



***YORK REGION RAPID TRANSIT
CORPORATION AUDIT***

NOVEMBER 2021

***Authored by Michelle Morris, CPA, CGA, FCCA, CIA, CRMA and
Catherine Atkari, CIA, CFE***

Table of Contents

1. Management Summary	2
2. Introduction	2
3. Objectives and Scope	3
4. Detailed Observations.....	4
4.1 Opportunities to Strengthen Governance	4
4.2 Opportunities to Increase Openness and Transparency	8
4.3 Opportunities to Improve Board Reporting.....	9

1. Management Summary

Audit Services has completed a governance audit of the York Region Rapid Transit Corporation. The main objectives of this engagement were to: establish whether the mandate of the corporation is appropriate in the context of the future direction of rapid transit projects; evaluate the decision-making framework in place to ensure there is appropriate authorization over key decisions; and ensure that appropriate information is communicated to decision makers and stakeholders to enable timely and effective decisions.

The audit methodology included interviews with appropriate personnel from both the York Region Rapid Transit Corporation (YRRTC) and York Region; a review of relevant documents that govern the organization; and a review of a sample of projects conducted by YRRTC to assess the decision-making framework and information that flows to the board of directors and the shareholder.

This audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

Based on review of the three projects in the sample, Audit Services concludes that the decision-making framework in place at YRRTC is working as intended. Opportunities to strengthen governance, improve openness and transparency and improve board reporting have been noted and are discussed in detail under Section 4.0 Detailed Observations.

Should the reader have any questions or require a more detailed understanding of the risk assessment and sampling decisions made during this audit, please contact the Director, Audit Services.

Audit Services would like to thank YRRTC and York Region staff and management for their co-operation and assistance provided during the audit.

2. Introduction

York Region Rapid Transit Corporation is responsible for planning, design and construction of the rapid transit network and related infrastructure in conjunction with contracted program management and technical advisor corporations. YRRTC collaboratively plans, designs and delivers innovative mobility and rapid transit solutions to connect and transform communities.

YRRTC is a wholly-owned subsidiary and share capital corporation of The Regional Municipality of York; it represents one of the three corporations owned by York Region and is incorporated under the Ontario Business Corporations Act. Its Board of Directors is comprised of elected officials from York Region. The president of YRRTC reports to the Board of Directors and the Chief Executive Officer of YRRTC.

As at December 31, 2020 YRRTC has delivered just over \$3.0 billion in rapid transit projects which include: 34 kilometers of dedicated bus rapid transit lanes, the bus terminal at the Vaughan Metropolitan Centre, an operations and maintenance facility in Richmond Hill and the soon-to-be-completed Cornell Bus Terminal.

Senior staff at YRRTC also assisted in coordinating and overseeing York's cost share of approximately \$600 million of the Toronto Transit Commission construction of the Toronto-York Spadina Subway Extension (TYSSE). The organization continues to advocate for funding from other levels of government and continues to work with Metrolinx on the Yonge North Subway Extension.

3. Objectives and Scope

AUDIT OBJECTIVES

The main objectives of this engagement were to:

- Establish whether the mandate of the corporation is appropriate in the context of the future direction of rapid transit projects.
- Evaluate the decision-making framework in place to ensure there is appropriate authorization over key decisions.
- Ensure that appropriate information is communicated to decision makers and stakeholders to enable timely and effective decisions.

AUDIT SCOPE AND METHODOLOGY

The audit objectives were accomplished through:

1. Review of the corporation's articles of incorporation, Rapid Transit Agreement between York Region and YRRTC (Shareholder's Directive), and any other relevant governance documentation.
2. Review of a sample of projects that have been carried out to assess whether an appropriate decision-making framework was in place and whether adequate information was communicated to decision makers.
3. Environmental scan of other jurisdictions which have rapid transit projects or special purpose entities to establish what governance structures are in place.
4. Interviews with appropriate personnel including York Region staff and YRRTC staff.
5. Review of other related documentation.

