



## STAFF REPORT ACTION REQUIRED

### New Streetcar Delivery and Claim Negotiation Update

<b>Date:</b>	December 20, 2016
<b>To:</b>	TTC Board
<b>From:</b>	Chief Executive Officer

### Summary

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The report is submitted to provide a status update on the delivery of 204 new low floor streetcars from Bombardier Transportation Canada Inc. (Bombardier). The report also provides an update on the negotiations related to TTC's notice of dispute for late vehicle delivery for the contract following up on the July 11, 2016 board report on that subject.

### Recommendations

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**It is recommended that the Board:**

1. Receive the information as set out in this report.

### Financial Summary

This report has no financial impact as the purpose is to provide a status update on the revised delivery schedule for the 204 streetcar order based on TTC's contract with Bombardier. However, as a result of the adjusted vehicle delivery schedule noted in this report, the cashflows have been adjusted to reflect the schedule changes as summarized in Table 1 below (all numbers in \$'000). The estimated final cost (EFC) of the project remains unchanged at \$1,186,503,000 as included in TTC's 2016-2025 Capital Budget and as approved by Council on February 17, 2016. This project is also included in the 2017-2026 Capital Budget as approved by the Board on November 21, 2016.

Table 1 - Adjusted Cashflows

Years	Prior to 2016	2016	2017	2018	2019	2020	Estimated Final Cost (EFC)
<b>Approved Budget (2016-2025)</b>	528,319	174,871	165,928	157,136	160,249		1,186,503
<b>Forecast Based on Bombardier's Schedule of May 18, 2016</b>	509,301	54,051	152,716	267,999	190,693	11,743	1,186,503
<b>Changes Increase/(Decrease)</b>	(19,018)	(120,820)	(13,212)	110,863	30,444	11,743	-

The Chief Financial & Administration Officer has reviewed this report and agrees with the financial impact information.

## Decision History

At its April 27, 2009 meeting, the TTC Board approved a staff recommendation to award the contract to Bombardier for the supply of 204 streetcars to replace the aging fleet and accommodate marginal future growth. Toronto City Council's approval of the contract was, amongst other conditions, subject to a commitment of funding from the Province of Ontario. Refer to the board highlights item 1 in the following link:

[http://www.ttc.ca/About\\_the\\_TTC/Commission\\_reports\\_and\\_information/Commission\\_meetings/2009/Apr\\_27\\_2009/Highlights/index.jsp](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2009/Apr_27_2009/Highlights/index.jsp)

On June 22, 2015, a status update report was provided to the Board outlining the current status of the delivery of the new streetcars. At the June 22nd meeting, the Board requested that staff report back to the July 29th, 2015 meeting (the report was subsequently deferred to October 2015) with respect to a range of options available to the TTC based on Bombardier's poor performance to deliver the streetcars within the time specified in the contract schedule.

[http://www.ttc.ca/About\\_the\\_TTC/Commission\\_reports\\_and\\_information/Commission\\_meetings/2015/June\\_22/Reports/Board\\_Report\\_with\\_Confidential\\_Attachment\\_New\\_Streetcar.pdf](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2015/June_22/Reports/Board_Report_with_Confidential_Attachment_New_Streetcar.pdf)

On October 28, 2015, a further report was provided to the Board reviewing options to exclude Bombardier from future bidding. At the October 28th, 2015 meeting, the Board adopted staff's recommendation to commence a claim for liquidated damages against Bombardier. In addition, the Board adopted a number of other motions relating to Bombardier.

[http://www.ttc.ca/About\\_the\\_TTC/Commission\\_reports\\_and\\_information/Commission](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission)

[meetings/2015/October\\_28/Reports/Board\\_Request\\_Staff\\_Review\\_of\\_Options\\_to\\_Exclude\\_Bombardier\\_.pdf](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2015/October_28/Reports/Board_Request_Staff_Review_of_Options_to_Exclude_Bombardier_.pdf)[http://www.ttc.ca/About\\_the\\_TTC/Commission\\_reports\\_and\\_information/Commission\\_meetings/2015/June\\_22/Reports/Board\\_Report\\_with\\_Confidential\\_Attachment\\_New\\_Streetcar.pdf](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2015/June_22/Reports/Board_Report_with_Confidential_Attachment_New_Streetcar.pdf)

At its meeting of March 23, 2016, the Board approved the overhaul of 30 Canadian Light Rail Vehicles (CLRVs) required as a result of the delays in the delivery of the new streetcars.

[http://www.ttc.ca/About\\_the\\_TTC/Commission\\_reports\\_and\\_information/Commission\\_meetings/2016/March\\_23/Reports/Overhaul\\_of\\_30\\_Canadian\\_Light\\_Rail\\_Vehicles\\_%28CLRV%29\\_and\\_Maint.pdf](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2016/March_23/Reports/Overhaul_of_30_Canadian_Light_Rail_Vehicles_%28CLRV%29_and_Maint.pdf)

TTC's negotiation strategy was presented to the Board on July 11, 2016 at the Committee of the Whole meeting. Refer to the following link for the Board report summary:

[http://www.ttc.ca/About\\_the\\_TTC/Commission\\_reports\\_and\\_information/Commission\\_meetings/2016/July\\_11/Reports/2\\_Bombardier\\_Streetcars\\_-\\_Claims\\_Update.pdf](http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2016/July_11/Reports/2_Bombardier_Streetcars_-_Claims_Update.pdf)

