachment, of the SLRT route, and not the attachments related to the Kennedy Station as referenced in the briefing note.
133. That same day, on behalf of the TTC Board Chair, the briefing note was forwarded to all members of the TTC Board in advance of the July 11th board meeting, which included the report *Developing Toronto’s Transit Network Plan to 2031*.
134. An email dated July 6, 2016, from Thompson to Peter Notaro, former Executive Director, Strategic & Corporate Policy, City Manager’s Office, and copied to others, including Ross, Thompson wrote: *“it was suggested that we should consider issuing it to all councillors. I was subsequently advised by Brad that the mayor’s office had already circulated to the councillors. Not sure if it was issued*

*with all of the attachments, as I had one councillor's office calling to request them. Suggest it be reissued to all councillors, in full." [Underlining added]*

135. An email dated July 8, 2016, from Thompson to Notaro requested that he confirm whether the briefing note was redistributed and states that a Councillor's office called a few days prior asking for the attachments "*and if you haven't reissued, I need to respond to them*". Thompson's email was forwarded by Notaro to Taylor, TTC's Chief of Staff, without further comment. We were unable to confirm whether Notaro assumed that the TTC would take further action to distribute the note.
136. An email dated later in the day on July 8, 2016 from Thompson to the DCM, copied to Notaro, Taylor and others, attached the briefing note and related attachments.
137. On June 19, 2017, Don Peat, the current Director of Communications for the Mayor, advised the investigators that he does not know whether the distribution occurred or who in the office would know as he was not in the Mayor's Office at that time. We spoke to the Mayor's Chief of Staff to confirm whether there is a record of the distribution of the note taking place. We did not find any email that would show the note was distributed by the Mayor's Office.
138. We interviewed some councillors and they confirmed that they had no record of the briefing note being sent electronically to them.
139. We note that Thompson's email to Notaro said that he was advised by Ross that the Mayor's office had already circulated the briefing note to the councillors. The email from Galbraith only asks whether the note can be distributed '*more widely*'.
140. In any case, when the TTC realized that the briefing note was missing attachments and that it may not have been distributed to all councillors, it then requested the City Manager's Office to ensure the briefing note was redistributed to councillors. We found no email to confirm that the briefing note was, in fact, distributed to all councillors.
141. Based on a review of emails and interviews, it looks as if the TTC was trying to get the briefing note distributed to all councillors, but there was a breakdown in the distribution process and misunderstandings between TTC, the Mayor's Office and the City Manager's Office. Although the briefing note was not shared equally, it does not appear that this deficiency was intentional.
142. We conclude that there were deficiencies in how the briefing note was distributed. It was the TTC's responsibility to ensure the briefing note was properly distributed. Nothing came to our attention to support that there was politicization of staff in the dissemination of the briefing note.



143. All City Council members have equal rights to information that is relevant to a decision. Under the *City of Toronto Act (COTA)*, the powers and duties of the City are carried out by City Council as a whole. Chapter 27, Council Procedures, all members have equal rights, privileges and obligations. Further, all members have the right to information to help make decisions, unless otherwise prevented by law.
144. Generally, the types of information that are contained in communications to Council members is public information. It is information that should be routinely disclosed if requested. It is information that would often be disclosed upon an access request. Information that is subject to withholding would likely be reviewed by Access and Privacy staff in any event.
145. Though initially it appears that the briefing note was developed for the Chair of TTC Board and the CEO, it became clear that TTC intended that the briefing note be distributed to Members of Council and was under the impression it had been. For various reasons, this did not occur.
146. Non-disclosure or unequal distribution, even if it is inadvertent, reduces transparency and may raise questions. Routine proactive disclosure through a better, defined process, will help the City avoid the appearance of a secret, private channel of communications. We spoke with the City Clerk's Office and confirmed that generally, more clarity is needed to define when briefing notes in the form of memos, briefing notes, bulletins, updates, announcements that are relevant to a decision and when they should be shared, especially when a member of Council has a dual role as a Board Chair or a CEO.
147. We also note that Vancouver has implemented a public register to house communications issued to all members of Council, outside its formal legislative process. (<http://vancouver.ca/your-government/city-managers-emails-and-memos-to-mayor-and-council.aspx>). This register includes briefing notes, announcements, updates and related communications. Documents are posted online for everyone to see. This practice increases openness and transparency and eliminates the need for the public to make access requests for such information.

## **Recommendations:**

- 2. City Council request the City Clerk implement protocols defining when it is appropriate to share briefing notes, as well as an online public repository to house briefing notes, bulletins, announcements and similar communications issued by City divisions and agencies, similar to the one maintained by the City of Vancouver, and direct the City Manager to ensure that City divisions and agencies submit copies of any such correspondence to the City Clerk for the register.**
- 3. The Board request the Chief Executive Officer, Toronto Transit Commission, to ensure its briefing note distribution protocols align with and integrate seamlessly with the City distribution protocols.**

## **E. SCOPE LIMITATIONS**

### **E.1. Investigative review**

148. This was an investigative review wherein we undertook sufficient work to confirm whether there was evidence of a deliberate attempt by the TTC's CEO to mislead and misinform Council, and if so, whether there was evidence of political interference. This was not an audit assurance engagement.

