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<b>TO:</b>	<b>CHAIR AND MEMBERS</b> <b>Built and Natural Environment Committee</b> <b>MEETING September 12, 2011</b>
<b>FROM:</b>	<b>PETER CHRISTIAANS,</b> <b>DIRECTOR, DEVELOPMENT FINANCE</b>
<b>SUBJECT:</b>	<b>Deposits on EA studies – timing of reimbursement to</b> <b>landowners who financed the studies – Old Victoria pond</b>

<b>RECOMMENDATION</b>
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1. That Administration **BE DIRECTED**, :
  - a. With respect to EA study costs for the Old Victoria planning area, where the Environmental Assessment was financed by resident land owners by way of deposit with the City in 2006, and the lands have not been sold since the time of the deposit, that the same amounts **BE RETURNED** to those who provided the deposits, to the effect that the City Services Reserve Fund will bear the costs of financing the study from this point forward
  - b. With respect to a), where the lands have been sold since the provision of the deposit, Administration **BE DIRECTED** to obtain a release and indemnification in favour of the City prior to release of the deposit, from the new landowner;
  - c. That the Source of Financing attached to this report as Appendix 'A' **BE APPROVED**;
  - d. That Administration **BE DIRECTED** to review similar circumstances and report back on the findings and budget implications.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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- Planning Committee – Meeting November 28, 2005 – Terms of Reference for Old Victoria Planning Area.
- Environment and Transportation Committee – Meeting April 24, 2006 – Appointment of Consulting Engineer for Municipal Class Environmental Assessment Study for Storm/Drainage Works for land development within Old Victoria Area Plan
- 2009 DC Background Study – section M-1 dealing with Major SWM Facilities (CSRF Funded)

<b>BACKGROUND</b>
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In the late 1990's, City's Engineering division began collecting deposits towards the costs of EA studies. The studies were needed to advance the completion of storm water works that would eventually facilitate development in the area in question. The collections were termed "deposits" with the expectation that the costs of the studies would be claimed from the UWRF when the pond works were constructed.

At least one of the landowners who contributed funds towards the cost of an EA study in the Old Victoria area (Larry Breau) has repeatedly requested that his initial deposit for study completion should be returned without delay. The request for refund is based on the fact that funding responsibility for the pond in question (as with several others) has been transferred from UWRF to CSRF.

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Purpose

The purpose of this report is to address the landowner's request for a refund of the original deposit paid. This is accomplished by reviewing the circumstances surrounding the receipt of deposits on the Old Vic pond, and how the new policy related to construction of this pond by City through CSRF funding has changed.

The report also includes a brief discussion on cases with similar circumstances. The report concludes with recommendations arising from the review.

<b>DISCUSSION</b>
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Review of original circumstances – Old Victoria area Environmental Assessment

Relevant history on this matter begins with a report to the Planning Committee (dated November 28, 2005). This report establishes the terms of reference for completion of the Old Victoria Community Plan. The plan was initiated by six(6) area property owners at a time when such area studies were initiated by landowners interested in property development. The total lands owned by the six(6) initiating landowners comprised approximately 65% of the total lands within the study area. This report to approve the terms of reference for the area study was approved by Council on December 5, 2005.

The report established, among other elements of the area planning study, the terms of reference for the development of an appropriate drainage servicing strategy for the area and completion of the necessary Environmental Assessment (EA) study.

Consistent with Council's decision to initiate the EA study on drainage works, the six(6) proponent landowners provided the City with a letter dated February 2, 2006 indicating:

- the landowners were undertaking the required EA study based on the terms of reference approved by Council on December 5, 2005;
- requesting the City be the proponent for the completion of the EA study, in accordance with legislation on EA's;
- the six landowners' agreement to undertake financing responsibility for the cost of the EA estimated at \$71,000 (plus taxes and contingencies); and
- their understanding that "these monies are claimable for the cost of the SWM facility, once constructed".

This letter was followed by a report to Environment and Transportation Committee (April, 2006) which:

- sought to engage an Engineering consultant to conduct a municipal class EA for lands in the Old Victoria Planning Area;
- sought to authorize the Mayor and the Clerk to execute an agreement with the area landowners which would require the owners to pay the total cost of the study.

According to the staff report to initiate the EA study, the City would conduct the EA, with the developing landowners putting up the funds to conduct the study (estimated cost for EA study changed from \$71,000 to \$83,467). In accordance with UWRF policies of the day, the cost of the EA could eventually be recovered through a claim on the UWRF fund upon construction of the regional SWM facility, and subject to usual restriction related to availability of funds in the UWRF to pay the claim, and without interest.