SCOPE LIMITATION

Based on the level of risk, a review of YRRTC's plans for staffing requirements was not conducted as part of this audit.

4. Detailed Observations

4.1 Opportunities to Strengthen Governance

Mandate Observation

There is an absence of clarity regarding the YRRTC's mandate compared to the Articles of Incorporation, the York Region Rapid Transit Agreement and actual practice.

The organization is governed by the York Region Rapid Transit Articles of Incorporation (July 2, 2003) (Appendix A) and the York Region Rapid Transit Agreement (September 10, 2009) (Appendix B). The powers of the corporation are restricted to carrying out one or more of the purposes listed in the Articles of Incorporation.

The York Region Rapid Transit Agreement, Article II sets out the responsibilities, rights and powers of YRRTC, and Article III sets out the responsibilities, rights and powers retained by York Region. This agreement is set to expire September 10, 2024 unless extended by both parties. Aside from the administrative responsibilities of the corporation, the Rapid Transit Agreement restricts YRRTC's role to: strategic planning and oversight; delivery of the Rapid Transit System and to seek senior level government funding; manage and monitor rapid transit project work; and, through Council approval, purchase, lease or otherwise acquire land as required for the Rapid Transit project.

Specific details of the differences are captured in Table 1 below:

Table 1

<i>As per the Articles of Incorporation</i>	<i>As per the York Region Rapid Transit Agreement</i>	<i>Actual Practice</i>
Operate and maintain a public transit system (Item 1)	Item is not covered in the agreement	Operations and maintenance are conducted by the Transportation Department at York Region
Operate and maintain one or more municipal capital facilities (Item 2)	Item is not covered in the agreement	Same as noted above
To construct, operate, maintain and own, including ownership of the land, related thereto, one or more facilities: <ul style="list-style-type: none"> Public transportation system General parking facility (Item 4) 	Plan, implement and manage transit-oriented development Structured in ways that will provide the greatest benefit to the Region, YRRTC, and the Rapid Transit Project as a whole	Operations and maintenance are conducted by the Transportation Department at York Region Land ownership remains with York Region

<i>As per the Articles of Incorporation</i>	<i>As per the York Region Rapid Transit Agreement</i>	<i>Actual Practice</i>
To develop one or more sites for an industrial, commercial or institutional use if the sites are part of, abut or are necessary for a system or facility of the Corporation for public transportation. (Item 5)	Item is not covered in the agreement	55 Orlando site designed and built, as per YRRTC staff.
To develop one or more sites for and construct, operate and maintain one or more housing projects used in whole or in part for residential accommodation on those sites, including facilities used for ancillary purposes, and located in one or more buildings used in whole or in part for residential accommodation if the sites are part of, abut or are necessary for a system or facility of the Corporation for public transportation. (Item 6)	Item is not covered in the agreement	Not done to date
YRRTC can own land related to the facility	Through Council approval, purchase, lease or otherwise acquire land as required for the Rapid Transit project	YRRTC does not own the land. Land purchases made through York Region and owned by York Region

Without clarity, YRRTC may pursue objectives that are not consistent with the organization's mandate and/or Shareholders' Directive or may perform work that is not strategically aligned with the intent and purpose behind the creation of the corporation.

Recommendations:

There are opportunities to:

4.1.1 Revisit the mandate to help ensure that the direction of the corporation is aligned with the internal and external needs of the Board, Regional Council (as the shareholder), and stakeholders. Once the mandate is reviewed and decided, the Articles of Incorporation should be updated accordingly.

4.1.2 Review the Rapid Transit Agreement to ensure that the objectives of the agreement are aligned with the updated mandate.

4.1.3 Consider developing a timeline to renew the Rapid Transit Agreement in line with recommendations 4.1.1 and 4.1.2 above.