### **E.2. Factors not an issue**

149. The following factors (items iii to viii of the briefing note) were not brought into question by the complainant, nor others interviewed during this process, except to say that some of the information in these sections could have been more clearly worded to clarify the level of significance of each factor:
  - 1) Potential Conflicts with GO / RER (Rapid Express Rail)
  - 2) Assess LRT Maintenance and Storage Facility (MSF) Options
  - 3) Closure of Line 3
  - 4) Re-Examine Bus Terminal Concepts
  - 5) Update Schedule and Capital Cost
  - 6) EA Amendment Public Meeting

## CONCLUSION

150. This report sought to investigate whether there was any political interference involved in the writing and dissemination of a briefing note about large transit projects for Scarborough. City Council was debating the issue at the time this briefing note was made.
151. A citizen group requested that the Auditor General investigate this note. The group's main complaint was that political interference led to inaccurate, incomplete and misleading information in this note that was provided to City Council about the costs of the Scarborough Subway Extension (SSE) option compared to the Scarborough Light Rail Transit (SLRT) option. The group felt that this note was a key piece of information that Council relied on when choosing the SSE over the SLRT.
152. Our investigation examined how the briefing note came to be drafted. We also evaluated the reasonableness of financial and other information in the note, and addressed possible pressures that could have influenced the contents of the note, as well as the process used to distribute it.
153. Our investigation findings are:
  - i. no evidence of any lack of integrity on the part of CEO Byford or other TTC personnel in its preparation.
  - ii. no evidence of a systemic problem of political interference or staff being pressured by elected officials, including the Mayor and his office, in relation to the development of the ridership numbers and the preparation and distribution of the note.
  - iii. In our view, the briefing note estimate was within an acceptable range given the stage of the project, the nature of a briefing note and the caveats contained therein. The briefing note highlights that the figures are "*estimates only*," intended for a "*high level cost comparison*". After evaluating the reasonableness of the figures, it is our view that even if construction on the SLRT could have begun several years earlier, the potential difference between the briefing note figures and our calculated escalated cost is within an acceptable range for estimates at that stage of completion.

## Exhibit 1: The Briefing Note



# Briefing Note

Date: June 29, 2016

## Issues Relating to Re-introduction of LRT Replacement for Line 3 (SRT)

### Background

The original proposal - to replace the aging Line 3 Scarborough (SRT) with a 7-stop LRT line, extending to Sheppard Avenue East, is shown in the attached schematic. This note summarises the primary tasks that would have to be undertaken in the event that the LRT solution was re-introduced. It is intended to assist in the event of any questions on this matter at City Council. It is important to note, that these figures are estimates only and have been escalated, as noted below.

### Discussion

The Environmental Assessment (EA) that was approved for the LRT project in 2010 must be updated, and formally amended, to address the following elements:

- i) **Complete Redesign of the EA-Approved LRT Connection at Kennedy Station:** The most complex aspect of the conceptual design work on the LRT was the connection at Kennedy Station. The recommended solution, shown in the attachments in plan and cross-section views, consisted of a large one-way LRT loop with the LRT station directly on top of the Eglinton Crosstown LRT (ECLRT) station. As Metrolinx's plans for the ECLRT were finalised after Council approved subway technology in October 2013, they did not make any provision to protect for the LRT connection. This LRT connection is now physically precluded by the current ECLRT plans and an entirely new design would have to be developed.
- ii) **New Ridership Forecasts:** As with the subway extension, ridership forecasts for the LRT would have to be updated using the City's new forecasting model and reflect changes in the transit network in Scarborough. This would include Smart Track/RER - with several options re service frequency and assumed level of fare integration – and options with and without the Sheppard East LRT and the easterly extension of the ECLRT.
- iii) **Review Potential Conflicts with GO/RER:** A new design concept for a Lawrence LRT station must be developed that incorporates the current plans for a Smart Track Station at Lawrence Avenue. In addition to identifying and resolving any issues at Lawrence Station, the LRT plans would have to reviewed with Metrolinx to and identify and resolve any conflicts as the running structure is in the same corridor.
- iv) **Assess LRT Maintenance and Storage Facility (MSF) Options:** Subject to confirmation of a consistent maintenance/operating/ownership model for three LRT lines in Scarborough, an

adequate location for MSF facility would have to be identified. This could mean an interim solution (eg. a Bellamy yard was included in the original LRT EA) with a future consolidation at the previously planned Sheppard/Conlins yard.

- v) **Closure of Line 3:** finalise plans for the bus replacement service when Line 3 is shut down, including the associated temporary bus terminals and storage facility.
- vi) **Re-examine Bus Terminal Concepts at Stations:** The previous number of bus bays to be confirmed for all stations.
- vii) **Update Schedule and Capital Cost**
- viii) **EA Amendment Public Meeting:** It is expected that at least one public meeting would be necessary as part of the process to amend the LRT EA.

### **Timing**

From the point Council directs staff to proceed with an LRT solution, a very rough estimate would be that it would take approximately 12 to 18 months to present a revised plan to obtain Council and MOE approval. This is very much dependent upon the time required to identify, and obtain acceptance of, a new connection at Kennedy Station.

The construction at Kennedy Station is the key element on the critical path for the LRT and depending if the preferred design is above or below grade, construction could range from approximately 3.5 to 5 years. If staff are directed to proceed in July 2016 and assuming construction cannot begin before the ECLRT work at Kennedy is completed in 2021, a quick preliminary evaluation suggests the LRT could be operational in early 2026 to late 2027.

### **Funding**

With the change in technology, confirmation of contributions from funding partners may be required.

### **Order of Magnitude Comparison**

The October 2013 Council report indicated the Province had announced \$1.8B (\$2010) for construction of SRT as LRT, to Sheppard. Of the \$1.8B, the Province committed \$1.48B (\$2010) to the SSE. As a minimum, staff believe the \$1.8B should be the starting point, which would have to be updated through proper design to address the changes noted above.

The \$1.48B has recently been reported as the total cost of a seven stop LRT. To facilitate a high level cost comparison of the current subway estimate to the costs of an LRT at this time, the \$1.8B was escalated to an end of 2025 opening (2% per year from 2011 to 2013 and 4% per year from 2014 to mid-2023), adding SRT Life Extension and SRT Shutdown service.

