

TO:	CHAIR AND MEMBERS STRATEGIC PRIORITIES AND POLICY COMMITTEE MEETING May 13, 2013
FROM:	MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER
SUBJECT:	DEVELOPMENT CHARGES POLICY REVIEW UWRF FRAMEWORK & TIMING OF DC PAYMENT – SWM COMPONENT

RECOMMENDATION

That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, with the concurrence of the Managing Director, Environmental and Engineering Services and City Engineer and the Managing Director, Development and Compliance Services and Chief Building Official, the following policy amendments with respect to the City's Urban Works Reserve Fund and the future funding of Storm Water Management Facilities (SWMs) **BE APPROVED IN PRINCIPLE** as part of the 2014 DC By-law, **SUBJECT TO** further dialogue with External Stakeholders with respect to the following:

- i. details of implementation including the change to the number of SWMs affected and their costs, all of which would ultimately be included in Background Study in any event;
 - ii. how existing financial obligations of the UWRF ("Transition payments") will be met through the implementation of the new policy;
 - iii. assurance that the policies being introduced are not intended to be used to unduly delay approvals for land development by staff or by Council; it being noted the existing Growth Management Implementation Strategy is the mechanism which facilitates the sufficient supply of serviceable land, and which must be respected following its implementation;
 - iv. an update of Stormwater Management Facility design standards; and
 - v. details regarding the impact of changing the timing of payment of the SWM component of the DC from building permit to subdivision agreement;
- a) funding of all future SWM works **BE CONSOLIDATED** under the City Services Reserve Fund (CSRF) – SWM component; it being noted that suitable transitional measures associated with existing claims and development applications involving Urban Works Reserve Funded (UWRF) Storm Water Management Facilities (SWMF) in progress will be in the draft 2014 Development Charges DC By-law; it being further noted that the City's policy regarding Private Permanent Stormwater Servicing is expected to reduce the number and size of ponds that will be constructed in the future;
 - b) revised timing of collection of the SWM component of the DC charge under Section 26 of the *Development Charges Act* **BE INTRODUCED** in the next DC Rate By-law; it being noted that this will result in DC charge collections for this component being made at time of entering the agreement of subdivision or consent rather than from collection at building permit stage;
 - c) new processes for Design and Construction of Storm Water Management Facilities (SWMF's), as generally summarized in the attached Appendix D **BE INTRODUCED**;
 - d) the Civic Administration **BE DIRECTED** to further develop the procedures governing construction of infrastructure undertaken through development agreements, summarized

in draft form in the attached Appendix E;

- e) the Civic Administration **BE DIRECTED** to prepare by-law amendments and further refine administrative processes necessary to effect the above-noted changes coincident with the effective date of the 2014 DC By-law; and
- f) comments received from the London Development Institute, the Urban League and Lyn Townsend, LLB, with respect to the above-noted policy amendments and attached as Appendix G **BE RECEIVED** for information.

EXECUTIVE SUMMARY

The UWRF has been the subject of discussion over many years, predominantly because of its unique approach to financing of infrastructure, and the “notional deficits” associated with its operation.

This report addresses the issues and is structured as follows:

- A review of previous reports, studies, and expert opinions (See “*Preamble*”, “*Background*” and “*Past comments.....*” sections below).
- *General Observations* related to the merits and shortcomings of the UWRF fund operation are provided in the next section.
- *Observations specific to the funding and construction of UWRF SWM ponds* (ponds generally serving less than 50 ha.).
- *Alternative Policy frameworks* and *Strategies to addressing the issues* in funding SWM ponds, are considered.
- *Recommended Policy Changes* and the *Benefits of the proposed approach* are presented.
- Commentary from stakeholders, namely – the *London Development Institute* and the *Urban League*. The report also contains the comments of *Lyn Townsend, LLB*, an industry expert who has significant knowledge of the funding of infrastructure in Ontario generally, and specifically, the operations of the City’s unique UWRF approach.

The key elements of this report are summarized as follows:

A. UWRF Framework for the Future – Financing Stormwater Management Works

Source of Financing for SWM ponds

- Stormwater Management facilities are to be consolidated under a single source of financing: the City Services Reserve Fund. The Urban Works Reserve Fund would no longer include provisions for financing Stormwater Management facilities.

Who Builds SWM ponds?

- The responsibility to construct development charge funded projects is with the City as outlined in the underlying legislation and City policy (DC legislation, Municipal Act and City policies in Official Plan (Growth Management Policy) and Growth Management Implementation Strategy). It is recommended that the design and construction of all stormwater management facilities are to be led by the City at the discretion of the City Engineer and managed in accordance with the City’s Procurement Policy.

SWM Design and Construction Process

- The engineering design of stormwater management works will be advised by the City of London’s “Stormwater Management Facility “Just in Time” Design and Construction Process”. The process provides triggers for the various design and construction activities which are essential to providing stormwater servicing for new development. The process also intends to delay the investment in new ponds until there is clear evidence of the developer’s intention to market lots for sale.
- “Gold Plating” - The engineering design of stormwater management works will be advised by the City of London “Design Standards and Requirements”. Development related projects are considered an asset of both present and future tax payers of that

area. Responsible service delivery is achieved through balancing the technical needs of the project with the long-term costs to the taxpayers.

Timing of Payment for SWM component of DC charge

- In order to rebalance the SWM debt risk profile, the City will collect the stormwater management portion of the development charge fee at signing of the subdivision or consent agreement.

UWRF Transition for SWM in progress

- Review current SWM Works to see if any developments are affected by the change in funding approach. Treatment of transitional projects will be established prior to finalizing the 2014 DC Background Study in consultation with the DC stakeholder committee.

STAFF RECOMMENDATIONS:

Re: City Financing with Urban area wide Charge and SWM DC Payments at Subdivision Agreement Execution.

1. The stormwater component of a development charge will be payable on execution of a subdivision agreement or consent agreement (as allowed by Section 26 of the *DC Act*).
2. City provides financing for future Stormwater Management Works and assigns timing. No UWRF funded SWM in future.
3. Accelerating the timing of SWM works construction will be based on the MSFA framework (currently, limited to 5 years).
4. City will charge an “Urban area wide” rate that includes debt financing costs associated with SWM works construction. The timing of the collection of the charge for SWM works will be changed from the building permit to the subdivision agreement stage.

Advantages:

- Earlier SWM payments will ensure that all developers make a direct cash contribution towards the infrastructure servicing their development, and permanently improves the cash flow to the SWM reserve fund.
- City financing relieves financial burden on developer that initiates SWM work. City financing of SWM works construction benefits small developers.
- Administration is simpler than any other options involving developer financing and individual agreements.
- Moves up the timing of the collection of the SWM charge and thereby improves the current debt problems with the Stormwater Component of the City Services Reserve Fund.

Disadvantages:

- The debt risk related to financing infrastructure is borne by the City and managed by the City.
- Increased administrative demands during the transitional process. For example, likely involves more administrative effort (and cost) in relation to tracking the unused “credit” associated with earlier payment of the DC.
- Requires all development to pay SWM charge sooner, closer to the actual construction of the facility rather than over the estimated 20 year collection period.

B. Urban Works Reserve Fund Claims Process

Procurement Best Practices

- A schedule will be incorporated into the Development Charges By-law that will provide principles and procedures to be applied when work is to be undertaken by a Developer and reimbursement is expected. These documentation requirements will be consistent with procurement and financial best practices.

Oversizing Exempt

- These policies will not apply to water, storm, or sanitary oversizing as they are based on fixed subsidy system.

Advantages:

- Aligns with industry procurement and financial best practices and other City procurement policies.
- Provides support documentation for possible financial audits.
- Ensures that publicly managed funds spent appropriately.

Disadvantages:

- More documentation required from the Developer and Developer's Consultants.
- Increased administrative demand to review documentation and interact with Developer's Consultants.

C. Outline of Requirements for Developer Managed Infrastructure Projects

1. The initiation of any development related work for which a developer claim may be made in the future, should first be approved by the City Engineer.
2. The City Engineer will acknowledge commencement of the work by the developer or their agent, in writing, with any conditions associated and costs to be incurred. Any costs incurred prior to the City Engineer's acknowledgement will not be considered for repayment.
3. A work plan must be provided by the owner and approved by City staff.
4. Costs ultimately eligible for reimbursement must ultimately be contained in provisions of a Council approved agreement.
5. Invoices billed against the work plan will be circulated to both City Engineering Project Managers and the Development Finance group.
6. Any increase in project scope must be approved by City Staff and reflected in an updated work plan.
7. Costs ultimately eligible for reimbursement must ultimately be contained in provisions of a Council approved agreement.

This concludes the summary of key policy matters discussed in this report.

The report has been structured to provide ‘summary level’ discussion and rationale for the proposed changes in the next ten (10) pages. The balance of the report is Appendices which are referenced in the report and contain greater detail (approximately 25 pages) at the back of the report.

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PREVIOUS REPORTS PERTINENT TO THIS MATTER

Blue Ribbon Panel Report, October, 2006
http://www.london.ca/Reference_Documents/PDFs/UWRFReport.pdf

Board of Control, May 13, 2009-12-09 - 2009 Development Charges Adoption of DC Policy, Background Study & Rate By-Law

<http://council.london.ca/meetings/Archives/Agendas/Board%20Of%20Control%20Agendas/Board%20of%20Control%20Agendas%202009/2009-05-13%20Agenda/Item%2012a.pdf>

Internal Audit committee, September 29, 2011 – Price Waterhouse Coopers recommendations related to UWRF

http://www.london.ca/Committees_and_Task_Forces/PDFs/2011-09-29_ACreport_4.pdf

28th report of Finance and Administration Committee, November 16, 2011, - Municipal Servicing and Financing Framework Policy – agenda part II, item 1)

<http://sire.london.ca/aqdocs.aspx?doctype=minutes&itemid=3340>

Strategic Priorities and Policy Committee – December 4, 2012 (item 8) - Growth Management Implementation Strategy (GMIS): 2013 Annual Review & Update

[Growth Management Implementation Strategy \(GMIS\): 2013 Annual Review and Update](#)

POLICY REVIEW

I. Preamble

The work on the 2014 DC by-law update was initiated in April, 2012.

Recently, Council approved the growth forecasts that represent an important building block to the DC Background Study. Currently, there is a significant effort being made to collect capital cost projections for works needed to service growth in the future. Next steps involve completing the information needed to make adjustments to rate calculations required under the Development Charges Act. All of these matters are subject to scrutiny of the Internal Steering and External Stakeholder committees.

