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# Determination No. R-2019-73

May 3, 2019

**APPLICATION** by the City of Ottawa carrying on business as Capital Railway (City) pursuant to subsection 98(2) of the *Canada Transportation Act*, S.C., 1996, c. 10, as amended (CTA) for the Canadian Transportation Agency's (Agency) approval to construct railway lines forming part of its Trillium Line extension (Trillium extension).

**Case number:** 17-05428

## ISSUE

[1] In determining whether to grant the section 98 authorization that was applied for by the City for the Trillium extension, the Agency must decide:

1. whether the Crown has met its duty to consult with Indigenous peoples who may be affected by the Trillium extension, and whether the Agency's approval of the Trillium extension would adversely affect Aboriginal rights;
2. whether the Trillium extension is likely to cause significant adverse environmental effects; and
3. whether the location of the Trillium extension is reasonable taking into consideration the requirements for railway operations and services and the interests of the localities that will be affected by the railway lines.

## FINDINGS

[2] The Agency, acting on behalf of the federal Crown, has an obligation to consult with Indigenous peoples where it contemplates decisions or actions that may adversely impact asserted or established Indigenous or treaty rights. The Agency notified Indigenous groups that could be impacted by the Trillium extension, provided them with a copy of the application and afforded them an opportunity to express any concerns or comments. The Agency, after considering the information on record, finds that consultation has been adequate to inform its decision.

[3] The Agency is satisfied that the City's actions taken to date, along with ongoing consultation and engagement processes for the Trillium extension, are effectively addressing the concerns which Indigenous groups have identified. Based on a review of the evidence before it, the Agency finds that

the approval of the Trillium extension is not likely to cause adverse impacts to Aboriginal rights.

[4] The Agency has considered the information on the record, including information gathered through public consultations with the localities, including Indigenous consultations, as well as the requirements for the proposed railway services and operations, and is satisfied that:

- the Trillium extension is not likely to cause significant adverse environmental effects; and
- the location of the railway lines is reasonable.

## **DETERMINATION**

[5] The Agency, pursuant to subsection 98(2) of the CTA, approves the Trillium extension subject to the conditions included in this Determination.

[6] The Agency notes that its detailed reasons for this Determination will follow under separate cover.

## **CONDITIONS**

[7] In establishing conditions under the CTA in relation to the Trillium extension, the Agency relies upon the existing and applicable provincial and municipal requirements, notably in relation to air quality; erosion and sediment control; noise, drainage and storm water management; and management of excavated and imported materials. The Agency's approval and associated conditions do not relieve the City from any obligation to comply with other legislative or other legal requirements of the federal, provincial or local governments.

[8] These conditions apply equally to any agent or contractor hired by the City to carry out any phase of the Trillium extension.

### **Consultation for future decision points**

[9] To date in the planning process, the City has prepared the appropriate technical studies and assessments; identified the localities that could be affected by the project; and undertaken reasonable efforts to inform and engage them, to identify their concerns, and to state how these concerns will be addressed.

[10] However, detailed design and construction plans for the Trillium extension have not yet been undertaken, and various options under consideration at key decision points could have different impacts on the localities relating to noise, dust, vibration and traffic disruption, including restricted access for the general public, and increased truck traffic to and from construction sites.

[11] Therefore, the Agency requires the City to consult with the localities in relation to the following decision points during the construction phase of the Trillium extension:

- Limebank Road bridge, including the design of the freight track crossing connecting to the National Research Council's Lester Road facility;
- Leitrim Road bridge;

- Leitrim Park and Ride Facility;
- Leitrim Station;
- Traffic Management Control plans and Truck Route plans;
- the Noise and Vibration Control Plan; and
- the drainage and storm water management system.

[12] The Agency also encourages the City to consult the localities on the other identified decision points for the project related to new rail systems, roads, bridges and pedestrian facilities and structures, as well as to continue discussions with the National Research Council with respect to rail line access and running rights.

[13] The City shall consider the options for each decision point in a careful and precautionary manner, informed by the best information and knowledge available at the time it takes action, including community and Indigenous traditional knowledge. It shall inform the Agency within 30 business days of the chosen option or finalized plan for each decision point identified above.

### **Air quality management**

[14] The City shall develop, in consultation with the localities, and implement measures for managing project-related air emissions beyond construction sites, including fugitive dust and odour.

[15] Where construction-related activities are likely to generate air-borne particulate matter, the City shall develop, in consultation with the localities, and implement an air sampling and monitoring program to:

- establish a baseline level of particulate matter in the air near the construction works; and
- determine the level of particulate matter in the air during construction and demolition activities.

