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TO:	CHAIR AND MEMBERS BUILT AND NATURAL ENVIRONMENT COMMITTEE MEETING ON SEPTEMBER 26, 2011
FROM:	PATRICK MCNALLY, P. ENG. EXECUTIVE DIRECTOR - PLANNING, ENVIRONMENTAL & ENGINEERING SERVICES
SUBJECT:	STAFF COMMENTS ON LONDON DEVELOPMENT INSTITUTE LETTER OF JULY 26, 2011

RECOMMENDATION

That, on the recommendation of the Executive Director - Planning, Environmental and Engineering Services, the following action;

1. this report **BE RECEIVED** for information purposes with respect to letter submitted by the London Development Institute dealing with Development Charge Project Costs & City Services Reserve Fund Projects and,
2. staff **BE DIRECTED** to provide this response to the London Development Institute.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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- FAC, August 17, 2011 – 2010 Annual Report – Development Charges Reserve Funds (Agenda Item #4)
- BNEC, July 18, 2011 – DC Rate Monitoring – Mid-2011 Report (Agenda Item #10)
- BNEC, March 7, 2011 – EESD Procurement Practice for Consulting Engineers (Agenda Item #10)

BACKGROUND

Purpose:

The purpose of this report is to provide Council with commentary on the points raised by the London Development Institute (LDI) in their letter addressed to Mayor Fontana, dated July 26, 2011 dealing with Development Charge Project Costs & City Services Reserve Fund Projects.

Discussion:

In the above referenced letter (copy attached as Appendix A), The London Development Institute offered a number of comments and suggestions with respect to Development Charges (DC), City Services Reserve Fund (CSRF), procurement of consulting services and stormwater management (SWM) projects.

Staff work very closely with the LDI, their members and non-members in advancing development in the City. This is a key partnership in the growth and development of the City and we value their input and participation. LDI has consistently been a resource group on industry practice and policy issues. We meet and dialogue regularly in many different forums and in groups of different size, usually trying to better understand one another's needs and desires to progress towards a practical approach. Their letter and this commentary should be seen as another step in helping Council understand the different perspectives of different groups with similar, but not identical, outcome goals. Staff have also heard from the Urban League of London and the London Consulting Engineers of Ontario with views that differ from some of the approaches being suggested by LDI.

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CSRF project timing

The schedule for the CSRF projects in the 2009 DC Study was originally set with the target of opening lands that would be in the 3 to 8 year time frame given the Development industry's concerns the timing of the works needed to provide the developers with flexibility and the ability to respond to market conditions.

It is the Growth Management Implementation Strategy (GMIS) objective to coordinate growth with capital delivery on an annual basis. However, where capital SWM project or trunk sanitary sewer has progressed in advance of draft plan, it is without exception because the draft plan has been delayed. A couple of illustrative examples follow;

- Kenmore Bierens – this subdivision was sent back by Council in January 2011 for several considerations that were returned just this month after a lengthy time with the developer. The SWM facility was functional in April 2011. The delay was not anticipated and last fall the schedule coordination was that the developer would be pulling permits by June 2011.
- Stoneycreek Erosion Protection – in 2006 staff told Council that Stoney Creek was the best area in the City to advance on the parameters of lot provision, number of developers in play, and the gross amount of servicing that had been provided to date and what remained. The lack of progression of key lands owned by several LDI members has been for various reasons. There had been no indication by these developers that there would be multi-year delays and in some cases it was not possible to foresee reasons not to progress.

Stormwater Management Projects

SWM facilities are a key up front component of any land development and often require consideration that extend well beyond the specific area of land ownership of one developer. The design of the SWM systems require the application of multi discipline science and engineering knowledge that includes the general water recourses principals and functions, hydrological and hydraulic evaluations and SWM modeling, fluvial geo-morphological, hydrogeological, geotechnical evaluation, ecological, fishery and aquatic evaluations, as well as compliance with the major Canadian and Ontario Acts and Regulations as well as the Ontario Water Resources Act, the Environmental Assessment Act, the Environment Protection Act, the Conservation Act, the Dam and Safety Act, Fishery Act, the Canadian Environmental Assessment Act, the Canadian Environment Protection Act, the Endanger Species Act, and many others. The City has seen significant opportunities for innovation that ensure the appropriate functioning of the SWM facilities and works at either a cost savings or significant cost avoidance to the development community.

For existing projects we agree that there have been increased costs for some studies. There are a number of factors ranging from new field information, specific environmental issues that arise as the work progresses and/or addressing developers issues as it relates to the proposed subdivisions and their interrelationship with the SWM facility that have led to those increases. This is not unusual in this type of work.