\$1.8B escalated	\$2.7B
SRT Life Extension	.108
SRT Shutdown	<u>.171</u>
Total	\$2.979B

**Prepared By**

Rick Thompson, Chief Project Manager, Scarborough Subway Extension  
416-590-6870

Figure 1: Scarborough RT Conversion to Light Rail Transit



TTC SP 09-01-2013 DRIG. No. 12222b

Figure 2: Kennedy Station Today





Figure 3: Transit City Alignments

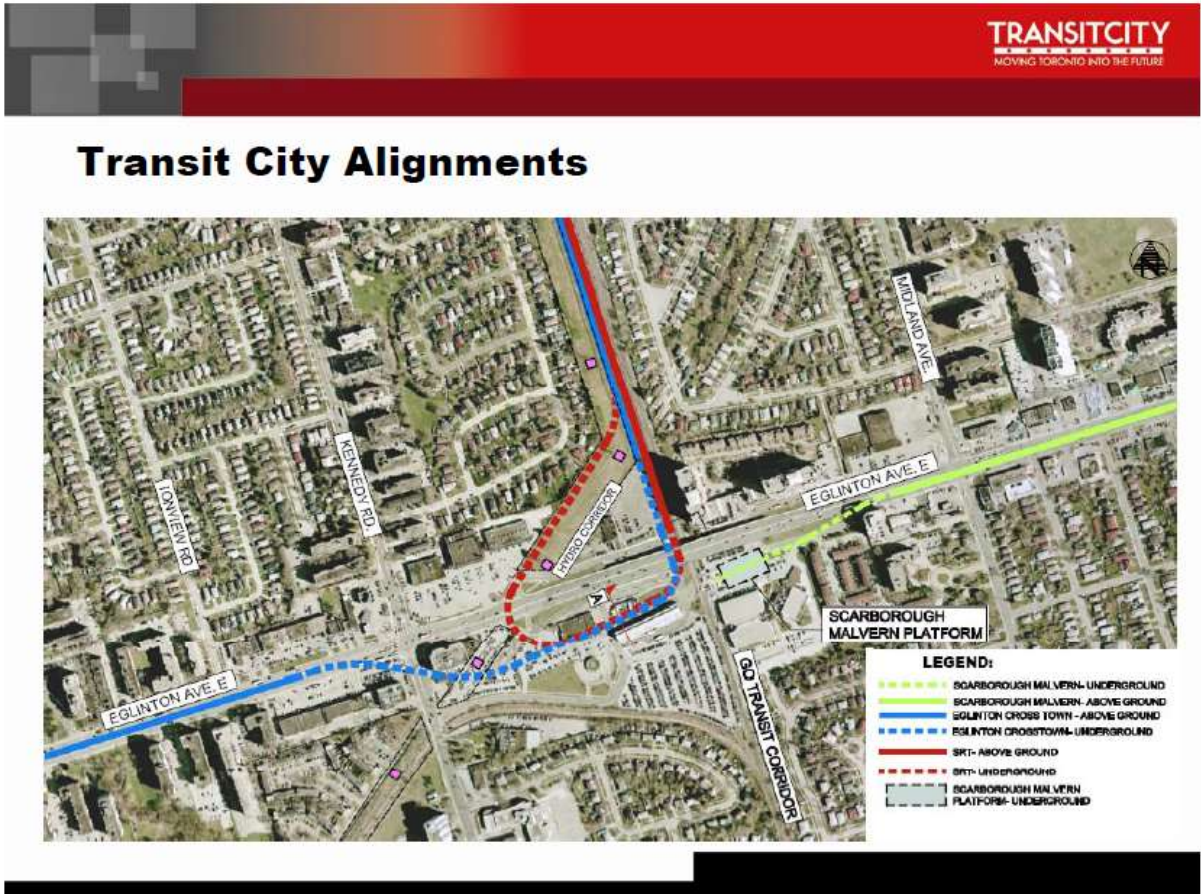
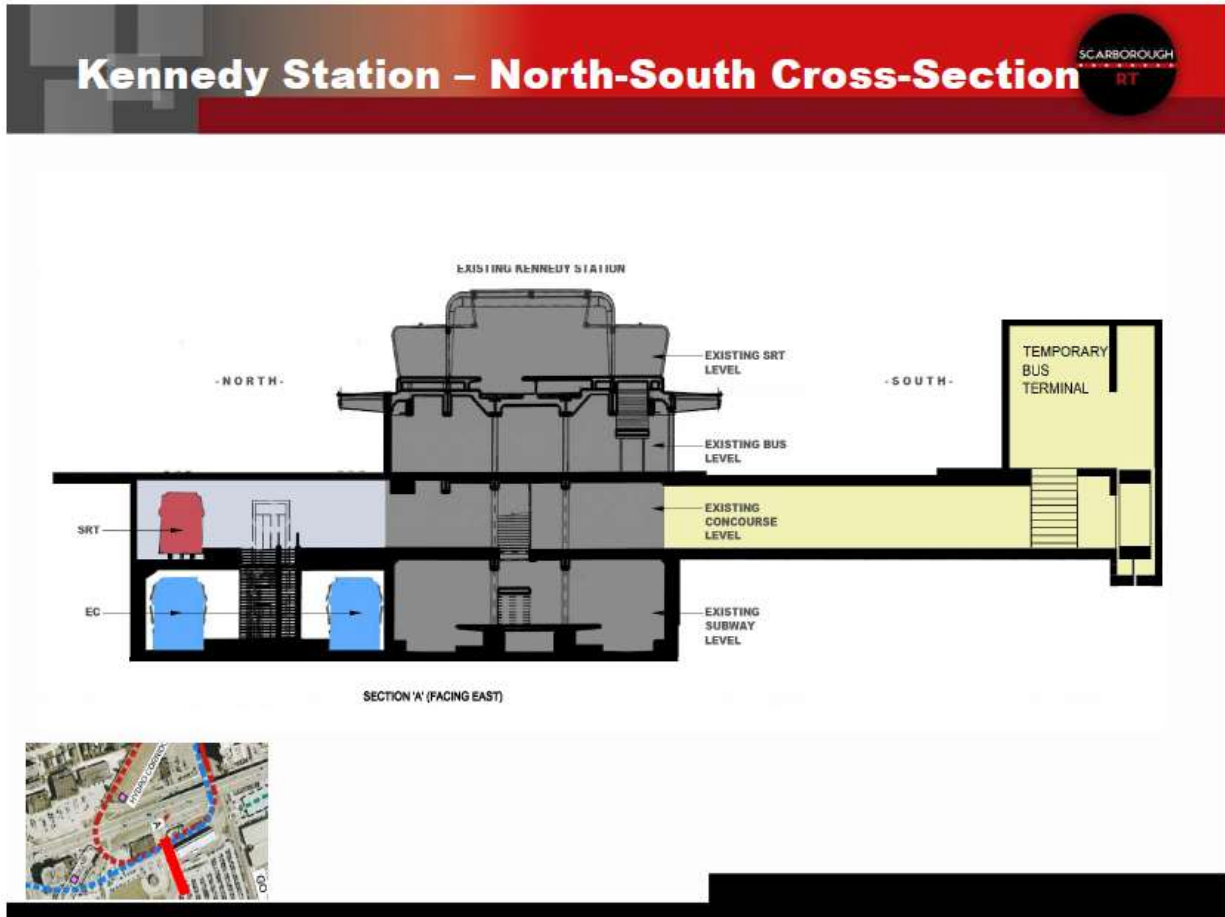


