

# “SPECIAL ADVISOR TO CABINET – TRANSIT UPLOAD” & “TRANSIT UPLOAD ADVISORY PANEL”: TERMS OF REFERENCE

## CONTEXT

- In recognition of the strategic importance of the Toronto Transit Commission (TTC) subway system to the broader regional transit network, the Government of Ontario has committed to:
  - Evaluate the benefits and implications of the province assuming responsibility for the TTC subway infrastructure, including the building and maintenance of new and existing subway lines, from the City of Toronto (the “upload”); and,
  - Engage with the City of Toronto such that, through the potential upload of subway infrastructure by the province, the responsibility for day-to-day subway operations – including labour relations and fare revenue generated by the subway system – could remain with the City of Toronto.
- The potential upload of the TTC subway system presents an opportunity to realize regional benefits, which relate to improved decision-making and better transit connectivity in the Greater Toronto and Hamilton Area (GTHA). To that end, the upload could help to ensure that:
  - The planning, implementation and operation of transit is more efficient and integrated throughout the region;
  - The decision-making framework for transit projects and service delivery is effective and clear – enabling the province to build more projects faster; and,
  - Investments are optimized to help manage congestion, to allow seamless connections across municipalities, and to enable regional economic competitiveness/productivity.
- In light of the above, the Government of Ontario has established:
  - 1) A Special Advisor to Cabinet – Transit Upload (“Special Advisor”) position, with the objectives of:
    - Supporting the province’s evaluation and assessment of a potential upload; and,
    - Engaging the City of Toronto related to a potential upload.
  - 2) A Transit Upload Advisory Panel (“Panel”), with the objectives of:
    - Providing technical expertise and advice related to the potential upload; and,
    - Supporting the Special Advisor in carrying out his or her duties in respect of the potential upload.
- The following outlines the term and composition, key parameters and framework/structure that will guide and govern the work of the Special Advisor and Panel.

## TERM, COMPOSITION & STRUCTURE

- The Special Advisor and the Panel, comprising up to three peer experts, as needed, will be appointed by the Premier of Ontario (“Premier”) for a term of up to one year, with the option to extend the term – at the discretion of the Premier – to up to three years (total), or until the upload transaction has been executed.
- The Special Advisor, Michael Lindsay, was appointed on August 31, 2018 for an initial term that will end no later than August 30, 2019, unless extended in the position by the Premier.
- The Panel member(s):
  - Will be appointed as needed, and at a later date than the Special Advisor; and,
  - Is(/are) expected to be selected from a cross-section of various disciplines, in order to ensure that the required core competencies and areas of expertise can be leveraged in support of the upload exercise.
- The Premier may appoint new Panel member(s), as needed, during the established term, while ensuring that the Panel comprises no more than three individuals at any one point in time.

## **MANDATE & OBJECTIVES**

- Over the course of the initial maximum one-year term (“Stage 1”), the Special Advisor, supported by the Panel, will have a mandate to advise and work with the Ministry of Transportation – and partner ministries, as appropriate – in:
  - Developing the upload implementation strategy, including the negotiating mandate, to secure provincial ownership of the TTC subway network and other strategic transit/transportation assets in Toronto; and,
  - Undertaking staged/scoped consultation with key stakeholders, and, potentially the public, to inform the upload implementation strategy.
- If the option to extend for an additional maximum two year period (“Stage 2”) is exercised (i.e., for a total term of up to three years), then the Special Advisor (as appointed), supported by the Panel and subject to government approvals, will also:
  - Lead provincial upload negotiations with the City of Toronto/TTC.
- More specifically, the purposes of the Special Advisor and Panel functions are as follows:

### **Stage 1 – Initial Maximum One-Year Term**

- Based upon the recommendations of the Special Advisor, and subject to provincial approvals, it is expected that the key activities to be undertaken will include the following:

1) *Provide Technical Expertise and Advice to Government*

- Beginning in late summer/early fall 2018, the Special Advisor and Panel will guide and provide input to the internal-to-government analytical work, which will enable the development of the provincial upload implementation strategy.
- Moreover, the Special Advisor and Panel will be asked to bring to bear technical expertise on several focus areas to inform provincial decision-making, such as:
  - Financial modelling and analysis, including the associated accounting and controllership considerations;
  - Potential ownership and service delivery models under the upload; and,
  - The upload implementation pathway, timeline and strategy, including:
    - The design and mechanics of the merger/acquisition;
    - The policy, financial and corporate governance/structure implications for the entity responsible for the assumed Toronto assets; and,
    - Other implementation risks and considerations.