For new projects the City is following the Council approved consultant procurement process to ensure it is getting the best value from the consultants who will be engaged to complete the EA studies. There were a few transition projects where the City sought proposals in keeping with the procurement process and in some of these cases consultant's other than the developer's original consultant were successful.

In fact it is very easy to track project costs as there are very few SWM projects and each one of them is individually reported out. The LDI has the 2009 DC Study which identifies the individual costs of the proposed SWM facilities and the projected timing of those works. The City reports, through Built and Natural Environment Committee on the award of each of the SWM facilities

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which includes both consultant and contract costs. A review will show that three of the four works tendered late 2010 through 2011 are less than the DC Study projections and overall the four works tendered to date are below the total amount budgeted for these projects. This provides very simple accountability as required by the industry and by the City from a Tangible Capital Asset perspective, while allowing flexibility in adjusting the timing of projects as expressly mentioned in the LDI's July 26 letter.

Consultant Selection / Procurement

LDI's letter suggested that too much is being spent on consulting services for DC projects. Like many other things in life, "you get what you pay for". Lowest cost consulting services provide the lowest level of service, with the "seized upon solution" often being more expensive, especially over the life of the works. Adequate and proper review of several alternative designs (which costs more) can result in a solution which provides a higher level of service, has less environmental impact, is more sympathetic to the specific site conditions, provides benefits to the broader development community, reduces social disruption during construction and throughout the life of the project and is less expensive for the "ultimate" customers, the home purchaser, taxpayers and rate payers of the City of London. Quality designed and built communities will ultimately save money for the person who pays the bills over the life of the works. Cost optimization on a 1 to 5 year timeframe for municipal infrastructure is not the correct perspective, since the life expectancy should be in the 80 to 100 year range. Infrastructure that doesn't work properly is expensive to maintain and diverts resources from day-to-day operational and maintenance responsibilities.

Value-added consulting services provide the opportunity for the use of innovative construction techniques, with a complete understanding of the risk/reward proposition providing the necessary information for informed decision making. Obviously checks and balances are required in the overall design and construction process, and this is provided by City engineering staff who are knowledgeable in this type of work, have a broader view of the purpose and service requirements of the works, know how much it should cost and effectively lead the entire design team – the consultant being a simple extension of the City team. Staff have previously provide Council with background reports on Council's approved consultant procurement practices and rationale.

DC Monitoring

The LDI suggests that a DC Monitoring Committee needs to be established to review costs of projects that are being constructed and paid for by DC monies. The City is currently addressing public information needs related to growth financing in the following ways :

- DC monitoring reports that report on expected variances from DC estimates based on recent tender results. These reports are expected to be produced at least bi-annually, and provide adequate information related to cost experience on DC projects;
- Ad hoc requests by developers for information on project status are routinely responded to;
- The City Treasurer is required under the DC legislation to annually produce a report that outlines all expenditures and draws for DC funded projects;
- There are annual processes that LDI and others are invited to comment on – the Growth Management Implementation Strategy and the Annual Capital Budget process are two avenues that incorporate their participation and can affect growth patterns and infrastructure timing in the City;
- Finally, each project incorporates an initiating report with a Source of Financing. These reports provide tracking of application of DC funds to DC projects and provide information desired by the industry.

The governance of a DC Monitoring Committee was addressed in the Blue Ribbon panel report in 2006. That report was adopted by Council. The following points related to DC monitoring committee :

- The report concluded that the DC Monitoring Committee should be disbanded. It stated that "it is not serving any useful purpose in monitoring development charge expenditures nor

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claims approval.” The report also suggested quarterly reports to Council, a recommendation that has not been satisfied to date due to resource issues;

- The report recommended that development industry and the staff should meet on an informal basis at least semi-annually to discuss issues of common concern relating to the two development charge funds. This would inform stakeholders of emerging issues and could be used as a forum for discussion regarding development charge related issues. This recommendation is being addressed through informal meetings on topics of interest including :
 - discussions on policy matters - Growth Management Implementation Strategy (GMIS), Municipal Servicing and Financing Agreements (MSFA), Site Plan process,
 - resolution of issues related to particular development applications at weekly Corporate Approvals Team (CAT) meetings,
 - one on one discussions with developers related to topics of interest

The City still has a number of DC policy issues to resolve – more frequent fund reporting and analysis of projected fund activity and building activity, industrial oversizing policy, area rating, and refinements to UWRF policy – to name a few. Any additional information needs would require additional tax supported staff resources, and may further detract from ability to provide customer service for the development industry. The LDI letter suggests the use of DC funds to finance the committee operations. The DC Act permits the use of DC funds for DC projects and studies, but does not provide for use of DC funds for purposes of monitoring and review of DC funded projects.

