



**Report of the Auditor General
of the Ville de Montréal**
to the City Council and to the
Urban Agglomeration Council

For the Year Ended December 31, 2015

4.8

**Real Estate
Transaction
Management**
(Service de la gestion et de
la planification immobilière)



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List of Acronyms

SGPI Service de la gestion et de la
 planification immobilière

4.8. Real Estate Transaction Management (Service de la gestion et de la planification immobilière)

1. Background

Real estate property management involves concluding asset acquisitions and disposals as part of municipal asset management programs or as a means to help improve the urban environment and economic development of the Ville de Montréal (the City).

When concluding such real estate transactions, the City must be sure to comply with the applicable legal and administrative frameworks. From the outset, the City is subject to the *Municipal Aid Prohibition Act* and must therefore dispose of property in exchange for payment.

According to the charter of the City (the charter), City council has the powers to approve real estate acquisitions and disposals. For acquisitions and disposals of immovables valued at \$25,000 or less, the charter also stipulates that these powers are exercised by the executive committee. In addition, since September 2, 2015, the powers of the executive committee have been delegated to the Service de la gestion et de la planification immobilière (SGPI),¹ which is responsible for real estate transaction management.

In terms of the awarding method, the charter states that, for property acquisitions, the City can acquire by agreement or expropriation any immovable for industrial purposes (art. 139) or whose acquisition is deemed appropriate for land reserve or housing purposes (art. 144). In the case of disposals, articles indicating the disposal method to be followed (e.g., public call for tenders or agreement) are not included in the charter.

Real estate transactions represent substantial amounts. Table 1, below, shows the amounts for 2014 and 2015.

Table 1 – Real Estate Transaction Amounts

Real estate transactions	2014	2015
Acquisitions	\$26.5M	\$20.6M ^[a]
Actual sales	\$10.4M	\$12.7M

^[a] Data recorded in the accounting system as of February 22, 2016.

Source: SIMON for the acquisition data and the Service des finances for the sales.

¹ Level A official, i.e., director – real estate evaluation and brokerage/security.

In 2015, a restructuring process was undertaken within the SGPI. In the first phase, four departments were created, including two involved in the management of real estate transactions: the Direction évaluation et courtage immobilier / sécurité and the Direction planification, assurance qualité et service à la clientèle. Pending the establishment of the divisions and sections in this new structure, the business units involved in the process remain the Section des stratégies immobilières, the Section des transactions immobilières and the Section de l'évaluation immobilière.

Well before this restructuring, the Direction générale had given the SGPI a mandate aimed at optimizing real estate transaction processes. In 2014, the SGPI reviewed business processes with a view to improving and standardizing procedures. Expectations were mainly to increase the number of files finalized.² Since that time, the SGPI has been continuing the work of optimizing real estate transactions.

Every year, the Section des transactions immobilières opens over 230 transaction mandates of various categories and closes roughly 200 files. On August 31, 2015, a little over 550 files were still active. Close to 50% were sale files, 30% acquisition files and 20% involved other types of transactions (e.g., a release, a servitude).

2. Purpose and Scope of the Audit

The purpose of the audit conducted was to ensure that the real estate transactions (the sale and purchase of land) were governed by a strategic management process and were conducted in such a way as to maximize value for the City. To this end, we examined the presence of administrative frameworks, real estate transaction processes, follow-up and control mechanisms, and accountability.

Our audit covered real estate transactions completed between June 2014 and August 2015. For certain aspects, data from before this period were also taken into consideration. Our audit was mainly conducted between December 2015 and February 2016 and took place mainly within the SGPI, and more specifically within the Direction évaluation et courtage immobilier / sécurité, to which the Section des transactions immobilières and the Section de l'évaluation immobilière administratively reported at the time of our audit. It was also conducted within the Section des stratégies immobilières of the SGPI.

² Completed decision-making record in which the head of the administrative unit confirms that the information it contains has been verified, that the standards and procedures have been followed, that the required authorizations and notices have been obtained, and that the file can be submitted to the relevant decision-making bodies.

3. Main Findings

The audit conducted revealed the areas in need of improvements, including the following:

- The role and responsibilities of the Section des stratégies immobilières in the real estate transaction management process need to be clarified;
- Administrative frameworks have still not been drafted for all the types of real estate transactions, including acquisitions and sales over \$25,000;
- There are no mechanisms allowing all employees involved in the real estate transaction process to declare their independence before the start of a mandate, to regularly declare whether they are in a conflict of interest situation, to make a periodic declaration of pecuniary interests and to produce a solemn pledge of confidentiality;
- There is no proof of approval of promises to purchase by an authorized City representative;
- A promise to purchase was concluded between the City and a buyer without obtaining written authorization from the borough and without officially requesting a market value assessment report;
- Proof of compliance with the contractual clauses set out in the notarial deeds is not always documented;
- The mechanisms in place do not make it possible to track, control and report on processing times for the various real estate transaction processes.

4. Audit Results

In June 2015, the executive committee approved the new Service de la gestion et de la planification immobilière (SGPI) organizational model. A restructuring process was undertaken for the purpose of implementing it. By approving this new organizational model, the executive committee also authorized the creation of four departments as well as their mandates.

For the purposes of this audit, we were particularly interested in the mandate of the Direction évaluation et courtage immobilier / sécurité, which is to:

- manage the acquisition and sale of immovables and the real property rights required to meet the objectives related to improvement of the urban environment and economic development of the City;
- establish property values;
- develop and deploy the means to implement an integrated management approach aimed at acquiring immovables over the medium and long term in order to anticipate and meet

the land reserve needs for urban development (urban infrastructure, economic development, residential, commercial and industrial sectors);

- Identify real estate needs and the urban development vision of departments and boroughs, when mandated, so as to implement a real estate strategy to satisfy future development needs.

Certain aspects of the mandate are already in place, namely those regarding the management of real estate transaction files and the establishment of property values. However, according to the information obtained, measures have not yet been taken to implement an integrated management approach aimed at acquiring immovables over the medium and long term. This would involve putting together a land reserve to meet the City's future needs and providing real estate funds to be able to take advantage of business opportunities that arise. Lastly, with regard to the fourth aspect of the mandate, the activities are currently carried out by the Section des stratégies immobilières, which is presently under the Direction planification, assurance qualité et service à la clientèle.