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The City's accounts show the funds (\$83,467) to conduct the study, were collected in 2006. However, there is no evidence of an agreement executed by the City with the land owners, as per the April, 2006 resolution of Council. The best evidence of the terms under which the City collected the \$83,467 is in the owners' February 2, 2006 letter cited above.

General strategy related to former UWRF claims now CSRf works

The preceding describes a specific circumstance related to EA study costs on the Old Victoria drainage plan. In this instance :

1. the work was intended to be financed from the UWRF until constructed;
2. the project converted from UWRF to CSRf funded work as a result of DC policy change in 2009;
3. there is no provision in the capital budget as yet, to finance the EA study costs;

There are a few other examples where a similar set of circumstances exist. Whatever decision is taken on this case will establish a precedent these few other similar cases.

Analysis

It is clear from the February, 2006 letter the intention was to initially divide the upfront financing of the study between 6 landowners who initiated the Community Plan. According to all sources (staff report, landowner letter, UWRF policy), the cost of the EA study would be claimable from the UWRF upon construction of the works for which the EA was initiated.

When the City adopted the responsibility for timing and construction of several of the larger ponds, the funding obligations related to EA study costs on the ponds was not addressed. Since the new owner can no longer unilaterally influence the timing of the completion of the work, it is considered most equitable that their "investment" in the project be returned. As mentioned, a few other landowners have incurred costs to progress their development, but as a result of the switch to CSRf funding responsibility, can no longer progress the work – it is now the City's project to complete. In April, 2011, at the request of Sifton, Council directed that Administration commence the functional design studies on the pond serving the lands in question.

It is recommended that for the case at hand, the City initiate a budget amendment to underwrite the cost of the EA study (\$83,467) (see Source of Financing Report attached as Appendix A). Administration will address the other cases over the coming months, on a case by case basis.

The benefit of returning the deposits on the EA drainage study for the Old Victoria planning area is that it will "clean-up" the existing claimable costs for what, under previous funding approaches, would have been UWRF claimable works. This "clean up" would complete the transition process on this pond. Future expenses will be charged to the project account and financed by the City of London. This approach will also avoid requiring several owners (or former owners) who have financed EA studies from waiting until these projects have been built by the City, and then having a future Administration perhaps years from now, deal the outstanding deposits.

Upon acceptance of the recommendations of this report, staff would pursue the following process to remove the owner funded stake in the EA study :

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1. through targeted contact (with signatories to the February 2006 letter), solicit requests of landowners who provided the original deposits to make a claim for reimbursement of their deposit,
2. obtain a declaration from the landowners protecting the City from further claims related to the return of the EA deposits, and without interest.

Alternative course of Action

For projects fitting the criteria earlier mentioned (ie. "transition projects"), the following paragraphs discuss an alternative option to the above that is not being recommended, but is being provided for Council's consideration in addressing this situation.

The alternative essentially involves no action. It entails sticking strictly to elements of any existing agreement (even though funding source has shifted to CSRF). The agreements generally provide for costs to be claimed upon completion of the construction of the works. This would result in no reimbursement for EA study deposits until ponds are constructed through CSRF funded capital project. This approach would generally strictly observe the letter of Council's initial intentions without regard to the switch in funding source from UWRF to CSRF.

The alternative is consistent with the DC rate study in that it provides for financing costs to be the responsibility of the CSRF only after the time of its construction (ie. refunding the EA deposit prior to the completion of the study and construction of the pond would be introducing a financing cost - albeit a very minor one- that was not included in the DC rate calculations for funding SWM facilities).

This approach also keeps the onus on the depositor to submit a claim for the EA study deposit after construction of the facility. Under this approach however, UWRF claims for SWM pond costs may not be submitted for some time to come (ie. upon pond construction by the City).

Rightful recipient of refund for EA study deposits

There is a potential legal issue related to refund of the EA deposits.

In this instance, original owners (Breau) who provided a deposit on the EA study sold their interest in the land to another property owner (Sifton). In July, Sifton raised a question through their lawyer as to whether they had a right to claim the refund on the deposit by virtue of their purchase of the land from Mr. Breau. It is consider prudent that any repayment of the funds should first require a release and indemnification in favour of the City of London where the original depositor, and the current landowner, are different parties.

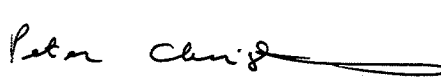
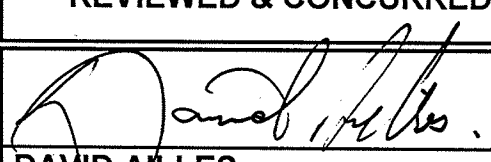
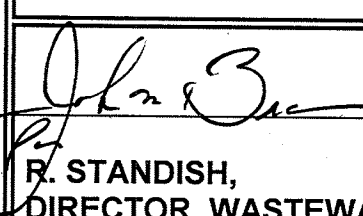
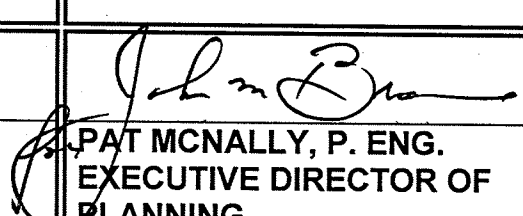
**CONCLUSION**

The new CSRF funding approach for several larger SWM ponds has resulted in a completely revised approach to the timing, construction and payment for these ponds.

