TO:	CHAIR AND MEMBERS FINANCE AND ADMINISTRATION COMMITTEE MEETING ON WEDNESDAY, NOVEMBER 16, 2011
FROM:	MARTIN HAYWARD, CITY TREASURER, CHIEF FINANCIAL OFFICER
SUBJECT:	MUNICIPAL SERVICE FINANCING AGREEMENTS

RECOMMENDATION

That on the recommendation of the City Treasurer, Chief Financial Officer:

1. The report (attached as Appendix A) and presentation from Watson and Associates **BE RECEIVED** for information;
2. The recommendations 2b through 2e **BE APPROVED**, but implementation **BE SUBJECT TO** recommendation 2a, noting that a significant debt load is currently being carried and projected to be carried by the City Services Reserve Funds (CSRF).
    a. The following conditions to implement a Municipal Services Financing Agreement (MSFA) **BE APPROVED**:
        i. that the Development Charges By-law **BE AMENDED** as necessary to accommodate an MSFA, noting the next scheduled update is 2014;
        ii. The staff complement **BE INCREASED** by at least one additional staff resource to support the Director, Development Finance to effectively assess and administer these agreements, as well as provide for other analyses related to Development Charges (DC), including those necessary for the next DC background study.
    b. The annual review of the Growth Management Implementation Strategy (GMIS) **BE CONFIRMED** as the development staging strategy to ensure the orderly progression of development and for construction of CSRF (growth) projects and, further, that the GMIS process **PROVIDE** a stronger link between the projection of revenues (projected building activity), existing debt approvals and the determination of the works proposed in the ten year capital plan;
    c. Consideration **BE GIVEN** to the benefit of accelerating CSRF projects on an exception basis where the individual project provided economic opportunities for new business and jobs or where it may facilitate a community use facility; In considering the merits of an application to accelerate a CSRF project, the evaluation process provided in section 4.2 of Appendix A **BE ADOPTED** in principle and the Civic Administration **BE INSTRUCTED** to further develop and implement the principles and processes identified, with any adjustments that are deemed necessary for practical reasons. In addition, an assessment of risk and financial implications of accelerating the timing of the project should be included in any analysis;
    d. The following forms of MSFA be provided to facilitate recommendation 2c above (these are outlined in Appendix A page 3-1 and 3-2):
        i. Accelerated Payment Agreement would facilitate construction of the CSRF project by <u>the City</u> with reimbursements provided by credits;
        ii. Service Emplacement Agreements would facilitate construction of the CSRF project by <u>the landowner</u> with reimbursement provided by credits, subject to the process set out in section 4.1 of Appendix A; or
        iii. Front-ending Agreements would facilitate construction of the CSRF project by the City with reimbursement provided by either a credit or repayment. If a repayment is considered, then the repayment should occur no earlier than the cumulative growth amount anticipated in the GMIS forecast in force at the start of the agreement.
        iv. That the non-growth share of projects undertaken with the MSFA be cash-flowed by the developers and repaid by the City no earlier than the cumulative growth amount anticipated on the original timeline in the Development Charge Study growth forecast in force at the start of the agreement.

   e. The total amount of all agreements entered into **NOT EXCEED** $5 million. The adequacy of this cap **BE REVIEWED** within five years. Further, the Civic Administration **BE AUTHORIZED** to delay other competing projects to balance lot inventories and/or restrict debt levels;
3. The City Solicitor **BE INSTRUCTED** to develop appropriate forms of agreement to accommodate the recommendations in 2 and BE DIRECTED to retain an independent legal review of the proposed forms of agreement;
4. The Civic Administration **BE AUTHORIZED** to engage consulting services necessary to develop the processes, tools and resources required implement the recommendations;
5. That Civic Administration **BE DIRECTED** to develop the debt cap for the CSRF based on the low point for DC revenue over the previous ten years and this cap **BE APPLIED** to the allowable debt authorized in the CSRF. If this debt amount is exceeded, projects must be postponed until the debt levels come to acceptable and affordable levels;
6. Civic Administration **BE DIRECTED** to develop an administrative charge to be charged to any developer requesting an MSFA to recoup in full or in part administrative costs associated with administering the agreements; and,
7. That Civic Administration **BE INSTRUCTED** to explore the following other considerations as part of the next Development Charges Background Study:
   a. Development Charges **BE REVIEWED** with a view to establishing a fee structure that encourages intensification and discourages “leap frog” development;
   b. That capital works **BE REVIEWED** as part of the next Development Charges Background Study to establish more works related to the development as local services (Section 59(2), *Development Charges Act, 1997*) rather than regional services; and,
   c. That further to recommendations to the Audit Committee from the internal auditor, the viability and future of the Urban Works Reserve Fund **BE REVIEWED**.
   d. The Development Charges By-law **BE REVIEWED** with a view to applying section 26(1) of the *Development Charges Act, 1997* which allows for payment of development charges related to water, wastewater, storm water and roads upon entering a subdivision or consent agreement; noting that while this improves cash flow to the CSRF, considerable administrative burden and cost will be incurred to effectively monitor this change.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Committee of the Whole, March 1, 2007 - Blue Ribbon Panel Implementation Strategy;