We also looked at one aspect of this department's mandate: management of the inventory, archives, databases and computer applications related to the City's property assets. More specifically with regard to land (used for municipal purposes or intended for resale), inventory management and updating are performed exclusively by this department.

As we mentioned in the introduction, in an effort to determine avenues for improving the processes in place, a Kaizen exercise³ was held in fall 2013 within the Division évaluation et transactions immobilières.⁴ The exercise targeted the following eight business processes:

- Acquisition;
- Acquisition of servitudes;
- Public call for tenders/proposals;
- Exclusion of ecoterritories;
- Releases;
- Lane transfer;
- Sale of leftover land valued at less than \$25,000;
- Sale by agreement.

According to the information obtained, the purpose of the exercise was to improve and standardize procedures within the division itself. The processes were therefore deployed starting in June 2014. It should be mentioned that even though these processes underwent

³ The Kaizen approach is a continuous improvement process. The expected results are workflow simplification, quality improvement, reduced processing times and increased productivity.

⁴ Which, after the restructuring, became the Direction évaluation et courtage immobilier / sécurité.

an evaluation using Kaizen, the activities involved had nevertheless existed for several years despite numerous restructuring operations.

During our audit, we focused on sale and acquisition transactions valued at over \$25,000. We began by examining whether preliminary analyses of real estate transactions had been conducted as set out in the processes. Second, we looked at certain aspects surrounding the completion of real estate transaction files, such as the existence of administrative frameworks, how the sale or acquisition price was determined, authorization by officials, documentation and archiving. Moreover, our audit also dealt with the monitoring of contractual clauses and follow-up and control mechanisms used to manage the real estate transaction files. Third, we looked at accountability reporting on real estate transactions.

We therefore examined six real estate transactions on a test basis: four sales by agreement and two acquisitions. In addition, for the monitoring of contractual clauses, we examined on a test basis three real estate transactions officially approved in 2013.

4.1. Receipt of Requests and Preliminary Analysis

4.1.A. Background and Findings

According to the information obtained, the Section des stratégies immobilières is involved in the real estate transaction process as soon as it receives a request to acquire or sell land. In the case of acquisitions, the clients are the central departments and boroughs, whereas for disposals, they can also be external clients. Furthermore, while boroughs are not obliged to make a request to the section, the number of requests received is apparently on the rise. The manager states that requests are also made directly to the Direction évaluation et courtage immobilier / sécurité. In such a case, both units have agreed for these requests to be sent back to the Section des stratégies immobilières for preliminary analysis.

For acquisitions, one of the first steps in the preliminary analysis is to evaluate clients' needs in order to propose land that will meet them. Based on agreed-upon search criteria, a search is conducted in the City land database. If the search is unsuccessful, it is extended to the private market. For potential land, a project feasibility analysis is conducted and a preliminary estimate of the market value is requested as needed from the Section de l'évaluation immobilière. This estimate is used to determine whether the client has the necessary budget to move forward. A financial analysis may also be conducted to help the client make a decision. Once a piece of land is chosen, a mandate is given to the Direction évaluation et courtage immobilier / sécurité to complete a real estate transaction.

Regarding the involvement of the Section de l'évaluation immobilière, we obtained information to the effect that it should be involved not only in preliminary estimates, but also in terms of recommending one piece of land over another. It should be noted that in the current acquisition process, the Section de l'évaluation immobilière is only mandated when a market value assessment is required. According to this method of operation, its involvement begins well after the mandate has been given to the Direction évaluation et courtage immobilier / sécurité. A piece of land that is thought to be potentially worthwhile for the Section des stratégies immobilières to acquire could therefore turn out to be a less attractive option following a more in-depth examination. For example, it could be shown that acquisition of the lot in question should be done by expropriation rather than by agreement, which, for the City, would have a direct impact on the acquisition cost and the time required to conclude the transaction. To avoid such situations, the involvement of the Section de l'évaluation immobilière from the start of the process would provide the Section des stratégies immobilières with useful information for land selection.

In the case of a request involving the sale of land, the analysis performed by the Section des stratégies immobilières consists in determining whether it is earmarked for municipal functions and then conducting a search for the property titles. According to the information obtained, the purpose of the analysis is to ensure that the sale of the land is indeed planned strategically.

As part of our audit, we sought proof, through the files surveyed, that a preliminary analysis had been conducted by the Section des stratégies immobilières prior to the opening of the files by the Direction évaluation et courtage immobilier / sécurité and that it had been made available to the parties involved. In this respect, we found proof of a preliminary analysis performed prior to the mandate being assigned for two of the six transactions examined. For the four other transactions, the steps of the preliminary analysis process were performed instead by the real estate advisor assigned to the transaction. This situation increases the amount of time spent on these transactions by the real estate advisors in the Section des transactions immobilières.

Moreover, according to the real estate advisors consulted, in general, the preliminary analysis would be of little use to them since they have to revalidate the information obtained. Furthermore, the information shared would, in some cases, be incomplete, making it necessary to contact the Section des stratégies immobilières or other stakeholders involved in the file to obtain it (e.g., geomatics opinion missing from the file).

In addition, we mentioned previously that the Section des stratégies immobilières currently performs the fourth aspect of the mandate assigned to the Direction évaluation et courtage

immobilier / sécurité, i.e., identify the departments' and boroughs' urban development vision to establish a real estate strategy to meet future development needs. Since not all the borough requests are necessarily received by the Section des stratégies immobilières, we question the development of actual real estate strategies. We believe that this situation may cause the City to negotiate land to meet specific needs without having a strategic vision. The City could therefore find itself in a vulnerable position when it comes to negotiating an acquisition or sale price, as the case may be.

We feel that clarification is needed with regard to the expected role and responsibilities of the Section des stratégies immobilières to enable the City to establish a strategic vision of the future needs of clients.

4.1.B. Recommendation

We recommend that the Service de la gestion et de la planification immobilière clarify the role and responsibilities of the Section des stratégies immobilières in the real estate transaction management process to enable the City to establish a strategic vision of the needs of clients and also to reduce real estate transaction processing times.