Figure 4: Kennedy Station - North-South Cross-Section



## Exhibit 2: The Complaint Letter to the Auditor General with a Brief Chronology

### **Complaint to Toronto Auditor General Regarding the Decision to Replace the Scarborough RT with a Subway Extension**

We are writing to ask Oral the Auditor General examine the circumstances involved with the decisions to construct Scarborough Subway Extension (SSE) instead of the Scarborough LRT and investigate whether the mayor, city council and city administrators have appropriately exercised their responsibility of stewardship over public funds and further, to also investigate whether the SSE will achieve value for money.

We believe that from the outset there has been political interference in the process of providing factual information and evidence for council to make its decisions on this matter, in terms of the content of the information, who receives what when and how it is conveyed. It appears to us that the mayor's office has influenced the information and evidence that has been presented to council and has interfered with the council's democratic processes in order to achieve an outcome in line with its political preferences.

We feel the decision made to replace the Scarborough RT with a subway must be revisited. There needs to be an objective comparison of the two rapid transit options<sup>3</sup> on the basis of established financial and transit planning criteria. We further request that the American Public Transit Association be commissioned to prepare a peer reviewed comparative report, based on the earliest possible construction start date of the LRT line, including the option of starting at the northern end. And when complete, the full contents of this report be released immediately to the public.

We also believe that whether or not a situation existed during the decision process where staff feared reprisal and were thus unable to share their expertise, or whether it was the case that expert knowledge was neither wanted nor welcome, the end result was the same; priorities and solid planning methodology were jettisoned, evidence was manipulated and decisions were made on shaky foundations.

The Scarborough Subway Extension has a troubled, expensive and politically-charged history. It has taken place in the context of a part of the city where there has been no new rapid transit investment in over 30 years. During this time, Scarborough has grown into a major reception point for immigrants starting their lives in Canada and a place where Torontonians of all backgrounds have been able to afford decent homes and apartments. As well, the Toronto region has become very multi-polar; in the sense that, while downtown remains a major destination for employment and entertainment, commute patterns and leisure travel have changed and residents travel to many disparate destinations at all times of the day. Additionally, there have been many reports that have documented a trend of growing income polarization in Toronto and the dearth of transit options in much of our region.<sup>4</sup> The common denominator amongst these reports is the concentration of poverty in the inner suburbs and the need for a rapid transit network that would help address income inequality and increase mobility, both in a physical and social sense. The Transportation Tomorrow Survey also documented the fact that most workers from Scarborough are trying to get around Scarborough, itself while very few (13%) are headed downtown. The City's own 2016 Scarborough Subway Extension Business Case Analysis shows that only 6 per cent of all trips originating in Scarborough end in downtown, while 60 per cent end in Scarborough. These studies all point to the importance of a rapid transit network within Scarborough to connect its

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<sup>3</sup> Scarborough LRT and one stop line 2 extension

<sup>4</sup> <http://www.urbancentre.utoronto.ca/pdfs/curp/tnrn/Three-Cities-Within-Toronto-2010-Final.pdf>;  
<http://www.toronto.ca/legdocs/mmis/2013/hl/bqrd/backgroundfile-56681.pdf>;  
<https://torontofoundation.ca/torontos-vital-signs-report/>;  
<https://torontofoundation.ca/torontos-vital-signs-report/>;  
<http://uttri.utoronto.ca/files/2015/03/Choices-for-Scarborough.pdf>

neighbourhoods and allow residents easier access to work, school, health services, etc. The growing multipolarity of the region that we have mentioned will only exacerbate the trend and a one stop subway extension to replace an existing form of rapid transit will do little to alleviate the issues facing Scarborough.

This three decade period has also witnessed successive city budgets being approved by council without appropriate or adequate sources of revenue, as seen for example, in the previous mayor's slashing of transit services, the current mayor's broken promise to not increase transit fares, the posturing exercises of both administrations to find savings, in contradiction repeated warnings from the City Manager and of at least two significant reports (KPMG and Munk School of Global Affairs) asserting that Toronto has a revenue problem, not a spending problem, the obstinate refusal to explore less regressive revenue measures, such as a graduated property tax, while at the same time shifting an ever-increasing burden onto residents in the form of increased fares and user fees, the recent unfair edict for all divisions to cut expenses by 2.6 percent and the growing reliance on reserve funds to close the operating budget and a growing list of unfunded capital projects and a straitjacketed inability to finance them. Council's ill-conceived subway extension decision is compounding this dire financial situation by putting an unnecessary strain on current and future budgets. A 24-stop LRT network, paid for in large part by the province, without the onerous long-term operating and maintenance costs of the subway, and which could be built much more quickly, would have immediate and spin-off beneficial financial economic and social effects. A one-stop subway that does not come anywhere close to most parts of Scarborough, that will not be built until 2025 at the earliest and, at the 5 percent design stage whose costs have already ballooned to such an extent that it has consumed the available funding for the Eglinton East LRT that had served to help legitimize the one stop subway, is a disastrous value-for-money decision.