[16] The City shall take all reasonable steps to limit the generation and dispersion of air-borne particulate matter and other air-borne contaminants associated with the construction work, and implement effective measures to mitigate the potential adverse impacts of this particulate to human health and safety, local nuisance and the environment within the localities.

### **Noise and vibration**

[17] The City shall take all reasonable steps to limit localized noise and vibration impacts of construction, works and vehicles on the localities. It shall monitor noise levels during the construction phase of the project using properly functioning measurement equipment and analysis methods recognized by appropriate standards organizations. Where calculated ground-borne or air-borne noise or vibration levels exceed established noise and vibration performance limits, it shall apply effective mitigation measures.

### **Heritage management plan**

[18] The City shall develop, prior to construction and in consultation with Indigenous groups, a chance find protocol for physical or cultural heritage features or objects that are discovered during any phase of the project, and procedures for the preservation of the find and the transmission of related information to

Indigenous groups.

## Consultation requirements

[19] In carrying out future consultations required by the Agency, the City shall:

- provide a written notice of the opportunity for the localities being consulted to present their views and information on the subject of the consultation;
- provide sufficient information on the scope and the subject matter of the consultation and a reasonable period of time to permit the localities to prepare their views and information;
- undertake an impartial consideration of all views and information presented by the localities on the subject matter of the consultation; and
- advise the localities in a timely manner on how it has considered the views and information received.

[20] Where consultation involves Indigenous groups, the City shall respect those groups' expressed consultation preferences in relation to notification, the type of information provided, the period of time for seeking input, the process to be used for consideration of all views and information presented, the period of time to advise Indigenous groups of how their views and information were considered, and the means by which they will be advised.

[21] This Determination takes effect on May 1, 2019, the date on which it was communicated by e-mail to the City.

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## REASONS FOR DETERMINATION NO. R-2019-73

August 1, 2019

### INTRODUCTION

[1] On September 14, 2018, the City filed an application with the Agency pursuant to subsection 98(2) of the CTA for approval to construct the Trillium extension in Ottawa, Ontario. The Agency subsequently asked the City for supplemental information regarding future decision points for the design and construction of the project, and issues raised by potentially affected Indigenous groups in order to complete the application.

[2] On January 31, 2019, the Agency determined that the City's application was complete. The Agency conducted a public comment period on the application, and invited potentially impacted Indigenous groups to submit their comments, including how the proposed railway lines would affect their interests.

[3] On May 3, 2019, the Agency found, in Determination No. R-2019-73 (Determination), that:

1. acting on behalf of the Federal Crown, it met its duty to consult with Indigenous peoples who may be affected by the Trillium extension;
2. the approval of the Trillium extension is not likely to adversely affect Aboriginal rights;

3. the Trillium extension is not likely to cause significant adverse environmental effects; and
4. the location of the Trillium extension is reasonable taking into consideration the requirements for railway operations and services and the interests of the localities that will be affected by the railway lines.

[4] The Agency, pursuant to subsection 98(2) of the CTA, approved the Trillium extension subject to the conditions set out in the Determination. The reasons for the Determination follow.

## PROJECT OVERVIEW

[5] The Trillium extension will extend the City's existing Trillium Line passenger rail service, which currently terminates at Greenboro Station, south to the terminus at Limebank Station along the Bowesville Subdivision; add a railway line linking to the Ottawa Macdonald-Cartier International Airport (Ottawa Airport) [Airport Spur]; and upgrade infrastructure within the existing railway right-of-way between Leitrim Road and Bayview Station. It is one of three components of the City's Stage 2 Light Rail Transit Project.

[6] The federal and Ontario governments have each committed to fund one third of the project. The Trillium extension and related works will be undertaken through a full Public-Private Partnership Design-Build-Finance-Maintain contract. The City has awarded the contract to TransitNEXT (Project Co.) who will be responsible for the detailed design, construction, and maintenance of the railway line, subject to the Project Specific Output Specifications (Project Specifications) that form part of the Project Agreement and set out the specific technical requirements and parameters for the project.

[7] The City has received letters of support from VIA Rail, the National Capital Commission (NCC), the National Research Council of Canada (NRC), the Ottawa Airport Authority, Trinity Development, Ottawa Community Housing, Urbandale, community associations (Riverside South, Manotick, and Osgoode), and Stage 2 Project "champions" that include major Ottawa employers, cultural centres, educational institutions, hospitals, and business improvement areas.

## PRELIMINARY MATTER

[8] As part of the project, the City will undertake infrastructure upgrades within its existing railway right-of-way, between Leitrim Road (at the southern end of the North Prescott Spur) and Bayview Station track (at the northern end of Ellwood Subdivision), including:

- doubling the track between the new Gladstone Station and the existing Bayview Station;
- constructing a new maintenance facility on City property at Walkley Yards;
- constructing new Gladstone, Walkley, and South Keys passenger stations;
- lengthening the passing siding at Carleton Station;
- constructing a grade separation at the Ellwood Diamond; and
- doubling the track at South Keys Station.