Business unit's response:

[TRANSLATION] The role and responsibilities of the Section des stratégies immobilières in the real estate management process will be updated as part of the current restructuring of the SGPI. (Planned completion: December 2016)

4.1.C. Recommendation

We recommend that the Direction générale require all boroughs to provide the Service de la gestion et de la planification immobilière with their land acquisition and disposal needs in order to meet future development needs so that it can fully exercise its role in establishing real estate strategies on the territory.

Business unit's response:

[TRANSLATION] As a first step, the Direction générale will send borough directors a note to this effect. (Planned completion: April 2016)

In the medium term, the administration will examine the possibility of grouping together all real estate activities under the SGPI, allowing it to take on the leadership and planning required to carry out its mandate. (Planned completion: March 2017)

4.2. Real Estate Transactions

When the Direction évaluation et courtage immobilier / sécurité receives a mandate to conduct a real estate transaction, file processing must be guided by recognized administrative frameworks and business processes.

4.2.1. Administrative Frameworks

4.2.1.A. Background and Findings

The management of real estate transactions is governed by administrative frameworks dealing with certain types of transactions. The purpose of these frameworks is mainly to enable staff members to understand what is expected of them and inform them of the extent of their freedom of action. They consist of the following directives:

- The transfer of lanes to riparian owners⁵ (April 2011);
- Transactions between school boards and the Ville de Montréal⁶ (July 2012);
- The terms and conditions of the sale of plots of land, leftover land and parts of lanes valued at \$25,000 or less⁷ (August 2009).

We found that these frameworks dealt with two processes that were subject to the Kaizen analysis: the sale of lanes and the sale of land valued at less than \$25,000. The other types of transactions, namely the other sales by agreement or the sales by call for proposals or tenders as well as acquisitions, are not subject to any official administrative framework. According to the managers we interviewed, these types of transactions are governed instead by standards of good practice within the Direction évaluation et transactions immobilières / sécurité.

We feel that it would be beneficial for these rules to be set out in administrative frameworks. As long as these rules are not official, we believe there is a risk that the staff neglects to apply them or does not apply them consistently.

With regard more specifically to land disposals, the managers we interviewed mentioned the ability to choose a method of alienation (by public call for proposals or tenders, or by agreement). According to the information obtained, the choice is made collectively by the Section des transactions immobilières and the Section des stratégies immobilières or the borough involved. During our audit, it was unclear whether official criteria had been established to guide the parties involved in making a choice. In such a situation, the parties

⁵ C-OG-SCARM-D-11-001.

⁶ C-OG-SCARM-D-12-002.

⁷ C-OG-SMVTP-D-09-001.

involved could set inconsistent criteria from one transaction to another, which could potentially be unfair.

We feel that the SGPI should ensure that the administrative frameworks cover all real estate transactions so that the application of recognized practices remains consistent over the years. The failure to provide a framework for transactions exposes the City to the risks of not getting the best price for sales and paying too much for acquisitions, or not applying the same practices for similar transactions.

4.2.1.B. Recommendation

We recommend that the Service de la gestion et de la planification immobilière ensure that it has official administrative frameworks for all the types of transactions in order to standardize procedures and be fair to all potential buyers.

Business unit's response:

[TRANSLATION] The SGPI will produce administrative frameworks for all of its processes associated with real estate transactions. (Planned completion: April 2017)

4.2.2. Land Sale and Acquisition Processes

4.2.2.A. Background and Findings

Recognized business processes must provide consistency in the procedures performed by the staff involved in file processing. In this section, we will discuss the notion of conflicts of interest, market value assessment and evaluation of the agreed price, preparing the decision-making record to allow officials to make an informed decision as well as archiving files, monitoring contractual clauses, and follow-up and control mechanisms.

4.2.2.1. Notion of Conflicts of Interest

4.2.2.1.A. Background and Findings

Mechanisms for the disclosure and management of conflicts of interest exist within the City. As stipulated in the guide to the *Code of Conduct of Ville de Montréal Employees*, an employee who finds him or herself in a conflict of interest situation is required to submit a confidential report that will be evaluated by the comptroller general (self-declaration report). Very often, employees are only informed of it when they are hired or when the *Code of Conduct* is updated. The real estate advisors we interviewed all stated that they were aware

of the notion of conflict of interest in the context of their work. They are required to disclose any conflict with a party to a transaction from the moment the mandate is assigned to them, and, if necessary, the mandate will be assigned to another real estate advisor. These measures are taken to ensure that transactions are transparent and are performed at the best cost for the City.

Certain organizations require that their employees make regular declarations, even when there are no conflicts to declare. Asking employees to provide this type of declaration is useful in assuring management that they have thought about conflicts of interest and have taken them into account. At the City, top executives must submit a declaration of pecuniary interest when they are initially hired and, subsequently, on a yearly basis.

Although this audit did not uncover any problems with regard to conflicts of interest, past audits and recent police investigations have revealed cases of such, including in the area of real estate transactions. At the City, the activities of the Direction évaluation et courtage immobilier / sécurité fall under sectors that should be considered high risk and that, in our opinion, merit special attention. We feel that an official process must be implemented to allow all employees involved in the real estate transaction process to make a declaration of independence at the start of the mandate, to regularly declare whether or not they are in a conflict of interest situation, to make a periodic declaration of pecuniary interests and to produce a solemn pledge of confidentiality.

4.2.2.1.B. Recommendation

We recommend that the Service de la gestion et de la planification immobilière implement the appropriate mechanisms to allow all employees involved, based on the type of real estate transaction, to declare their independence before the start of a mandate, to regularly declare whether or not they are in a conflict of interest situation, to make a periodic declaration of pecuniary interests and to produce a solemn pledge of confidentiality to demonstrate the transparency and objectivity of the process and the decisions made.

