



Finance and Economic Development Committee

DISPOSITION 25

Tuesday, 2 October 2012

Note: 1. *Reports requiring Council consideration will normally be presented to Council on 10 October 2012 in Finance and Economic Development Committee Report 25.*

CONFIRMATION OF MINUTES

Minutes 24 - Finance and Economic Development Committee meeting of 19 September 2012; and
Minutes 2 – Joint Finance and Economic Development Committee and Governance Renewal Sub-Committee meeting of 30 August 2012

CONFIRMED

AUDIT SUB-COMMITTEE

1. OFFICE OF THE AUDITOR GENERAL (OAG) – 2013 WORK PLAN, BY-LAW AND PROTOCOL AMENDMENTS AND SUCCESSION PLAN
ACS2012-OAG-BVG-0002 CITY-WIDE
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That the Finance and Economic Development Committee recommend Council approve the 2013 OAG's Work Plan, as amended by the motion below, and the amendments to the Audit Protocol and receive this report.

That the Office of the Auditor General 2013 work plan be revised to include an audit of Infrastructure Services and to defer an audit of Service Excellence until after the program is fully implemented in 2014.

CARRIED, as amended

OTTAWA MUNICIPAL CAMPGROUND AUTHORITY

2. OTTAWA MUNICIPAL CAMPGROUND AUTHORITY - ANNUAL REPORT
ACS2012-CMR-OMC-0003 BAY (7)
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That the Finance and Economic Development Committee recommend Council receive this report for information.

CARRIED

PLANNING AND INFRASTRUCTURE

INFRASTRUCTURE SERVICES

3. COMPREHENSIVE ASSET MANAGEMENT PROGRAM
ACS2012-PAI-INF-0007 CITY-WIDE
(Tabled at the meeting of September 19, 2012.)
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1. At its meeting of 2 October 2012, that the Finance and Economic Development Committee recommend Council:

- a) **Receive the Comprehensive Asset Management Program, 2012 State of the Asset Report (Document 1);**
- b) **Approve the Comprehensive Asset Management Policy (Document 2);**
- c) **Approve an infrastructure renewal funding target, indexed annually to construction inflation, to maintain City assets in a state of good**

repair, as outlined in this report, to be reached within 10 years and included for consideration as part of each year's draft budget; and

d) Approve inclusion of an Asset Management section in all relevant future Committee and Council reports to ensure the long-term infrastructure implications of recommended projects are specifically identified.

e) Approve working with the Association of Municipalities of Ontario (AMO) and the Federation of Canadian Municipalities (FCM) to achieve long-range infrastructure funding for municipalities.

2. That the report be amended by replacing the content of its "Legal Implications" section with the following:

"Legal Services supports the recommendations contained in this report, which outlines a proposal for a renewed approach to investment in infrastructure maintenance for the City of Ottawa.

Like any other property owner, the City of Ottawa is responsible for maintaining its assets in order both to preserve its investment, as well as to ensure that they do not deteriorate to the point that they pose a risk to others. Where the deterioration of municipal infrastructure results in incidents that cause injuries or property damage to others, it is foreseeable that legal claims will follow. The City's ability to successfully defend those claims depends on a number of factors, one of the most important of which is the extent to which the level of disrepair is attributable to a policy decision of Council, or an operational decision at the staff level.

In a succession of decisions spanning the period between 1989 and 1995, the Supreme Court of Canada articulated a principled approach to the assessment of liability against a public authority for claims arising out of allegations of improper maintenance. This approach is founded on the view that policy decisions made by public authorities, particularly those involving the allocation of public funds, should be shown deference by the courts. Simply put, if a government chooses to provide a lower level of maintenance due to budgetary constraints, that government should not then be held liable for claims resulting from that lower level of maintenance. At its root, this legal approach this represents the legal equivalent of "you get what you pay for". If, however, the damage or injury is the result of an operational decision by staff, the government's liability is assessed in accordance with the ordinary principles of negligence.

In the 1994 case of *Brown v. British Columbia (Ministry of Transportation and Highways)*, the Supreme Court of Canada tried to define the two types of decisions as follows:

Policy

“In such decisions, the authority attempts to strike a balance between efficiency and thrift, in the context of planning and predetermining the boundaries of its undertakings and of their actual performance. True policy decisions will usually be dictated by financial economic, social and political factors and constraints.”