[9] As the proposed infrastructure upgrades will be entirely within the City's existing railway right-of-way, pursuant to paragraph 98(3)(a) of the CTA, the City does not require the Agency's approval to undertake

these upgrades.

## ISSUE

[10] In determining whether to grant the section 98 authorization that was applied for by the City for the Trillium extension, the Agency must decide:

1. whether the Crown met its duty to consult with Indigenous peoples who may be affected by the Trillium extension, and whether the Agency's approval of the Trillium extension would adversely affect Aboriginal rights;
2. whether the Trillium extension is likely to cause significant adverse environmental effects; and
3. whether the location of the Trillium extension is reasonable taking into consideration the requirements for railway operations and services and the interests of the localities that will be affected by the railway lines.

## **WHETHER THE CROWN MET ITS DUTY TO CONSULT WITH INDIGENOUS PEOPLES WHO MAY BE AFFECTED BY THE TRILLIUM EXTENSION, AND WHETHER THE AGENCY'S APPROVAL OF THE TRILLIUM EXTENSION WOULD ADVERSELY AFFECT ABORIGINAL RIGHTS**

[11] The Agency, acting on behalf of the Federal Crown, has a duty to consult with Indigenous peoples where it contemplates decisions or actions that may adversely impact asserted or established Indigenous or treaty rights. The Crown may rely on the Agency's processes to fulfill this duty because the Agency can hear and determine all relevant matters of fact and law in making its determinations and the Agency has procedural powers to conduct consultations as well as remedial powers—such as the power to impose conditions on any authorization—that can mitigate adverse impacts on rights.

[12] To determine whether consultation has been adequate, the Agency considered the City's Indigenous engagement activities as well as its own consultations with Indigenous communities and groups.

[13] The City consulted local Indigenous groups including the Algonquins of Ontario Consultation Office (AOO), the Kitigan Zibi Anishinabeg, and Nation Métis Québec. The Métis Nation of Ontario did not participate. To address key areas of interest, the groups asked that the City:

- undertake thorough archaeological work;
- explore opportunities to incorporate linkages to their history, such as through interpretive pathways, identifying trees and the importance of access to water;
- meet expectations that all anticipated effects on traditional uses or cultural heritage resources be identified and described as part of the environment assessment (EA) process, and be communicated to any potentially affected Indigenous peoples and communities, as effects are identified;
- guard against potential impacts on the health of waterways during the course of the light rail transit

extensions; and

- respect the belief that water is sacred and essential for all life.

[14] The City, in response, committed to:

- Ongoing consultation with the AOO regarding the scope and results of archaeological assessments;
- identify and describe all anticipated effects on traditional uses or cultural heritage resources as part of the environmental assessment process and subsequent detailed design, and communicate them to any potentially affected Indigenous peoples and communities as they are identified;
- a public art program where the City will make a general call for artists; will reach out to indigenous communities as part of this program; will coordinate workshops aimed at helping to build the capacity of local artists and artisans; and will use the wayfinding symbol developed for Pimisi Station in Stage 1, and include it in all of the stations for the three extensions of the rail system; and
- identify additional economic opportunities for continued capacity building and engagement in consultation with the Indigenous communities.

[15] For the purposes of its consultations, the Agency, through the Government of Canada's Aboriginal and Treaty Rights Information System (ATRIS), identified the following Indigenous communities and groups, located within a 100-kilometre radius of the project, as potentially affected by the location of the railway lines:

- the AOO;
- the Algonquins of Pikwàkanagàn;
- the Kitigan Zibi Anishinabeg;
- Nation Métis Québec; and
- Métis Nation of Ontario.

[16] The Agency gave each of these Indigenous communities and groups early notification of its consultation process for the application through Decision No. LET-R-15-2019 on January 18, 2019, with follow-up contact by Agency staff on January 28, 2019.

[17] On February 11, 2019, the Agency issued Decision No. LET-R-26-2019 notifying these Indigenous communities and groups that it found the City's application sufficiently complete to assess the project pursuant to section 98 of the CTA. The Agency provided them with copies of the complete application to assist them in their review and asked whether they had any concerns or comments about the Trillium extension.

[18] On February 21, 2019, Nation Métis Québec indicated that it had no concerns with the proposed railway lines.