Roles and Responsibilities Observation

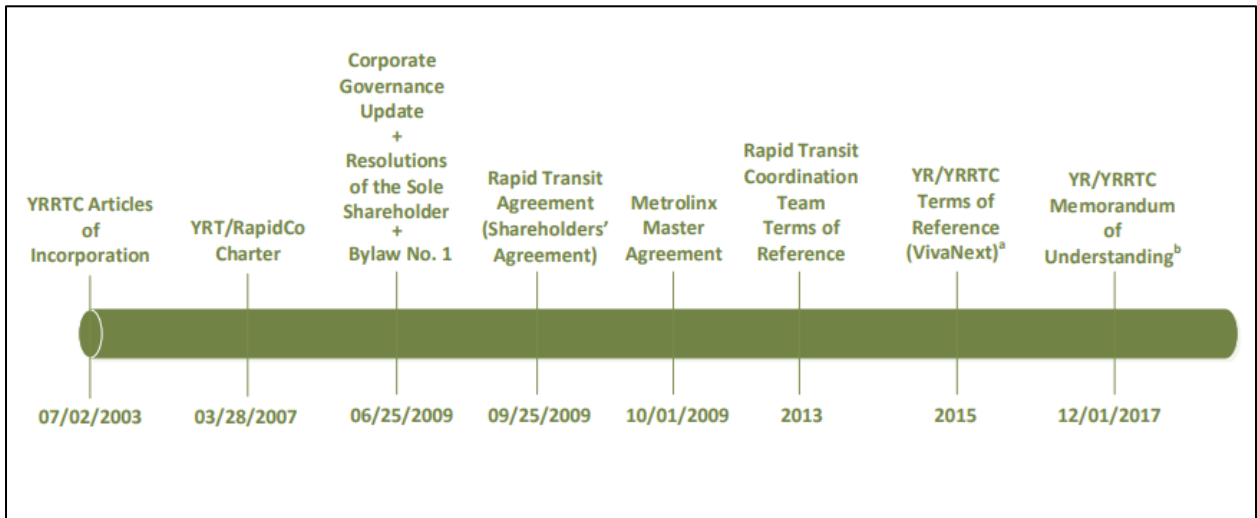
Staff at both YRRTC and York Region may be unclear on their roles, responsibilities, and authority to act on behalf of the corporation. As such, decisions made by both parties may not be in the best interests of the corporation.

As part of the audit testing, 20 interviews were conducted with YRRTC staff and York Region staff that provide support to YRRTC. Based on the feedback in the interviews, there was varied understanding of the purpose, roles and responsibilities regarding YRRTC which include:

- Construction of the Rapid Transit Network
- Advocacy for funding from other levels of government for rapid transit projects
- Some roles and responsibilities lacked clarity between YRRTC and York staff, for example, who is responsible for what?
- YRRTC’s ability to own/ not own land
- Various agreements are in place to manage the relationship between YRRTC and York Region in addition to the Articles of Incorporation and the Rapid Transit Corporation Agreement
- The role of the Rapid Transit Coordination Team. This team consists of staff at both YRRTC and York Region and meets monthly. Its Terms of Reference defines purpose, roles and responsibilities; however, decisions made from this forum are not tracked and the meetings are not recorded in minutes.

Additionally, there are over 15 documents that govern the working relationship between YRRTC and York Region including dedicated services agreements, memorandums of understanding, protocols, charters and terms of reference. A pictorial of the high-level agreements is below:

Picture 1



a) Administrative Services Only; b) FIN Services

Recommendation:

4.1.4 There are opportunities to revisit all the governance documents in concert with the review of the mandate to help ensure alignment and role clarity.

Organization Structure Observation

The current reporting structure provides opportunities and risks which are outlined in Table 2 below. This list is not exhaustive.

Table 2

<i>Opportunities</i>	<i>Risks</i>
Full autonomy allows for quick decision-making with reduced administrative oversight	Decisions made while in the best interest of the corporation, may not be in the best interest of the municipality
Decisions made may be actioned quickly as the corporation may not be subject to the same level of legislation governing the municipality, for example, the Purchasing By-law.	The same level of rigour on administrative processes (oversight) may not be present and may expose the corporation and subsequently the Region to additional risks such as procurement and/ or human resources risks.
	CAO may not have a line of sight to the corporation given the absence of an official administrative reporting line.