Operational

“The operational area is concerned with the practical implementation of the formulated policies, it mainly covers the performance or carrying out of a policy. Operational decisions will usually be made on the basis of administrative direction, expert or professional opinions, technical standards or general standards of reasonableness.”

By way of example, if a municipal council decides that it can only afford one cycle of bridge inspections per year, it may be insulated from liability in the event that a problem with the bridge causes damage to a passing vehicle, even if more frequent inspections may have uncovered the problem such that timely repairs could have been done. However, if an operational decision is made by staff that the annual inspection is to be done in January of one year and December of the following year, the municipality may be found liable if it is shown that allowing the bridge to go uninspected for a period of 23 months is negligent.

It is important to observe that, while the distinction between policy and operational decisions may serve to insulate a public authority from liability, the courts have shown themselves willing to characterize decisions as “operational” in cases where a sympathetic plaintiff might otherwise be denied compensation.

It should further be noted that the courts deference to public policy decisions may be limited by considerations of bad faith or irrationality: A municipality that chooses through policy to undertake no maintenance, nor to correct known hazards, will almost certainly be found liable for any loss that results. Similarly, where there exist legislated requirements, such as Ontario’s *Minimum Road Maintenance Standards*, it is not open to a municipality to ignore these, even by way of a policy decision.

In the present report, staff have outlined three options for City Council’s consideration. These reflect levels of maintenance ranging from the *status quo*, to a higher level (cited as the “good state of repair”), to an even more enhanced level of maintenance. As would be expected, higher levels of maintenance require a greater financial commitment on the part of the City.

In terms of liability, Council is free to select any of the three options. In the view of Legal Services, this would properly fall within the definition of a “policy” decision by Council, particularly as the report identifies the varying that are associated with each of the proposed maintenance levels. As such, City Council’s adoption of a Comprehensive Asset Management Policy may help to insulate the municipality from claims arising out of allegations of deficient maintenance of City infrastructure.

The recommendations contained in the report constitute a rational evaluation of Council’s options. The preferred option of adopting a “good state of repair” level of infrastructure maintenance may help to limit the risk of future incidents that could give rise to claims, particularly as it currently represents an industry best practice.

While it would be open to a future Council to adopt a different policy approach in respect of its commitment to infrastructure maintenance, such a decision would need to give due consideration to the same kinds of social, political, and economic factors as will underlie Council’s decision in the present case. Whether a future reduction in maintenance levels would give rise to increased liability would necessarily depend on the state of the law at the time, particularly given the courts’ reluctance to deny compensation to otherwise sympathetic and deserving plaintiffs.”

CARRIED, as amended

CITY TREASURER AND FINANCE

4. LONG RANGE FINANCIAL PLAN IV - TAX SUPPORTED CAPITAL
ACS2012-CMR-FIN-0039 CITY-WIDE
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That the Finance and Economic Development Committee recommend that Council approve that the existing debt policies be continued while providing the required investment to maintain City assets in a state of good repair, and that in order to address the funding target as recommended in the *Comprehensive Asset Management Program* report, the following funding strategies be approved for consideration as part of future budgets:

- 1. That the use of debt for tax supported capital works continue to correspond to the amount of debt retiring within the year in accordance with Council’s adopted target to limit debt service for tax supported debt to 7.5% of own source revenues;**
- 2. To ensure capital funding is maintained and increased, starting in the 2013 budget year, the annual contribution from taxation for capital projects be increased by inflation (Construction Price Index) and by an additional \$5.4 million per year for both the renewal of existing assets**

- and the increase in the asset base, as a priority within Council's approved tax targets;
3. Starting in the 2015 budget year, the portion of the contribution to capital used to fund capital projects classified as strategic initiatives (new capital works) be maintained at \$20 million per year and that priority be given, after the completion of the "Service Ottawa" project, to infrastructure investment;
 4. Starting in the 2015 budget year, the enhancement component of any capital renewal project be identified and approved separately;
 5. That the City of Ottawa Endowment Fund be maintained at \$200 million and any excess continue to be directed to fund the capital program; and
 6. That Council's priorities for the use of any future federal or provincial infrastructure funding programs be for the renewal of existing assets and transit related projects included in the Transportation Master Plan.