[19] On April 8, 2019, the AOO, which represents the consultation interests of groups within its territory, including the Algonquins of Pikwàkanagàn, responded, indicating its consent to the construction of the railway lines, its agreement that the City's information accurately reflects consultations with the AOO, its support for the City's ongoing engagement, and its view that there were no outstanding concerns with

the proposed railway lines.

[20] The Kitigan Zibi Anishinabeg and the Métis Nation of Ontario did not respond.

[21] After considering this evidence, the Agency found that the consultation process with potentially impacted Indigenous groups was adequate to inform its decision. The Agency was satisfied that the City's actions taken to date, along with ongoing consultation and engagement processes for the Trillium extension, were effectively addressing the identified concerns.

[22] Based on the evidence before it, the Agency found that the Trillium extension is not likely to cause adverse impacts to Aboriginal rights. In addition, in light of the fact that detailed design and construction plans for the Trillium extension have not yet been undertaken, and various options under consideration at key decision points could have different impacts, the Agency also included procedural safeguards for Indigenous groups in the conditions requiring future consultations on the project.

## **WHETHER THE TRILLIUM EXTENSION IS LIKELY TO CAUSE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS**

[23] The City's railway line construction is to be carried out, in part, on federal lands administered by the NCC and Transport Canada. Under section 67 of the *Canadian Environmental Assessment Act, 2012*, S.C., 2012, c. 19, s. 52, the Agency cannot exercise the power under section 98 of the CTA to approve the Trillium extension unless it determines that carrying out the project is not likely to cause significant adverse environmental effects on those federal lands.

[24] The City filed an Environmental Effects Evaluation (EEE) that assesses the Trillium extension's potential impacts, and identifies conditions and mitigation measures to reduce or prevent adverse environmental effects.

[25] The Agency, in determining that the Trillium extension is not likely to cause significant adverse environmental effects, considered the City's EEE, noted that it was the subject of public consultation, and accepted it as comprehensive, fulfilling the Canadian Environmental Assessment Agency's EEE requirements and incorporating expert advice and comments received from federal authorities.

## **WHETHER THE LOCATION OF THE TRILLIUM EXTENSION IS REASONABLE TAKING INTO CONSIDERATION THE REQUIREMENTS FOR RAILWAY OPERATIONS AND SERVICES AND THE INTERESTS OF THE LOCALITIES THAT WILL BE AFFECTED BY THE RAILWAY LINES**

[26] Subsection 98(2) of the CTA states:

The Agency may, on application by the railway company, grant the approval if it considers that the location of the railway line is reasonable, taking into consideration requirements for railway operations and services and the interests of the localities that will be affected by the line.

[27] The Agency, in determining whether the location of the Trillium extension is reasonable, considered the City's application, supplemental filings, comments received from Indigenous peoples and the public related to the requirements for railway operations and services, and the interests of the localities that will be affected by the railway line.



## Location of the railway lines

[28] The proposed railway lines will be composed of two parts: the Bowesville Subdivision and the Airport Spur. They form part of an integrated light rail transit network that will connect to the City's Trillium Line and Confederation Line, and will be situated alongside existing railway infrastructure, such as CN's Walkley yard and CP's Walkley yard.

### BOWESVILLE SUBDIVISION

[29] The new Bowesville Subdivision will be constructed on existing and new railway right-of-way, commencing at mileage 4.89 of the Greenboro Station Track and will continue for 11.37 kilometres to Limebank Station at mileage 12.00 of the Bowesville Subdivision. It will include new stations at South Keys, Leitrim, and Bowesville/Earl Armstrong to serve the Riverside South-Leitrim area, where new communities are planned. It will be segregated from roadways at key locations, such as Leitrim Road. In this area, there is an existing spur servicing the NRC rail testing and research facility located at 2320 Lester Road in Ottawa (NRC's Lester Road facility).

[30] The Bowesville Subdivision alignment of the railway right-of-way follows the former CP Rail Prescott Subdivision rail corridor from the end-of-track just north of Leitrim Road to Earl Armstrong Road, which was formally discontinued in 1998 and is now owned by the City, and extends west to Limebank Road.

[31] The Agency, in considering whether the location of the Trillium extension is reasonable, accepted the City's rationale for preferring the proposed alignment among many possible corridors in order to:

- minimize construction costs;
- minimize travel delay for passengers;
- minimize impacts to existing communities and road networks; and
- serve the largest potential ridership in the residential and employment areas of Riverside South.

### AIRPORT SPUR

[32] The Airport Spur will be built upon a new, fully segregated, railway right-of-way that will provide a 3.44-kilometre track connection from the Trillium Line to the Ottawa Airport. The construction of the Airport Spur begins at mileage 5.79 of the Bowesville Subdivision and continues to mileage 2.15 of the future Airport Spur. The City plans to construct two passenger rail stations along this spur: the EY Centre at Uplands Drive and the Ottawa Airport.

