

**Report to
Rapport au:**

**Planning Committee / Comité de l'urbanisme
July 9, 2020 / 9 juillet 2020**

**and Council / et au Conseil
July 15, 2020 / 15 juillet 2020**

**Submitted on June 29, 2020
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**Submitted by
Soumis par:
Douglas James**

**Acting Director / Directeur par intérim Planning Services / Services de la
planification Planning, Infrastructure and Economic Development Department /
Direction générale de la planification, de l'infrastructure et du développement
économique**

**Contact Person
Personne ressource:
Richard Buchanan**

Coordinator/ Coordinateur

**Front Ending Agreements and Brownfields Programs / Ententes préalables et
Programme de friches industrielles, Planning Services / Services de la
planification**

(613) 580-2424, 27801, Richard.Buchanan@ottawa.ca

Ward: BARRHAVEN (3)

File Number: ACS2020-PIE-PS-0073

**SUBJECT: Front-Ending Report – Oversizing of the Road and Sewer on
Cambrian Road from Old Greenbank Road to New Greenbank Road
Alignment**

**OBJET: Rapport d'entente préalable – Surdimensionnement du chemin
Cambrian et de son réseau d'égout, entre l'ancien et le nouveau
tracé du chemin Greenbank**

REPORT RECOMMENDATIONS

That Planning Committee recommend that Council:

1. Delegate authority to the General Manager, Planning, Infrastructure and Economic Development Department, to enter into a Front-Ending Agreement with Mattamy Limited for the oversizing of the road and sewer on Cambrian Road, from Old Greenbank Road to New Greenbank Road Alignment as outlined in this report, to an upset limit of \$3,293,042 plus applicable taxes and indexing, in accordance with the Front-Ending Agreement Principles and Policy set forth in Documents 1 and 2 and with the final form and content being to the satisfaction of the General Manager, Planning, Infrastructure and Economic Development Department and City Solicitor;
2. Authorize the reimbursement of the oversizing of the road and sewer costs incurred by Mattamy Limited pursuant to the execution of the Front-Ending Agreement, to a maximum amount of \$3,293,042 plus applicable taxes and indexing, in accordance with the reimbursement schedule set out in the Front-Ending Agreement; and
3. Authorize the creation of a budget for the design and construction work required per the Front-Ending agreement.

RECOMMANDATIONS DU RAPPORT

Que le Comité de l'urbanisme recommande au Conseil :

1. de déléguer au directeur général de Planification, Infrastructure et Développement économique le pouvoir de conclure une entente préalable avec Mattamy Limited en vue de procéder au surdimensionnement du chemin Cambrian et de son réseau d'égout, entre l'ancien et le nouveau tracé du chemin Greenbank, comme le décrit le présent rapport, jusqu'à concurrence de 3 293 042 \$, taxes applicables et indexation en sus, conformément aux principes et à la politique de l'entente préalable énoncés dans les documents 1 et 2 et dont la forme et le contenu définitifs seront à la satisfaction du directeur général de Planification, Infrastructure et Développement économique et du greffier municipal;
2. d'autoriser le remboursement des coûts de surdimensionnement engagés par Mattamy Limited dans le cadre de l'exécution de l'entente préalable jusqu'à concurrence de 3 293 042 \$, taxes applicables et

indexation en sus, conformément au calendrier de remboursement fixé dans l'entente préalable;

- 3. d'autoriser l'établissement d'un budget pour les travaux de conception et de construction requis dans le cadre de l'exécution de l'entente préalable.**

BACKGROUND

Mattamy Limited entered into a Subdivision Agreement with the City of Ottawa regarding Half Moon Bay Community development located in Barrhaven South, dated September 12, 2008. Pursuant to Schedule "F" of the Subdivision, the reconstruction of Cambrian Road was a condition of Final Plan Approval as it required permanent arterial road infrastructure. Clause 23(c) of that schedule provides that the oversizing of Cambrian Road and associated sanitary sewers would be eligible for Development Charge Reimbursement subject budget approval by City of Ottawa and the inclusion of the works in the 2009 Development Charges By-law.