CARRIED

5. DELEGATION OF AUTHORITY – CONTRACTS AWARDED FOR THE PERIOD APRIL 1, 2012 TO JUNE 30, 2012
ACS2012-CMR-FIN-0038 CITY-WIDE

That the Finance and Economic Development Committee and Council receive this report for information.

RECEIVED

CITY MANAGER'S OFFICE

6. LANSDOWNE PARTNERSHIP PLAN - AUTHORIZATION TO PROCEED WITH LEGAL CLOSE AND IMPLEMENTATION
ACS2012-PAI-INF-0010 CITY-WIDE

That the Finance and Economic Development Committee recommend Council:

1. Approve that By-laws 2005-439 and 2004-239, being by-laws regulating permanent and temporary signs on private property, be amended so as to establish Lansdowne as a special signage zone where the implementation of signage, including the review and approval for purposes of issuing sign permits, will be in accordance with the policies, directions, and regulations set out in the Lansdowne Signage

- and Way-finding Plan approved by Council on June 27, 2012, as revised by this report, and that the required by-laws setting out the details of the amendments be brought forward for enactment by Council prior to the end of 2012.
2. Approve the Heritage Easement Agreement between the City of Ottawa and the Ontario Heritage Trust as outlined in Document 1 to this report and authorize the City Manager to execute the Agreement on behalf of the City.
 3. Approve an increase of \$12 Million in capital authority and the funding sources as outlined in this report.
 4. Receive the final report on the satisfaction of all of the conditions precedent to close the Lansdowne Partnership Plan Project Agreement as outlined in Document 4 to this report, as amended by the recommendations above.
 5. Approve the legal close of the Lansdowne Partnership Plan in order to move to the construction stage of the redevelopment of Lansdowne Park and approve that the City Manager be delegated the authority to carry out the intent of the foregoing approvals including, but not limited to, the execution and delivery of such other agreements, documents, instruments, acts and things as are required or deemed necessary or desirable to give full effect to the terms of this report and the transactions contemplated herein.
 6. That the site plan for the Lansdowne Partnership Plan redevelopment be approved with the inclusion of the modified language in the Site Plan Agreement as follows:

“The Owner acknowledges and agrees that any LED or electronic messaging/advertising to be provided on the Bank Street frontage of the Stadium scoreboard, outside those time periods when this area of the stadium scoreboard is being used for messaging/information/wayfinding or advertising in association with an event being held at Lansdowne, shall be subject to controls.

The controls shall be in accordance with any conditions that may be imposed by the General Manager, Planning and Growth Management at his/her sole discretion, as part of the sign permit that will be required for this feature, as set out in the Lansdowne Signage and Wayfinding Plan. The owner acknowledges that such conditions may relate to but are not necessarily limited to matters of size, intensity of light, and the time periods when such messaging/advertising may be provided. The owner acknowledges that such conditions, as they relate to any commercial advertising but not naming rights or

sponsorship applications, can be reviewed and updated as required during the first year of operation, so as to address any community concerns regarding the intensity of illumination, time of use and appropriateness of the messaging/advertising for this public space and main street environment.”

7. a) That Committee recommend Council approve the Value Engineering proposals number 1, 3 & 4 subject to the design recommendations of the LDRP namely:
 - i. Reductions or modifications must follow the same conceptual curvature and/or an acceptable one to the design architect if the veil is modified and whereas modifications to the approved site plan requires Council approval;
 - ii. The method and materials should be applied to the design of the pedestrian bridge in keeping with the design of the stadium. The stadium architect should assist the design build contractor to ensure the suitability is consistent.
- b) That in light of the concerns raised by the LDRP that the Committee recommend that Council request the LDRP to review other design decisions related to stadium construction with a view to recommending to City Council any realistic alternatives to the value engineering recommendations for the stadium canopies.
- c) That the alternatives for the stadium canopies, if any, provide for a cost saving of at least \$750,000.
8. That staff be directed to reinstate \$3.46 million to the Parking Cash-in-lieu Fund and that the same amount be issued as debt for the Lansdowne revitalization project.