Business unit's response:

[TRANSLATION] The SGPI will create a declaration of independence and conflict of interest form that each manager will have to complete and sign at the beginning of a mandate. This form will be added to the file. (Planned completion: June 2016)

The SGPI will create a periodic declaration of pecuniary interests form including a solemn pledge of confidentiality that each employee responsible for recommending real estate transactions will have to complete and sign once a year. These

declarations will be kept by the first-level manager. (Planned completion: June 2016)

4.2.2.2. Appraisal and Agreed Price

4.2.2.2.A. Background and Findings

Real estate transactions must be conducted in a manner that is fair and cost-effective for the City. While the processes for each type of transaction vary, a fundamental principle to adhere to remains that of negotiating a price that reflects the market value. Before beginning the negotiation process, the real estate advisor must have an independent appraisal report for the land, prepared at his or her request by the Section de l'évaluation immobilière. Although this section is part of the same department as the Section des transactions immobilières, it remains independent, mainly because the appraiser does not participate in the negotiations or decision-making related to the transaction. A market value range is established by the latter and guides the advisor in the negotiation process. The price agreed on between the parties must be within this range; otherwise the advisor must have it approved by his or her superior. Market values established in an appraisal report are considered valid for a period of 18 months. If the time elapsed between the date of the appraisal report and presentation of the file to officials is greater than 18 months, the process calls for the real estate advisor to request an update of the appraisal to ensure the price agreed on for the real property still represents its market value.

Our audit consisted first in seeking proof that an appraisal report had been obtained at the appropriate time and that the agreed price determined fell within the range of the market value assessment. We therefore did not question the market values presented in the appraisal reports. Only one transaction presented a problem with regard to obtaining an appraisal report at the appropriate time. Our findings are as follows.

To begin with, the developer had informed the borough of his interest in acquiring several plots of land belonging to the City with a view to piecing them together with land that he already owned in the sector. The initially proposed project included two development phases and involved plots A and B. When the Section des stratégies immobilières mandated the Section des transactions immobilières in January 2014, it stressed that the borough had confirmed its agreement to sell plot A and that, subsequently, when the borough so desired, the sale of plot B could be handled. Given that this project did not comply with the urban planning regulation, specifically in terms of height and density, a request to modify the City plan in accordance with this project was in the process of being approved when the mandate was transferred. An appraisal report was obtained in March 2014, before the start of

negotiations between the parties; however, this report only covered one of the two plots that would ultimately be involved in this sale transaction.

In April 2014, the real estate advisor was informed during discussions with the purchaser that the latter wanted to acquire plot B and plot C first. The parties agreed on a price for these plots despite the fact that the borough's initial agreement only covered plot A. The total agreed amount of the transaction was more than 5.3 million dollars.

Subsequently, in May 2014, the Office de consultation publique de Montréal tabled its recommendations regarding the developer's first project. At that time, discussions between the parties continued with a view to reaching an agreement on all aspects of the transaction, such as special obligations and clauses. As previously mentioned, a promise to purchase for plots B and C was nonetheless signed several months later, in September 2014. However, the request for an appraisal report for these plots was made only in November 2014 and was only obtained in January 2015, four months after the promise to purchase was signed. The agreed price was nevertheless within the market value range established at the time this plot was appraised.

Furthermore, this transaction was conditional on the purchaser's consent to promise to sell belts of land that he owned to the City to allow it to one day widen a street. However, we also found that no appraisal report had been produced to support the agreed price for this promise to sell.

We feel that by not having an appraisal report for one of the two plots at the time of negotiating and signing the promise to purchase in September, the real estate advisor was putting the City at risk of concluding a different price than that recommended in an impending market value assessment. Moreover, the advisor should have obtained written agreement from the borough before proceeding with negotiations with the purchaser, on the one hand to avoid needlessly putting efforts into a mandate that ultimately may not receive the required acceptance from the borough and, on the other hand, to avoid presenting it with a *fait accompli*. What's more, plot C was not part of the real estate development for which a modification to the City plan was in the process of being approved by the borough.

This transaction therefore seemed problematic to us, not only due to the absence of an appraisal report, but also due to the absence of proof of the prior consent of the borough in question at the time the parties agreed on a price. According to established practice, this consent must be obtained as part of the preliminary analysis of the mandate carried out by the Section des stratégies immobilières, and the real estate advisor must be sure to have it in the file when he or she undertakes the mandate.

We feel that the validation of the promise to purchase should be performed using a checklist to ensure the presence of an appraisal report for the real property in question, the approval of the borough and any other element that should be documented at this step in the process. This list must, of course, be approved by a manager and kept in the file.

Second, our audit consisted in ensuring that the elements discussed during negotiations were documented. In general, for the files analyzed, we found that the dates and amounts of the respective offers of the parties to the negotiations are not always indicated in the files. Also, we found no documentation or references to the information used during the course of the negotiations, such as zoning characteristics or an ongoing regulatory modification process. We did not find any documentation regarding the inclusion of special obligations or clauses (e.g., restricted use of a good (no-building servitude) or a transaction subject to a condition or promise (letter of guarantee)). We found no directive stipulating the terms of a negotiation framework. We feel that the negotiation process would benefit from being better defined in order to show that it is conducted in a transparent manner. We would have expected these elements, impacting not only on the price but also the other aspects of the transaction, to be recorded in the file in order to demonstrate that the agreed price represents the best value. Some of this information could, for example, be recorded in the transaction summary.

4.2.2.2.B. Recommendation

We recommend that the Service de la gestion et de la planification immobilière create a checklist to be approved by a manager before signing the promise to purchase and keep it in the transaction file to demonstrate that all the steps of the process have been followed.

Business unit's response:

[TRANSLATION] The SGPI will create a checklist to be approved by the first-level manager before a promise to purchase is signed. This checklist will be added to the file. (Planned completion: December 2016)

4.2.2.2.C. Recommendation

We recommend that the Service de la gestion et de la planification immobilière establish a negotiation framework and include all the relevant information in the files in order to standardize practices within the unit.

Business unit's response:

[TRANSLATION] The negotiation framework will be established when the administrative frameworks discussed in recommendations 4.2.1.B. and 4.2.2.2.B. are drafted.

Creation of the administrative frameworks discussed in recommendation 4.2.1.B. will ensure the standardization of practices within the unit. (Planned completion: December 2016)

4.2.2.3. Authorization by Officials

4.2.2.3.A. Background and Findings

City council is responsible for approving real estate transactions valued at over \$25,000. It therefore needs to be able to rely on the information conveyed to it in decision-making records. In the transaction described above, we observed that the decision-making record submitted to officials did not present all the aspects involved in the transaction pertaining to the impending adoption of the Programme particulier d'urbanisme in that sector. Certain information would have provided officials with a more complete picture, necessary for making an informed decision, such as the status of the other transactions in progress, the anticipated costs of the land exchange strategy with this developer, as well as the costs of a potential expropriation, in the event it was not possible to come to an agreement with the developer. The combined transactions, as initially presented, were supposed to cost the City close to nothing, which now seems less likely. We realize that, in certain cases, it is not advisable to publicly share the City's negotiation strategies and positions; however, a communication protocol should be established to remedy this situation.