The April, 2012 DC project initiation report identified a number of policy issues that would be addressed and brought before Council prior to consideration of the DC Background study. This report addresses two of those DC policy issues related to:

- the operation of the Urban Works Reserve Fund (UWRF) and
- proposed changes in the timing of the collection of the SWM component of the development charges.

Two other policy issues – Local Services policy and DC Specific Area Rates – are addressed under separate reports.

II. Background

The following highlights key background information about the UWRF funding approach:

- The UWRF has been used by the City of London in excess of 40 years. It provides a pooled source of development funds for serving “boundary roads and outlet sewers”. The fund has experienced a couple of financial crisis points in its +40 year history when there was concern about the ability to liquidate claims against the fund on a timely basis.
- In 1987 the Province introduced legislation to govern the collection and use of development charges across Ontario.
- In 2006, the Blue Ribbon Panel report (a committee made up of three development charge experts from Legal, Planning and Engineering disciplines) completed a report on the UWRF. Their findings suggested the City maintain the UWRF in a “modified form”, but also move towards approaches more widely employed in the Province of Ontario, for financing of growth works. Accordingly, the scope of the UWRF works was narrowed in 2009.
- In June 2009, Council adopted the provisions and rates in a new DC by-law that was to be effective in August, 2009. An appeal of DC by-law under the DC Act was

subsequently launched. The gist of the appeal was that the UWRF charge produced through 2009 DC rate calculations was considered too low in light of both the previous UWRF rate and in relation to cash flows expected to pay out existing UWRF claims. The appeal was lodged only after the DC by-law had been approved by Council, and the appeal process provided no opportunity to increase the overall DC rate to provide the increased UWRF cash flow through a 'UWRF only' rate increase. In light of inability to increase the overall DC charge at that point, the response from the City was twofold:

- Double the originally adopted UWRF charge for a 4 year period (after which UWRF rates revert to their lower, calculated rates in Jan, 2014);
 - To offset the 2009 redirection of DC revenues to the UWRF, \$90M of the City's Arterial Road Program was delayed. The combination of increased UWRF rate and reduced CSRF Transportation rate provided the necessary trade off to ensure no change in the overall DC rate. The delay in the Arterial Road Program has resulted in a detrimental impact on the City's ability to provide required roadway capacity improvements in a coordinated manner with development growth and has contributed to the overall transportation infrastructure funding gap.
- UWRF "deficits" and the level of the "notional deficit" have been cited by Councillors as contributing to uneasiness with the UWRF. A few key terms pertinent to UWRF discussions are highlighted in the following:
 - UWRF "Deficits" are in fact debts for "oversized" work required by the City as a condition of development, and financed and constructed by the development proponents. Claims for completed UWRF work wait in line for reimbursement until sufficient revenues have been accumulated to pay the next claim. Each claim is paid in the order in which it is received, subject to annual maximum pay out amounts.
 - "Notional deficits" include actual claims for completed work against the fund (ie/. "Deficits"), as well as estimates of potential future claims from planning applications that are progressing towards final approval sometime in the future. In other words, all the claims we are tracking – both completed and potential future claims. If cash flows to the UWRF are poor (as a result of a downturn in building activity), developers with outstanding claims may experience fiscal stress that have, on rare occasions, resulted in need for city to intercede to address poor cash flows.
 - "oversized" work is any work considered to serve a benefit beyond a direct local benefit of the development community. The cutoff between oversized and local works is defined in the Local Servicing Policy (see separate report).

Investment in some DC funded growth works involves debt. In typical cases the investment in growth infrastructure (underground pipes, SWM, treatment capacity, water supply) is made before any building can occur, and long before the last buildings that benefit from the expenditure, are constructed. Depending on the rate of growth and the municipal willingness to facilitate growth in numerous locations, this typical development scenario can be repeated many times over. The more numerous the distinct areas of development, the more capital required to service those areas. At the same time, the demand for housing (arguably) remains relatively unchanged, despite the increase in serviced locations.

London is one of few major municipalities in the province with the option to grow in a 360-degree pattern. This presents a challenge in servicing all development interests, both in terms of debt risk (ie. risk of too much growth related debt as compared to the DC revenue stream), and financing costs associated with that debt.

The investments made in servicing growth entail incurring debt. These debts are City debts. This debt should be taken into account in assessing our overall debt capacity. It is the responsibility of the City to manage these debt levels, as with all other debts. However, under the current funding approach, UWRF investments are not assessed in capital spending decisions in the same manner as all other capital investment decisions.

III. Past comments and resolutions on the Urban Works Reserve funding approach

The UWRF funding approach has been discussed and debated by Council at various points over the fund's +40 year history. The discussions and expert opinions over the past several years have included the following:

- The report of the Blue Ribbon Panel, 2006,
- Comment from Lyn Townsend, industry expert, on adoption of 2009 DC by-law (May, 2009),
- Pricewaterhouse Coopers, Internal Audit report and recommendations on some of the elements of the UWRF approach, September 2011,
- Municipal Servicing and Financing Agreements (MSFA), 2011 – Council resolution and comment from Lyn Townsend, industry expert, on adoption of MSFA policy framework,
- 2013 Growth Management Implementation Strategy (GMIS) report on caution related to funding of SWM ponds in CSRF – Council resolution (December, 2012).

The Council resolutions which arose from the listed items provided direction to address the UWRF. Outside experts generally point towards a reduction, or minimizing, of the scope of the works financed through the UWRF. The expert opinions and Council resolutions referred to in the list above are presented in **Appendix A**.

IV. General Observations on Urban Works Reserve funding approach

Through the process of reviewing the fund operations, a number of observations have been collected. The observations have been summarized below. Details of these observations are provided in **Appendix B**:

- There have been infrequent, but turbulent occasions in the UWRF history ;
- UWRF assists developers in avoiding the need to negotiate with neighbouring developers over contributions towards oversized works. The CSRF approach has the same advantage;
- The UWRF approach has the advantage of requiring the host developer to invest in a SWM pond before the developer can sell lots. That is a significant investment and helps ensure good investments – the developer would not invest but for his expectation of immediate ability to sell lots. However the approach also has a disadvantage in that the City has virtually no say in assessing the financial feasibility of a pond construction when timing is unknown, and conditions (amount of already serviced land, claims backlog, other City debt on SWM ponds) at the time the developer intends to construct the pond can neither be foreseen nor affected by the City after approval of the SWMF in the related Planning application.
- The scope of the work on a UWRF funded SWM pond is not easily separated from the work that is the responsibility of the local developer;
- The DC legislation provides alternative methods to the UWRF for funding growth works;
- Expert opinion points toward gradual elimination of UWRF approach;
- Council has voiced concern in the past with the level of claims outstanding. The last time that UWRF rates were a concern to the development community, a reduction in CSRF rates to finance the growth Transportation program was adversely affected.
- There is a need to assess all pond construction under the same process. The current system provides two processes for what are virtually, the same types of works (SWMF"s).
- Despite certain short comings, the UWRF can and has acted as a funding vehicle for minor road works (like turning lanes) that are triggered by development; and oversizing of sewers (sanitary and storm) to serve upstream lands.
- The MSFA agreement framework could be used to provide for accelerating SWM ponds, but only after taking into consideration existing debt levels and DC revenue streams.
- The desire of the London Development Institute is that some form of UWRF be maintained.

V. Observations on Urban Works Reserve funded SWM projects

The observations above lead staff to focus attention towards addressing a single, though large facet of the UWRF funding – the funding of SWM works. The following are summary level observations on the operation of the UWRF in relation to SWM works:

1. The use of two funds for the same service component has in the past resulted in confusion over appropriate funding source, and errors in DC rate calculations;
2. The lack of corporate budgetary control on UWRF funded SWM works compromises the City's ability to manage overall debt levels associated with growth;
3. The current approach to construction of CSRF funded SWM works can and has resulted in "idle investments" (investments that are not producing SWM revenues though they serve to improve the development readiness and market value of the land they serve). Idle capital investment is an inefficient use of limited financial resources. The resulting debt servicing costs are taxing the CSRF DC SWM reserve fund. We need to address this issue with respect to the collection point of CSRF rates and the process we use to advance ponds to the point of construction in tandem with progress on subdivision of land. An investment by development community in new ponds coinciding with the creation of building lots will assist in ensuring new ponds are built only with corresponding investment by the benefiting development community and will improve cash flows in the SWM CSRF. Requiring and investment by the development community in ponds already built recognizes the City's major outlays in the ponds, and the development community responsibility for the market risks associated with lot sales.
4. The use of the UWRF has in the past implied that the developer would construct the works. By moving the remaining and future UWRF SWM ponds to the CSRF, the design and construction of these works would be City led. The City Engineer maintains that it is critical that the City design and construct all SWM facilities. Life cycle cost considerations are a high priority for City directed designs. Where these designs are coordinated by consulting engineers hired by an individual land owner, considerations with regard to life cycle and maintenance may be more subjective, which could impact the long term operational budget and associated rates.

City Staff are in the best position to represent the public interest by ensuring that SWM pond designs allow for affordable long term operating and maintenance costs. By managing the SWM engineering consultant directly, City Staff can assure that the long term priorities of the City and rate payer are met.

The Pricewaterhouse Coopers (PwC) recommendations (September, 2011– see Appendix A) on the UWRF imply that there is room for improvement in transparency, accountability and showing value for money spent. PwC made recommendations that can generally be described as providing for "more rigorous claim controls". Their recommendations included:

- instituting completion of a projected claims summary;
- completion and review by staff of bid summaries to ensure appropriate separation of developer financed "local" servicing costs from DC funded costs;
- acknowledgements and approvals regarding the commencement of work before the work begins;
- more consistency in claims submission; and claims audit program that would require more information on selected claims

VI. Issues to be Addressed in Future UWRF Framework

In light of the Chronology and Observations cited above, staff identified alternatives to the UWRF that will:

- a) continue to facilitate development but also address Administrative concerns with respect to the UWRF framework;
- b) remove confusion resulting from two approval systems for SWM works – one under the Planning Act, and one under the City Capital Budget and GMIS process,

- c) remove confusion and duplication of infrastructure design and construction processes associated with two funding sources(CSRF & UWRF) for SWM works;
- d) simplify the funding of SWM works without removing the City from assisting development in financing SWM works;
- e) enhance control over the design and construction processes,
- f) move the City further towards growth funding methods employed in the rest of the province.