[33] The Agency, in considering whether the location of the Trillium extension is reasonable, accepted the City's rationale for preferring the proposed alignment in order to:

- minimize track duplication by branching from the main line as far south as possible;
- minimize impacts on adjacent wooded areas;
- serve major destinations (the Ottawa Airport and the EY Centre); and
- align with future Ottawa Airport development plans.

## Requirement for railway operations and services

## **RAILWAY SERVICES**

[34] Based on the 2016 Census, the City's population was over 880,000 inhabitants while the Ottawa-Gatineau Census Metropolitan Area had a combined population of over 1,320,000. According to the City's Official Plan, the population is predicted to grow 16 percent by the year 2031.

[35] The City's 2013 Transportation Master Plan (TMP) outlines the City's plans to meet the demands of the estimated growth in population. The Trillium extension is a component of the larger Stage 2 Light Rail Transit Project. Once all Stage 2 components are completed, approximately 70 percent of Ottawa's population will live within 5 km of its light rail transit system. The City's railway network is planned to be fully integrated with the communities that it serves, including connections to local bus service, Park and Ride facilities, and cycling and pedestrian pathways to encourage sustainable transportation.

[36] The City's objectives for the light rail transit network are to decrease congestion, save travel time, reduce operating costs for commuters, reduce greenhouse gas emissions, benefit public health by reducing pollution, facilitate intensified land uses, foster economic development, and increase public transit ridership. Ridership is expected to increase by approximately 20 percent by 2023 and by approximately 40 percent by 2031.

## **RAILWAY OPERATIONS**

[37] The City's Trillium extension is designed to support a 12-minute headway service operating at differing hours depending on the day of the week with train volumes not exceeding five trains per hour per direction. The Bowesville Subdivision will accommodate the operation of the equivalent of seven 80-metre long trains and will have a maximum permissible speed of 80 km/hr.

[38] The new transit stations of the Trillium extension will provide passengers access to the City's light rail transit network and the OC Transpo bus network.

[39] The Leitrim Station will be adjacent to the existing Leitrim OC Transpo Park and Ride facility, and will consist of three bus and two rail platforms. The Park and Ride lot will be expanded initially to 330 spaces, and to 925 spaces in the future.

[40] The Bowesville Station will be constructed adjacent to the intersection of Earl Armstrong Road and Bowesville Road, with bus and rail platforms. A new Park and Ride facility will be co-located with the station and will initially have 800 parking spaces, expanding to up to 2,000 spaces in the future.

[41] The Limebank Station will be constructed adjacent to the intersection of Earl Armstrong Road and Limebank Road, with bus and rail platforms, and an area designated for passenger drop-off.

[42] The Airport Spur will include a passenger station at Uplands Drive and at the Ottawa Airport. The Uplands Station will be constructed adjacent to the EY Centre and consist solely of rail platforms. It will not include Park and Ride services or a designated passenger drop-off area. The Airport Station will be constructed directly adjacent to the airport departure roadway and the airport terminal building. Trains will arrive at the station along an elevated guideway and no parking or drop-off spaces will be provided in addition to those already existing at the Ottawa Airport.

[43] An *Accessibility for Ontarians with Disabilities Act/Americans with Disabilities Act* (AODA/ADA)

compliant multi-use pathway will be constructed along the Trillium extension to provide connectivity to pedestrians and cyclists. Perimeter fencing will be installed throughout the railway right-of-way.

## **INFRASTRUCTURE AND GROUND ALTERATIONS**

[44] The City will use a Signalling and Train Control System, which will provide continuous positive train protection and speed enforcement to prevent derailments and disobeying signals. It will also provide an integrated train control solution alongside all of the existing supporting technology, including Supervisory Control and Data Acquisition systems, closed-circuit television cameras, emergency telephones, public address systems, electronic signage, radio, and other features.

[45] Bridges at Leitrim Road, Earl Armstrong Road, Bowesville Road, High Road, Lester Road, Uplands Drive, the Airport Parkway, and Limebank Road will separate rail operations from vehicular traffic at these road crossings. To facilitate these new bridges, there are several roadway modifications planned at Leitrim Road, the Airport Parkway, Uplands Drive, Earl Armstrong Road, Bowesville Road, Limebank Road, Connector Road, Main Street, and Collector D.

[46] In addition, there will be a new bridge over Mosquito Creek's wildlife path and an elevated guideway to the Ottawa Airport while the existing at-grade crossing will remain at the Lester Road crossing over the spur track servicing the NRC's Lester Road facility.