4.2.2.3.B. Recommendation

We recommend that the Service de la gestion et de la planification immobilière make sure to present a decision-making record that includes all the relevant elements that could impact decision-making in order to ensure greater transparency.

Business unit's response:

[TRANSLATION] The SGPI will create a checklist for employees who draft decision-making summaries. (Planned completion: December 2016)

4.2.2.4. Documenting and Archiving

4.2.2.4.A. Background and Findings

Guidelines should be established that formally address documentation and the organization of transaction records as well as document retention standards. During our audit, we found no formal guidelines dealing with these aspects, and several shortcomings were observed.

First, with regard to file documentation, our audit revealed that evidence was often missing to show the decisions made or actions taken at certain steps of the process. For example, the choice of acquisition or alienation method was not explicitly presented in the files analyzed. In some situations, the choice may seem clear, while in others, two methods may apply; for example, a disposal by call for proposals or by mutual agreement. We would have expected the factors guiding one choice over another, such as an options analysis, to be documented and referenced in the transaction records. Furthermore, we would have expected reviews and approvals at certain key steps in the processes to be documented. Our audit revealed instead that evidence of reviews and approvals was not necessarily retained and documented (e.g., determination of the agreed price, promises to purchase).

Certain files were better organized and more complete than others. The transaction records did not always contain key documents. Advisors therefore had to go back into their personal note file, inbox or personal directory to retrieve the information. Certain files that had been completed months ago had still not been archived. One archived file contained a document related to another file. Some advisors were surprised to find that documents believed to be archived were not in the archived file or were misfiled.

Given the involvement of various stakeholders in a real estate transaction, special attention must be given to these aspects as well as to maintaining the centralized database and to the accesses granted to it. The *Gestion des mandats* application is the management tool used by the Direction évaluation et courtage immobilier / sécurité. We observed that this tool is accessible to all users in **read** mode and to the project manager and section head in **write** mode. It is therefore important that the staff be made aware of the highly confidential nature of the information recorded in it so as not to influence the course of a transaction. For market value assessment files, it seems that both the physical files stored and the digital information kept in the network directory are only accessible to staff members responsible for **appraisals**. While a clear directive to this effect was apparently issued a few years ago, the individuals we interviewed could not provide any proof of this. In our opinion, such a directive and regular reminders are essential.

We also feel that the Section des transactions immobilières would benefit from creating a standard form and checklist for its files, as well as a standardized approach to document retention to ensure that procedures are followed and are not inadvertently forgotten.

4.2.2.4.B. Recommendation

We recommend that the Service de la gestion et de la planification immobilière implement a methodology on how to document, organize and retain documents in the transaction files to promote greater transparency and standardize procedures.

Business unit's response:

[TRANSLATION] The SGPI will create a list of documents to be added to the file at the close of a mandate.

*On January 14, 2016, the SGPI launched a document management and archiving tool called ULTIMA. This tool allows users to add documents to the file electronically and search for them at a later time. This will improve document organization and retention and is in line with this recommendation. **(Planned completion: December 2016)***

4.2.2.4.C. Recommendation

We recommend that the Service de la gestion et de la planification immobilière draft the directive on document management to restrict access to documents and make the staff aware of their highly confidential nature.

Business unit's response:

*[TRANSLATION] The SGPI will create a directive on document management for employees who carry out real estate transactions and monitor them. **(Planned completion: April 2017)***

4.2.2.5. Monitoring of Contractual Clauses

4.2.2.5.A. Background and Findings

When transactions consist in disposing of land with a view to carrying out a specific project, the City must be able to require that the purchaser use it for the intended purpose, thus avoiding all speculation. To do so, obligations or conditions are stipulated in the notarial deeds (e.g., construction obligations, access to land). For the City, this requires monitoring until the purchaser complies with them. Due to these conditions, even though the deed of sale is signed between the City and the purchaser, the sold property will only be released of

guarantees once the release⁸ is granted to the purchaser. Accordingly, a release clause inserted in the deed of sale stipulates the point at which the City intends to release the purchaser of his or her obligations or conditions.

A directive approved by the executive committee in March 2012 details the exercise of powers to grant a release of real rights, delegated to the director of the Direction évaluation et courtage immobilier / sécurité. Per this directive, the official must ensure that all obligations or conditions set out in the release clause are met and must retain evidence to this effect. More specifically, [TRANSLATION] *“if authorizations, permits or proof of compliance with the regulations are required, the borough in question must provide **written confirmation**⁹ that these have been obtained or followed.”*

As part of our audit, we first examined the point at which the City grants its releases. We also looked for evidence that the Direction évaluation et courtage immobilier / sécurité had followed up on the obligations or conditions stipulated in the notarial deeds with a view to granting a release to the purchaser. To this end, we analyzed three notarial deeds of sale signed in 2013 that included obligations or conditions for the purchaser.

The selected deeds of sale contained at least a build obligation, but also included various other obligations or conditions. It should be noted that at the time of our audit, a release had not yet been requested by the purchaser in one of the cases examined.

First, upon reading the release clauses contained in the notarial deeds, we found that they do not enable the City to have a guarantee that **all** the conditions stated in the deed of sale have been met.

The three deeds examined included a clause regarding the obligation to build, which stipulated that construction work is deemed complete when the foundations, walls, exterior finish, windows and roof are installed on the building. The three notarial deeds also included a release clause that could be granted, at the purchaser’s request, once the buildings’ foundations had been poured and a building permit meeting the construction conditions¹⁰ had been issued.

We understand that the purchaser must obtain a release to get the financing required for construction of the building. We also understand that releases are granted in accordance with

⁸ Act by which the creditor waives the effects of a security guaranteeing the fulfilment of obligations or conditions, which translates into the record of such security being struck from the land register.

⁹ Our emphasis.

¹⁰ For example, the number of units, the number of storeys or the surface area.

the requirements of these clauses; however, we feel that at the time the City grants these releases, the purchaser has not met all the obligations or conditions since construction is not complete. Although the notarial deeds include a clause stating that the City reserves all rights and recourse regarding the obligations undertaken, it remains that the City no longer has a real guarantee that the obligation to build will be met. Considering the importance of including a build obligation clause, we feel that the City should take the necessary measures to conserve the guarantees that would allow for obligations to be monitored until they are met.