The report provided to BNEC in July was not an official financial record of DC activity, in fact that annual statement was provided by the Treasurer to Finance and Administration Committee in August. The report in July more specifically reported on activity and the progress post-tender in comparison to approved budgets. This report is in evolution, the process to assemble it needs some attention to being more readily repeatable but the reports are intended to become quarterly as early as 2012. The provision of any analysis by the industry could be undertaken independently and would likely have more credibility in providing Council with a developer’s perspective.

As for reporting that costs exceeded estimates, this has been a traditional issue given the pressures to keep the rate for infrastructure as low as possible. It also is why the Blue Ribbon Panel identified that contingencies should be increased.

It is surprising to see the Urban Works Reserve Fund (UWRF) described as being self-regulating after the deficit levels achieved through commitments of this fund. As processes and practices evolve, we continue to look for ways to accommodate the development industry’s needs. The current practice between the GMIS, File Manager Process and DC Monitoring reporting illustrates that sufficient inventory has been provided to the residential market while debt issuance has increased over the last 3 years to gap the difference between servicing and revenues. The adjusted File Manager process to change lotting in an approved subdivision to meet the delicate market conditions for residential growth in London has made it quite feasible for developers to make adjustments. The combined effect is that substantial inventory is serviced and that processes support a flexible delivery to meet changing market demands.

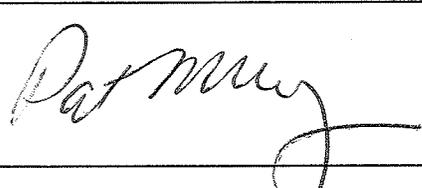
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The City continues to work closely with the development community to monitor growth activity and costs and has revised the GMIS in consultation with the development community. The City is proceeding with works in the light of the revised GMIS and in discussions with directly affected developers. Success in achieving our mutual goals are key in keeping London both competitive and affordable, now and in the future.

This report has been prepared with the assistance and input of John Braam, David Ailles, Ron Standish, Roland Welker and Peter Christiaans.

PREPARED AND RECOMMENDED BY:

PAT MCNALLY, P. ENG. EXECUTIVE DIRECTOR, PLANNING, ENVIRONMENTAL & ENGINEERING SERVICES

Attach: Appendix "A" – Letter – London Development Institute

London Development Institute

July 26, 2011

City of London
300 Dufferin Avenue
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Attn.: Mayor Joe Fontana and Members of Council

Re: Development Charge Project Costs & City Services Reserve Fund Projects

Mayor Fontana,

This letter is in regard to the development industry's concerns with the escalating costs of projects funded from the City Service Reserve Fund (CSRF) and projects that are being constructed in advance of draft plan approval of new development. CSRF works should be built in phases timed to the approval for draft plans for the development that will generate the funds to pay for the works that are being constructed.

LDI has been monitoring the City's progress with regard to the execution of CSRF projects since the changes to the CSRF and the Urban Works Reserve Fund (UWRF) were implemented in the 2009 Development Charges By-law (DC). The City has updated the Growth Management Implementation Strategy (GMIS) and various other monitoring reports to Council with limited input from the development community.

Based on our observations, we offer the following suggestions on how performance of the CSRF may be enhanced. We believe that numerous adjustments should be made, with regard to the implementation/phasing of projects which will improve the cost-effectiveness of the City's work, promote a balanced DC fund and limit increases to future DC rates all to the benefit of both the City and the development/housing industries.

1. CSRF Project Timing

Some CSRF projects are currently being advanced well ahead of draft plan approvals of adjacent benefitting lands. City staff are moving to implement projects in accordance with the GMIS schedule without considering whether all of the benefitting developers are in a position to 'connect' to the new service when it is installed. This should be reviewed to consider the timing or phasing of the project.

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Consideration must be given to phasing/staging of the design and construction of projects, prior to commencement. This will ensure that development will begin paying for the project immediately after installation. LDI's active participation in this decision-making process would be invaluable.

2. Stormwater Management (SWM) Projects

One of the main areas of concern for the industry is Stormwater Management (SWM) projects that are now CSRF projects managed by City staff. There are current examples of increased costs for new EA Studies and cost increases to engineering firms for EA's that are ongoing. Some scrutiny of the cost of these assignments is in order, to determine if savings can be found.