#### Problems:

- Key advisors - TTC CEO Andy Byford and Chief Planner Jennifer Keesmaat had at the outset of the subway discussion been strong advocates of the LRT option for the Scarborough RT replacement, both from the perspective of planning criteria, such as creating walkable cities, with opportunity for economic development and also on the basis of priorities that had already been determined on the basis of considerable study and consultation. The evolution of these experts to being subway supporters is indicative of how elected officials required that facts be manipulated to fit their proposals, rather than basing decisions on facts.
- The mayor's office manipulation of council procedures allowed the vote on the subway to proceed illegally
- Dodgy numbers, lack of evidence-based decision making, lack of due diligence according to Chief Planner Keesmaat. Initially it wasn't clear where the ridership numbers to justify the subway came from. Not from Keesmaat or Byford. Tim Laspa, the city's director of transportation planning, is reported as saying the 14,000 figure was discussed in meetings, so who threw the number out? In order for it to get past Keesmaat and Byford, the pressure to use the number would have had to come from the top.
- Subsequent peak hour ridership numbers for the one-stop subway (7,300) are still less than projected peak hour ridership numbers of 8,000 for the seven-stop LRT. The LRT would also serve 47,000 people in walking distance, compared to the 24,000 that were estimated to be in walking distance of the original 3-stop subway; meaning that less will be able to walk to the sole Scarborough Centre station.
- Who had access to the Metrolinx reports that advised on possible cost increases and warned of low ridership? Did councilors? If not, why not? Did councilors know there was the possibility of significant cost overruns?
- Outright refusal to provide numbers...E.g. In February 2015, Councillor Matlow's attempt to get clarification on data was voted down by council. Councillors shouldn't have to attempt to win votes at council in order to get facts and figures to guide their decision-making
- Councilors in favour of the subway talk about how Scarborough "deserves" a subway, because other parts of the city have a subway. Scarborough certainly deserves a modern, efficient form of rapid transit that allows residents to get to where they need to go, but where is it written that this must be a subway?

- Seeming abandonment of the official plan process and Feeling Congested criteria, e.g. easy walkability, access to jobs, population living near stations, economic development potential are now pointedly ignored in subway discussions
- The subway model's abandonment of the current SRT stations means that people who live near and use those stations are also abandoned. Much of the housing in these areas was built explicitly because of the proximity to the stations. If the subway is built, the people who live there will have to use buses, or drive and may see the value of their properties decline.
- Stubborn refusal to prioritize major capital projects, including defeating a motion for same that occurred in the midst of the current budget process
- Deliberate misinformation - for example, the June 2016 briefing note prepared by TTC staff that contained deliberately misleading information about the Scarborough LRT costs. TTC CEO Andy Byford admitted that he was asked to prepare the briefing note. It is important to know who made this request. It seems to us that no one but the mayor would have the authority to make this request.
- The mayor's office leaked the briefing note to the media and to pro-subway councillors, including TTC Chair Josh Colie, before distributing it to the rest of council
- The mayor and pro-subway councillors used the TTC briefing note to ask leading questions of staff during the Executive meeting of June 28/16.
- Mayor's office staff used the report to convince councillors to vote against the LRT
- Subway proponents have misled the public about LRTs throughout the RT replacement history, often characterizing them as streetcars. It is unclear whether this is from a lack of understanding about LRTs very different technology or from a deliberate attempt to profit from inaccurate perceptions that streetcars clog traffic, create disruption, are slower or less efficient than buses, etc. This was seen most recently in a response from Councillor Thompson to a letter from a constituent: "Over the past several years, an overwhelming majority of Scarborough residents made it abundantly clear that a subway extension was their preferred choice over an upgrade of the SRT or its replacement by a Light Rapid Transit (streetcar) line."
- The repeated delay of the comprehensive SSE report on costs and alignment until sometime conveniently after the budget process and the ward 42 by-election

## Complaint to Toronto Auditor General Regarding the Decision to Replace the Scarborough RT with a Subway Extension, continued...

### **A brief chronology:**

- *The Scarborough RT, which opened in 1985, can politely be described as outdated technology that ill serves Scarborough. It runs above ground from Kennedy Station at the eastern end of Line 2 to McCowan Avenue, just past the Scarborough Town Centre. It is uncomfortable, noisy, extremely crowded during rush hour and subject to breakdowns in inclement weather. The SRT was built in a railway right of way so as to not interfere with cars. This meant that initially its stations were difficult to access and had low ridership. However, with higher density housing being built, especially near the Lawrence and Ellesmere stations, ridership at these stations has increased.*
- *During Dawd Miller's tenure as mayor, 'Transit City' was conceived to update rapid transit in Scarborough. It involved plans for the construction of several LRT lines, including the Sheppard LRT, running along Sheppard Avenue, from Don Mills Station to Meadowvale Avenue and the Scarborough LRT, a seven-stop line running from Kennedy Station to north of Sheppard Avenue East, to replace the aging RT and to connect the Malvern neighbourhood.*
- *Construction had begun on the Sheppard LRT in 2009, but was stopped when the provincial government delayed funding for the Transit City projects. Rob Ford announced on his first day of office in November 2010 that "Transit City is dead" and that "the war on the car was over".*
- *March 2012 - TTC Expert Advisory Panel on transit for Sheppard Corridor releases report that compares LRT option with subway option on various planning criteria and concludes LRT option is best.*
- *March 2012 - Mayor Ford calls the report "hogwash" without bothering to read it. Panelist professor Eric Miller, in a Globe and Mail interview, points to the lack of education and misinformation about LRTs, in particular, their characterization as "streetcars". It is important to note that this deliberate characterization continues today, as seen in the 2017 response from Councillor Michael Thompson to an email from a constituent, where he says that Scarborough residents' preference is for a subway extension over a Light Rapid Transit (streetcar) line.*
- *The Scarborough LRT line had received Environmental Assessment approval in 2009 and its estimated cost of \$1.48 billion (2010 dollars) was to be fully funded by the province of Ontario. The project would have connected five priority neighbourhoods to rapid transit.*
- *In July 2012, Glenn de Baeremaeker and Karen Stintz began promoting a transit plan that included replacing the Scarborough RT with a subway. Council rejected the plan on July 12, 2012. De Baeremaeker raised the issue in October at the TTC Board meeting, with a motion approved to ask staff to study the feasibility of a subway.*
- *In November 2012, Metrolinx and the TTC sign a master agreement on the terms and conditions of the four LRT projects, including the Scarborough LRT.*
- *April 25, 2013, John Tory, then Chair of CivicAction, announces support for the subway extension in a speech to the Empire Club.*
- *May 9, 2013, Council voted in favour of de Baeremaeker's motion of replacing the Scarborough RT with a subway extension. Two years later it came to light that this vote violated council procedures. In the midst of a debate on revenue tools for transit, Councillor De Baeremaeker arose with a motion to support a subway extension, without having the two-thirds vote required to reopen the council decision from the year earlier that had confirmed support for the LRT.*

Speaker Nunziata made her ruling on the question based word for word on a written ruling prepared by the mayor's officer staffer, Mark Towhey. This violated the city's procedural rule that the speaker can only rely on the city clerk for assistance in making a ruling. Speaker Nunziata ruled that the motion was in order.