CARRIED, as amended

CITY CLERK AND SOLICITOR DEPARTMENT

7. LANSDOWNE PARTNERSHIP PLAN IMPLEMENTATION – FINAL
REPORT ON LEGAL AGREEMENTS
ACS2012-CMR-LEG-0002 CITY-WIDE
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That the Finance and Economic Development Committee recommend Council:

1. Approve amendments to the Lansdowne Partnership Plan Project Agreement, as contemplated by the updated LPP Project Agreement Framework, as follows:

- (a) That the previously approved LPP Project Agreement Framework be amended to state that the City will agree to act reasonably, in accordance with pre-determined criteria, in deciding whether to permit a sale of either or both of the Canadian Football League team and/or the Ontario Hockey League team in exchange for a binding commitment by the Ottawa Sports and Entertainment Group (OSEG), or OSEG's successor, to extend its legal obligations to operate the teams for the first eight (8) years under the Lansdowne Partnership Plan instead of the current, first five (5) years, as described in this report;
- (b) That the Project Agreement be amended to treat any cost overruns above the conditional guaranteed maximum price contract incurred by the members of OSEG for the City's portion of the Stadium Parking Garage as Additional Equity under the Closed System for the Lansdowne Partnership Plan, as described in this report; and,
- (c) That the description of the formula for City Funding Equity in the previously approved LPP Project Agreement Framework be amended to read as follows, "the lesser of the Maximum City Cost or the actual cost borne by the City for the Stadium Improvements and City's share of Cost of Parking less proceeds from the sale of air rights, less the amount that can be debentured from 75% of the realty taxes estimated from the project other than the residential component, less the amount that can be debentured from the avoided costs of \$3.8 million per year of the City by it not having to operate the Stadium" and that the Project Agreement be revised accordingly, as further described in this report.
2. Confirm that the priorities for the distribution of net cash flow between the City and OSEG in the Closed System under the LPP are as set out in the previously approved June 28, 2010 LPP Project Agreement Framework referenced in this report.
3. Approve the updated LPP Project Agreement Framework as described in this report and attached as Document 1 – "Overview of Structure and Content – Final LPP Project Agreements" as amended by the above recommendations.
4. Receive the final legal Agreements, as amended by the recommendations above and by the updated LPP Project Agreement Framework, as set out in Document 2 – "Listing of Final LPP Legal Agreements on file with the City Clerk and Solicitor".

CARRIED

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8. STATUS UPDATE – FINANCE AND ECONOMIC DEVELOPMENT
COMMITTEE INQUIRIES AND MOTIONS - FOR THE PERIOD ENDING
21 SEPTEMBER 2012
ACS2012-CMR-CCB-0073 CITY-WIDE
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That the Finance and Economic Development Committee receive this report for information.

RECEIVED

CORPORATE PROGRAMS AND BUSINESS SERVICES

9. QUARTERLY PERFORMANCE REPORT TO COUNCIL, Q2: APRIL 1 –
JUNE 30, 2012
ACS2012-CMR-OCM-0017 CITY-WIDE
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1. That the Finance and Economic Development Committee receive the attached report and refer it for review and discussion at the following standing committee meetings:
- Transportation Committee – October 3, 2012
 - Agriculture and Rural Affairs Committee – October 4, 2012
 - Planning Committee – October 9, 2012
 - Environment Committee – October 16, 2012
 - Community and Protective Services Committee – October 18, 2012
2. That Council receive the report for information on October 24, 2012 once it has been reviewed by standing committees.

CARRIED

PLANNING AND INFRASTRUCTURE

REAL ESTATE PARTNERSHIPS AND DEVELOPMENT OFFICE

10. LEASE - RIVERAIN PARK – OTHER PROPERTIES - NATIONAL
CAPITAL COMMISSION
ACS2012-PAI-REP-0021 Rideau-Vanier (12)
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That the Finance and Economic Development Committee recommend Council approve a lease between the City of Ottawa and the National Capital Commission (NCC) for the property at 400 North River Road, known as Riverain Park, for a forty-nine (49) year term at a rental rate for the term of \$1, and that in kind services (maintenance) on various NCC properties in the amount of \$370,000 per annum be performed to reflect the current market lease value of the Riverain Park property.