Second, with regard to monitoring contractual clauses, our audit did not demonstrate that all the proofs or declarations of fulfilment of the obligations or conditions had been obtained. The verifications performed sometimes consist in obtaining a verbal confirmation from the real estate advisor in charge of the transaction or assuming that verifications were made by the borough upon issuing a building permit. In one case where we did not find any proof, the person responsible for the file told us that this was a standard clause for this type of transaction but that it was not applicable for this particular transaction. We would have expected to find a note to this effect in the file.

As previously mentioned, we did not obtain evidence of a formal follow-up to ensure the fulfilment of all the obligations stipulated in the notarial deeds of sale. This situation is mainly due to the fact that certain obligations or conditions were not specifically required to obtain the release. According to the information obtained, verifications are carried out, but only for the purpose of producing a release. The responsibility for follow-up is not clearly defined in this respect. Follow-up may be performed by the real estate advisor or by the technical support manager.

Considering all of these findings, we feel that the transaction records should contain:

- A checklist establishing all of the conditions or obligations placed upon the purchaser;
- The steps taken to gather the required proof for each of the conditions and obligations;
- A record of the proof obtained;
- Justification of the clauses not requiring any particular proof.

This would make it much easier to monitor compliance with contractual clauses and it would furthermore make it possible to demonstrate that all the documents required to prove compliance have been obtained. We also feel that the Direction évaluation et courtage immobilier / sécurité must take the necessary steps to clarify the division of roles and responsibilities of the parties involved in the monitoring of contractual clauses to ensure compliance with the framework on releases.

4.2.2.5.B. Recommendation

We recommend that the Service de la gestion et de la planification immobilière take the necessary steps to conserve the guarantees until total fulfilment of the build obligation stipulated in the notarial deed to ensure that the construction project is carried out as authorized by the City.

Business unit's response:

[TRANSLATION] The SGPI will determine the means and the ways to exercise them when it creates the administrative frameworks discussed in recommendation 4.2.1.B., specifically when it drafts the frameworks on the sale of land by agreement and the sale of land by public call for tenders when such sales include an obligation to build. (Planned completion: April 2017)

4.2.2.5.C. Recommendation

We recommend that the Service de la gestion et de la planification immobilière document all the actions taken during verifications and conserve the proofs demonstrating compliance with the contractual clauses set out in the notarial deeds to comply with the directive on releases as well as to exercise any possible remedy in the event of non-compliance with these clauses.

Business unit's response:

[TRANSLATION] The SGPI will create a monitoring report to be completed by the employee in charge of monitoring and added to the file.

The proofs gathered during this monitoring will be documented and added to the file. Use of the ULTIMA tool (see recommendation 4.2.2.4.B.) will help improve conservation of such proofs. (Planned completion: December 2016)

4.2.2.5.D. Recommendation

We recommend that the Service de la gestion et de la planification immobilière clarify the division of roles and responsibilities of the staff involved in monitoring the contractual clauses set out in the notarial deeds to ensure compliance with the directive on releases.

Business unit's response:

[TRANSLATION] The SGPI will determine the roles and responsibilities of each stakeholder involved in contract monitoring when creating the administrative

frameworks discussed in recommendation 4.2.1.B., specifically when it drafts the framework on monitoring obligations. **(Planned completion: April 2017)**

4.2.2.6. Monitoring and Control Mechanisms

4.2.2.6.A. Background and Findings

Several steps are involved in the various real estate transaction processes, and these concern a number of stakeholders from other business units (e.g., land surveyors, appraisers, notaries) or external to the City (e.g., the buyer, the seller). Considering the number of transactions as well as the associated processing times, efficient tools must be accessible to enable the staff involved to monitor the files to which they have been assigned on a daily basis. These tools must also allow for the production of pertinent management reports for follow-up and control purposes.

File monitoring is performed using the *Gestion des mandats* application. Initially, when a mandate is received by the Direction évaluation et courtage immobilier / sécurité, the manager in charge assigns the file to an advisor and gives it a priority ranking. A file is opened in the application, and then each of the advisors enters various information enabling them to monitor the progress of their files. This includes the date of the various requests to the professionals involved (e.g., the land surveyor, the appraiser, the notary), the date expected reports are received, the record of various actions carried out, the date decision-making records are finalized as well as the date the file is closed.

It should be noted that the *Gestion des mandats* application is actually a database from which data can be extracted and analyzed in an excel spreadsheet. For management purposes, reports have been produced by the Direction évaluation et courtage immobilier / sécurité. During our audit, we examined how managers were able to monitor transactions using these reports.

First, we found that reports could be produced listing the transactions in progress and those that are closed according to various criteria (e.g., by employee, for a given period). We also found that other reports provide information on the mandates given to land surveyors and notaries. With regard to monitoring mandates with land surveyors, a list of priority requests is sent to them. This list is reviewed monthly by the manager responsible for the Section des transactions immobilières. For monitoring mandates with notaries, reports enabling requests are sent to them to be followed up. These contain the request and receipt dates. We also noted that target deadlines are sometimes indicated but only in a small proportion. In a report dated September 1, 2015, for example, we found that out of 72 requests under way, a target deadline had been entered for only 26 files (36%). In the case of files indicated as

completed,¹¹ we found that the target deadline had been entered for only 71 out of the 160 files listed (i.e., 44%).

According to the information obtained, reports allowing for the management of transaction times have not yet been produced. Despite this, in the course of our audit, we obtained a copy of the database in order to assess transaction times. First, we examined the processing times for closed files relating to acquisition and sale by agreement transactions. The period covered was from January 1, 2014, to August 31, 2015.

For the purposes of our analysis, we considered the time span between the opening and closing dates of a file in the application. According to the information obtained, it can take about a week from the time the mandate is received to the time the file is created in the system. We did not take this time into account in our analysis. In terms of the closing date of a file, we took into account the date entered by the employee in charge of closing the file following its approval by authorities or its discontinuation.