At the time the Subdivision agreement was executed, the oversizing of Cambrian Road and sewer was not an identified work in the then-in-force 2004 Development Charge By-law. However, these works were included in the 2009 Development Charges Background study as item 1.0089, which estimated a gross capital cost of \$14,690,000. The oversizing servicing and widening of Cambrian Road was substantially completed and received preliminary acceptance by the City in February 2009. Cambrian road maintenance was transferred to the City of Ottawa in 2011 and final City acceptance occurred in January 2014. The total value of the permanent works eligible for development charge reimbursement amounted to \$3,293,042.

The 2014 Development Charge Background Study did not reflect the Cambrian Road oversizing works and as such, no agreement could be secured until the works were reinstated in the next 5-year Development Charge By-law update.

In July 2017, Mattamy and the City of Ottawa entered into a Tolling Agreement pursuant to section 22 of the *Limitations Act*, preserving Mattamy's right of action as of July 25, 2017 with respect to the above noted compensation, in anticipation of the 2019 Development Charges Background Study. The intent of the of the Tolling Agreement was to avoid the necessity of litigation pending the completion of the 2019 study, in order to include the oversizing of Cambrian Road be reinstated in the study and that Mattamy be compensated in the normal course.

The 2019 Development Charges By-law was approved in March 15, 2019. The 2019 Development Charges Background study includes the provision of the Cambrian Road

oversizing as Project Number 1.CWA01 Cambrian Road (New Greenbank – Jockvale) Oversizing. The portion of Cambrian Road and associated sanitary sewers from existing Greenbank Road to Jockvale Road were constructed by the City of Ottawa and the amount in the Development Charges Background Study for these works are excluded.

Mattamy Inc. has submitted a Front Ending application (D07-20-19-0001) to enter into a Front-Ending Agreement with the City of Ottawa to allow for payments for these completed works. These costs have been identified as \$3,293,042 plus applicable tax and indexing with payment occurring in 2020.

DISCUSSION

The Cambrian Road and associated sanitary sewer is a requirement for the development of the Mattamy Inc. plan of subdivision for access and servicing.

Mattamy Inc. is requesting to enter into a front-ending agreement for the cost recovery of the Cambrian Road oversizing sanitary sewer works, from Old Greenbank to New Greenbank. The Total Development Charge Project Costs (Growth) for the design and construction for the Cambrian Road oversizing including sewer works is \$3,293,042 plus applicable tax and indexing.

All Front-Ending Agreements are subject to the Front-Ending principles noted in Document 1 and Council approved Front-Ending policy noted in Document 2.

The City of Ottawa will schedule the repayment of the cost of the works, subject to approval, for the 2020 year.

RURAL IMPLICATIONS

There are no rural implications associated with the proposed Front-Ending Agreement.

CONSULTATION

All development approvals were conducted according to the requirements of the *Planning Act* and the City's Public Notification and Consultation Policy. The front-ending entities agree to the process outlined herein.

COMMENTS BY THE WARD COUNCILLORS

Councillor Harder provided the following comment:

"I fully support this front ending arrangement. I am pleased that Mattamy took advantage of "time" in that they completed the work while doing the major servicing work and build for the subdivision."

LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendations of this report. If the recommendations of this report are adopted by Council, Legal Services (Innovative Client Services) staff will negotiate and complete a Front Ending Agreement. The standard-form Front Ending Agreement will be modified to account for the fact that in this case the works that were front-ended have already been completed (subject to any outstanding final approval(s) by the City).

RISK MANAGEMENT IMPLICATIONS

There are no risk implications associated with the front-ending of the intersection.

ASSET MANAGEMENT IMPLICATIONS

The recommendations documented in this report are consistent with the City's [Comprehensive Asset Management \(CAM\) Program](#) objectives. The implementation of the Comprehensive Asset Management program enables the City to effectively manage existing and new infrastructure to maximize benefits, reduce risk, and provide safe and reliable levels of service to community users. This is done in a socially, culturally, environmentally, and economically conscious manner.