VII. Strategies towards addressing issues

The following strategies were identified to address these issues:

1. Combine funds - Devise a funding approach that eliminates UWRF as a funding source for SWM works, in favour of an approach that all future SWM projects be funded from CSRF;
2. 'Who Builds' criteria - Develop criteria for "who builds" works independent of the funding source for the works;
3. Enhance City administered purchasing controls on construction projects undertaken in conjunction with development agreements where subsequent claims against City managed financial resources are involved;
4. Promote efficient use of capital - incorporate into the processing of development applications, financial checks and balances to ensure timely and prudent investments in SWM works.

VIII. Recommended Policy Changes

Administration has developed the following list of recommended policy provisions to address the issues:

- 1) That the UWRF continue to be used for certain oversized works triggered by development.**

The fund provides a mechanism for developers to be reimbursed for oversized works, in conjunction with the construction of other works in their subdivision. For some works – oversized sewers, turning lanes into their development – this approach makes sense. It seems like both a cost efficient and simple approach for relatively low cost claims. To this point in the discussions, the Development community has expressed unreserved interest in maintaining the UWRF.

In the interest of compromise and for the reasons of cost efficiency and simplicity, City Administration is recommending we continue with the UWRF funding mechanism to finance the following limited range of works:

- minor road works (channelization on public roads) immediately abutting a development that triggers the works;
- oversizing of roads internal to the development (that provide sufficient capacity for safe ingress & egress);
- oversizing of sewers (sanitary and storm) reimbursed on a subsidy basis (to serve upstream lands to reimburse developer for the non-local share of pipes installed on their property).

These works are typically required as a result of subdivision applications, and consist of works on, or adjacent to, the land being developed. They are not so expensive individually, as to be a source of concern for overall, DC funded debt levels.

Maintaining the fund only in these areas results in a further significant reduction in the scope of the fund, and minimizes the City's exposure to debt risk for infrastructure investments contained in agreements under the *Planning Act*. It also preserves an element that the development community has expressed interest in preserving.

2) That all SWM works be funded from CSRF

The 2009 DC study significantly reduced the scope of SWM works funded by UWRF. This reduction in scope has resulted in a wave of new debt for the CSRF. The current situation (with DC revenues slowing down over the past few years) suggests that we should also slow down the pace of investment.

In conjunction with recommendation 1 above, this recommendation initiates the eventual complete winding down of the UWRF as a funding option for SWM works. Administration is recommending that all SWM works in the future be funded from a single CSRF – SWM component funding source.

The rationale for this recommendation is summarized as follows:

- standards and legislation for Storm Water design keep changing. The City Engineer submits that City staff are in the best position to respond to these changing circumstances and to direct the design of the pond.
- the significant cost of even the smaller SWM works that are currently funded from UWRF. SWM ponds cost in the range of \$1M - \$3M. There is a need for budgetary discipline and oversight when considering the timing of these investments;
- the need to ensure coordination of infrastructure with other City works
- the need to consider future investments in infrastructure on a timetable that takes into account the economic circumstances of all DC funded SWM works,
- the need for debt management related to all SWM work construction, (ie. consolidate all debts related to SWM work funding under one DC fund in the future), and
- need to eliminate confusion and duplication associated with two funding sources for SWM works (ie. UWRF and CSRF)

The consolidation of future SWM works funding under the CSRF implies:

- the City will be responsible for specifying the timing of all DC funded SWM works;
- The City will be responsible for the budget approval of all future works and project management of all SWM works (Note: this is not a major immediate change as only a few small ponds remain as UWRF funded SWM works today);
- The City will manage all the debt associated with SWM works in the context of all other SWM debt;
- The City will determine whether acceleration of SWM works or construction by the host developer of works is in its best interests;
- a need for transitional measures to address UWRF SWM works currently in the system. (Note: this is not a major immediate change as only a few small ponds remain as UWRF funded SWM works today). The MSFA framework will be used to assess requests and design specific agreements that address acceleration of SWM work construction and/or developer requests to construct work.

At the request of the development community for more detail as to how the new process would work, staff compiled a 'Draft SWM Design and Construction Process' (see **Appendix D**). This process describes the respective responsibilities of the developer and the City in cases where that development triggers a new SWM work construction.

The recommended approach preserves the City's preference for "regional" size SWM works, as opposed to many numerous small "local" ponds. Regional ponds are preferred due to their reduced operating costs (on an acreage served basis) and their relative capital cost efficiency in relation to numerous smaller ponds.

In summary, the City will include all SWM works in the GMIS timing and DC rate calculations, and manage all the elements of SWM work construction. This will provide a cohesive, consolidated and simpler method of addressing SWM pond financing than the "dual" approaches in use today. Pending approval of the principles recommended in this report, staff will further address transitional issues with respect to the recommended change in funding source.

3) Enhance internal controls on claimable work completed under provisions of development agreement

Whatever the scope of the UWRF in the future, there is a need to address the internal controls associated with construction of growth works completed under development agreements.

Under the UWRF system, developers and their consultants initiate works to advance their development application and at the same time, incur costs related to claimable works. The works are often undertaken on the strength of draft conditions of approval. Only after subdivision or consent agreements were executed, was there a legal agreement that referred to the claimable works.

After the execution of the subdivision agreement, a claim for completed construction of the SWM work that potentially spans years of design work, final design and construction (tendered) of the claimable works is submitted. Claim management by the City as the construction progresses is not possible under current processes. The process makes it difficult to prudently assess claims spanning several years of work, and to address construction claim issues as they arise.

To the extent that the City policies provide for a host developer to manage claimable work, certain enhanced internal controls associated with this work are recommended. These controls will ensure City staff:

- a) are aware that financial resources on potentially claimable works are being applied by a private sector development proponent before the work begins;
- b) are aware of the scope of the potentially claimable work before it begins;
- c) are able to confirm the eligibility of the work for cost sharing, before it begins or conversely have an opportunity to express reservation or deny the claimability of work before it begins.
- d) in conjunction with the City's responsibility to administer the use of development charge funds, have an opportunity to manage the claim as work progresses;

These procedures, which are intended to improve internal controls, will be applied to all claimable construction completed under the authority of a development application. These works may be claimable from any fund (ie. includes UWRF-however it is ultimately configured, CSRF as well as Parkland Reserve funded work, or any Capital works budget (CWB) claim).

The new approach is not expected to present an onerous addition to the process currently in place, the reasons:

- a) This report recommends a significant reduction in scope of the UWRF (SWM works will hereafter follow a City 'capital budget approval and procurement process'). If administrative recommendations are adopted, the new procedures would have limited applicability as most UWRF type works would no longer be initiated under the former process;
- b) The subsidy for UWRF pipes is paid at a set rate based on pipe diameter, and includes engineering. Subject to the adoption of the recommendations of this report, this leaves road works (turning lanes) as the only UWRF work subject to this policy, as well as park improvements and other circumstances where the developer accesses funding from the Capital Works Budget to complete claimable work.

4) Balance the timing of City construction of new SWM ponds with the financial risks and major up front investments associated with new investments in SWM works, by:

- a. **Moving ahead payment of DC-SWM component from building permit stage to time of subdivision agreement (Planning Act s.51 agreement) or consent agreement (Planning Act s.53 conditions of consent), all in accordance with DCA s.26;**

b. follow the “Just in Time” SWM Design and Construction process before initiating construction of ponds (Appendix D).

The rationale for this recommendation is as follows:

- i. Council directed Administration look for ways of managing high debt levels of the CSRF - SWM works reserve fund (see the December, 2012 “2013 GMIS report” which reported on high debt levels associated with SWM work funding) and identify alternative financing approaches. This approach provides the City with a return on its capital outlays much sooner than waiting for the returns to slowly accumulate over the course of many years of subdivision buildout;
- ii. Collection at this stage is justified, in part, as the SWM work design and construction is either complete (or imminent) at this point. The service is available for development industry use.
- iii. There are benefits of having the development industry participate in the funding of infrastructure at an earlier point than building permit stage. These benefits include more timely delivery of SWM pond construction that incorporates a balanced view towards the significant capital cost of initiating the works – a developer will not want to trigger a pond, and payment of the SWM component of the charge before it is necessary.
- iv. The City is ultimately responsible for the debt associated with financing SWM works. The City is not able to control or gauge the rate of market return on each individual investment. The developer is in the best position to undertake the risk associated with how long it will take to buildout the subdivision.
It makes sense for the City to receive a return on its investment in SWM ponds when the subdivision is initiated rather than only as lots are sold. A more balanced sharing of the risks that both the City and the developer are undertaking in the development process can be achieved through earlier collection of the SWM DC component of the charge;
- v. The authority for advancing revenue recovery is provided for in the DCA legislation (see s.26 of the DCA reproduced below):

When development charge is payable

26. (1) A development charge is payable for a development upon a building permit being issued for the development unless the development charge by-law provides otherwise under subsection (2). 1997, c. 27, s. 26 (1).

Special case, approval of plan of subdivision

(2) A municipality may, in a development charge by-law, provide that a development charge for services set out in paragraphs 1, 2, 3, 4 or 5 of subsection 5 (5) for development that requires approval of a plan of subdivision under section 51 of the *Planning Act* or a consent under section 53 of the *Planning Act* and for which a subdivision agreement or consent agreement is entered into, be payable immediately upon the parties entering into the agreement. 1997, c. 27, s. 26 (2).

- vi. Earlier collection of SWM component of the charge provides the opportunity for a modest reduction in SWM DC rates and possibility of a more stable SWM reserve fund position than exists today (lowers the fund cost of financing related to SWM work investments relative to the current timing of the collections).

5) Why other options are not desirable

Prior to arriving at the package of recommendations above, a number of alternative options to financing future ponds were developed and assessed.

These options are listed in **Appendix F**.

In summary, we believe the recommended option minimizes the adverse impacts on developers and builders as compared to other options considered. It maintains City involvement in the financing of ponds. It improves the debt risk sharing profile between the City and the development community. It improves the cash flows to the CSRF SWM fund through moving ahead the collection of the DC-SWM component. Finally, it minimizes the duplication in systems used in construction SWM ponds (ie. CSRF process and UWRF process).