- Also in May, according to Spacing Magazine, Metrolinx produced a business case analysis that warned that because it was at such early stage of planning, the subway extension could cost considerably more than the \$2.3 billion that de Baeremaeker and Stintz claimed it would cost. The report also noted the low ridership forecast of 11,000 per peak hour, less than half of a subway's 25,000 passenger capacity and concluded that "the additional capacity of subway technology is not required and does not add value to the scheme. It is unclear whether at any point council had access to or the benefit of this information.
- Metrolinx also produced a draft report in September 2013, a "Mini Benefits Case Analysis", which came to light in 2016, through a freedom of information request by journalist Jennifer Pagliaro. It compared the three-stop subway with the Scarborough LRT and concluded that the subway was not a "worthwhile use of money". The report also noted that "It is estimated that approximately \$5 Bn of development (approximately the equivalent of 20,000 condominium units or 56 30-story towers) would be required in order to justify the additional costs of the Subway".
- The SSE was approved by city council in July 2013, conditional on certain funding commitments from the Ontario and federal governments. It was conceived of as a three-stop subway extension from Kennedy Station to Sheppard Avenue via McCowan Avenue. At the time the project was estimated to cost \$2.3 Billion in 2010 dollars.
- Council made the decision in spite of advice from the city manager (July 12, 2013: REVISED Report from the City Manager on Scarborough Rapid Transit Options CC37.17) that:
  - —"the LRT option has been studied more extensively. The lack of time to consider all necessary assumptions related to a review of the subway option introduces risk when considering transportation network and land use implications. An issue requiring further review is the impact of the subway extension on the transit network as a whole. Further work is required to accurately report on forecast subway ridership as it related to network planning considerations..."
  - —"as directed by Council, the City is currently undertaking a comprehensive review of Toronto's transportation priorities through the Official Plan Review process (i.e. "Feeling Congested") to identify future transit infrastructure that best meets city-building objectives." Noting that the subway extension did not fall in the top five unfunded transit proposals that had been identified, the report warned that "the decision to adopt subway technology could impact the ability to fund the other priorities that are established through the Official Plan review process.

- The city manager's presentation claimed that ridership numbers for the SSE ranged from 9,500 to 14,000 persons per hour. The ridership benchmark used for determining a subway is 15,000 riders/hour. Council had previously approved an LRT based on an estimated subway ridership number from the TTC of 9,500. Two years later, Jennifer Keesmaat publicly acknowledged that the report to council was rushed and that figures were prepared without "due diligence". Upon hearing this, councillor De Baeremaeker claimed that he would support a subway even if the ridership number was 9,000 out of "fairness" for Scarborough. Keesmaat revealed that she had been surprised by the 14,000 figure, that it did not come from her department and that TTC CEO Andy Byford claimed the TTC had not increased their figures. Keesmaat later explained that the new numbers came from revised population estimates, an assumption that all planned transit lines will be completed and an assumption of increased frequency of trains, but critics of this methodology, including Eric Miller, director of U of T's

Transportation Research Institute, explained to the *Globe and Mail* that these results should have been regarded as preliminary. Mike Wehkind, program manager with the city planning department, confirmed to the *Globe and Mail* that indeed the work is just at beginning stages. Nonetheless, these are figures that council based its decision on.

- During the July 2013 debate on the SSE, council rejected motions from councillors Minnan-Wong and Davis to refer the matter of the subway extension to the city manager for a report on the impact of the subway on the transit network, as well as a comparison of the operating and maintenance costs of the LRT and the subway.
- in June 2013, Metrolinx wrote to the City Manager in an attempt to clarify council's decision and advising on monies owing to cover sunk costs
- the project was approved by council again in October 2013. The Ontario government had announced in late July, just prior to the Scarborough-Guildwood by-election, that it would commit \$1.48 billion from its LRT commitment (reduced from \$1.8 billion - the difference was re-directed to the Eglinton Crosstown) to the SSE. The Harper government also promised \$660 million and council approved a plan to set a dedicated property tax levy of .5 percent in 2014, rising to .6 in 2016 to cover the city's share of the project.
- so instead of moving forward with a seven-stop LRT that was completely paid for by the province, and with its operating and maintenance cost paid for by the province, the city had just landed itself with a more expensive project for which it had to find ways to fund the \$900 million (check) balance of costs, and for which the future operating and maintenance costs were unknown. The province got a pretty good deal: a glitzy promise for less money, additional cash to help pay for its more immediate Eglinton Crosstown bills, appeasing the subway lobby while deferring the need to fund said subway and joining certain unscrupulous municipal politicians in ignoring any and all contrary expert advice as to the usefulness of the project.
- on September 25, 2013, Andy Byford tells the *National Post* that if he had to choose a priority, it would be the downtown relief line. At this point, he is still promoting transit planning based on priorities that had been identified through the planning process.
- in January 2015, the city agreed to pay Metrolinx \$75 million in 'sunk costs' for the city's decision to build the SSE instead of the LRT. The sunk costs were to reimburse Metrolinx for program oversight and management and to cover consultants' fees for planning, design and engineering. It was noted at the time that there would be no additional cost for renegotiating with Bombardier for the LRT cars and that some of them would like be used for the LRT being built in the Region of Waterloo. (The Waterloo LRT began construction in 2014 and will be operational in 2014. In January 2017 the city announced that construction was 92 per cent complete.)

