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<b>TO:</b>	<b>CHAIR AND MEMBERS</b> <b>Built and Natural Environment Committee</b> <b>MEETING November 14th, 2011</b>
<b>FROM:</b>	<b>PETER CHRISTIAANS,</b> <b>DIRECTOR, DEVELOPMENT FINANCE</b>
<b>SUBJECT:</b>	<b>Engineering claims on CSRF funded SWM works –</b> <b>Procedures for reimbursement of pre-approved Owner costs</b>

<b>RECOMMENDATION</b>
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That on the recommendation of the Director, Development Finance, that procedures for the reimbursement of costs related to the construction of SWM ponds **BE CIRCULATED** for stakeholder comment, with the expectation they be returned with any recommended changes by December 15, 2011 and finalized procedures **BE TABLED** for Council's consideration in 2012.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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Blue Ribbon Panel Report  
[http://www.london.ca/Reference\\_Documents/PDFs/UWRFReport.pdf](http://www.london.ca/Reference_Documents/PDFs/UWRFReport.pdf)

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

<b>BACKGROUND</b>
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The advancement of Storm Water Management Facilities is a complex issue, and part of the reason that many municipalities have removed SWM facilities from their DC charges. In the context of a slower growth municipality, ponds serve regional areas, and an array of residential development parcels, London has retained SWM facilities in their DC charge.

Currently, the City uses two approaches to financing the construction of Storm Water Management Facilities (aka. SWM ponds) based on funding source :

1. The Urban Works Reserve Fund (UWRF) is used occasionally to fund smaller ponds (generally, draining less than 50ha.).
2. The City Services Reserve Fund (CSRF) is used to fund larger ponds.

The UWRF pond construction works are led by the owner - the CSRF funded works by the City.

In the course of completing the functional design on City led ponds (CSRF funded), owners have claimed, after the completion of the final design, that they have incurred costs directly associated with the construction of the pond. Owners have been requesting substantial compensation for time spent with engineers in advancing their preferred SWM design. Their intent is to ensure the SWMF fits with their preferred street layout and to avoid unnecessary earth moving operations on their lands. Both the scope of these CSRF claims and the timing of the City's financial commitment to reimburse costs need to be addressed.

The same is true of UWRF funded ponds, where costs are incurred prior to subdivision agreements being struck. Proposed new procedures regarding reimbursement for these costs are also contained in this report.

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The purposes of this report are :

1. to establish procedures regarding reimbursement for costs incurred by the host landowner for engineering or other consulting work they have completed in relation to pond construction on CSRF funded ponds;
2. to establish procedures for the UWRF SWM pond claims that result in review of SWM pond claimable costs on a timetable that corresponds closely with discussions on the pond design;

<b>DISCUSSION</b>
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1. CSRF funded ponds

In the case of CSRF funded ponds, the City is the lead on the project. The City is therefore responsible for determining the use of resources and incurrence of costs to bring the facility to readiness.

However, the owner invariably incurs professional engineering fees to protect and further their interests with regard to the placement and design of the pond where their lands are host to the pond. These fees are over and above fees incurred by the City who engage consulting engineers to design and supervise construction of the pond.

In a couple of instances, staff have received requests for reimbursement of engineering costs incurred on behalf of the host landowner, and associated with the early discussions on the design of the ponds (including fees while the pond design is in the Environmental Assessment stage).

Administration has developed the following procedures with the intention of:

1. Providing upfront, defined parameters for reimbursement of owner incurred costs on CSRF funded ponds;
2. Enabling the city to identify its commitments and obligations related to CSRF funding prior to these costs being incurred;
3. Enable the owner to know the "ground rules" as to costs that will be reimbursed, prior to incurring the costs;
4. Avoid duplication of effort by the land owner's engineer through direct contact with the City's engineer who completes the design of the pond.

**Section A Procedures for claims by the host land owner on CSRF funded ponds**

The following protocols are recommended to be used for claims being made with respect to CSRF funded SWM projects :

1. General Description of Claimable Costs

Developer incurred costs potentially eligible for reimbursement can generally be described as follows:

- a. The claimable costs would have been incurred in the design and construction of the regional SWMF in question by the City in its capacity as project leader, including surveying costs, archaeological studies, hydrogeological studies and geotechnical studies. Costs that benefit a large parcel of land may be refunded on a basis that prorates the benefit of a study between SWM lands and the balance of the land involved in the study; but
- b. the City believes the host owner is in the best position to provide cost savings to the CSRF and will therefore entertain claims for certain costs for works or studies completed on the host owner's lands, and

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- c. there is documented acceptance by the City as to the list of activities to be reimbursed to the owner, prior to these costs being incurred (further details below);

2. Costs not recommended to be eligible for reimbursement

Costs not eligible for reimbursement include :

- a. costs incurred prior to completion of an Environmental Assessment to represent owner interests. These costs are considered to be the responsibility of the host owner (as is the case for any other interested member of the public);
- b. any engineering related costs for layout and grading work adjacent to the SWM and
- c. engineering work related to inlet and outlets to the proposed facility.