[47] The drainage and storm water management system will be designed to ensure that operations can safely commence and continue during a 100-year storm event.

[48] The construction of the new track section, north of Leitrim Road to Limebank Station, will be a double-track line to increase service efficiency. The Airport Spur will provide a mixture of single-track and passing sidings to optimize service efficiency.

[49] Utility infrastructure relocations may be required and Project Co. will develop a Utility Infrastructure Relocation Plan to locate utilities, identify relocation options, and undertake the relocations, as required.

## **CONSTRUCTION ACTIVITIES**

[50] The detailed design and construction plans for the Trillium extension have not yet been undertaken. Prior to the start of construction, the related plans and procedures will identify how the work will be undertaken to meet the Project Specifications set out in the Project Agreement. Project Co. will begin the construction of the railway line infrastructure in 2019 and complete the work on the Airport Spur in 2020 and the Bowesville Subdivision in 2022.

[51] Infrastructure and foundation work will commence at multiple sites concurrently, along with horizontal operations including utilities, track and roadway drainage systems, cut and fill works, rail systems-related underground operations, and foundation support systems (H-piles and concrete caissons). Multiple types of construction operations will be undertaken within the railway right-of-way, utilizing many different types of construction equipment. Project Co. will utilize conventional or established excavation methods for the construction of the railway lines. For utility relocation and trench work, trench boxes will be installed. The City does not anticipate tunnelling and/or blasting operations.

## Temporary Structures

[52] Project Co. will establish staging and laydown/hoarding zones at each of the three stations on the Bowesville Subdivision and the two stations along the Airport Spur. Bridge construction over the Airport Parkway, Uplands Drive, and Mosquito Creek, and the grade separation structures bridgework at Limebank, Bowesville, and Leitrim Roads may also necessitate laydown and staging areas at these locations. The boundaries of each of the construction sites will be fenced, and the boundaries of each mobilization site will be hoarded. Project Co. will establish temporary access and egress roadways, staging and laydown areas, crew and construction oversight facilities, and will select appropriate safety related warning devices such as horns, visual signage, lit beacons, strobe lights, signal-type devices and back-up alarms.

[53] Project Co. will be responsible for any required temporary shoring and falsework; removal and disposal of materials and refuse, in accordance with applicable laws; as well as for the construction and maintenance of temporary environmental control devices such as silt curtains, screens and fencing, check dams, temporary drainage ditches and temporary detention basins. It will also be required to restore and rehabilitate any disturbed areas within or extending beyond the limits of works.

## TRAFFIC IMPACTS

[54] Project Co. will be responsible for identifying, in advance, all roadways that will be utilized for haul routes and for ensuring that haul routes are kept clean and free of construction debris and dust. It will also be required to manage the traffic and transit impacts of construction throughout all phases of the project to ensure that the impacts on the mobility of all modes of traffic are minimized.

## AIR QUALITY MANAGEMENT

[55] The City's assessment of the potential air quality impacts along the proposed railway corridor concluded that the Trillium extension will have a negligible impact on local air quality during its construction. The City committed that in all cases, dust and fugitive emissions from construction sites along the railway lines will remain within applicable standards.

[56] The City's *Air Quality, Noise and Vibration Impact Assessment* (impact assessment) identifies the following types of measures for controlling air impacts on localities, such as those caused by dust and fugitive emissions: monitoring wind conditions and planning operations to take advantage of calm wind periods; minimizing site storage of granular material in height and extent; locating storage piles in sheltered areas that can be covered; providing movable windbreaks; using water spray and suppression techniques during the construction; covering haul trucks and keeping access routes to the construction site clean of debris.

[57] Because detailed design and construction plans were not available at the time of the Determination, the Agency requires the City to develop, in consultation with the localities, and implement measures for managing project-related air emissions beyond construction sites, including fugitive dust and odour.

[58] Where construction-related activities are likely to generate air-borne particulate matter, the Agency

requires the City to develop, in consultation with the localities, and implement an air sampling and monitoring program to:

- establish a baseline level of particulate matter in the air near the construction works; and
- determine the level of particulate matter in the air during construction and demolition activities.

[59] The Agency acknowledges the City's commitment to adhere to applicable standards. It also requires the City to take all reasonable steps to limit the generation and dispersion of air-borne particulate matter and other air-borne contaminants associated with the construction work, and to implement effective measures to mitigate the potential adverse impacts of this particulate to human health and safety, local nuisance on the environment within the localities.

## **NOISE AND VIBRATION**

[60] The City indicated that the major existing noise sources along the Trillium extension result from vehicle traffic on arterial roads and highways, rail traffic along existing rail corridors and at the Walkley Yard, and air traffic taking off and landing at the Ottawa Airport.