By this time the SSE was expected to cost \$3.56 billion.

- The March 2015 study "Choices for Scarborough" by University of Toronto professors Andre Sorensen and Paul Hess, assessed the Subway plan compared with SmartTrack and the LRT plans for Scarborough on criteria such as walkability, access to jobs, population within walking distance and opportunity for economic development and found that the LRT options were superior on every measure.
- January 20, 2016, Mayor Tory announced a new plan to build a one-stop subway extension from Kennedy Station to the Scarborough Town Centre and a 17-stop LRT from Kennedy to the University of Toronto at Scarborough, all within the \$3.56 billion envelope. The plan was proposed by Chief Planner Keesmaat after mounting criticism of the three-stop subway plan and was initially regarded as having achieved a truce between the subway proponents and detractors



*\*In March 2016, Eric Miller, a University of Toronto professor who was hired by the city to analyse ridership numbers for SmartTrack and its impact on the SSE told the Toronto Star that there was little justification for the subway and that it does not contribute to a future transit network*

- *June 1, 2016, at a public consultation meeting in Scarborough, city staff revealed that ridership on the SSE at its busiest hour would be just 7,300 people, roughly half of the estimate that councillors were given in 2013 when the SSE was approved.*
- *On June 17, 2016, Mayor Tory announced in advance of the release the following week of an engineering report that its analysis had pushed up the cost of the subway by \$1 billion more, bringing its cost to \$2.9 billion. With \$3.56 committed to the combined SSE/Eglinton East LRT project from all levels of government, this meant there was only \$660 million left over for construction of the Eglinton East LRT. The increased cost created doubt among some councillors as to whether they were in support of the project. Jon Burnside was one who said he needed more information to make up his mind.*

*\*When the engineering report was released the following week, the cost was actually nearly \$300 million higher, accounting for the cost of extending the life of the RT and then decommissioning it, bringing the cost of the SSE portion of the project to \$3.2 billion. The report noted that the project design was still only at 5 per cent and that at that stage cost estimates can be off by 35 per cent. The report left first-term Councillor Burnside with serious doubts about the project and concerns about its affordability.*

*\*June 21, 2016 City Planning Public Information Meeting document showed cost of subway at \$3.2 billion and Eglinton East LRT cost ranging from \$1.58 to \$1.67 billion and recommended next step of "retaining the services of a third-party rail transit construction and cost-estimation expert to undertake a risk assessment and detailed review of the TTC's 5% design cost estimates for the McCowan corridor and other possible express subway alignment options"*

- *On July 13, 2016, Toronto city council voted in favour of proceeding with a one-stop subway extension instead of the seven-stop LRT option to replace the Scarborough RT.*
- *This decision was made in large part on the basis of a June 29, 2016 briefing note prepared by TTC staff*
- *The briefing note erroneously and deliberately inflated the price of the LRT option by approximately \$1 billion more than had originally been estimated. The inflated cost was a result of estimating the start of construction in 2021, after the completion of the Eglinton Crosstown LRT, with a completion date of 2026. This caused the cost to increase because of inflation.*
- *The inaccurate information in the TTC briefing note was leaked to the media and was used in a misleading way both during the week leading up to the council meeting and during the council meeting, to influence how council members cast their votes.*
- *Councillor Burnside told the Toronto Star that this information swayed him to vote against the LRT option.*
- *The deliberately misleading framing of the costs was revealed during the July 13 council debate when TTC staff admitted there was no reason construction could not begin earlier at the northern end.*
- *TTC CEO Byford admitted that he had been asked to prepare a briefing note with the same finish date as the subway.*
- *Byford later told Toronto Star journalist Jennifer Pagliaro that he couldn't remember who asked him to provide the note. However, he also claimed that the TTC would be criticized if it didn't anticipate questions on costs and escalation. It is not credible that someone in Byford's position would not remember who made this request.*
- *Furthermore, it displays a lack of due diligence that he did not make sure other costing options were prepared, such as one based on construction beginning at the north end immediately.*
  - *it is in the public interest to know who it was who requested that Byford produce the briefing note with this limited content*

- *The TTC's briefing note also questioned whether other levels of government would still commit to funding the construction of the Scarborough LRT. When the mayor's spokesperson, Amanda Galbraith, described the memo and its contribution to the city council debate, to the Toronto Star, she said "It was important council and the public had all of the facts before them about what it would mean to return to the LRT - higher costs, further delays and damaged relations with other levels of government." However, this assertion was never substantiated either in writing or in any official statement from the funding partners.*
- *Councillor Burnside was appointed to the Executive Committee by Mayor Tory in December 2016*

As it stands now, Toronto Council has committed billions toward a one-stop subway extension in Scarborough without the benefit of an objective and complete comparison of costs, delivery dates and funding commitments from higher levels of government for the seven-stop LRT option. At a time when there is increasingly limited funding allocated to basic services in Toronto, public confidence that Council was presented with all the facts before deciding where to place a significant amount of our shared resources, needs to be restored. An investigation by the AG's office is necessary to restore depoliticized and rational planning for rapid transit in Toronto.

## Exhibit 3: The Complaint Letter to the Ombudsman (shared with the Auditor General by the news media)

Ombudsman Toronto  
375 University Avenue, Suite 203  
Toronto ON M5J 2G5

January 19, 2017

We are submitting a complaint to you regarding the attached TTC Briefing Note.

### **Basis of the Complaint**

Section 192-3 of the Toronto Municipal Code and the Public Service Values section of the Toronto Public Service By-Law call on Toronto staff and managers to serve the public well by ensuring they always “serve council well and/or their board well; act with integrity, maintain political neutrality, use city property, services and resources responsibly, apply judgement and discretion, and serve the public service well.” The by-law also notes that members of the public service should “ensure that council and/or the board receive frank, professional, timely and comprehensive advice on how its objectives can be achieved in ways which are legal, consistent with policies and in the public’s interest.” Another stipulation of the Code is that city employees must “ensure that business-related information is provided equally to all Members of Council.”