This work is considered to be the responsibility of the City's consulting engineer.

3. Approved Purchase Order – requirements

It is recommended that no costs will be claimable without an approved purchase order. The purchase order is the document that records the City's understanding as to future cost reimbursement between the land owner and the City. The Purchase Order will include :

- a. Estimate of any Legal costs to be incurred by the owner in providing the City with easements for access to lands for the purposes of completing advance preparations for the construction of the SWMF on the owner's land.
- b. With respect to any other costs related to the construction or design of the SWMF, a detailed written description as to the nature, scope, and estimate of costs to be incurred by the owner and which will be eligible for reimbursement;
- c. Sole sourcing of works to be undertaken by the owner where it would be reasonable to obtain competitive bids for the work in question, will be discouraged. In the absence of competitive bids, the City will be under no obligation to reimburse the owner for the work in question.
- d. The approval of signatures of City Administrative staff (dual signatures required), in advance of the incurrence of these costs. "In advance of the incurrence of these costs" means that any costs incurred by the owner prior to the approval discussed herein are ineligible for reimbursement.
- e. Costs approved for reimbursement shall not include consulting fees incurred to represent the Owner during discussions on the Environmental Assessment. Neither will the costs incurred to represent the owner during discussions on SWM pond design or discussions related to the advancement of a draft plan application be eligible. In all cases, these costs are considered costs of doing business and are included in the rate paid for acquisition of the land.
- f. To be eligible for reimbursement, the costs for which the developer seeks reimbursement must have been provided for in the estimated costs (specific project or contingencies) used to calculate DC rates in the previous DC study.

A Purchase Order form to be used for the purpose of seeking prior approval is appended to this report (Appendix A).

4. General Provisions regarding reimbursement for deposits on EA studies

The City has previously used the practice of funding EA studies from deposits towards the costs of SWM EA studies from interested landowners. Contributions that fit this description will generally be reimbursed when all the following conditions have been met

- a. completion of the EA study;
- b. Approval of the study by Council;

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- c. Commencement of design of the approved EA works; and
- d. Approval of sufficient budget to refund the initial financing contribution of the contributing land owners.

5. Limitations on Purchase Order approvals

No purchase order and no claim for any cost reimbursements under this procedure will :

- a. be approved until a project budget for the work has been approved by Council. The City will make efforts to appropriately time the budget approvals for design to coincide with the work that is the subject of this policy. However, costs incurred prior to identifying an approved budget are not eligible for reimbursement.

Early indication of the intention to incur costs for reimbursement will help ensure budget provision is made on a timely basis.

6. Acknowledgement of intention to incur costs

- a. It is important that those responsible for approval of eventual claims are clear on the costs the owner anticipates incurring and claiming for reimbursement , and appropriate division of duties in acknowledging the future claims, is practiced. For the purposes of acknowledging the clarity of the expenses to be reimbursed, the signature of two(2) officers from the City are required :

- i. Either the Director of Wastewater Treatment, or Manager of Storm Water, and
- ii. the Director of Development Finance of DABU, or designate.

In the event of corporate reorganization, a successor to any of the above staff positions assumes the responsibility for approval.

7. Distribution of signed Purchase Order

The Director of Development Finance (DABU) and each executed Purchase Order shall represent a commitment of funds against the approved capital budget. The DABU copy of the approved purchase order will be held in a file until claim for reimbursement is made.

8. Claim submission

- a. To be eligible for reimbursement, the city and the developer must have executed an agreement (likely a Consent Agreement to create the SWM block) that requires the works referred to in the approved purchase order. The incurrence by an owner of claimable costs by the property owner shall in no way obligate the City to approve the related planning application.;
- b. Claim for reimbursement of expenses submitted for reimbursement by the owner consistent with an executed Purchase Order must be accompanied by :
  - i. a summary of paid invoices for Engineering fees showing services provided and date of invoices, with copies of the invoices attached. Where invoices are for time billed in consultation with City staff, the name of the staff member consulted and the cost allotted to those discussions should be included on the invoice, and
  - ii. a copy of the approved Purchase Order that describes the expense being claimed
- c. Timing of claims submission should be incorporated into the agreement mentioned above. The right to reimbursement for costs incurred will lapse upon completion of the construction of the facility in question.