Board of Control, May 13, 2009 - 2009 Development Charges Adoption of DC policy, Background Study & Rate By-Law;

Built and Natural Environment Committee, December 13, 2010 – DC Rate Monitoring Initial Report;

Committee of the Whole, March 22, 2011 - DELEGATION → Gary Scandlan, Watson & Associates Economist Ltd. Re: Introduction to Development Charges.

BACKGROUND

On March 28, 2011 Council resolved that:

4. That, on the recommendation of the Chief Administrative Officer, the following actions be taken:

(a) the attached presentation from Gary Scandlan, Watson & Associates Economists Ltd. on “Development Charges Overview, the Urban Works Reserve Fund and Financing Practices in Ontario” **BE RECEIVED**;

(b) the Civic Administration **BE DIRECTED** to prepare a report for consideration at a future meeting of the Finance and Administration Committee in respect of a policy framework for potential agreements that might be available under the *Development*

Charges Act, 1997 or any other relevant provincial legislation, for the construction of municipal capital works funded by the City Services Reserve Fund provided for in the City's Development Charges By-law, including a financial impact analysis of the Urban Works Reserve Fund and the City's capital budget in connection with the proposed potential agreements;

(c) prior to tabling the report, the Civic Administration **BE DIRECTED** to consult with stakeholders, including the London Development Institute, the London Home Builders Association, the Chamber of Commerce, the London St. Thomas Association of Realtors and the Urban League; and

(d) the Civic Administration **BE AUTHORIZED** to retain the services of Watson & Associates Economists Ltd. and Lyn Townsend, under the direction of the City Treasurer, Chief Financial Officer;

it being noted that the Committee of the Whole (CW) heard a verbal delegation from L. Townsend, as well as the attached presentation from the Director of Development Finance, the Managing Director of the Development Approvals Business Unit and the City Treasurer/Chief Financial Officer with respect to "Growth Planning, Management and Finance Orientation", received a Municipal Council resolution adopted at its meeting held on December 20, 2010 with respect to an orientation on development charges, and also received a copy of the "2011+ GMIS: Development Area Summaries", dated June 14, 2010. (4/13/CW)

Process

Watson and Associates Economists Ltd have approximately 119 municipal clients on matters related to development charges. Of these clients 20 are in the Greater Toronto Area and 21 are in South-western Ontario. Watson and Associates have been retained, as indicated in the Council resolution above, as lead consultant. The scope of their work included examining the topic of accelerating City Services Reserve Fund (only) related works in the capital plan that serve growth and that consideration should also be given to:

- The circumstances where the timing of works could be moved forward by the land developer upon entering into a municipal services agreement with the City;
- Identify the most appropriate form of municipal services agreement for the City to use;
- Identify policy matters which should be considered in determining their use;
- Identify potential issues to be addressed resulting from the above;

In addition, Lyn Townsend has also been engaged to provide guidance and assistance as required and to provide insight as to the intent of the Blue Ribbon Panel.

A stakeholder group representing all parties identified by Council and others who requested participation were invited to joint meetings that took place in May through November. These sessions provided a background to the issues and ensured each person at the table was heard and all issues identified. Draft reports were brought forward for feedback and input of the group.

Discussion

Extensive discussion took place with respect to the following topics:

1) Status of City Services Reserve Funds (CSRF) and debt levels borne by those funds (all paid through current and future development charges):
   a) Pages 2-4 through 2-6 of the Watson report outline the issues with respect to the CSRF.
   b) Given current revenue projections and expenditure plans, the consolidated CSRF is projected to achieve a maximum cash shortfall of approximately $80 million by 2017.
   c) This shortfall would be made up by issuing debt against the CSRF and would be repayable by development charges as a first draw against incoming revenue. In the event that DC revenues from building permit issuances become weak, no new investment could take place until the debt service payments in any given year were satisfied. The estimated debt that will be carried in the CSRF is estimated to be $142 million by 2022, assuming revenues remain as projected, noting that revenues are currently projected to decline.
   d) Current expenditure patterns, building lot inventories and revenue forecasts suggest that projects should be postponed.

e) One way to alleviate some of the cash flow issues is to apply section 26(1) of the Development Charges Act which allows for payment of development charges related to water, wastewater, storm water and roads upon entering a subdivision or consent agreement.