Currently, there is duplication of work in the approval process when the engineer for the developer prepares the conceptual design for a SWM pond for draft plan approval but they are not permitted to do the functional and detailed design work. The conceptual design completes 60 to 70% of the work required to finish the functional design of a SWM pond and has established the background information for detailed design including the topographical survey, the preliminary grading plan for the subdivision and the overland flow routes throughout the area.

It appears that an unwritten policy in effect at the City restricts a consultant from working on a CSRF project if he has worked for a benefitting developer in the pre-design stage. While the avoidance of conflicts of interest is a necessity, we should recognize that Engineers are bound by a Code of Ethics that requires them to report conflicts. We should not then eliminate the obvious competitive advantages that could benefit the DC funds.

Ninety five percent of all SWM ponds that have been designed and built in the City of London have been designed and constructed by the engineer for the developer and meet and operate to City standards.

It is also difficult to evaluate individual SWM project costs in the City's current accounting system since all SWM costs are consolidated into a single total in the Capital Budget estimates. It is impossible from the public information available to determine whether the final expected SWM costs will be 'reasonable' for specific projects. A DC Rate Monitoring staff report to BNEC Committee dated December 13, 2010 notes that the lack of distinct capital budgets for SWM projects "frustrates analysis for DC rate monitoring purposes". It should be noted that SWM projects constitute a significant portion of the overall CSRF budgets. This practice continues today, two years after implementation of the CSRF program and the lack of adequate accounting is entirely unacceptable.

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A review of SWM budgets, forecasting and phasing should be undertaken immediately and prior expenditures on SWM works should be categorized into specific projects in the DC background study to permit analysis.

3. Consultant Selection/Procurement

Policies and numerous staff reports promote the selection of engineering consultants derived from a 'Quality Based System' (QBS) of assessment. Simply stated, the QBS is designed to consider initial engineering costs as a secondary factor, while focusing on the value a consultant's proposed work program will offer to the life cycle cost of infrastructure when determining who to hire for design work. We acknowledge that for expensive, complex projects such as sewage treatment plants, dams, structures, etc., 'value-added' designs can result.

However, the CSRF contains relatively few 'complex' projects and SWM facility and sewer designs have to meet strict criteria and City design standards with little room for innovation on the part of an engineering consultant. The same is true for conventional transportation projects. Ignoring engineering costs on these projects, which make up the bulk of the CSRF budget, is not cost efficient.

The City should adopt a competitive-price based system for engineering selection for CSRF projects until such time that proper benchmarking can occur and lifecycle cost benefits for simple projects can be realistically documented. Too few consultants appear to do too much of the City's work on CSRF projects. Opening up the bidding process will enliven the local engineering economy and minimize DC rate increases.

4. DC Monitoring Committee

A DC Monitoring Committee needs to be established to review the costs of projects that are being constructed and paid for by DC monies. The committee should consist of members from the City's Finance department, Development Approvals Business Unit (DABU), Engineering Division, the Development Industry and a third party engineering firm.

The monitoring committee should be tasked to review DC projects throughout the planning, design and construction phases of the projects to ensure they are being conducted as they were estimated in the DC Background studies and to ensure they adhere to the original scope of the project.

A charge should be included in the DC By-law to fund the monitoring committee and the review process for DC funded projects.

The committee should track the scope and cost of the project from the original estimate used in the DC background study, the costs of EA's and other studies through to final design and construction. The committee should also review the Vacant Land Inventory and the Growth

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Management Implementation Strategy (GMIS) to ensure there will be sufficient development to pay for the constructed works. Part of this review should look at phasing of major works.

In the past the Urban Works Reserve Fund (UWRF) was self regulating when the developer who was responsible to carry the interest costs of the project would review the current and future market conditions to determine if they would proceed to construct the works based on their estimate of when they would be paid back from the fund. These works would be closely tied to the developer's project and they would not be built in advance of either draft plan or site plan approval for the development.

The LDI members have considerable experience in managing CSRF/UWRF projects, having constructed 90% of the City's SWM ponds and many of the major roads in conjunction with their developments. This expertise should be utilized through the development of a monitoring committee to ensure future Development Charges are kept affordable.

We appreciate your earliest attention to this matter and the LDI is available to discuss these issues further. The industry looks forward to working with the City to ensure that London remains competitive in Southwestern Ontario in providing affordable and desirable communities.

Sincerely

London Development Institute



Jim Kennedy

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