6) Transitional Implications

Pending Council approval, the key transitional and implementation implications of the recommendations are:

- i. Currently, SWM component DC charge is collected at Building permit stage. In future, all charges for SWM works would be collected at the time of subdivision or consent agreement. This will require changes to subdivision and consent agreement wording. It will also require coordination with Building division in collecting the balance of the charge.
- ii. Collection of the SWM component will need to be estimated. It may be based on the proposed residential lots and zoning density of the non-residential lots in a subdivision or consent. The City is investigating the possibility of collecting SWM component on a per ha. rather than a per residential unit basis or commercial sq. ft. charge. Administration will need to assess the transitional implications for subdivisions and consents available for construction created by past subdivision and consent agreements.
- iii. The accelerated collection timing will marginally reduce the financing cost borne by the CSRF-SWM component, while increasing the financing costs (on CSRF SWM component) on the development and building industry. For SWM works previously funded through UWRF, this approach should reduce the financing cost to the land developer and lot buyer (as only a portion of the full cost of the pond is recovered through collection of the DC-SWM component, not the entire upfront cost of the pond).
- iv. The City will need to assign timing and incorporate provisions for all ponds into future capital budgets (ie. GMIS and Capital Budget implications).
- v. Refine the implementation in 'Draft SWM Design and Construction' process referred to earlier (**Appendix D**),

Pending approval of the recommendations of this report, the staff will continue to refine the implementation and transitional provisions.

IX. Consultation with External Stakeholders and External Legal Counsel

Consultation on the background, objectives and strategies has occurred with members of the External Stakeholder Committee (LDI, Building Industry, non-LDI developer, Urban League) since October of 2012. There have been several meetings with the development community beyond the monthly External Stakeholder Meetings as well.

In addition, the chair of the 2006 Blue Ribbon Panel was consulted for comments with respect to the above report and provided comments generally indicating the proposals are consistent with recommendations in the Blue Report Panel report.

The LDI has expressed opposition to most of the elements being recommended by Administration above.

The Urban League has also commented on the recommendations of this report and generally support the recommendations being made.

The complete text of the input from these three (3) sources is provided in **Appendix G**.

X. Summary of Benefits of the Recommended Approach

In summary, the report recommendations:

- address concerns with how the current UWRF funding approach to ponds circumvents the usual capital budget and GMIS approach to timing and funding major capital investments. In short, the revised approach allows the City to manage its debts;
- allows for management of SWM debt through a single process (ie. eliminates duplication in financing and tracking systems present in the current approach);
- provides a desired correlation and control on behalf of the City Engineer, over :
 - complex and changing standards of SWMF construction and
 - responsibility for life cycle costs of pond operation ;
- maintains LDI expressed desire for averaging of costs of SWMF's over a large area that receives similar benefits from the SWMF's;
- consistent with the expressed desires of the LDI, maintains UWRF funding approach for works like oversizing of pipes and minor road works abutting developer lands – areas where City ability to manage construction and debt obligations are not compromised.

XI. Conclusion

This report has summarized background, observations and concerns related to past operations of the UWRF. Despite the fact that UWRF funding approach has served development interests for many years, Administration is recommending a change based on its perception of the City's obligations and exposure related to UWRF SWM pond construction. This report presents a package of recommendations that as a whole, Administration believes best serve the City in its obligations as administrator of the DC funds and service provider of SWMF's.

The recommendations deal with interrelated elements, and we believe cannot easily be separated from one another.

The report requests an approval in principle of the transfer of SWMF services to CSRF with details of the following items to be the subject to further dialogue through the DC background study review process. The recommendations have far reaching implications on processes that have been employed for many years, but for the sake of accountability, transparency and prudent stewardship of DC funds, we believe are necessary. We also recognize that it will be necessary to further develop refinements to aid in transition and implementation. Finally, we believe the proposed recommendations are not overly onerous on the development community, and fall short of other possible alternatives and do not eliminate the UWRF entirely.

ACKNOWLEDGEMENT

This report has been completed with the input of the members of the External Stakeholder Committee and the assistance of the entire Internal (Administrative) Steering Committee of the 2014 DC Study process.

SUBMITTED BY:	CONCURRED IN:
PETER CHRISTIAANS Director, Development Finance	GEORGE KOTSIFAS Managing Director, Development & Compliance Services & Chief Building Official
CONCURRED IN:	RECOMMENDED BY:
JOHN BRAAM, Managing Director – Environmental and Engineering Services & City Engineer	MARTIN HAYWARD, Managing Director, Corporate Services and City Treasurer, Chief Financial Officer

May 6, 2013

Attachments

Appendix A - Past comments and resolutions on the Urban Works Reserve funding approach

Appendix B - General Observations on UWRF Operations

Appendix C - Full Council Resolution on Municipal Servicing and Financing Agreement Framework – November 21, 2011

Appendix D - Draft SWM Design and Construction Process

Appendix E - Draft Enhanced Internal Controls for development related work managed and constructed under development agreement

Appendix F - Why other options are not desirable

Appendix G - Full Text of Comments from London Development Institute, Urban League and Lyn Townsend, LLB

c.c. James Barber, City Solicitor
 Jennie Ramsay, Manager, Development Services & Engineering Liaison
 Terry Grawey, Manager, Development Services & Planning Liaison

Appendix A - Past comments and resolutions on the Urban Works Reserve funding approach

The following chronology contains key milestones and Council decisions related to the UWRF framework over the past several years.

Blue Ribbon Panel, 2006

Blue Ribbon Panel, 2006 was an expert panel engaged by the City to complete an extensive review of UWRF operations and City approach to financing of development. As part of the background to their recommendations to maintain a modified UWRF funding approach, their report states :

“The Panel has examined practices in other municipalities in Ontario related to development charge by-laws, front-ending agreements and other means for managing and funding localized works. The Panel is familiar with and has extensive experience in working under Option 2 : one City-wide development charge with separate reserves for each service category. This is the typical approach used by municipalities in Ontario. The Panel favours this option, however, London is unique in that it maintains two separate reserve funds under the Development Charges Act, that being the City Services Fund and the Urban Works Reserve Fund. The Panel recognizes the historical background of the UWRF and, given the desire of the stakeholders, we have included a modified UWRF in the preferred option.”

In responding to the recommendations of the Blue Ribbon Panel report, the UWRF was continued, but its scope significantly reduced in the 2009 DC by-law.

2009 DC By-law adoption - Comment from Industry Expert

Lyn Townsend, LLB (industry expert on development finance and past chair of the Blue Ribbon Panel, 2006) - by letter dated May 6, 2009, commenting on the proposed 2009 DC by-law :

“...the Panel had preferred that the UWRF be abandoned in favour of all works being funded by the City Services DC Process. However, the Panel recognized that this requires transition and that a modified approach would be acceptable.”

Pricewaterhouse Coopers (PwC) and the Internal Audit Committee – 2011

In September 2011, the firm of Pricewaterhouse Coopers was engaged to review elements of the UWRF funding approach. As a result of their review, they offered the following list of “Risks” associated with the UWRF operations:

1. UWRF deficit continues to grow, resulting in a risk of litigation and potentially adverse impact to the City Services Reserve Fund (CSRF) and property tax capital projects.
2. Insufficient analysis of applications may result in inappropriate agreements entered into.
3. Lack of communication regarding development issues may result in unexpected cost overruns claimed against the UWRF.
4. Claims may not be reviewed and approved for appropriateness with respect to the Development Charge (DC) funding policies and the original agreements.

PwC offered the following Action Plan to address the risks :

The City should develop a task force and, if necessary hire appropriate resources and/or consultants, to transform the UWRF to a method consistent with those employed by other municipalities and contemplated in the Development Charges Act. To achieve this:

- (a) A Conceptual Framework outlining action items and impacts should be developed for Council approval; and

Appendix A

(b) A new proposed working plan should be developed in conjunction with the 2014 DC rate study.

The Audit Committee dealt with the PwC report with the following approved recommendations :

“The following actions be taken with respect to the Pricewaterhouse Coopers Quarterly Report on Internal Audit Results, relating to CAO's Department – Development Approvals..... :

- (a) the report **BE APPROVED IN PRINCIPLE**; and
- (b) the report **BE REFERRED** to Civic Administration to review and develop an implementation strategy to present to the appropriate committee of Council; ...

Municipal Servicing and Financing Agreements – comment from Industry Experts

In addition to a reduction in UWRF scope as a result of the Blue Ribbon Panel report, the BRP also recommended that the City investigate use of front ending agreements to accelerate construction of infrastructure funded by the CSRF.

After consulting with industry stakeholders and DC consulting experts in 2011, a framework for the increased use of front ending agreements was tabled in November of that year. The adopted Municipal Servicing and Financing Agreements (MSFA) policy provides a framework for accelerating a limited range of CSRF funded projects subject to various criteria to qualify the works. The full text of the resolution is contained in **Appendix C**. Key excerpts of the resolution involving the future of the UWRF follow :

(g) the Civic Administration **BE INSTRUCTED** to explore the following other considerations as part of the next Development Charges Background Study:

.....

(C) further to recommendations to the Audit Committee from the internal auditor, the viability and future of the Urban Works Reserve Fund **BE REVIEWED**; and

(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;

By letter on Nov 8, 2011, Ms Townsend, LLB (commenting on recommendations related to Municipal Servicing and Financing Agreement (MSFA) framework) :

“...It is important that the recommendations not lead to further use of the UWRF or a return to this type of fund in the future.the Panel (*ie. the Blue Ribbon Panel*) recommended that the UWRF should move towards elimination and should these recommendations be interpreted as meaning otherwise, they would not be consistent with the panel recommendations”

2013 Growth Management Implementation Strategy – Annual Review and Update

The 2013 GMIS report ([Growth Management Implementation Strategy \(GMIS\): 2013 Annual Review and Update](#)) identified concerns with the status of the debt associated with SWM work CSRF funding. The Council resolution acknowledged those concerns in part b) of the recommendation on the report :

- b) the emerging possibility of large scale deferrals of SWM works or an increase in the stormwater management component of the development charge as a result of a deteriorating position of the Development Charge SWM Reserve Fund **BE NOTED**, and that staff **BE ENCOURAGED** to continue to monitor the situation, develop alternative financing approaches through the ongoing work on the 2014 Development Charge study and report back in early 2013 in conjunction with other Development Charge policy review matters;

Appendix B - General Observations on UWRF Operations

In addition to the chronology and Council decisions above, the following elements have formed some of the background on this evaluation of the UWRF:

1. Although infrequent, there have been some turbulent occasions in the history of the UWRF, where the fund has experienced a crisis in meeting on a timely basis, a backlog of claims. This is apt to occur when an economically robust period is followed by an abrupt decline in the housing market. In this circumstance, the many investments made during the economic upturn are followed by a period when DC receipts decline, which leads to delays in payment of claims built up during periods of economic escalation.
2. The UWRF has a long history of providing a funding vehicle for “local oversized works” that benefit neighbouring developers. It has been effective in avoiding the need for developers to negotiate agreements with neighbouring land owners on these oversized investments. The CSRF funding approach has the same advantage as the UWRF with respect to providing a means for cost sharing.
3. The UWRF approach to financing entails, through the process of approving a Planning application for development, that the land owner who triggers certain types of oversized infrastructure constructs the works and finances the same. The repayment for the works is made over time, as the UWRF balance allows.