[61] The City submitted that the Trillium extension will increase future noise levels marginally, but they are not expected to be noticeable by the majority of human observers. The City committed to noise attenuation measures including berms, noise walls, and landscaping.

[62] The City's impact assessment concluded that vibration levels are not expected to cause structural issues. No vibration impacts are expected for residences along the new track segments, due to offset distances. The City also committed to installing vibration mitigation measures such as using resilient fasteners and floating slabs during construction.

[63] The City committed to developing a noise and vibration control plan, carrying out monthly surveys of ground-borne and air-borne noise and vibration to confirm that the operation of the system is in compliance with applicable standards, addressing and responding to each complaint regarding noise or vibration received, investigating any such complaint regarding noise or vibration including conducting ground-borne and air-borne noise and vibration measurements, and taking steps toward defining and undertaking mitigation measures.

[64] The Agency requires the City to take all reasonable steps to limit localized noise and vibration impacts of construction, works and vehicles on the localities. While the Agency found the range of mitigation measures proposed by the City to be realistic, the City must also monitor noise and vibration levels during the construction phase of the project using properly functioning measurement equipment and analysis methods recognized by appropriate standards organizations. Where calculated ground-borne or air-borne noise or vibration levels exceed established noise and vibration performance limits, it must apply effective mitigation measures.

## **HERITAGE MANAGEMENT**

[65] The City will undertake an archaeological assessment of the area impacted by the Trillium extension that will consider previous archaeological assessment areas and areas where significant ground disturbance is expected to occur, such as in relation to the installation or construction of utility

lines, roads, buildings and parking lots.

[66] In response to issues raised by the AOO, the Agency requires the City to develop, prior to construction and in consultation with Indigenous groups, a chance find protocol for physical or cultural heritage features or objects that are discovered during any phase of the Trillium extension, and procedures for the preservation of the find and the transmission of related information to Indigenous groups.

[67] The City can fulfill this requirement through its commitment to develop an archaeology risk management plan, including a protocol for dealing with archaeological resources or human remains discovered. The Agency also acknowledges the City's commitments to ongoing consultation with the AOO regarding the scope and results of archaeological assessments, identifying and communicating to affected groups any anticipated effects on traditional Aboriginal uses or cultural heritage resources, and instituting a public art program to help build the capacity of local artists and artisans.

## **FUTURE DECISION POINTS**

[68] Various design and construction options under consideration at key decision points could have different impacts on the localities relating to noise, dust, vibration and traffic disruption, including restricted access for the general public, and increased truck traffic to and from construction sites.

[69] Therefore, before design and construction plans are finalized, the Agency requires the City to consult with the localities in relation to the following decision points during the construction phase of the Trillium extension:

- Limebank Road bridge, including the design of the freight track crossing connecting to the NRC's Lester Road facility;
- Leitrim Road bridge;
- Leitrim Park and Ride Facility;
- Leitrim Station;
- Traffic Management Control plans and Truck Route plans;
- the Noise and Vibration Control Plan; and
- the drainage and storm water management system.

[70] The Agency also encourages the City to consult the localities on the other identified decision points for the project related to new rail systems, roads, bridges and pedestrian facilities and structures, as well as to continue discussions with the NRC with respect to railway line access and running rights.

[71] The City must consider the options for each decision point in a careful and precautionary manner, informed by the best information and knowledge available at the time it takes action, including community and Indigenous traditional knowledge. It must inform the Agency within 30 business days of the chosen option or finalized plan for each decision point identified above.

## **COMPLIANCE WITH FEDERAL, PROVINCIAL AND LOCAL REQUIREMENTS**

[72] The Agency's approval and associated conditions do not relieve the City from any obligation to comply with other legislative or legal requirements of the federal, provincial or local governments. In

particular, the Agency notes that construction activities are subject to detailed provincial and municipal requirements, notably in relation to air quality; erosion and sediment control; noise, drainage and storm water management; and management of excavated and imported materials. Nothing in these Reasons for Determination No. R-2019-73 relieves the City of any of its obligations in relation to these requirements.

[73] Transport Canada advised the Agency on April 9, 2019, that all work relating to railway works—including but not limited to, design, construction, evaluation, maintenance, and alteration—must be done in accordance with sound engineering principles and approved by a professional engineer. Transport Canada also indicated that under the *Railway Safety Act*, R.S.C., 1985, c. 32 (4<sup>th</sup> Supp.) [RSA], railway companies are responsible for the safety of their railway line infrastructure, railway equipment and operations, and for compliance with all applicable regulatory requirements. Finally, pursuant to subsection 8(1) of the RSA, should there be an objection to the proposed railway works including crossings, the City will need to follow the process pursuant to section 10 of the RSA and request the Minister's approval.