Details on invoices must be sufficient to clearly describe the tasks undertaken, and will be provided to the satisfaction of the Director of Development Finance, or designate.

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9. Claim for Costs in excess of approved Purchase Order

Administration shall refuse any costs that exceed the estimated cost approved in the Approved Purchase Order discussed above.

**Section B Transitional Provisions – UWRF funded ponds**

This section deals with ponds the construction of which is led by owners.

Under the UWRF system of funding ponds, developers incur costs towards the design of those ponds in advance of entering subdivision agreements. These agreements qualified the ponds (generally serving less than 50ha. and are not part of an environmentally sensitive ecosystem) as claimable. These costs were not technically claimable until the pond was identified in an executed development agreement. UWRF funded pond costs for which owners sought reimbursement included costs incurred in years prior to the agreement that made the costs eligible for claim. This process continues today.

For the purposes of establishing improved controls and accountability for these costs in the future, and for ensuring appropriate review as costs are incurred, the following is recommended :

a) Transitional Provisions – costs on ponds formerly UWRF now CSRF (“Transitional Claims”)

Since the 2009 DC study, most of the ponds that switched from UWRF funding to CSRF funding have been addressed in various reports to BNEC resulting in consulting fee claims being approved for reimbursement (Kenmore, Corlon, Z Group, etc.). There remain a few ponds where an owner has incurred costs that they expected would be claimable from the UWRF, which are no longer UWRF funded.

In order to get all DC funded ponds using similar procedures, it is recommended that the City staff attempt to bring closure to the remaining “former UWRF pond claims”.

This would be accomplished by :

1. a review of the planning files to identify planning applications that involve pond claims formerly intended to be funded from the UWRF;
2. requesting the owner to submit details of the claimable costs incurred while the ponds were considered to be UWRF funded;
3. assessing the pond claims for consistency with policy on UWRF pond claims;
4. preparation of a report(s) to recommend disposition of the claim (which may also involve a budget adjustment);

b) Go Forward Procedures on UWRF pond claims –pond costs incurred to date

In the future, a UWRF pond claims process that more closely ties progress in the pond design to the submission of claimable invoices is recommended.

Where owners incur costs to progress the design on a UWRF funded pond on their lands, in anticipation of eventually entering an agreement to make the pond costs eligible:

- i. Costs incurred to date would be summarized and submitted (ie. a catch-up submission of claims for all UWRF ponds in progress);
- ii. Costs incurred in the future should be submitted as incurred, on a month-to-month basis;
- iii. Though invoices are submitted on a month-to-month basis, reimbursement will continue to be based on completion of the pond, but the claim will be an accumulation of the

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individual monthly invoices, subject to the 15% limit on engineering fees identified in the current DC by-law (CP 1473-212).

The implementation of this policy will avoid the necessity to consider large claims that involve services rendered years earlier. It provides an opportunity for the City to monitor claims expenses as they are incurred, as opposed to long after they have been incurred. It provides a more “real time” evaluation of claims expenses and assessment of the claim coincident with discussions on the pond design. The SWM unit may be consulted on the monthly expenses submitted.

To implement this approach, a review of all UWRF ponds in progress will be undertaken and request for submission of invoices for costs incurred to date will be issued. An allocation of the consulting engineer’s invoice to claimable items and an explanation of the activity being claimed must be provided on the invoices. New planning applications that identify UWRF ponds will be advised of the month to month filing requirements on claimable costs discussed above. A review of the project-to-date submissions will be necessary – this will essentially accelerate the review of claimed expenses that would normally take place at the end of the process.

Eligibility of expense claims will be based on the same guidelines as those identified for CSRF ponds discussed earlier in this report. The figures below illustrate the current process (Figure 1 below) and the proposed process (Figure 2).