Our analysis revealed the following results, as shown in Table 2:

**Table 2 – Processing Times for Completed Transactions
From January 1, 2014, to August 31, 2015**

	Acquisitions	Sales by agreement
Completed transactions	23 (33%) 1,479 days (4.05 years)	45 (35%) 976 days (2.67 years)
Discontinued transactions	47 (67%) 1,443 days (3.95 years)	83 (65%) 856 days (2.35 years)
Total – Closed files	70 (100%) 1,455 days (3.99 years)	128 (100%) 898 days (2.46 years)

Source: *Gestion des mandats*.

With regard to the closing date, our audit revealed that there were different interpretations. For some, this refers to the date on which the decision-making record is finalized, and for others, it is the date on which the signed notarial deed is received. For clarification purposes, we should specify that the transaction finalization requires the creation of a decision-making

¹¹ Date of approval of the draft notarial deed.

record to be submitted to the authorities, which includes all the actions of the business units involved in the transaction. It is only following the approval by authorities that the signed notarial deed is obtained and, finally, payment is received for the sale or is made in the amount of the acquisition. In addition to these discrepancies in interpretation, there is also the fact that certain employees can react less promptly than others with regard to closing files, which can create delays. According to the information obtained, there is no clear directive defining this date. We feel that the Direction évaluation et courtage immobilier / sécurité should decide on a definition of the closing date as well as on the time limit for an employee to close a file. Establishing guidelines would help to guide employees and provide users with comparable data.

Second, we examined processing times for open files as of August 31, 2015. For the purposes of our analysis, we grouped together files according to the priority level indicated in the application. There are three possible categories to be assigned: priority “1” is for urgent files, priority “2” is assigned by default, and priority “3” is for files that have been put on hold. According to the information obtained, not only is a priority assigned when the mandate is opened, but it can also be modified during the process. The results of our analysis are presented in Table 3 below:

Table 3 – Processing Times for Transactions in Progress as of August 31, 2015

	Acquisitions	Sales by agreement
Priority 1^[a]	16 (16%) 544 days (1.5 years)	17 (9%) 588 days (1.6 years)
Priority 2^[b]	76 (79%) 832 days (2.3 years)	151 (84%) 954 days (2.6 years)
Priority 3^[c]	5 (5%) 1,267 days (3.5 years)	12 (7%) 1,403 days (3.8 years)
Total – Open files	97 (100%) 807 days (2.2 years)	180 (100%) 949 days (2.6 years)

^[a] File that must be handled urgently.

^[b] File to be handled in the normal course of business.

^[c] File put on hold.

Source: *Gestion des mandats*.

Considering that approximately 80% of files are of priority level 2 and that we are unable to ascertain their progress with regard to set deadlines, we question the actual usefulness of this information in its current form.

At first glance, all of the processing times appear long to us, for both the closed files and the files in progress in Table 3. Having long processing times presents several risks for the City: for example, transactions could fall through mid-process, promises to purchase could become invalid and need to be renegotiated or market value assessments could no longer reflect the market.

Given such results, we would have liked to determine the bottlenecks in the existing processes; however, we were unable to perform such an analysis since most of the dates of the various steps in the process had still not been entered in the application. As a result, we are unable to determine, for any of the files, which steps may have been at issue. The information is nevertheless available in each of the physical files. Thus, in the course of examining the six real estate transaction files, we were able to find the dates of the various steps involved in the process. For the six files examined, the overall transaction processing time was a little over 800 days, which is comparable to the results presented in Table 2. In terms of processing times for the main steps, we observed two that were longer. These were the negotiation time, which represents close to 400 days, and the time for notaries to act, which is approximately 120 days. This is the time it takes from the date of a request for action in the decision-making summaries to the date of receipt. We are unable to say whether this is generalizable to all the files.

It should be noted that in 2015, the manager in charge of the Section des transactions immobilières had raised an issue with timeframes surrounding files sent to land surveyors, although the application does not provide this information. A special report listing times according to various request categories had been produced and had led to establishing priorities with the manager in charge of geomatics. This is what prompted the report that we discussed earlier. Accordingly, a priority level is assigned to files in progress on a monthly basis by the manager of the Section des transactions immobilières. While we were not in a position to evaluate the effects of the improvements made, we believe it is a good approach.

In an optic of continuous improvement and customer service, we feel that in addition to showing the time elapsed at each step in the transactions, reports should contain the information needed to quickly determine the progress of transactions, which would in turn make it possible to identify potential bottlenecks and to react more promptly when issues arise. It goes without saying that in order for this to happen, stakeholders must enter all the data in the *Gestion des mandats* application.

In order to be in a position to reduce times, particularly where bottlenecks occur, and in cases where the issue resides with other business units involved in the transactions, we feel that the Direction évaluation et courtage immobilier / sécurité should agree on standard processing times with the heads of each business unit involved so as to be able to plan requests at the proper time. Subsequently, when making requests to the various professionals, advisors should provide deadlines and follow up on them to ensure they are met.

In order to address all of these problems, we feel that the *Gestion des mandats* system in its current form should be improved to better support the operational process of the real estate transactions. Since current follow-up mechanisms do not make it possible to track the status of transactions, the addition, for example, of a field in which to indicate the progress of the transaction would allow the manager to better monitor the progress of files.

4.2.2.6.B. Recommendation

We recommend that the Service de la gestion et de la planification immobilière define the closing date to be used to calculate the overall processing time for a transaction so that all employees enter data in the *Gestion des mandats* application in a consistent manner.

Business unit's response:

*[TRANSLATION] The SGPI considers a mandate closed on the date the notarial deed is published (subject to receipt of the proof of payment in the case of a sale). This date will be entered as the mandate closing date in the *Gestion des mandats* application.*

Note: This information will be included in the administrative frameworks discussed in recommendation 4.2.1.B. (Planned completion: April 2016)

4.2.2.6.C. Recommendation

We recommend that the Service de la gestion et de la planification immobilière take the necessary measures to ensure that all members of staff involved in the handling of real estate transactions enter all the relevant data, including the dates of the various requests, in the *Gestion des mandats* application in order to identify bottlenecks in the real estate transaction processes.

Business unit's response:

[TRANSLATION] The SGPI will determine the actions and means at its disposal to ensure that the staff involved in handling real estate transaction files enter all the relevant data, including the dates of the various requests, in the Gestion des mandats application. (Planned completion: June 2016)

4.2.2.6.D. Recommendation

We recommend that the Service de la gestion et de la planification immobilière produce management reports providing information on the overall processing times for the various real estate transaction processes to improve real estate transaction management and customer service.