2) The important role of the Growth Management Implementation Strategy (GMIS) in determining the projects that proceed and market conditions.
   a) GMIS update is undertaken annually. There was general agreement of all stakeholders that this should be the primary mechanism for determining project timing.
   b) Responsiveness to meeting the needs of specific types of development was questioned and requires some further analysis on the part of the Development Approvals Business Unit (DABU).
   c) The same criteria used by DABU in setting the annual GMIS update should be developed further, in consultation with stakeholders, to provide a consistent approach in determining whether specific projects are advanced or postponed as part of the MSFA process.

3) The potential role of a Municipal Services Financing Agreement (MSFA) to advance projects ahead of GMIS timing. If GMIS is working, why is this necessary?
   a) It was generally agreed that if GMIS was working perfectly, MSFA would not be necessary. However, there may always be exceptions and an MSFA process should be considered.
   b) The MSFA should be limited to a maximum amount Watson and Associates in section 4.3 establish the limit at $5 million at any one time, this is based 25% of the DC collections anticipated in the low revenue years over the next ten years for the roads, water, sanitary and storm water CSRF components. The development industry has indicated this maximum is too low since the cost for an individual project may exceed this limit and/or only one or two projects maybe under an MSFA at any one time for a number of years.
   c) given the first draw on revenues is debt service which is estimated to exceed $15 million by the end of the ten year plan (based on existing planned capital expenditures and DC background study revenue estimates) costs which peak at and the low point on revenue over the next ten years is roughly $19 million it would be better to leave the maximum at the $5 million level, given the debt service payments projected and the on a calculation of DC of the low point of forecast DC revenue over the next 10 years DC and considered an exception.
   d) The use of an MSFA is not "neutral"; projects advanced may be offset by other projects that are pushed off in recognition that market demand shifts.

4) Criteria for advancing projects requesting an MSFA Page 4-3 of Appendix A. (In addition, the criteria for delaying projects as part of the GMIS should also be developed)
   a) Criteria have not been discussed in detail, but would be required prior to establishing an MSFA policy. Elements would include:
      i) Projection of growth forecasts and impact on existing developments for which infrastructure is already in place, including an assessment of existing applications and market supply of lots in registered subdivisions;
      ii) Contribution to principles of smart growth (intensification, etc.) rather than "leap frog" development;
      iii) Availability of existing municipal servicing and impact on advancing new infrastructure ahead of schedule as a result of advancing specific projects;
      iv) EA/EIS are completed;
      v) Business case for non-residential development including:
         (1) Net new jobs created (temporary and permanent);
         (2) Type of business attracted (does it fit with the Council strategy of "new economy") – a measure of longevity;
         (3) Spin-off business for other organizations (such as the airport, service industries);
      vi) Projects advanced are included in the existing DC background study and are within the approved five year capital budget plan (the development industry would like to see the ten year budget horizon in order to undertake the necessary planning steps to advance construction of the project);

vii) Other considerations include:
   (1) Impact on the discretion of future Councils to apply evolving standards to development;
   (2) Taking advantage of an emergent economic development opportunity involving significant job creation (other than construction);
   (3) Facilitating the development of a major facility needed by an adjacent area.

5) Levels of risk to be assumed by both the Developer and the City of London with respect to reimbursement (whether through credits or repayment). This issue was likely the most controversial.
   a) Risks are borne by both the developer and the City when entering into any agreement.
   b) Where there is a desire on the part of a developer to advance a project, it is on the premise that they can capture market share and/or make money. The larger risk should therefore be borne by the developer.
   c) Assuming MSFA's are used, the least risk approach to the City would be the issuance of developer credits for projects (See Figure 1 below). Page 3-3 of the report discusses credits versus repayments. Repayments could also be coordinated with the flow of revenue from building permits to achieve a similar goal.