The proposed Front-Ending Agreement with Mattamy Limited for the oversizing of the road and sewer on Cambrian Road, from Old Greenbank to New Greenbank Alignment, allows for the infrastructure to be built and operational in advance of the City's capital project plans for emplacement of these same works.

FINANCIAL IMPLICATIONS

The recommended front-ending agreement is in accordance with the 2019 Development Charge Study and By-law.

Upset limits and cost breakdowns are below. Repayment is subject to fulfilment of the Front-Ending Agreement conditions and will be based on the actual values of the costs incurred, to the upset limits, which include all City fees and review costs. Should the actual costs exceed the upset limit, the additional costs shall be borne by the developer and the City shall not be obligated to compensate for additional costs.

Development Charge Appendix E-1, Table 3 - DC Project Number 1.CWA01	Oversizing of Road and Sewer on Cambrian Road, from Old Greenbank to New Greenbank Alignment
A. Construction	\$2,863,515
B. 15 per cent Engineering	\$429,527
C. 10 per cent Project Management	0
D. 15 per cent Contingency	0
Sub-Total	\$3,293,042
E. City Sunk HST (1.76%)	\$57,958
Total	\$3,351,000

Pending Council approval of the recommendations, a capital account will be established with budget authority of the upset limit, 100% funded by development charges.

ACCESSIBILITY IMPACTS

All infrastructure will be designed in accordance with all relevant legislation and regulations.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications with the front ending of this Roadway.

TERM OF COUNCIL PRIORITIES

This project addresses the following Term of Council Priorities:

- C2 – Enable the achievement of our short- and long-term success
- ES1 – Support an environmentally sustainability.

SUPPORTING DOCUMENTATION

Document 1 Front-Ending Agreement Principles

Document 2 Council Approved Front-Ending Policy

Document 3 Location Map

DISPOSITION

Legal Services to prepare the final form of the agreements in consultation with the Planning, Infrastructure and Economic Development Department.

The Treasurer to earmark funds for repayment as noted in this report.

Document 1 – Front-Ending Agreement Principles

1. The cost of the Cambrian Road oversizing, including all associated works, estimated at **\$3,351,000** including engineering, Sunk HST, project management and contingences plus applicable taxes. All costs incurred shall be justified and include supporting invoices and payment certificates.
2. The City will reimburse Mattamy Inc. after the works have been granted approval by the City. Reimbursement will take place in 2020, provided the applicant satisfies all requirements in accordance with the Council approved Front-Ending Policies in Document 2.
3. The repayment of the oversizing of road and sewer costs for Cambrian Road shall be pursuant to Council-approved Front-Ending Agreement Policy as referenced under Document 2.
4. Contingency costs are not applicable to this application.

Document 2 – Council Approved Front-Ending Policy

Front-Ending Agreements are requested by developers who wish to have specific growth-related capital works in place in advance of the City's capital project plans for emplacement of these same works: developers agree to finance the works at the "front-end" and recover their costs from the City at a later date. The following conditions must be met for the City to enter into a Front-Ending Agreement:

1. All Front-Ending Agreements with the City will be for growth-related capital works that have been included in a development charge study.
2. The contract for front-ended works shall be awarded by the front-ender in accordance with the City's Purchasing Policy of a competitive procurement process and subject to the review and satisfaction of the General Manager, Planning, Infrastructure and Economic Development Department. Where the front-ender does not award the work in accordance with the City's purchasing policy, they must demonstrate that competitive pricing has been obtained, through independent analysis of their engineer, to the satisfaction of the General Manager, Planning, Infrastructure and Economic Development Department. The contract for the work must be made available to the City to provide to the public.
3. Stormwater ponds and related sewer works that are 100 per cent development charge funded in the recommended by-laws will be paid back to the developer based on revenues as they are collected from the designated area. This means that at no time are the repayments to exceed the revenues received. Each Front-Ending Agreement will define the geographic area involved and a separate and specific deferred revenue account may be set up to keep track of the revenues collected and payments made. Crediting will also be allowed for the Front-Ending Agreements related to storm water ponds. Indexing shall apply to the outstanding balance in accordance with the rate of indexation pursuant to the Development Charge By-laws.
4. For all other capital projects, a lump sum payment, both the development charge portion and the City portion, will be made to the developer in the year the project is identified in the City's 10-year capital plan at the time the Front-Ending Agreement is approved. Should growth occur earlier than forecasted, then repayment would be accelerated to reflect the revised timing the City would have budgeted for the project. If growth occurs more slowly than forecasted, then the City will have an additional one to three years (one to three years from the year the project was identified in the 10-year plan) to make repayments. Only in this latter case will the City's portion of the payment be indexed beginning with the