The revised approach affects a number of agreements where the ponds were originally expected to be financed and built by owners, with costs expected to be recovered in accordance with policies applicable to the UWRF. The new approach conflicts with these original agreements since no UWRF claims will be made by the landowner for ponds constructed by the City. The issue is therefore an unaddressed transitional issue resulting from the 2009 change in policy on funding of major SWM ponds.

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In the case at hand, City administration recommends a reimbursement of the EA deposit, subject to securing an indemnification. City administration also recommends a review of other projects with similar circumstances as those described above for the Old Victoria Planning Area. Capital budget adjustments will be necessary to carry out the recommended approach.

<b>PREPARED BY :</b>	<b>REVIEWED &amp; CONCURRED IN:</b>
	
<b>PETER CHRISTIAANS, C.A. DIRECTOR, DEVELOPMENT FINANCE</b>	<b>DAVID ALLES MANAGING DIRECTOR, DEVELOPMENT APPROVALS BUSINESS UNIT</b>
<b>REVIEWED &amp; CONCURRED IN:</b>	<b>REVIEWED &amp; CONCURRED IN:</b>
	
<b>R. STANDISH, DIRECTOR, WASTEWATER TREATMENT</b>	<b>PAT MCNALLY, P. ENG. EXECUTIVE DIRECTOR OF PLANNING ENVIRONMENTAL AND ENGINEERING SERVICES</b>

September 6, 2011

- c.c. Martin Hayward, City Treasurer
- B. Krichker, Manager of Stormwater
- J. Page - Solicitor

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APPENDIX 'A'

Agenda Item #	Page #

#11143  
August 31, 2011

Chair and Members  
Built and Natural Environment Committee

RE: Deposits on EA Studies - Timing of Reimbursement to Landowners who Financed the Studies - Old Victoria Pond  
Capital Project ES3019-11 - 2011 SWM Ponds & Outlet Structures for Linked Systems  
Various Landowners - \$83,467

**FINANCE DEPARTMENT REPORT ON THE SOURCES OF FINANCING:**

Finance Department confirms that the cost of this project can be accommodated within the financing available for it in the Capital Works Budget and that, subject to the adoption of the recommendations of the Director, Development Finance, the detailed source of financing for this project is:

<u>ESTIMATED EXPENDITURES</u>	<u>Approved Budget</u>	<u>Committed to Date</u>	<u>This Submission</u>	<u>Balance for Future Work</u>
Engineering	\$220,377	\$136,910	\$83,467	\$0
Land Purchase	145,000	142,800		2,200
Construction	11,104,906	503,071		10,601,835
City Related Expenses	30,817	16,344		14,473
<b>NET ESTIMATED EXPENDITURES</b>	<b>\$11,501,100</b>	<b>\$799,125</b>	<b>\$83,467</b>	<b>\$10,618,508</b>

**SOURCE OF FINANCING:**

Drawdown from Sewage Works Reserve Fund	\$472,700	\$32,844	\$3,430	\$436,426
Drawdown from City Services -Major SWM Reserve Fund (Development Charges) 1)	4,275,400	766,281	80,037	3,429,082
Debenture Quota (Serviced through City Services-Major SWM Reserve Fund (Development Charges)) 1&2)	6,753,000			6,753,000
<b>TOTAL FINANCING</b>	<b>\$11,501,100</b>	<b>\$799,125</b>	<b>\$83,467</b>	<b>\$10,618,508</b>

**NOTES:**


1) Development Charges have been utilized in accordance with the underlying legislation and the Development Charges Background Studies completed in 2009.

2) **NOTE TO CITY CLERK:**

Administration hereby certifies that the estimated amounts payable in respect of this project does not exceed the annual financial debt and obligation limit for the Municipality of Municipal Affairs in accordance with the provisions of Ontario Regulation 403/02 made under the Municipal Act, and accordingly the City Clerk is hereby requested to prepare and introduce the necessary authorizing by-laws.

An authorizing by-law should be drafted to secure debenture financing for Project ES3019-11 - 2011 SWM Ponds & Outlet Structures for Linked Systems for the net amount to be debentured of \$6,753,000.

JG

  
 Alan Dunbar  
 Manager of Financial Planning & Policy