## 2) *Lead Stakeholder Engagement*

- The Special Advisor and Panel (as needed), working with MTO and partner ministries, will develop a formal negotiating strategy and lead pre-negotiation/early engagement with the City of Toronto/TTC, beginning in January 2019, in order to identify opportunities to advance the upload initiative.
- Additional engagement with key stakeholders (e.g., the federal government, GTHA municipalities, business/advocacy organizations, etc.) may also be conducted to inform the provincial upload implementation strategy, including the negotiating mandate.

## 3) *Potential for Public Consultation*

- The Special Advisor and Panel may be called upon to publicly champion the upload initiative on behalf of the province, which will involve working with MTO and, potentially, Metrolinx, to undertake a public engagement process.
- If public consultation is undertaken, the Special Advisor and Panel may be expected to deliver a final report to government that captures the feedback received throughout the process.
  - The results of this potential engagement process may be communicated publically.

## **Stage 2 – Additional (Optional) Maximum Two-Year Term**

- Subject to the term option being exercised, and upon provincial approval of the negotiating mandate, the Special Advisor (as appointed), working with MTO/partner ministries and supported by the Panel (as needed):
  - 1) May be responsible for leading formal negotiations with the City of Toronto/TTC to execute the upload transaction and the associated legally-binding agreement(s).
  - 2) May consult with other key stakeholder groups, and, potentially, the public, as negotiations progress.

## PHASES & POTENTIAL TIMELINES OF WORK

### Stage 1 – Initial Maximum One-Year Term

- Based upon the recommendations of the Special Advisor, and subject to government approvals, it is expected that the “Stage 1” mandate of the Special Advisor and Panel will be delivered in two phases of work, with details/timing to be confirmed:

#### *Phase One – Establishment & Internal Work (Early September to December 2018)*

- MTO, in collaboration with partner ministries, would provide a series of foundational briefings on the internal work underway related to the upload initiative.
- The Special Advisor and Panel (as needed) would begin developing the upload implementation strategy, while providing guidance/advice to MTO/partner ministries on the internal-to-government analysis as it proceeds.
  - Core outputs may include the negotiating mandate, the potential stakeholder engagement plan and a blueprint of the mechanisms that may be required to execute the upload.
- Furthermore, details related to a potential public consultation process – including timing and approach – would be developed between the Special Advisor/Panel and MTO/partner ministries.

#### *Phase Two – Pre-Negotiation Activities (January to April 2019)*

- Subject to approvals, the Special Advisor, working with MTO/partner ministries and supported by the Panel (as needed), would lead pre-negotiation preparation and early engagement activities with the City of Toronto/TTC, and, potentially, other key stakeholders.
- As this early engagement progresses, the Special Advisor and Panel would meet regularly with MTO/partner ministries to refine the upload implementation strategy, including the negotiating mandate.

### Stage 2 – Additional (Optional) Maximum Two-Year Term

- Subject to the term extension option being exercised and provincial approval of the negotiating mandate, the Special Advisor, as appointed, may lead formal negotiations with the City of Toronto related to the upload implementation strategy, including with respect to executing the transaction and informing the development of the associated legally-binding agreement(s).
  - To this end, the Special Advisor would work with MTO/partner ministries and be supported by the Panel (as needed).

- The Special Advisor and Panel may also engage other key stakeholder groups, and, potentially, the public, as part of the “Stage 2” mandate.