Business unit's response:

[TRANSLATION] The SGPI will develop management reports providing information on overall processing times for the various real estate transaction processes. (Planned completion: April 2017)

4.2.2.6.E. Recommendation

We recommend that the Service de la gestion et de la planification immobilière review the parameters of its *Gestion des mandats* system to add fields that make it easier to track the progress of transactions to provide management reports that better meet the needs of managers.

Business unit's response:

[TRANSLATION] On January 14, 2016, the SGPI added fields to the Gestion des mandats application related to project management in which employees enter the steps required to complete a given transaction as well as the time allocated for each step. The SGPI will use these data to create management reports on the progress of mandates. (Planned completion: April 2017)

4.2.2.6.F. Recommendation

We recommend that the Service de la gestion et de la planification immobilière establish, in collaboration with the business units involved in the real estate transaction processes, set deadlines for performing the various requests to facilitate priority management and allow for follow-up of realistic deadlines.

Business unit's response:

[TRANSLATION] The SGPI will ask its partner suppliers involved in transaction processes to provide standard completion times for each of the expected deliverables. These completion times will be used in the deadline fields provided for this purpose in the Gestion des mandats application. (Planned completion: April 2017)

4.3. Accountability Reporting

4.3.A. Background and Findings

In order for SGPI management, the Direction générale adjointe and the Direction générale to be informed about real estate transaction management and the achievement of set objectives, structured accountability mechanisms must be put in place. Accordingly, management reports must be produced regularly to inform them about achievements and justify reasons for gaps, if applicable. This accountability must promote informed decision-making to guide the planning and allocation of resources required to reach objectives.

As part of our audit, our work consisted in determining the mechanisms put in place to report on real estate transaction management.

We found that real efforts had been put forth to implement accountability mechanisms within the Direction évaluation et courtage immobilier / sécurité. Accordingly, statutory meetings between staff members and their immediate managers are held periodically to review the files in progress. Statutory meetings between managers and their corresponding directors are also held.

Following the continuous improvement exercise, the Section des transactions immobilières set itself the goal of improving the number of finalized files. To report on the improvement of the situation, an operational report was produced in 2014 for the division head of the Division évaluation et transactions immobilières.¹² In 2015, a similar report was produced, but for the director of the Direction évaluation et courtage immobilier / sécurité. According to information obtained, for both years, this accountability reporting was performed on the initiative of the head of the Section des transactions immobilières.

For 2014, the report showed a 20% increase in the number of finalized files compared with the previous year, as well as a 9% increase in the number of files opened and closed. For 2015, the report showed a slight increase (5.6%) in the number of files finalized and a 9% decrease in the number of files opened. The report also showed the inability of the Section

¹² Which, in June 2015, became the Direction évaluation et courtage immobilier / sécurité.

des stratégies immobilières to perform preliminary analyses prior to the mandates being assigned. With regard to the result for closed files, it is not conclusive, since the 12 months were not taken into consideration. Another issue raised is the difficulty in reducing the number of active files in the *Gestion des mandats* application.

As previously mentioned, the Section des transactions immobilières has spent the past two years working to improve the number of files opened, closed and finalized. We feel, however, that by proceeding in this manner, all the files are treated equally without distinguishing whether they are acquisitions, sales or other types of transactions; without considering processing times; and, especially, without considering priorities.

We believe that the first step towards improving real estate transaction management is to determine timeframes for the main steps of the business processes. Having this information would make it possible to analyze issues involving not only SGPI resources but also the other stakeholders involved in the processes. We feel that measurable objectives with regard to timeframes should be set by SGPI management. Consequently, accountability reporting on these objectives would allow for informed decision-making and would contribute to improving real estate transaction management.

4.3.B. Recommendation

We recommend that the Service de la gestion et de la planification immobilière set measurable objectives not only with regard to finalized files but also for file processing times, broken down by transaction type, to carry on the process of continuous improvement.

Business unit's response:

[TRANSLATION] The SGPI will consider this recommendation when establishing the annual objectives of the Section des transactions immobilières. (Planned completion: June 2016)

4.3.C. Recommendation

We recommend that the Service de la gestion et de la planification immobilière put in place regular accountability mechanisms for real estate transaction management to be able to take the appropriate corrective measures in response to issues raised.

Business unit's response:

[TRANSLATION] The SGPI, in collaboration with its Bureau de projets, currently being set up, will put in place regular accountability mechanisms for real estate transaction management. (Planned completion: April 2017)

5. Conclusion

Generally speaking, our audit did not demonstrate that real estate transactions were conducted within a strategic management framework. First, the Service de la gestion et de la planification immobilière (SGPI) has not yet developed and deployed the means to implement an integrated management approach aimed at acquiring immovables over the medium and long term that would allow it to anticipate and meet the land reserve needs for urban development. Moreover, in terms of establishing a real estate strategy to meet future development needs, the SGPI can only identify the boroughs' urban development vision if it officially receives requests. Accordingly, the expected role and responsibilities of the Section des stratégies immobilières in real estate transaction processes must be clarified.

In addition, in terms of demonstrating that real estate transactions are conducted in such a way as to maximize value for the City, our audit revealed that several aspects of real estate transaction management must be structured, monitored and controlled. Clear and official directives on the various types of transactions have not been produced, leaving room for practices to be applied differently from one file to another. The employees involved in the real estate transaction processes are not currently required to regularly produce a declaration of independence or a declaration related to conflicts of interest, nor to submit a solemn pledge of confidentiality, which would be helpful in ensuring greater transparency and objectivity in the process. In addition, throughout all the steps of the various real estate transaction processes, the actions taken by staff members and the decisions they made are not always documented or are done so inconsistently. Furthermore, formal authorizations are not required by the current managers. The absence of clear rules in these areas does not allow the SGPI to demonstrate full transparency in the handling of real estate transaction files.

Furthermore, the follow-up and control mechanisms currently in place are insufficient to fully improve real estate transaction management. The tools available to the staff as a whole do not currently allow for efficient file monitoring. Nor do they provide managers with management information that is essential to continuous improvement, such as information on processing times.