York Region has three municipal corporations – YRRTC, YorkNet and Housing York Inc. The YRRTC reporting structure is different from the other municipal corporations. At both YorkNet and Housing York Inc., the president and vice president have an administrative reporting structure to an executive leader at York Region. The president of YRRTC reports both functionally and administratively to the CEO of YRRTC and the Chair of the Board for YRRTC. In the current state there is no formal administrative reporting relationship to any executive leader at York Region.

Based on the documents reviewed, there was no rationale provided for the reporting relationship differences among the Regional corporations. Staff commented during interviews that YRRTC was incorporated to be nimble (less administrative burden). Based on the By-Law No. 1 relating to the business affairs of YRRTC, Article 4.3, the president is granted full authority, subject to the authority of the Board of Directors and the supervision of the CEO, to manage the business affairs of the corporation.

Recommendation:

4.1.5 That consideration be given to formalizing an administrative reporting relationship between YRRTC and an executive lead at York Region to help ensure that decisions and actions taken by both entities are aligned and support the strategic direction of York Region and YRRTC. This consideration may be done in concert with the review of the mandate as noted in the mandate observation above.

4.2 Opportunities to Increase Openness and Transparency

Presentation Observation

Some decision reports requiring Board of Director approval go forward in presentations as opposed to reports.

As part of testing, a review of Board reports for 2020 and 2021 was conducted. YRRTC generally provides the Board of Directors with monthly reporting. Presentations are often used to inform the Board on project updates, procurement requests for approval, corporate updates and budget information. Presentations are either for approval or information. Staff at YRRTC expressed that presentations are used on occasion in lieu of reports because they provide more flexibility with respect to timelines. Reports by YRRTC follow the same procedures as York Region, which require greater lead time and review.

Presentations are generally used to augment information in a report, to help inform boards or councils to enable informed decision-making. In the current process, presentations do not follow the same level of rigour as reports in terms of review and do not form part of the agenda package. Presentations are appended to the minutes of open session meetings; however, the majority of YRRTC Board meetings are held in closed session.

When a decision is made by the Board through a presentation, a resolution is passed and recorded in the minutes. Presentations given by third parties are not always received by Regional staff and therefore not appended to the minutes in the Regional repository.

Recommendation:

4.2.1 That information to the Board of Directors and decisions required from the Board of Directors go forward as a report to allow for sufficient review and feedback through the administrative agenda review process.

Private Session Observation

To demonstrate openness and transparency and reduce the potential risk of being challenged for not meeting the criteria for closed session, meetings should be held in open session.

As noted, YRRTC is a wholly-owned corporation of York Region and is incorporated under the Ontario Business Corporations Act; however, it may be considered as an extension of the municipality and is treated as a municipality for Harmonized Sales Tax purposes. Municipalities, with limited exceptions, hold Council meetings in open session.

Prior to the Covid19 pandemic, YRRTC board meetings were held in both open and closed session. As the board meetings moved to virtual from in-person in 2020, all meetings are now held in private.

Reports meeting the requirement of closed session would continue to go forward in private.

Recommendation:

4.2.2 That where possible, YRRTC Board of Director meetings be held in open session and further that items meeting the criteria for private session continue in private.

4.3 Opportunities to Improve Board Reporting

Project Testing Observation

Project information that is reported to Metrolinx, does not consistently flow to the YRRTC Board of Directors. There is an opportunity to develop an overall consistent approach for project reporting to the YRRTC Board of Directors regardless of the type of agreement governing the funding.

Three projects were reviewed that have various agreements that dictate reporting, approval and financial protocols. The three projects included:

1. Davis Drive (D1): Metrolinx funded project and YRRTC project-managed;
2. Toronto Transit Commission (TTC) managed, with York funding the assets built in York Region; and,
3. Cornell Station: YRRTC project-managed with 50/50 funding split between the federal government and York Region.