## **SPECIAL ADVISOR & PANEL SUPPORT**

- The Special Advisor and Panel will be supported by the following:
  - A dedicated team comprising staff from MTO, which will:
    - Work directly with the Special Advisor and Panel; and,
    - Perform secretariat duties.
  - Other ministries (e.g., Ministry of Infrastructure, Treasury Board Secretariat, Cabinet Office, Ministry of Finance, Ministry of Municipal Affairs and Housing, etc.) and, potentially, provincial agencies (i.e., Metrolinx and Infrastructure Ontario), as needed; and,
  - If a public consultation process is to be undertaken, a communications team may be made available to assist with report writing and other communications activities.
- In addition, MTO will work with the Special Advisor to determine the external expertise required to plan, negotiate and execute the upload, including the associated resource needs.
  - Once confirmed, MTO will seek provincial approval of the resources to support these activities.
- Finally, MTO will endeavour to leverage the resources of the Special Advisor, the Panel and participating ministries, in order to minimize costs.
  - For example, options will be explored to leverage facilities, such as firm boardrooms and government meeting space, to host engagement and negotiation activities.

## **ACCOUNTABILITY FRAMEWORK**

- The Special Advisor and Panel are accountable to the Premier, through the Minister of Transportation.
- Per the government Agencies and Appointments Directive (AAD), the following are the accountability relationships and responsibilities of the Minister of Transportation, the Deputy Minister of Transportation, and the Special Advisor and Panel:

<b><i>Role</i></b>	<b><i>Accountability</i></b>	<b><i>Responsibilities</i></b>
Minister of Transportation	<ul style="list-style-type: none"> <li>• The minister is accountable to Cabinet and the Legislature, representing the public.</li> </ul>	<ul style="list-style-type: none"> <li>• Reporting/responding, within prescribes timelines, to the Legislature and Cabinet on performance and compliance.</li> </ul>
Deputy Minister of	<ul style="list-style-type: none"> <li>• The Deputy Minister is</li> </ul>	<ul style="list-style-type: none"> <li>• Ensuring that the Special</li> </ul>

Transportation	accountable to the Secretary of Cabinet and the minister.	Advisor and Panel member(s) are provided with all of the necessary supports to deliver on the respective mandates.
Special Advisor and Panel Member(s)	<ul style="list-style-type: none"> <li>The Special Advisor and Panel member(s) are accountable to the minister for their conduct, and for the respective mandates and deliverables.</li> </ul>	<ul style="list-style-type: none"> <li>Keeping the minister informed; and,</li> <li>Achieving the purpose and deliverables – which are subject to provincial approvals – as stated in this Terms of Reference.</li> </ul>

- The Special Advisor and Panel member(s) will ensure that they are compliant with all applicable government directives and policies.

## **ETHICAL FRAMEWORK, CONFLICT OF INTEREST PROVISIONS & CONFIDENTIALITY**

- Per the AAD, the Special Advisor and Panel member(s) are required to fulfill the duties of their appointment in a professional, ethical and competent manner, and avoid any real or perceived conflict of interest. In particular, and without limiting the generality of the foregoing obligations, a government appointee shall:
  - Not use or attempt to use his or her appointment to benefit himself or herself or any person or entity;
  - Not participate in or attempt to influence decision-making as an appointee if he or she could benefit from the decision;
  - Not accept a gift that could influence, or that could be seen to influence, the appointee in carrying out the duties of the appointment;
  - Not use or disclose any confidential information, either during or after the appointment, obtained as a result of his or her appointment for any purpose unrelated to the duties of the appointment, except if required to do so by law or authorized to do so by the responsible minister/Premier;
  - Not use government premises, equipment or supplies for purposes unrelated to his or her appointment; and,
  - Comply with such additional requirements, if any, established by the short-term advisory body itself and/or the responsible minister/Premier.

*Note: Per 4. (above), the Special Advisor and Panel member(s) shall be required to execute the attached Confidentiality Agreement.*

- A government appointee must declare a personal or pecuniary interest that could raise conflict of interest concerns at the earliest opportunity to the responsible minister or minister's designate (i.e., the Deputy Minister of Transportation).

## **REMUNERATION**

- The Special Advisor and Panel member(s) shall be paid such remuneration as established in the applicable Order in Council.
- Moreover, the Special Advisor and Panel member(s) will be reimbursed for reasonable expenses incurred while discharging their duties and in accordance with the relevant directives, guidelines and policies of the Treasury Board and Management Board of Cabinet.