year the project was identified in the 10-year plan.

5. Given that the City will be assuming operating costs earlier than anticipated through the Front-Ending Agreement process; the City is not to pay any carrying costs to the developer.
6. All development charges payable by developers must be paid up front in accordance with the City's by-law. With the exception of the stormwater ponds and related sewer works, there will not be any crediting allowed as a result of entering into a Front-Ending Agreement. On December 8, 2004, City Council approved, "That staff be directed to work with the industry to develop the details of a credit policy to be incorporated into the Front-Ending Policy".
7. In the case where multiple Front-Ending Agreements are in force in the same area-specific Development Charge By-law, and the City has approved the front-ended works for development charge reimbursements, the front-enders will share in the distribution of development charge revenues on a pro-rata basis with other storm water drainage projects. The pro-rated works shall be based on the balance of the outstanding amount owing on the date the repayment is due. Existing front-enders will be advised of new Front-Ending Agreements for stormwater works within the same benefiting area and area-specific development charge By-law.
8. The capital project upset limits for engineering, project management, and contingency shall be the established rates set in accordance with the City's Development Charge By-laws and accompanying background studies, as amended.
9. Land remuneration shall be subject to an appraisal by a professional land appraiser and the appraisal shall be conducted in accordance with the terms of reference as established in the City's Development Charge By-laws and accompanying background studies, as amended. The upset limit for land remuneration shall be the lesser of the appraised value and the upset limit in accordance with the City's Development Charge By-laws and accompanying background studies.
10. Indexing shall apply to the total project costs if the front-ended works have been delayed over a period of time; the front-ender provides justification for the delay, and with the written concurrence of the City.
11. Where a front-ender is eligible for development charge reimbursement, documentation is required to support the reimbursement in accordance with the

City's Purchasing Policy. The Front-Ending Agreement shall identify at which stage the documentation shall be required. The following documentation shall be forwarded to the City before payment is issued:

- An invoice summarizing the front-ended works, and separate cost items, if applicable, for land, construction costs, engineering fees, project management fees, contingency fees, and applicable taxes.
 - Payment Certificates, including the final certificate, signed by the developer's civil engineer.
 - All invoices supporting re-payment for the front-ended works.
 - Statutory Declaration.
 - Certificate of Substantial Performance.
 - Workplace Safety and Insurance Board Clearance Certificate (WSIB).
 - Certificate of Publication.
12. A report to Council is required to authorize staff to enter into a Front-Ending Agreement. The recommendation will include the financial commitment of the City, specify the funding source(s), the project timeline and where necessary, request that a specific deferred revenue account be established. The financial comment in the report will specify the timelines for the repayment, an operating budget impact and an estimate of the year in which the operating budget impact will begin. It should also indicate the year in which the project was originally identified in the City's 10-year capital plan. A capital project will be established upon Council approval to enter into a Front-Ending Agreement. The status of these projects will be provided to Council on a yearly basis.
13. No capital project identified outside of the Council approved 10-year long range capital plan, shown in the Development Charge Background Study is eligible to be front-ended unless other item(s) of comparable value, funding allocation, and timing is delayed. A capital project identified with a post-period deduction applied to the gross cost will only have the development charge portion reimbursed if front-ended over the term of the by-law. Indexing would not be applicable to the repayment of the post-period component of the project cost. If growth occurs more slowly than forecasted, then the City Treasurer will have the authority to add an additional three years, without interest, to the repayment of the post-period component of the front-ended project from development charges.