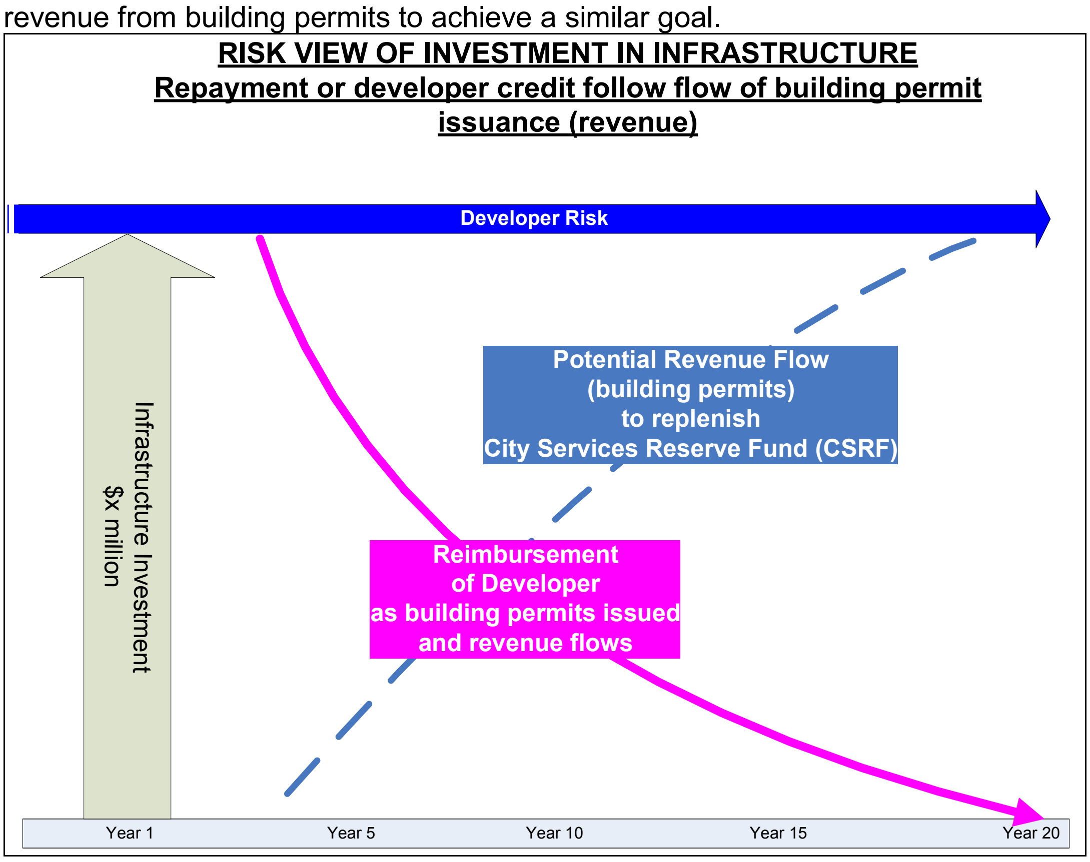

Figure 1 - The least risk approach from the City's perspective

   d) Complexities with reimbursement exist where a project benefits **multiple** developers. These more complex developments are not easily reimbursed through credits, and would therefore require true front-ending agreements as contemplated in sections 44 and 45 of the Development Charges Act. These are complex to administer and would require additional staff resource to implement, assess and administer effectively.
   e) The following outline the major concerns or issues with respect to assuming risk.
      i) Page 3-4 and 3-5 of the report outline the **major concerns from a City perspective** with respect to an MSFA and can be summarized in the following quote "If the developers are to be granted the ability to determine timing based on providing MSFA's then the City loses control of cash flow. The largest concern is that the MSFA could receive first priority on the City Services Reserve Funds (CSRF) resulting in the City not having the funds to build broader benefit projects. If the City ultimately wishes to move in this direction (and it is not recommended) then it should consider adjusting development charges in one of the two ways noted…" (noted on page 3-5 of the Watson report).
      ii) **Major issue from a developers' perspective,** the MSFA is required because GMIS is not able to appease each and every owner who wishes to develop their lands and

was recommended as part of the change with respect to the Blue Ribbon Panel. The development community does not want to invest cash in developing infrastructure ahead of schedule and not be certain of a payment date. Since the City planned to undertake the project, it should repay the developer in the year it intended to undertake the works. To do otherwise would eliminate a number of smaller developers due to inability to carry the cash burden until building permits reimbursed that developer.