One key advantage of the UWRF approach is that it requires an owner to consider market conditions before “fronting” the cash for the required services. This ensures due consideration of the conditions before a capital investment decision to fund another SWM work is made. This aspect of the UWRF is considered valuable in shaping the future policy framework.

One disadvantage of the UWRF approach is that approving infrastructure through Planning agreements bypasses the City’s capital budget approval process. As a result, the financial controls associated with commitment tracking and debt management that are essential in managing capital budgets and debt, is bypassed. The individual investment decisions that are made by individual developers are not necessarily considered, in terms of the overall debt committed to SWM ponds.

For example, a developer may bring forward an application for development that involves the construction of a SWM pond. The draft conditions of approval could involve the requirement for the developer to construct a \$1-\$3M pond. There is currently no basis for assessing the timeliness of that investment – the UWRF is assumed to be able to bear any and all obligations over time, without any regard to other claims already in the queue, or the status of other debts related to SWM ponds. Further, the pond would be designed by the proponent’s development consultant. The design process is intermingled with the process of designing the subdivision, not an ideal situations when assessing the scope of the design work (since the UWRF claimable work should not be mixed with local work that is the responsibility of the developer).

4. Alternative methods to the UWRF for funding growth works are provided in the DC legislation (s. 26, 27, 38 & 44). The City recently adopted a framework (MSFA) for accelerating investments in growth infrastructure. These investments will be subject to both vacant land supply considerations and an assessment of the financial conditions of the DC components in question.
5. The expert commentary and recommendations on the UWRF fund (cited above) have pointed towards a gradual elimination of the UWRF;
6. Council has voiced concern in the past with the level of claims outstanding as well as the level of future claims being tracked. At the end of the 2012 year, the fund commitments were as follows:

Appendix B

UWRF - Claims tracking at December 31, 2012						
	<i>(in \$ millions)</i>			SWMF	All Other works - Minor rds, sewers	Total
Claims for completed works - Authorized, Approved, Claimed, Completed				\$8.0	\$19.6	\$27.5
Future potential claims - Predesign or Under construction				\$5.4	\$22.7	\$28.1
				\$13.4	\$42.3	\$55.6

The fund position is much improved from its position in early 2010 (total claims tracking of \$85M). This improvement has occurred largely as a result of the doubling of the UWRF rate in response to the OMB appeal in 2009, at the expense of the Transportation DC rate.

7. The 2013 GMIS report identified issues related to the financing of SWM works. The future debt payments on the SWM works already constructed has reached unsustainable levels. There is a need to address this situation.

The DC rate setting process currently under way will assist in addressing this issue with a revision to DC SWM rates that will meet the cash flow needs of that fund. As well, there is a need to address the approvals process for UWRF funded SWM works to ensure decisions on all ponds are made with regard to existing land inventory and debt levels for SWM ponds already constructed.

8. Despite certain short comings, the UWRF can and has acted as a funding vehicle for certain growth related works with relative ease compared to other options. These works include minor road works (like turning lanes) that are triggered by development; and oversizing of sewers (sanitary and storm) to serve upstream lands. It should be noted that these types of infrastructure works remain to be funded from UWRF but would not enable an individual developer to open up large areas for development, as is currently the case, with UWRF claimable stormwater ponds.
9. The Development Charges Act provides for reimbursement of works constructed by developers through development charge credits (s.38). The MSFA agreement framework could be used to provide for this type of arrangement, but only within the overall context of timed works that take into consideration existing debt levels and DC revenue streams.
10. The desire of the London Development Institute is that some form of UWRF be maintained.

Appendix C - Full Council Resolution on Municipal Servicing and Financing Agreement Framework – November 21, 2011



300 Dufferin Avenue
P.O. Box 5035
London, ON
N6A 4L9

FINANCE & ADMINISTRATION
DEPARTMENT (F)

RECEIVED NOV 30 2011

CENTRAL REGISTRY AND
REFERRED TO: *[Signature]*
SUBSEQUENT REFERRALS
CSRW Working Group

November 22, 2011

M. Hayward
City Treasurer, Chief Financial Officer

FOR ACTION
 FOR INFORMATION AD; PC
 FOR REPORT
 B.F.

I hereby certify that the Municipal Council, at its session held on November 21, 2011 resolved:

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

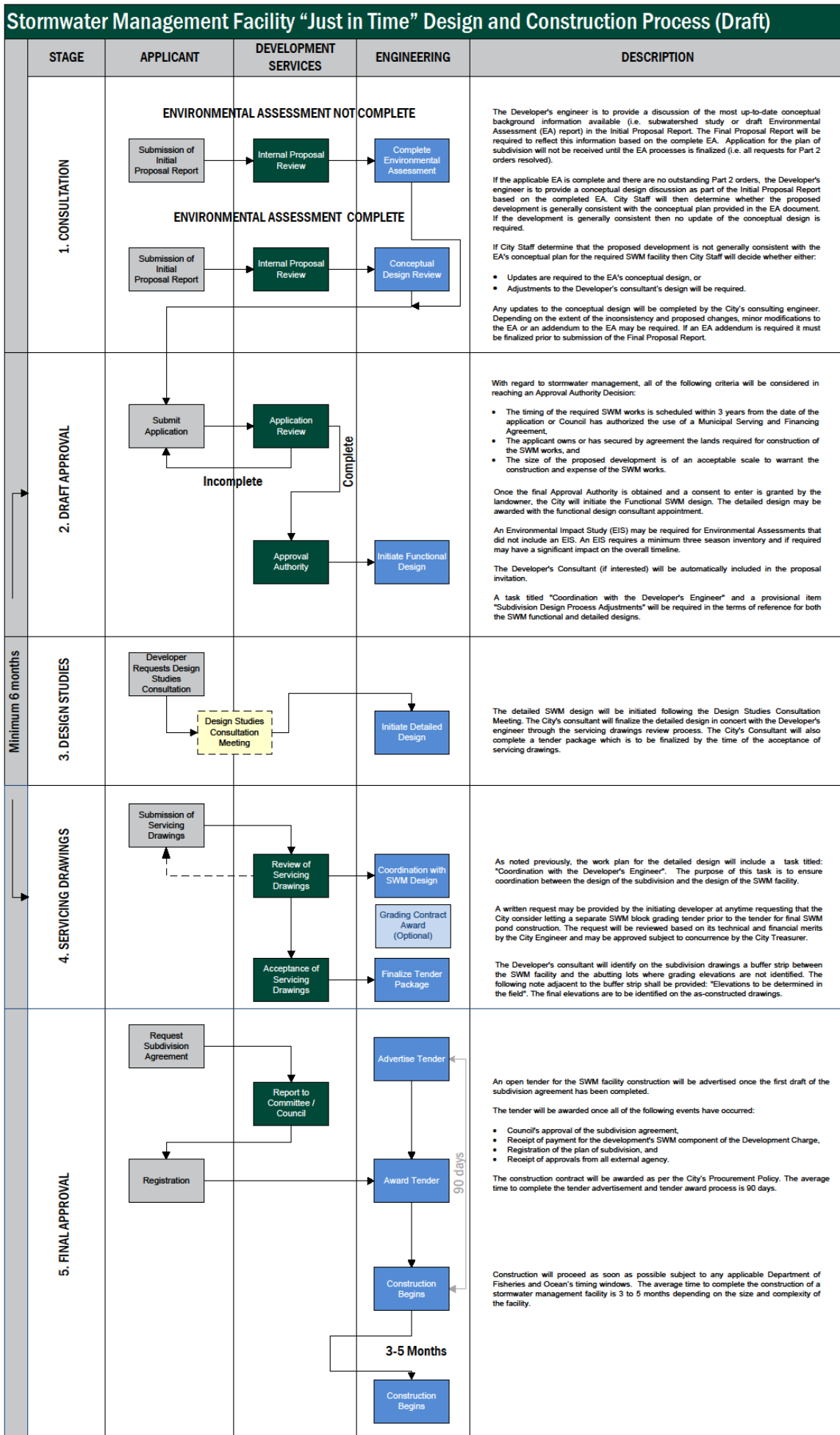
- (a) the report and presentation from Watson and Associates Economists Ltd. **BE RECEIVED** for information;
- (b) recommendations (b)(ii) through (b)(v) **BE APPROVED**, but implementation **BE SUBJECT TO** recommendation (b)(i), noting that a significant debt load is currently being carried and projected to be carried by the City Services Reserve Funds (CSRF);
 - (i) the following conditions to implement a Municipal Services Financing Agreement (MSFA) **BE APPROVED**:
 - (A) the Development Charges By-law **BE AMENDED**, as necessary, to accommodate an MSFA, noting the next scheduled update is 2014;
 - (B) 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.
 - (ii) 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 a stronger link **BE PROVIDED** through the GMIS process between the projection of revenues (projected building activity), existing debt approvals and the determination of the works proposed in the ten year capital plan;
 - (iii) consideration **BE GIVEN** to the benefit of accelerating CSRF projects on an exception basis where the individual project provides 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 the Municipal Service and Financing Policy document dated November 7, 2011, from Watson & Associates Economists Ltd. **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;
 - (iv) the following forms of MSFA **BE PROVIDED** to facilitate recommendation (b)(iii), above (as outlined in Pages 3-1 and 3-2 of the Municipal Service and Financing Policy document dated November 7, 2011, from Watson & Associates Economists Ltd.):
 - (A) Accelerated Payment Agreement would facilitate construction of the CSRF project by the City with reimbursements provided by credits;
 - (B) Service Emplacement Agreements would facilitate construction of the CSRF project by the landowner with reimbursement provided by credits, subject to the process set out in section 4.1 of the Municipal Service and Financing Policy document dated November 7, 2011, from Watson & Associates Economists Ltd.; or

Appendix C

- (C) 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;
 - (D) 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;
- (v) 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;
- (c) the City Solicitor **BE INSTRUCTED** to develop appropriate forms of agreement to accommodate the recommendations in (b) above and **BE DIRECTED** to retain an independent legal review of the proposed forms of agreement;
 - (d) the Civic Administration **BE AUTHORIZED** to engage consulting services necessary to develop the processes, tools and resources required implement the recommendations;
 - (e) the 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;
 - (f) the 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
 - (g) the 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) 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;
 - (C) further to recommendations to the Audit Committee from the internal auditor, the viability and future of the Urban Works Reserve Fund **BE REVIEWED**; and
 - (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;

it being noted that the Finance and Administration Committee heard the attached presentation from G. Scandian, Watson & Associates Economists Ltd. and received the attached communications from L. J. Townsend, Townsend and Associates; S. Levin and G. McGinn-McTeer, Urban League of London; and J. Kennedy, President, London Development Institute, with respect to this matter. (2011-L03-00) (1/28/FAC)

Appendix D - Draft SWM Design and Construction Process



Appendix E - Draft Enhanced Internal Controls for development related work managed and constructed under development agreement

1) Where a developer manages infrastructure construction work

On occasion, work on items that are ultimately cost sharable is commenced by a developer or their agent, prior to execution of a legal agreement that identifies the work both through references in the agreement and through inclusion on approved design drawings.