### **Interests of the localities**

[74] The Agency, in deciding whether to approve an application for the construction of a railway line, considers the interests of the localities that may be affected by the location of the railway line, or activities related to its construction or operation. A locality includes neighbourhoods, communities, townships and municipalities. It encompasses the residents, land owners, business owners and Indigenous peoples. In the case of the Trillium extension, it includes the NRC, notably in relation to the freight rail track connecting to the NRC's Lester Road facility.

## **CONSULTATIONS**

### **The City's pre-application activities (public consultation)**

[75] The City has undertaken consultation activities for the Trillium extension since 2014 to inform the localities, obtain input and feedback into the study of possible alternatives to the Trillium extension, and to fulfill provincial and federal environmental assessment requirements. Key targeted localities adjacent to the alignment included Indigenous groups; businesses; community associations; and the general public, including transit and non-transit riders. A variety of activities and platforms were used to engage them, including design and technical workshops, public open houses, committees, meetings, presentations, mail-outs, e-mail newsletters, and web-based interactions on the project's website.

### **The Agency's public comment period**

[76] From February 15, 2019 to March 29, 2019, the Agency solicited public comments on the City's application for approval to construct railway lines. A notice was published in the *Ottawa Citizen* and *Le Droit* newspapers on February 8, 2019, to inform the public of the opportunity to comment on the City's application. The Agency received three comments.

## **THE AGENCY'S FINDINGS RELATED TO THE INTERESTS OF THE LOCALITIES**

[77] The Agency recognizes that the purpose of the Trillium extension is to provide economic, social and environmental benefits to localities. The Airport Spur will improve public transportation to the EY Centre and the Ottawa Airport for all Ottawa residents. The Bowesville Subdivision will provide the residential and employment communities served with access to the City's railway network. Planned connections to local bus transportation, Park and Ride facilities, and cycling and pedestrian pathways are designed to encourage sustainable transportation.

[78] The Agency considered the results of the City's consultations with the localities. The City identified a number of concerns, notably the loss of greenspace, the impact of construction on the local community (for example, air quality and traffic diversions), increased noise and vibration, the impact on local wildlife, increased vehicular traffic to transit stations once operations start, and pedestrian and cyclist community connections to and through all stations and along the railway lines.

[79] To address these concerns, the City has committed to:

- institute an early transplanting program for trees prior to major construction works and, where possible, to relocate trees from heavily disturbed corridors to suitable locations;
- implement noise attenuation measures that include, but are not limited to, berms, noise walls, and landscaping. Vibration mitigation measures will include, but are not limited to, resilient fasteners and floating slabs;
- provide an eco-passage for wildlife to facilitate the migration of wildlife across the alignment;
- construct an AODA/ADA compliant multi-use pathway throughout the alignment to provide connectivity to pedestrians and cyclists; and
- integrate passenger pick-up and drop-off facilities with each transit station.

[80] The Agency considered comments received during its public comment period, which expressed support for the project, concern about the economic viability of the Airport Spur, and concerns about project impacts on the NRC's Lester Road facility. The Agency accepted the City's responses to these comments, including the City's reiterated commitment to working with the NRC during the design and construction phases of the project to provide reasonable access to its Lester Road facility.

[81] The Agency is satisfied that the City has made reasonable efforts to inform and engage the localities, to identify their concerns, and to state how their concerns will be addressed. The Agency acknowledges and relied upon the City's commitments and proposed mitigation measures in crafting the conditions of approval for the Trillium extension. Where planning uncertainties remain for the project, the Agency's conditions are designed to ensure that appropriate consultation continues.

[82] In particular, in carrying out the future consultations required by the Agency, the City must:

- provide a written notice of the opportunity for the localities being consulted to present their views and information on the subject of the consultation;
- provide sufficient information on the scope and the subject matter of the consultation and a reasonable period of time to permit the localities to prepare their views and information;
- undertake an impartial consideration of all views and information presented by the localities on the subject matter of the consultation; and
- advise the localities in a timely manner on how it has considered the views and information



received.

[83] Where consultation involves Indigenous groups, the City must respect those groups' expressed consultation preferences in relation to notification, the type of information provided, the period of time for seeking input, the process to be used for consideration of all views and information presented, the period of time to advise Indigenous groups of how their views and information were considered, and the means by which they will be advised.

## DETERMINATION

[84] In light of the above, the Agency concluded that the location of the Trillium extension is reasonable, taking into consideration the requirements for railway operations and services and the interests of the localities that will be affected by the railway lines.

### Member(s)

Elizabeth C. Barker  
Heather Smith  
Mary Tobin Oates

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