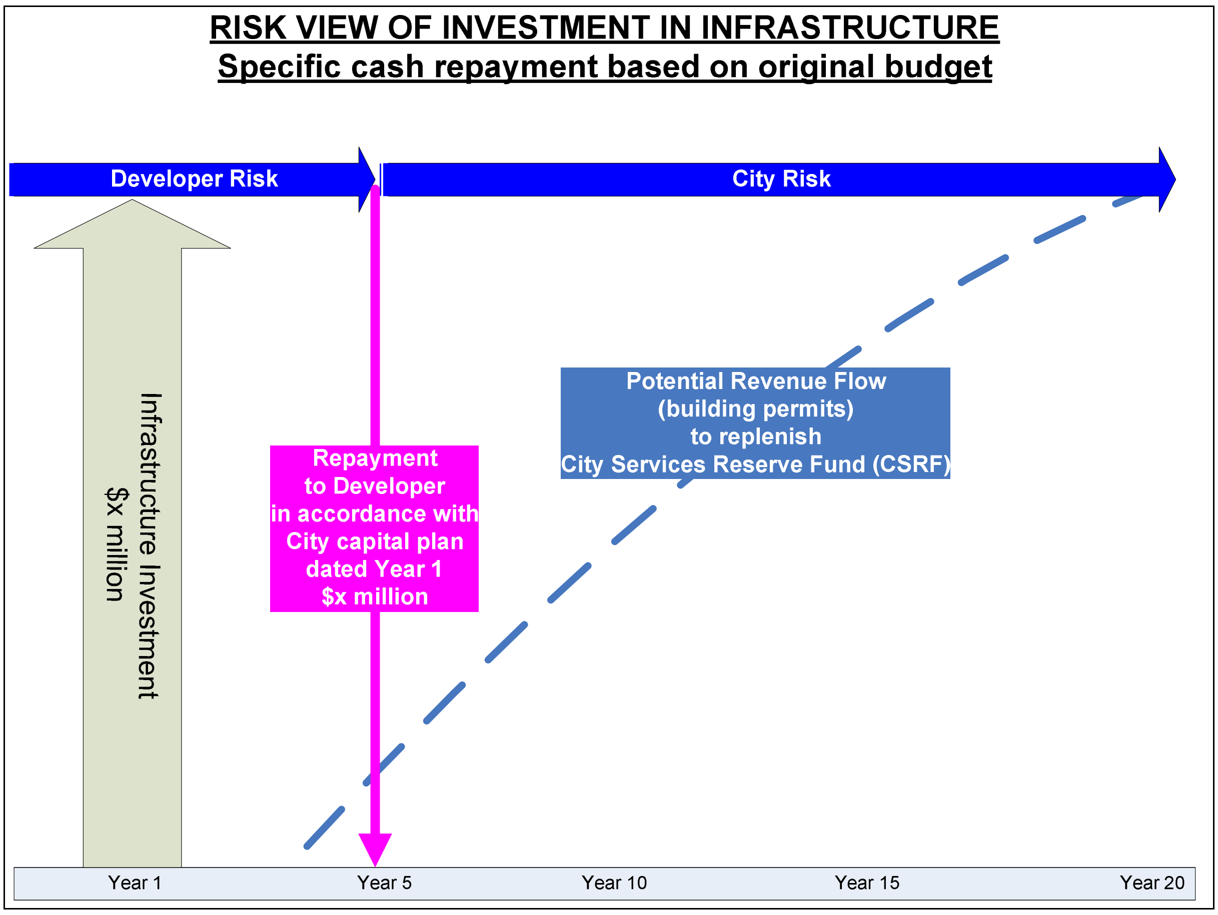

Figure 2 - The least risk approach from the Developers perspective

Legislative and Council Policy implications

The City Solicitor' Office advises that Section 24 of the *Planning Act* provides that no by-law regarding public works shall be passed which does not conform with the Official Plan.

Further the City Planner advises that the policies under section 2.6 of the Official Plan, Growth Management Policies, are applicable to consideration of these recommendations in connection with proposed public works.

Summary

An MSFA is a financing mechanism that allows developers to advance projects ahead of the timing recommended through the GMIS update. The GMIS provides Council with control over the timing of development (growth) projects. The MSFA should be considered only on an exception basis. Since the developer is advancing the project primarily for their own economic benefit, they should bear most of the risk associated with recouping those costs, rather than the tax payer.

Criteria for advancing projects should be similar to those used in setting the timing for GMIS, with potentially more emphasis on the economic benefits to the City identified through a business case as well as impact on other infrastructure or municipal service requirements.

Limits should be placed on the total amount in agreements. This will ensure that MSFA's will be used on an exception basis, and limit the risk to the City given there is a significant debt load anticipated in the CSRF; debt service is a first draw against all future development charge revenues.

RECOMMENDED BY:	RECOMMENDED BY:
MARTIN HAYWARD **CITY TREASURER, CHIEF FINANCIAL OFFICER**	**JEFF FIELDING** **CITY MANAGER**

Attach

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