The following principles and procedures have been developed to apply to work undertaken by land owners and their agents where there is an expectation on the part of the land owner/agent to be reimbursed for the work by the City.

The reimbursable work must be identified in an agreement executed under the Planning Act or the Development Charges Act. The principles are intended to reflect prudent purchasing policies and responsible project management:

1. The initiation of any development related work for which a developer claim may be made in the future, should first be approved by the City Engineer, in accordance with the criteria to be applied to “who builds” the work (see under ‘Recommended Modifications to the Claimable Work’, section 3.) The circumstances surrounding the commencement of the work, the type of work being undertaken, and the expected funding source for the work should all be submitted for review prior to initiation of claimable work.
2. The City should have the opportunity to review the Tender Request prior to the request being issued. This will allow the City to confirm the scope of the work. It will also help ensure that the developer’s agent has made appropriate distinction of costs between claimable costs to be funded from City administered funding sources, and local costs which are the responsibility of the developer to bear.
3. The City Engineer will acknowledge commencement of the work by the developer or their agent, in writing, with any conditions associated with costs to be incurred. Any costs incurred prior to the City Engineer’s acknowledgement will be undertaken strictly at the risk of the developer or their agent.
4. Costs ultimately eligible for reimbursement must:
 - a. Be contained in provisions of an agreement that calls for the construction that is approved by Council (except where authority for approval has been delegated to staff);
 - b. Be provided for in approved Development Charge rates, if that is the funding source
 - c. Be provided for in an approved capital budget (except for UWRF works).
 - d. Be identified in a work plan provided by the owner (or their agent) and approved by City staff (see below).
 - e. Be documented and provided to the City on the basis they deem appropriate (egs. monthly, upon completion of the work)

In the absence of all of these attributes, there will be no basis for reimbursement.

5. The work plan referred to in 3.d. above should include:
 - a. The location of the infrastructure being planned or built
 - b. The authority for the construction for which work is authorized under. If the work has not yet been approved in an agreement, but is expected to be claimable (eg. road channelization as a result of subdivision agreement), then the work plan will so state
 - c. The expected source of finance for the work (CSRF, UWRF, Capital Budget)

Appendix E

- Project, or a combination)
- d. A description of the major tasks to be undertaken and a logical sequence for their completion. At the conclusion of the construction, only work identified in the approved work plan will be reimbursed. Subsequent work plans should be submitted where the reimbursement being sought will either :
 - i. Exceed the previously approved estimate of earlier approvals;
 - ii. Describe work (tasks and \$ estimates) that are a continuation, or extension of the work described in previous work plans.
 - e. Elements of the City's Purchasing Policy as it relates to Public Tenders, Requests for Proposal and Sole sourcing will be followed.
 - f. The approval of the work plan will be evidenced by the signatures of the City Engineer and City Treasurer (or their designate). The approval signatures will be required in advance of the incurrence of these costs in order for costs to be eligible for reimbursement. "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.
 - g. Notwithstanding that the work for reimbursement may be referenced in an agreement for which the approval has been delegated to staff, where the expected costs in a work plan submitted for approval exceed \$50,000, the approval of the work plan shall be subject to additional approval of City Council.
 - h. The following guidelines will be applied in assessing costs eligible for reimbursement :
 - i. Costs incurred for consulting fees to represent the Owner during discussions on the Environmental Assessment are not eligible for reimbursement
 - ii. costs incurred to represent the owner during discussions on SWM work design or discussions related to the advancement of a draft plan application are not eligible for reimbursement
 - iii. Costs for efforts which represent a duplication of efforts expended by the City of London to construct infrastructure or manage a capital project are not eligible for reimbursement
 - iv. The City Engineer or City Treasurer may from time to time for the purpose of clarification, in consultation with the development community and local consulting engineers association, add guidelines which delineate claimable costs from non-claimable costs. Such guidelines will not be inconsistent with the City's Local Servicing Policy and Procurement Policy.
 - i. City staff will monitor progress on the work as they deem appropriate but generally based on the cost and duration of the work. Invoices for claimable work should indicate the date the work was completed, a description of the work completed, the cost associated with the work. All costs incurred should be compared with cost estimates in the approved workplan.
6. No claim shall be paid on reimbursable work unless it is completed, or otherwise agreed to in an agreement containing description of the work. Whether a work is completed shall be determined by the City Engineer.
 7. No claim shall be reimbursed where the invoices associated with the claim have not yet been paid by the claimant.
 8. This document shall not override the provisions of the DC by-law.

Appendix F - Why other options are not desirable

Prior to arriving at the package of recommendations contained in this report, a number of options to financing future ponds were developed and assessed.

The options considered included:

- i. Do Nothing – this option does not address the issues with health of the DC SWM fund, the need for improved internal controls on claimable construction works, the elimination of unnecessary duplication in the current system, the confusion with having two funds from which the same type of infrastructure (SWMF's) is financed, the need for improvements in the tools the City has to manage debt related to SWM ponds;
- ii. Developer to finance 100% of each future pond – recovery of costs on a 'watershed basis' by DC specific area rate by-law;
- iii. Developer financing of all SWM works through service emplacement agreement (DCA s.38) and 'urban area wide rate recovery basis. The legislation provides for the developer to receive a DC credit for work done that is in the DC rate calculations;
- iv. City financing of all SWM works through pooling of funds and 'urban area wide rate' DC rate recovery (the status quo);
- v. City financing of all SWM works through pooling of funds and 'urban area wide rate' DC rate recovery with acceleration of collection of SWM component (DCA s.26)

All options (except for options i) and iv) – which are essentially 'status quo') would improve the prospects of the City's DC reserve fund - SWM component to some degree. Each of the above options has varying degrees of increased burden on:

- the development community,
- on the degree of City participation in SWM work funding,
- on reducing the pooling of funds, which may impede financing of ponds, and
- on administrative systems required to manage debts that are associated with watersheds
-

All of the options involve a continued link between investment in growth infrastructure, and the development industry participation in financing of the investment.

City administration weighed the options. In recommending option v) we believe we are minimizing the adverse impacts on developers and builders, while improving the debt risk sharing profile, the collection timing of the DC-SWM component, and minimizing duplication in systems used to construction SWM ponds.

Appendix G - Full Text of Comments from London Development Institute, Urban League and Lyn Townsend, LLB

London Development Institute

Legend for LDI comments :

City summary policy direction (bold)

Comments Received from the London Development Institute(italics)

UWRF Framework for the Future – Financing Stormwater Management Works

Overview – Source of Financing

- **Stormwater Management facilities are to be consolidated under a single source of financing: the City Services Reserve Fund. The Urban Works Reserve Fund would no longer include provisions for Stormwater Management facilities.**
- ***LDI Comment:** There has not been, to this point, an open discussion or review for the reasons behind moving the UWRF SWM projects to the CSRF. The LDI has submitted comments in both written format and verbally on the operation of the UWRF and we have not had a serious review of the operation of the fund or the history of the fund.*
- *The UWRF is currently working as it was set up to operate and there is a \$1.7mil surplus in the SWM portion of the fund. The December 4, 2012 GMIS Update report pointed to debt issues with the CSRF SWM fund and it makes no sense to move UWRF SWM to the CSRF.*
- *It is evident from the SWM Facility Cost Analysis Handouts received at the March 8, 2013 DC Technical Committee meeting that the CSRF engineering costs are the main cause of any debt problem with the fund and should be brought under control.*
- *The Blue Ribbon Panel Report (BRP) in 2006 proposed changes to the way the UWRF operated and the major roadworks, SWM, storm and sanitary works were moved to the CSRF. There is an excellent document, Implementing Schedule 7 of the Development Charges By-law that should be reviewed to determine if the UWRF is working as recommended by the BRP. Let's not throw out the baby with the bath water, let's conduct a thorough review of the implementation of the BRP recommendations and correct any issues that arise.*
- *At the end of this document the City has listed the "Other Options Considered" but the first Option, the "Do Nothing" option was not reviewed which is the first Option when conducting an Environmental Assessment (EA) under the Municipal Engineers Association (MEA) Class EA Document.*
- *A recent review of the UWRF SWM facilities shows that these works are smaller ponds that are related to a specific development area and should be left to the developer to complete as part of the development as proposed by the BRP. (see attached pages)*
- *Further discussion is required on the feasibility of the City building the UWRF SWM ponds and the timing of design and construction. There are constructor and legal issues to be reviewed.*
- *The loss of timing and delay is one of the main concerns for the development community on this issue.*

Who Builds

The responsibility to construct development charge funded project is with the City as outlined in the Official Plan. The design and construction of all stormwater management facilities are to be led by the City at the discretion of the City Engineer and managed in accordance with the City's Procurement Policy.

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- *I do not see any language that states the responsibility to construct development charge funded projects is with the City outlined in the OP as stated above. Please point to where this language is located.*
- *The design and construction of stormwater management works are designed to City engineering standards and are approved by City staff.*
- *The tendering of all SWM projects is in accordance with City policy and the DC Procedural Manual, March 2010. The City has final approval and control over all work undertaken as CSRF or UWRF projects.*

SWM Design and Construction Process

The engineering design of stormwater management works will be advised by the City of London's "Stormwater Management Facility "Just in Time" Design and Construction Process". The process provides triggers for the various design and construction activities which are essential to providing stormwater servicing for new development.