Specific observations are noted below:

- For Metrolinx funded projects where purchasing limits exceed staff thresholds, Metrolinx is the approval authority. YRRTC staff prepare a procurement authorization report for Metrolinx review and approval. Once received the purchase orders are adjusted accordingly.
- YRRTC Board received information regarding significant financial changes on a PowerPoint presentation seeking direction to proceed with outstanding change directives, change proposals and change requests.
- For TYSSE, requests for financial increases went to York Region Council for approval.
- For Cornell, requests for increases were either sent via a PowerPoint presentation for Board approval or a report to the Board for approval.
- For approvals within the limits of staff, an action request form is prepared and approved by either the president or CFO. There were no deviations noted.

Recommendation:

4.3.1 That a consistent approach for project reporting to the YRRTC Board of Directors be implemented.

Purchase Orders and Change Orders Observation

There is an inconsistent approach to how change orders are managed between non-construction and construction related purchase orders.

In the sample reviewed, purchase order changes were driven by either a scope change or the need for additional work and financing.

Construction Related Change Orders

For construction related change orders, YRRTC contracts with a program management consultant (Comtech) and a technical advisor/ construction oversight consultant (CH2M Hill) to manage the construction contracts and change orders. For the sample selected, Audit was able to trace back change orders to the adjusted purchase orders for the Metrolinx funded project and the Cornell project.

Non-Construction Related Change Orders

Non-construction related contracts, purchase orders and change orders are managed by YRRTC staff. During the review, Audit was informed that change orders are not issued for non-construction related purchase orders (including utilities), even if the changes exceed the purchase order contingency amounts. In lieu of change orders, staff issue a memo and prepare either a procurement authorization report or an action request form based on the amount of the change.

Recommendation:

4.3.2 That consideration be given to standardizing purchase order and change order processes to align purchase orders with change orders where possible including non-construction related changes.

Portfolio and Project Reporting Observation

In reviewing the information presented to the Board of Directors, we noted there is an absence of detailed project reporting. As a result, Board members may not be aware of significant issues with a project, as reporting on project issues is separate from the overall project reporting.

Currently, the Board receives monthly presentations on projects and quarterly project status reports that outlines the project's accomplishments, projects underway, procurement activities and financial updates.

For the projects reviewed in the sample, budget versus actuals could not be determined, the percentage completion of the project is not clear and any projects that may have been experiencing difficulties were not clear based on the reporting.

Based on the sample, there was an absence of fulsome project reporting which would include:

- Dashboard report
- Percentage (%) complete
- Budget to actuals comparison
- Variance analysis
- Significant change orders
- Significant scope changes
- Time overruns

An example of project reporting is outlined in Picture 2 below

Picture 2 - Example of Project Reporting *

Overall Health Legend				
	Schedule	Cost	Scope	Issues
Green	On Schedule	On Budget	On Track	All Issues are under PM control
Yellow	Off Schedule by 3 months	Off Budget by 3%	Compromised Scope, with potential to impact Schedule or Cost	Issues require middle Management intervention
Red	Off Schedule greater than 3 months and requires Executive Management support to put back on Schedule	Off Budget by greater than 3%	Compromised Scope and impacts to Schedule and Cost	Issues require Senior Management intervention

Progress Legend	
	Completed
	In Progress
	Not Started

Project Name	Project Year	Progress Legend	Overall Project Health	Key Highlights
Project A	20X1			
Project B	20X2			
Project C	20X3			

*Legends from PMO Transportation

Recommendation:

4.3.3 That enhancements to project reporting to the Board be made as noted in the list above.

Management Response:

Management at both York Region and YRRTC have received a copy of this report. As the recommendations are within the purview of the shareholder (Council) and the Board of Directors of YRRTC, responses and actions from management are not included in this report.

End of Report

Original Signed

MICHELLE MORRIS

Director, Audit Services