## **New Streetcar Delivery Schedule**

As reported to the Board on July 11, 2016, the Contract with Bombardier for the design and supply of 204 new low floor streetcars remains behind schedule. Several key events have occurred on this project since the last report;

1. Bombardier replaced the president of its North America operation with Mr. Benoit Brossoit on April 11, 2016. On April 11, 2016 Mr. Brossoit introduced a "Get Well Plan" to recover the program and to commit to the delivery of all 204 cars required in the existing contract before year end 2019. It proposed deliveries for 2016 to 16 cars available for service from the previously committed 40 cars, and to change the deliveries to 40 cars in 2017, 76 cars in 2018, and 58 cars in 2019. (see Table 2 below).
2. Bombardier has not submitted to TTC a contractually required detailed project schedule (DPS) for the full length of the project since January 2016, prior to the recent substantive delivery schedule changes. TTC continues to request an updated DPS in order to understand and plan for the impact of these deliveries on TTC resources. Bombardier has advised that a DPS is forthcoming.
3. The delivery of 76 cars in 2018 and 58 cars in 2019 will require an average delivery rate of approximately one car every 3.3 days and 4.4 days respectively. To obtain this production capacity, Bombardier is transferring production of some of the underframes and cabs to plants in La Pocatière, Quebec; Bautzen, Germany; and Vienna, Austria. Bombardier is also in the process of moving the existing Metrolinx production line from Thunder Bay to Kingston to leave room to increase capacity of their existing TTC assembly line by the end of Q1 2017.

- TTC continues to experience financial and vehicle availability related burdens due to delivery delays. Additional resources are needed to support greatly increased vehicle commissioning and inspection requirements in Toronto and in the various Bombardier production facilities.

TTC continues to work with Bombardier to improve on production quality and quantities.

Table 2 below outlines the vehicle deliveries by year, comparing the original contract baseline to proposed schedules from February 2016, and then the latest revision of schedule provided on May 18, 2016, which has yet to be substantiated and accepted by the TTC.

Table 2 – LFLRV Schedule Update

***LFLRV Schedule Update - May 18, 2016  
Deliveries by Year End***

		2013	2014	2015	2016	2017	2018	2019
<i>Contractual Adjusted</i>	<i>Year Total</i>	7	30	36	36	36	39	20
	<i>Accumulated Total</i>	7	37	73	109	145	184	204
<i>May 2016, Proposed</i>	<i>Year Total</i>		3	11	16	40	76	58
	<i>Accumulated Total</i>		3	14	30	70	146	204

Based on supporting documentation received to-date, and staff’s assessment of production readiness of Bombardier’s Thunder Bay, Sahagun, Mexico, La Pocatière Quebec, and European plants, staff believe that there is a risk that Bombardier may not be able to meet its revised delivery schedule as submitted on May 18, 2016 and there is a risk that Bombardier may not meet the revised delivery schedule for contract completion of 204 new streetcars by 2019.

## **Impact to Service**

The current TTC fleet of legacy streetcars is between 32-37 years old, and were anticipated to be retired by now. The service life for new vehicles of this type vehicle is typically specified to be only 30 years. A life of 32-37 years without a major carbody rebuild is unheard of for a streetcar of this type operating in the conditions experienced in Toronto.

The TTC has begun to reduce the legacy fleet size from 248 vehicles to 224 since the start of delivery of the LFLRV fleet, by retiring the worst condition cars. The delivery delays have resulted in the need to try to extend the life of the remaining fleet in order to meet service demands. A 30-car overhaul program for both the ALRV and the CLRV, and a less substantial “road worthy” program have been initiated to maintain a minimum state of good repair. The risk of failing to meet streetcar service demands requires supplementing with bus service on some lines until the LFLRV delivery is complete.

## Liquidated Damages Claim Negotiation Progress

The proposed May 18, 2016 schedule is being reviewed for acceptability along with Bombardier's "Get Well Plan". A new baseline delivery schedule will be considered upon completion of technical assessment and negotiation of pertinent commercial terms in accordance with the Contract.

Both Bombardier and TTC agreed on a negotiation process between the delegated teams of representatives.

An updated report will be submitted once there is an agreed upon, realistic and binding delivery schedule in place, in conjunction with an update on the progress of the negotiation.

## Update on Board Motions

The following is an update to the board motion directives initiated at the July 11, 2016 meeting;

1. Commence claim and legal action;  
Status: Completed. Notice of dispute served to Bombardier.
2. Chair asked CEO of Bombardier to appear at Board Meeting;  
Status: Request made, declined by Bombardier in its response to the Chair.
3. Consult with alternative suppliers should Bombardier be unable to fulfill this order;  
Status: Considered but not recommended based on current slow but progressing manufacturing and delivery. Staff suggest reviewing this limitation when the TTC exercises the optional 60-car order.
4. Report on financial and operational impacts on the TTC should Bombardier not be able to fulfill their contractual obligation to deliver streetcars;  
Status: A status update report will be submitted upon reaching an agreement on a realistic and binding delivery schedule through the negotiation process as a means to determine when the "clock can be reset".
5. Seek outside business analyst to present to the Board on their assessment of Bombardier's corporate outlook;  
Status: Through our external legal advisers, a consultant has been identified and are finalizing the retainer.
6. TTC staff, in any negotiations on damages, liquidated or otherwise, to consider as a priority additional LRV's as compensation;  
Status: To be included in the negotiation.

7. The Chair to write to the Premier of Ontario requesting the province's support in facilitating the completion of the order for streetcars from Bombardier;  
Status: The Chair has written to the Premier.

## **Contact**

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