The terms "be advised by the City" and "Just in Time" need explanation. The LDI has reviewed and met with City staff to comment on the "Design and Construction Process" and we need additional meetings to discuss the timing issues related to the process further.

"Gold Plating"

The engineering design of stormwater management works will be advised by the City of London "Design Standards and Requirements". Development related projects are considered an asset of both present and future tax payers of that area. Responsible service delivery is achieved through balancing the technical needs of the project with the long-term costs to the taxpayers.

- *A definition is required for the term "Gold Plating" and recognition of who is responsible for asking for Gold Plating.*
- *The concern for the long term costs to the tax payer should also recognized the long term costs to the new home owners that are charged for gold plating through the DC's*

Timing of Payment

In order to rebalance the SWM debt risk profile, the City will collect the stormwater management portion of the development charge fee at signing of the subdivision agreement.

- *The payment of the SWM portion of the DC should stay at the time of building permit.*
- *There needs to be a review of why there is an issue with the CSRF SWM debt risk as reported in the last GMIS update so that it is not repeated in the future.*
- *Collecting the fees at the signing of a development agreement will not correct the past mistakes that occurred during the transition of major SWM works from the UWRF to the CSRF.*
- *The SWM fees, if collected at the time of signing an agreement should be allocated to that specific pond for that specific development and not be used to pay-off any prior debt incurred by the fund on CSRF projects. This may add additional staff time and costs to track the funds.*
- *The LDI sent a letter to City Council in July of 2011 raising a concern with CSRF SWM issues that were not addressed and if corrected the CSRF SWM fund would be in better shape today.*
- *Why would you move the UWRF SWM works to a fund where the City is concerned about debt risk, the CSRF SWM, when the developer is responsible for 100% of the debt and carries the financing costs of the UWRF SWM works.*
- *The timing of paying the SWM portion of the DC, if it is to advance, should be tied to the time the pond is completed and operational providing service to the development.*

UWRF Transition

Review current SWM Works to see if any developments are affected by the change in funding approach. Treatment of transitional projects will be established prior to finalizing the 2014 DC Background Study in consultation with the DC stakeholder committee.

- *A review of SWM works should have been completed prior to coming to an administration position to move UWRF SWM projects to the CSRF.*
- *The LDI recently reviewed with City staff the UWRF SWM works included in the 2009 DC and found that only a few projects listed have not been either started or constructed and that the remaining projects are smaller ponds related to specific developments as recommended by the BRP that should be left in the UWRF SWM.*
- *It is the transitional projects included in the CSRF SWM projects in the 2009 DC that caused the debt financing issues facing the fund today. The current UWRF SWM projects should be left in the UWRF.*
- *The City controls the design and timing of all UWRF SWM projects.*

Staff Recommendation:

City Financing with Urban area wide Charge and SWM DC Payments at Subdivision Agreement Execution.

5. **The stormwater component of a development charge will be payable on execution of a subdivision agreement or consent agreement (as allowed by Section 26 of the DC Act).**
 - *This needs further discussion in light of the LDI comments on the timing of works when we reviewed the “Just in Time” process with City staff.*
6. **City provides financing for future Stormwater Management Works and assigns timing. No UWRF funded SWM in future.**
 - *Further explanation is needed to explain why the UWRF SWM process needs to be changed if it is currently working and the CSRF has debt problems.*
 - *The City already controls the timing and approval of all UWRF projects.*
7. **Accelerating the timing of SWM works construction will be based on the MSFA framework (currently, limited to 5 years).**
 - *The BRP recommended a MSFA in 2006, when will we have an example to review?*
 - *Will the current cap of \$5mil be reviewed as part of this process?*
 - *The \$5.0mil cap needs to be reviewed with a financial analysis looking at DC works that may already be in the ground that could be paid back sooner if an adjacent project was advanced to spur on more development.*
8. **City will charge a “City-wide” (ie an urban area wide) rate that includes debt financing costs associated with SWM works construction. The timing of the collection of the charge for SWM works will be changed from the building permit to the subdivision agreement stage.**
 - *Is it a “City Wide” rate if the Central Thames is exempt? (proper descriptions for the area to be charged changed to “an urban area wide” charge)*
 - *The collection of the charge for SWM works should remain at the time of building permit for the benefit of smaller developers that may not be able to get bank*

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financing for the DC charge? Banks may not finance the prepayment of any DC charges. This should be reviewed before a decision is made.

- *How will debt financing costs be determined?*
- *The CSRF debt financing is reviewed with each DC update or as part of the yearly GMIS review and the DC charge can be adjusted as approved by the DC Act for any outstanding debt and not be added to the tax base. The City will only be liable for the debt on the non-growth portion of the debt which should be minimized by the City's excellent AAA credit rating.*

Advantages:

- **Earlier SWM payments will ensure that all developers make a financial commitment (i.e. the developer has "skin in the game").**
- *The developer has 100% skin in the game with the current UWRF because they pay 100% of the cost of the SWM works and they carry all of the financing costs.*
- **City financing relieves financial burden on developer. City financing of SWM works construction benefits small developers.**
- *This is not true if the smaller developer can't finance the prepayment of the SWM DC which is currently paid by the builder.*
- **Administration is simpler than any other options involving developer financing and individual agreements.**
- *See comment two in the Disadvantage column. The March 2010 Procedural Manual is very specific and gives good direction on administrating the UWRF. It should be read and understood before making changes to the UWRF.*
- **Moves up the timing of the collection of the SWM charge and thereby improves the current debt problems with the Stormwater Component of the City Services Reserve Fund.**
- *The current problems with the CSRF SWM fund were caused under the control of the City and the collection of the SWM component of the DC's for future ponds should be allocated to that specific pond and not be used to pay off past debt issues.*
- *The collection of the SWM portion of the DC should be left at the time of building permit*

Disadvantages:

- **The debt risk related to financing the infrastructure is borne by the City.**
- *This raises the question as to why the City would want to take on more debt when the UWRF is working so well.*
- **Increased administrative demands during the transitional process. For example, likely involves more administrative effort (and cost) in relation to tracking the unused "credit" associated with earlier payment of the DC.**
- *The City currently monitors the UWRF very efficiently as per the Manual and it was the transitional projects the City under took that caused the problems with the CSRF SWM debt.*
- *The City should review the CSRF projects with the same scrutiny as the UWRF.*
- *This points to the need for a DC Monitoring Committee*
- **Requires all development to pay SWM charge sooner.**

- *The early payment will eliminate the smaller developers in the City if the banks will not finance the SWM DC charge prepayment.*
- **Accelerates collection of the SWM Charge and thereby improves the current debt problems with the Stormwater component of the City Services Reserve Fund.**

Urban Works Reserve Fund Claims Process

Overview

Procurement Best Practices

A schedule will be incorporated into the Development Charges By-law that will provide principles and procedures to be applied when work is to be undertaken by a Developer when reimbursement is expected. These documentation requirements will be consistent with procurement and financial best practices.

- *The DC By-law Procedural Manual, March 2010 already provides a schedule, principles and procedures and should be reviewed and updated if required. The manual implemented the changes recommended by the BRP and should be incorporated into the DC By-law.*
- *See the attached pages from the March 2010 DC By-law Procedural Manual that show the principles and procedures to be applied when work is undertaken by a developer.*
- *The first version of the manual was produced in 2008 as part of the 2009 DC By-law update. The changes recommended by the BRP were a major change to the way past DC By-laws functioned and required considerable consultation between City Staff and the development industry to reach consciences on the changes to eligible works and the implementation of the by-law. The first version of the manual was revised in 2010 as part of the growing pains and lessons learned from practical experience with working with the procedures laid out in the manual. The current version of the manual is very concise and easy to understand. The current manual provides for and accomplishes everything that is referenced in the above statement. Let's not reinvent the wheel but if there are areas that need to be reviewed let's work together to revise the manual. The current system works very well as evidenced by the latest report on the status of the UWRF and perhaps a similar report is needed to monitor the CSRF.*

Oversizing Exempt

These policies will not apply to water, storm, or sanitary oversizing as they are based on fixed subsidy system.

- *The oversizing policies already exist and are included in the March 2010 Manual. (see attached)*

Advantages:

- **Aligns with industry procurement and financial best practices and other City procurement policies.**
- *UWRF and CSRF practices already align with the City's procurement policies. This statement makes it sound like the funds do not follow the existing City policies which is untrue.*
- **Provides support documentation for possible financial audits.**

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- *Supporting documentation is already provided with all tenders approved by the City and all claims to the UWRF/CSRF are reviewed and approved by the City. (see attached pages from the Procedural Manual)*
- **Ensures that publicly managed funds spent appropriately.**

The City currently manages and approves all claims to the funds as per the Procedural Manual. This statement infers that funds have been misspent in the past.

Disadvantages:

- **More documentation required by the Developer and Developer's Consultants.**
- *Additional costs added to claims to the fund for the engineering costs and most documentation is currently required as per the Procedural Manual.*
- *Marginally increases the DC rate.*
- **Increased administrative demand to review documentation and interact with Developer's Consultants.**
- *May require additional City staff and associated costs.
If these costs are added to the DC rate the rate will increase and add to municipal "leap frogging" to surrounding municipalities.*

Requirements for Developer Managed Infrastructure Projects:

8. **The initiation of any development charge related work for which a developer claim may be made in the future, should first be approved by the City Engineer.**
 - *All UWRF/CSRF projects are currently approved by the City Engineer or his appointee, read the Procedural Manual.*
9. **The City Engineer will acknowledge commencement of the work by the developer or their agent, in writing, with any conditions associated and costs to be incurred. Any costs incurred prior to the City Engineer's acknowledgement will not be considered for repayment.**
 - *The commencement of a UWRF/CSRF project is initiated with the complete knowledge of the City Engineering department and the conditions and costs are included in the subdivision or development agreement for the project. The suggested process is redundant because it is currently included in the Procedural Manual.*
10. **A work plan must be provided by the owner and approved by City staff.**
 - *Please give an example of the type of work plan required by City staff to aid in our review of this point.*
 - *The work plan is generally laid out in the current subdivision agreement and project tender documentation approved by the City.*
11. **Costs ultimately eligible for reimbursement must ultimately be contained in provisions of a Council approved agreement.**
 - *Eligible costs are currently included in the subdivision or development agreement and form part of the tendering process for the works as approved by the City.*

12. Invoices billed against the work plan will be circulated to both City Engineering Project Managers and the Development Finance group.