CARRIED

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11. SURPLUS DECLARATION AND SALE – 1357 KITCHENER AVENUE
ACS2012-PAI-REP-0026 RIVER (16)

That the Finance and Economic Development Committee declare as surplus to the City's needs two (2) residential building lots located at 1357 Kitchener Avenue shown as Parcels 'A' and 'B' on Document 1, and authorize staff to proceed with the sale of the lots in accordance with the City's Disposal of Real Property Policy and subject to the following:

1. That the provisions regarding the sale of these parcels include the following in the agreement of purchase and sale:
 - a. That development on each parcel be limited to a detached dwelling;
and
 - b. That no more than one dwelling be permitted on each parcel; and
2. That the above provisions be set forth in a restrictive covenant to be registered against the title to this property on closing.

CARRIED, as amended

12. PROPERTY ACQUISITION - URBAN NATURAL FEATURES: UNA #98 –
RIVERSIDE SOUTH FOREST AND UNA #100 – ARMSTRONG ROAD
SOUTH WOODS – URBANDALE CORPORATION AND RIVERSIDE
SOUTH DEVELOPMENT CORPORATION
ACS2012-PAI-REP-0035 GLOUCESTER-SOUTH NEPEAN (22)

That the Finance and Economic Development Committee recommend Council approve:

1. The Urban Natural Features acquisitions described in this report in accordance with the terms and conditions contained in a Memorandum of Understanding between City of Ottawa and Urbandale Corporation and Riverside South Development Corporation attached as Document 1; and
2. Subject to approval of Recommendations 1 and to the City satisfying all requirements of the Disposal of Real Property Policy, the delegation of authority to the Deputy City Manager, Planning and Infrastructure to declare surplus the City lands described as Parcel 5 on Document 2, and to finalize and execute the required agreements with Urbandale Corporation and Riverside South Development Corporation.

CARRIED

ECONOMIC DEVELOPMENT AND INNOVATION

13. CITY OF OTTAWA'S RESPONSE TO ONTARIO LOTTERY GAMING CORPORATION REQUEST FOR EXPRESSIONS OF INTEREST
ACS2012-CMR-OCM-0021 CITY-WIDE
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That the Finance and Economic Development Committee recommend Council:

- 1. Approve that the City of Ottawa respond to the Ontario Lottery Gaming Corporation's ("OLG") Request for Interest (RFI) by sending a letter from the Mayor stating that the City of Ottawa supports in principle becoming a "host city" for a gaming entertainment centre;**
- 2. Direct staff to provide an analysis that gives a broad picture of the potential economic benefits and impacts of a gaming facility for the City of Ottawa. As part of this analysis, staff will consult with relevant stakeholders and consult with Ottawa Public Health staff on the potential public health impacts of an expanded gaming facility in Ottawa, including providing an overview of the current mitigation measures for populations at-risk of problem gambling. The staff report will be provided to FEDCO and Council when Council reconsiders the matter once a preferred proponent has been selected by OLG.**
- 3. That the Mayor's letter stating the City of Ottawa's support in principle for becoming a "host city" for a gaming entertainment centres include the following:**
 - a) That the City of Ottawa strongly encourages the Ontario Lottery and Gaming Corporation establish an Request for Proposal process that is fair, transparent, open and competitive and which provides all proponents, including the Rideau Carleton Raceway, an opportunity to compete within a level playing field; and**
 - b) That the Ontario Lottery and Gaming Corporation consider providing an opportunity for the Rideau Carleton Raceway to be pre-qualified to take part in the final bidding process, given their strong record of success in the Ottawa region.**
- 4. That the report be amended by the REVISED pages 299 and 306 (French version) issued on September 27, 2012.**

CARRIED, as amended

INFORMATION PREVIOUSLY DISTRIBUTED

A. 2013 VEHICLE GROWTH
ACS2012-COS-PWS-0014-IPD CITY-WIDE

RECEIVED

B. CITY OF OTTAWA'S RESPONSE TO THE PROVINCE'S PROPOSED
CHANGES TO REGULATIONS OF THE AODA
ACS2012-CMR-OCM-0020-IPD CITY-WIDE

RECEIVED

C. MPAC ASSESSMENT NOTICES
ACS2012-CMR-FIN-0041-IPD CITY-WIDE

RECEIVED