Figure 1 Current process for UWRF pond claims

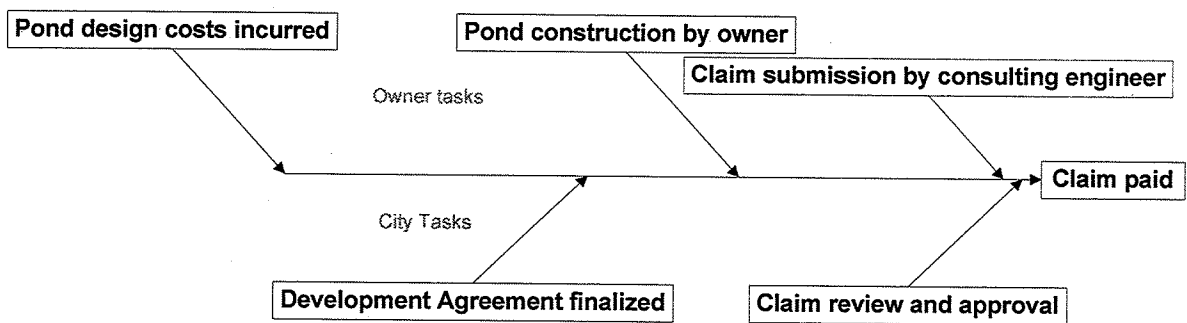
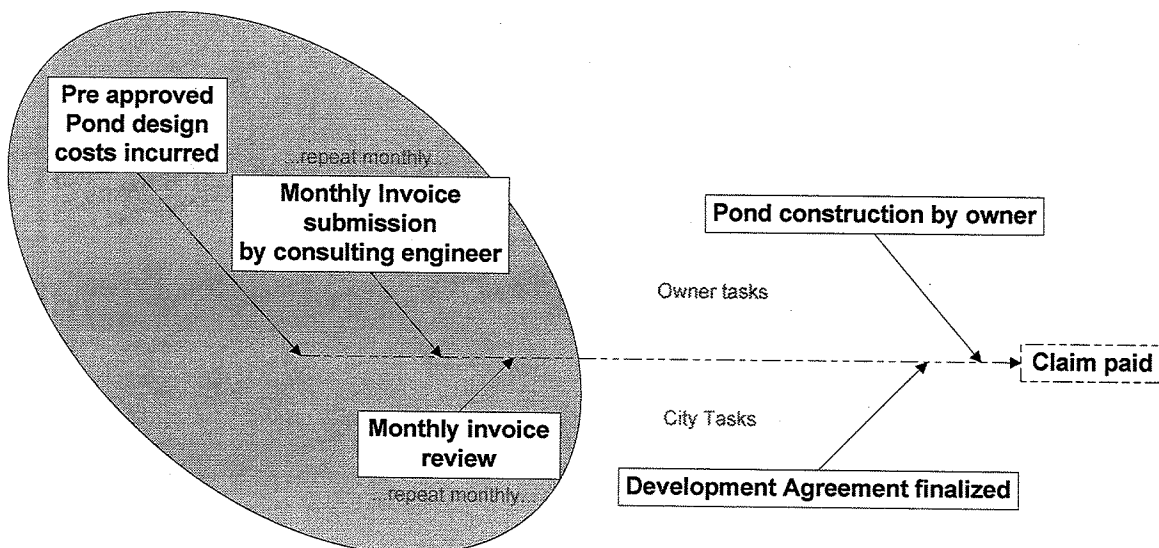


Figure 2 - Proposed process for UWRF pond claims



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**CONCLUSION**

The report sets out a procedural framework for CSRF funded ponds that includes:

1. Advance approval for costs expected to be incurred and reimbursed by the CSRF.
2. Completion of a Purchase Order subject to approval prior to incurring the costs. Purchase order shall not be approved until capital budget approval for the works in question is approved by Council.
3. Approval of this Purchase Order(PO) is delegated to City staff up to a limit of \$30,000, beyond which staff will seek Council approval through a report prior to approval of the PO;
4. Requires a Competitive tender, where the work to be undertaken by an owner can reasonably be competitively bid;
5. Timely review of expenses incurred for future reimbursement; and
6. Adequate documentation of claims for future reimbursement.

The procedures set out in this report are considered necessary to define clearly, the costs to be borne by the CSRF and UWRF. The recommended process for CSRF works provide for acknowledgement by both the owner and the City of the scope of eligible costs. Prior approval of purchase orders for these costs will ensure both the City (as administrator of DC funds) and the owner is aware of limits of claimable costs.

The report also proposes a means of putting expenses incurred on UWRF ponds on a regular and comparable (to CSRF funded ponds) basis of review. The proposed procedures for UWRF claims also promote an awareness of the relationship between discussions on SWM pond design and incurrence of claimable costs.