- *Invoices for works completed are provided with claims for payment from the UWRF/CSRF based on the tender document as approved by the City. The City may request any further documentation as required.*
- *See the attached pages from the Procedural Manual.*

13. Any increase in project scope must be approved by City Staff and reflected in an updated work plan.

- *Work change orders are currently required for any changes in scope or design of a project.*

14. Costs ultimately eligible for reimbursement must ultimately be contained in provisions of a Council approved agreement.

- *See item 4 above and the attached pages from the DC Procedural Manual.*

In summary, we already have the proper document to implement the DC By-law if it is followed by all parties.

Additional comments received from LDI on May 3, 2013

UWRF SWM Ponds

Pros

- UWRF SWM fund has built all of the SWM ponds in the past without creating any debt problems for the City
- The developers carry the cost of Project Management of the construction of the SWM facility saving the City money and the need for additional staff
- The UWRF self regulates by the developers monitoring the fund and the current and future economic conditions
- The developers built SWM ponds as needed and didn't over extend the fund by building works to service lands that were not draft approved
- The developer takes 100% of the risk for the cost of construction of the SWM pond
- The UWRF frees up monies in the city's capital budget by paying for works with the developers funding
- UWRF SWM ponds can be built by the developer to be more responsive to changes in the market
- The UWRF SWM fund is working better as a result of the recommendations of the BRP report
- There is a \$1.6mil balance in the UWRF SWM fund
- The developer can coordinate the design and construction of the UWRF SWM ponds to dispose of the fill from the pond to save the fund money by not having to truck it off site
- There are no "contractor issues" if the developers engineer is supervising the construction of the SWM pond and the internal servicing of the subdivision

Cons

- CSRF SWM fund currently in a debt situation as highlighted in the December 2012 GMIS Update prepared by the City
- City is not as reactive to changes in the market or the economy
- The City did not react in time to the economic downturn in 2008/09
- The City did not phase the construction of the SWM ponds
- The City built SWM ponds to lands that did not have draft plan approval that should pay for the installed works

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- There are problems with the transition of UWRF SWM ponds to the CSRF SWM fund that lead to large cost over runs
- City is building SWM ponds to a higher standard than required costing more money to construct
- City responsible for “Gold Plating” SWM pond design
- Ponds will cost more anytime Government gets involved with the design and construction of work
- City may require to hire additional staff to Project Manage SWM facility construction

Accelerated DC SWM Payments

- Carrying costs of the prepayment of the DC SWM charge will raise the cost of homes to new home purchasers
- Home builders cannot afford to pay a SWM prepayment prior to the sale of a house. Currently the home builder pays the SWM DC at the time of the building permit once an agreement of purchase and sale has been entered into with the home purchaser
- The UWRF currently has a positive balance of \$1.6mil that cannot be used to pay down the debt of the CSRF SWM DC
- Currently the Developer has 100% “skin in the game” and carries the cost of all UWRF SWM works and creates no debt for the city
- A partial prepayment of a portion of the cost of a SWM pond does not help alleviate the current CSRF DC debt situation
- The prepayment of a DC charge is not financeable by the home builders
- Developers may initiate smaller phases of development to reduce the cost of the prepayment creating the need for additional staff time to review multiple phases of a development
- The prepayment charge will require another fund to be established to hold the prepayment that should be assigned to the specific work
- The prepayment of SWM works does not work well in the London market due to the slower build-out of subdivisions and the higher carrying cost will be passed onto the new home purchasers
- Prepayment works in the GTA due to the fast build-out of new home developments

Urban League of London

The Urban League has the following comments on the policy recommendations presented at the March 8th meeting.

1. Financing Stormwater Management Works

We agree that City financing with a city wide (*ie an urban area wide*) charge and payments at the subdivision agreement stage will result in lower operating costs and better cash flows to the CSRF – Stormwater. We recognize that London is unique in funding such Greenfield works from Development Charges (which should be pointed out when comparing DC costs between cities), however, the longer term benefits for taxpayers are best protected through a city wide (*ie an urban area wide*) DC and through making stormwater works in the built up areas (Central Thames subwatershed) local works. We recommend the following clarifications:

- In setting the proposed SWM Rate Areas, it be made clear how Non Central Thames – Urban and Non Central Thames – Rural are distinct geographic areas and that the costs of any works that benefit future development in the “Rural” area, be captured in the appropriate DC by law

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- As some stormwater works will be adjacent to Environmentally Significant Areas (ESAs), all Environmental Assessments for such projects must also require the completion of an Environmental Impact Study, that is reviewed by the various provincial agencies (UTRCA, MNR, etc), City staff (both Engineering and Environment and Parks Planning), and by the city's EEPAC. To this point, there has been a mixed result in protecting the natural environment. We have been encouraged by the commitment to improvement made by the City Engineer and the City Planner at a recent Urban League Executive meeting with the City's Senior Leadership Team.

2. Urban Works Reserve Fund Claims Process

- The Urban League supports any and all improvements in the process, particularly that all claims shall be approved by the City Engineer (see #1 under Requirements for Developer Managed Infrastructure Projects)
- We wish to remind staff and Council that with the new by law, there must continue to be a mechanism in the DC Rate to pay for the outstanding claims from previous works done under Urban Works. This notional deficit still totals roughly \$50 M.

Submitted by: S. Levin and G. McGinn-McTeer

Lyn Townsend, LLB

TOWNSEND AND ASSOCIATES

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MEMORANDUM

TO: MR. PETER CHRISTIAANS
FROM: MS. LYNDA TOWNSEND
SUBJECT: DC POLICY REVIEW
URBAN WORKS RESERVE FUND (UWRF) FRAMEWORK AND ACCELERATED DC PAYMENTS
DATE: APRIL 23, 2013

1. Request

You have requested our opinion with regard to the contents of the draft report to Chair and Members of the Strategic Priorities and Policy Committee regarding the above-captioned. Specifically, you have asked that we provide comment on the direction of the proposed report and any legal considerations that are pertinent.

2. Relevant Provisions of the Blue Ribbon Panel ("BRP") report:

The relevant recommendations of the report submitted by the BRP report can be summarized as follows:

- i. The UWRF does not operate in the manner of a typical Development Charge ("DC") reserve fund.
- ii. Control and accountability for the expenditures in the fund was uncertain.
- iii. The larger UWRF expenditures should be administered by the City in conjunction with other priorities set by the municipality including growth management.
- iv. The UWRF should continue in a modified form where the following parameters apply:
 - flexibility in accessing funds for infrastructure is appropriate
 - sufficient funds have been set aside
 - front-ending agreements are not required
 - public benefits will accrue.
- v. Financial expenditures for infrastructure should be reviewed earlier in the planning process and with enhanced internal coordination.
- vi. The cost of "local" works should not be included in the UWRF but should be done by developers outside of the UWRF or DC funding mechanisms.

- vii. Certain larger UWRF works should be transferred to the City Services Reserve Fund ("CSRF") and front-ending agreements for CSRF works should be used as an alternative to the UWRF.
- viii. The cost impacts of stormwater management ponds and associated drainage infrastructure on the UWRF was a concern to the BRP. Historically, stormwater management ("SWM") ponds had significant costs (approximately \$2M - \$3M per pond), and are normally required as an up-front cost prior to development proceeding. The sheer number and cost of these facilities can be a key contributor to the notional deficit of the UWRF. The Panel recommended that the City consider removing the ponds and associated drainage infrastructure from the UWRF and create drainage area specific by-laws for SWM ponds. Area specific background studies would be developed along with growth projections for each drainage area, thus enabling the municipality to establish area specific SWM infrastructure by-laws. The benefits of this approach would be as follows:
 - Relieves financial pressure (i.e. cash flow) on the UWRF.
 - Allows for the use of front-ending agreements, which would stipulate mechanics for repayment from collected development charges within the drainage area.
 - More certainty to the developers regarding timing and mechanism for repayment
 - Amendments to the area specific by-law are not lengthy and would enable the by-law to be updated as required to reflect changes in housing form, growth projections and project costs.

3. Direction of the Proposed Report:

- i. Consolidation of all future SWM works in CSRF:

This recommendation is consistent with the recommendations of the BRP as noted above.

The Panel recommended greater control over the timing of expenditures for infrastructure by referring these decisions into an earlier part of the planning process.

The transfer to the CSRF allows the City staff and Council greater control over the direction of growth, the cost of which falls ultimately to the City to maintain. Infrastructure shouldn't drive growth. It should be planned in unison with growth management strategies.

Consolidation addresses the following concerns raised by the BRP. SWM works:

- exceed the financial capacity of the UWRF to sustain;
- should be planned and administered by the City staff to ensure coordination of planning, construction and budgetary parameters;
- should be a part of the City's Council's capital budget priority setting exercise;
- are not currently eligible for front-ending which can be remedied by this transfer and allow for a more conventional and predictable repayment process.

While the BRP recommended area specific DC's for SWM infrastructure the use of the CSRF is also an appropriate tool provided that funds are made available for the required works in association with growth management decisions.

- ii. Procedures governing owner construction of growth infrastructure:

This recommendation is standard practice in the municipalities with which we are familiar. The imposition of municipal standards upon infrastructure to be owned and maintained by the City is appropriate. The determination of acceptable standards can be a collaborative exercise between the City and the industry and need not result in significant cost increases or inappropriate delays.

- iii. Collection of SWM DC at subdivision Plan Registration vs. Building Permit stage:

SWM ponds are constructed at a time early in the development cycle. Funds will be required from the CSRF to support the cost of construction. If funds are not advanced until building permit stage the DC reserve fund must incur borrowing costs to build the ponds before money is received. These borrowing costs are included in the DC and thus borne by the industry. In the alternative where DC's are paid earlier in the process (at the subdivision Plan registration stage.) the DC charge will be reduced.

It is not uncommon for the municipality to collect DC's for SWM services at the subdivision plan stage and it results in a lower DC.

- iv. New process for SWM facilities design and construction:

These works are municipal and not privately owned or maintained. It is appropriate to have uniform municipal standards. Our comments on item 3ii. above apply equally to this recommendation.

- v. Administrative Charges/By-law amendments:

These recommended changes are consistent with the findings of the BRP as noted in the summary of our report above.

4. Legal Observations:

It appears there may be two DC reserve funds for similar purposes – CSRF storm works and UWRF storm works.

The *Development Charges Act* requires careful management and accounting for reserve fund expenditures. The Act stipulates that separate reserve funds should be established for each service. Two reserve funds for one service may pose a difficulty in complying with the legislation.