Furthermore, in his monthly CEO Report TTC head Andy Byford states that an objective of the TTC is to create “an organization that is transparent and accountable, well-regarded by stakeholders and peers.” **This complaint addresses what we consider to be a serious failure by Mr. Byford to meet this objective and to comply with the regulations described in the above paragraph.**

- On July 13, 2016, Toronto city council voted in favour of proceeding with a one-stop subway extension instead of the seven-stop LRT option to replace the Scarborough RT.
- This decision was based largely on a June 29, 2016 briefing note prepared by TTC staff under Mr. Byford's direction at the request of an undisclosed person.
- The briefing note erroneously and deliberately inflated the price of the LRT option by approximately \$1 billion more than had originally been estimated. The inflated cost was a result of estimating construction would start in 2021 -- after the completion of the Eglinton Crosstown LRT -- with a completion date of 2026. This caused the cost to increase because of inflation.
- Mr. Byford deliberately failed to perform due diligence in ensuring that Toronto city council had the most accurate information with which to make a decision that has enormous social and economic implications for the city.
- The inaccurate information in the TTC briefing note was leaked to the media and was used in a misleading way both during the week leading up to the July 13 council meeting and during the council meeting, to influence how council members cast their votes.

- At least one councillor publicly stated that this information swayed him to vote against the LRT option.
- The deliberately misleading framing of the costs was revealed during the July 13 council debate when TTC staff admitted there was no reason construction could not begin earlier at the northern end. Mr. Byford admitted he had been asked to prepare a briefing note with the same finish date as the subway.
- Mr. Byford later told *Toronto Star* journalist Jennifer Pagliaro that he couldn't remember who asked him to provide the note. However, he also claimed that the TTC would be criticized if it didn't anticipate questions on costs and escalation. It is not credible that someone in his position would not remember who made this request.
- Furthermore, it is unconscionable that he did not make sure other costing options were prepared, such as one based on construction beginning at the north end immediately.
- The TTC's briefing note also questioned whether other levels of government would still commit to funding the construction of the Scarborough LRT. When the mayor's spokesperson, Amanda Galbraith, described the memo and its contribution to the city council debate, to the *Toronto Star*, she said "(I)t was important council and the public had all of the facts before them about what it would mean to return to the LRT – higher costs, further delays and damaged relations with other levels of government." However, this assertion was never substantiated either in writing or in any official statement from the funding partners.
- We request that this matter be investigated and that Mr. Byford disclose who asked that the briefing note be prepared.
- We further request that the American Public Transit Association be commissioned to prepare a peer review based on the earliest possible construction start date of the LRT line, including the option of starting at the northern end. And when complete, the full contents of this peer review should be released immediately to the public.
- As it stands now, Toronto Council has committed billions toward a one-stop subway extension in Scarborough without the benefit of an objective and complete comparison of costs, delivery dates and funding commitments from higher levels of government for the seven-stop LRT option. At a time when there is increasingly limited funding allocated to basic services in Toronto, solid evidence-based decision-making must be used for all significant infrastructure spending.

Sources: [https://www.thestar.com/news/city\\_hall/2016/10/24/how-a-bid-to-resurrect-scarborough-lrt-was-killed-analysis.html](https://www.thestar.com/news/city_hall/2016/10/24/how-a-bid-to-resurrect-scarborough-lrt-was-killed-analysis.html) and [https://www.thestar.com/news/city\\_hall/2016/10/24/watchdog-says-city-staff-may-have-violated-public-service-code-over-scarborough-subway-advice.html](https://www.thestar.com/news/city_hall/2016/10/24/watchdog-says-city-staff-may-have-violated-public-service-code-over-scarborough-subway-advice.html)

Respectfully,

*Name withheld for privacy*

Appendix 1: Management's Response to the Auditor General's Report Entitled:  
"Review of Complaint Regarding the June 29, 2016 Toronto Transit  
Commission Briefing Note"

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**Recommendation 1:** The Board request the Chief Executive Officer, Toronto Transit Commission, to provide more clarity in relation to the assumptions being relied on when the information is used in briefing notes.

**Management Response:**  Agree  Disagree

**Comments/Action Plan/Time Frame:**

We agree. TTC will ensure more clarity of assumptions in briefing notes.

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**Recommendation 2:** City Council request the City Clerk implement protocols defining when it is appropriate to share briefing notes, as well as an online public repository to house briefing notes, bulletins, announcements and similar communications issued by City divisions and agencies, similar to the one maintained by the City of Vancouver, and direct the City Manager to ensure that City divisions and agencies submit copies of any such correspondence to the City Clerk for the register.

**Management Response:**  Agree  Disagree

**Comments/Action Plan/Time Frame:**

City Clerk Response: We agree - This will further advance the transparency of the City by getting relevant information into the hands of Councillors and the public at the same time

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**Recommendation 3:** The Board request the Chief Executive Officer, Toronto Transit Commission, to ensure its briefing note distribution protocols align with and integrate seamlessly with the City distribution protocols.

**Management Response:**  Agree  Disagree

**Comments/Action Plan/Time Frame:**

**TTC Response:** We agree.

At times it is necessary to prepare and distribute information on TTC matters to TTC Board members, and/or members of Toronto City Council. This requirement can be at the sole discretion of the TTC, or in response to specific requests for information received from TTC Board members and members of Council.

When it comes to information relevant to matters for consideration by the TTC Board, a City Committee or City Council it is essential that all members in a decision making capacity are in receipt of the same information at the same time. The basic principles of procedural fairness and transparency in the decision making process require this to be the standard approach in these situations.

In consideration of the foregoing, the TTC has implemented a new protocol whereby:

- briefing notes related to matters that will be considered by the TTC Board, whether initiated by TTC staff or requested by an individual member of the TTC Board, will be distributed to all members of the TTC Board.
- briefing notes related to matters that will be considered by a City Committee or City Council, whether initiated by TTC staff or requested by an individual member of Council, will be distributed to all members of City Council.

The TTC's Commission Services Department will be responsible for the distribution of briefing notes, as set out above.