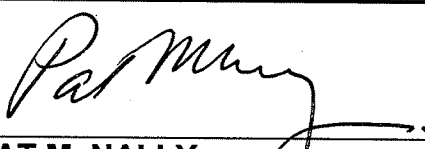
Taken as a whole, the procedures should promote predictability of claims and improved linkage between incurring expenses and assessment of claims for future reimbursement.

A brief period of consultation with the industry is intended to provide for refinement of the recommended procedures.

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**ACKNOWLEDGEMENTS**

This report was compiled in consultation with the staff in the City's Purchasing and Supply division, the Development Approvals Business Unit and staff in Stormwater Management.

<b>PREPARED and RECOMMENDED BY :</b>	<b>REVIEWED &amp; CONCURRED IN:</b>
	
<b>PETER CHRISTIAANS, Director, Development Finance Development Approvals Business Unit</b>	<b>RON STANDISH Director - Wastewater and Treatment</b>
<b>REVIEWED &amp; CONCURRED IN:</b>	<b>REVIEWED &amp; CONCURRED IN:</b>
	
<b>DAVID AILLES Managing Director, Development Approvals Business Unit</b>	<b>PAT McNALLY Executive Director - Planning, Environmental &amp; Engineering Services</b>

November 4, 2011

c.c. Martin Hayward, City Treasurer and CFO  
J. Freeman, Manager, Purchasing & Supply

attchmt: Appendix A

protocol for engineering claims on csrf & uwrf funded ponds.final report.docx



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**Appendix A**

**City of London  
PURCHASE ORDER**

DATE: \_\_\_\_\_

Re : (describe the SWM facility – cite the SWM reference number used to identify the SWM pond in the most recent DC study)

This Purchase Order recognizes that (insert name of owner with whom City is agreeing to cost reimbursement) is the owner of land which is intended to be the site of the above mentioned pond. The City acknowledges that the host land owner is about to incur costs as described herein, which are costs related to the construction of the SWM pond, and the City deems it expedient for the owner of land to incur those costs and upon execution of an agreement, become eligible for reimbursement from the City's Project Budget for this facility for the costs in question:

Description of costs eligible for future reimbursement	Estimated cost
<ul style="list-style-type: none"> <li>• Legal costs incurred with respect to providing the City with easements for access to lands for the purposes of completing advance preparations for the construction of the facility or construction of a SWMF on the owner's land.</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>
<ul style="list-style-type: none"> <li>• A detailed description as to the nature, scope, and estimated costs to be incurred by the owner and which the owner will seek reimbursement<sup>(1) (2)</sup>;                             <ul style="list-style-type: none"> <li>○</li> <li>○</li> <li>○</li> <li>○</li> <li>○</li> <li>○</li> <li>○</li> <li>○</li> <li>○</li> <li>○</li> <li>○</li> <li>○</li> <li>○</li> <li>○</li> <li>○</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>
<p>Total estimated costs for future reimbursement</p>	<ul style="list-style-type: none"> <li>•</li> </ul>

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Acknowledged on behalf of the City of London <sup>(3)</sup> :	
Director of Development Finance	DATE
The Director of Wastewater Treatment	DATE

- (1) Costs for work undertaken by the owner should be competitively bid, where it is reasonable to do so. In the absence of competitive bid, the City will be under no obligation to reimburse the owner for the work in question.
- (2) costs approved for reimbursement shall not include consulting fees incurred to represent the Owner during discussions on the Environmental Assessment.
- (3) Approvals must be provided in advance of the incurrence of any reimbursable costs. Approvals in excess of \$30,000 will be subject to Council approval. Costs incurred by the owner prior to the approval discussed herein are ineligible for reimbursement. Approval shall not be given prior to approval of a capital budget for the works in question.
- (4) No reimbursement for any costs will be made until
  - a. a project budget for the work has been approved by Council and
  - b. an agreement requiring the works for which the costs were incurred is executed and registered.

Invoices for eligible costs should be submitted on a monthly basis.

Claim for expenses claimed under the above mentioned approved Purchase Order must consist of a summary of paid invoices for Engineering fees showing services provided and date of invoices, with copies of the invoices attached and with reference to the part of the approved Purchase Order that describes the expense being claimed. No reimbursement for claims will be allowed beyond completion of the construction of the facility in question. Completion of construction shall be deemed to occur once the City has paid final amounts related to construction of the facility. Where the costs ultimately claimed exceed \$20,000, an information report to Council shall disclose the amount claimed, and confirm compliance with the provisions of this policy.

**Original :**     **Owner**

**Copies:**     **Director of Development Finance (file: pending claim file),**  
**Director Storm Water Management (file :project file)**