TO: CHAIR AND MEMBERS
ENVIRONMENT AND TRANSPORTATION COMMITTEE
MEETING ON MAY 29, 2006

FROM: PETER W. STEBLIN
GENERAL MANAGER OF ENVIRONMENTAL & ENGINEERING SERVICES CITY ENGINEER, and
JAMES P. BARBER
CITY SOLICITOR

SUBJECT: W12A LANDFILL SITE

RECOMMENDATION

That on the recommendation of the General Manager of Environmental & Engineering Services & City Engineer and the City Solicitor,

(a) a public participation meeting of the Environment and Transportation Committee BE HELD on June 19, 2006 to be advertised in the London Free Press to consider whether the extension of the use of the W12A landfill site beyond August 31, 2006 until it shall have been fully utilized and completed be formally consented to by the City to continue the implementation of the Waste Management Plan of the City of London, and,

(b) the letter from the solicitors for wwwgethelp.com requesting that the City of London close the W12A landfill by August 31, 2006, BE REFERRED to the public participation meeting.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Report to Planning Committee of August 25, 2003;
Report to Environment and Transportation Committee of October 14, 2003;
Report to Board of Control of May 12, 2004;
Report to Planning Committee of November 29, 2004;

BACKGROUND

The City Solicitor provided an opinion on April 11, 1994 to the Environmental Services Division that under the London-Middlesex Act, 1992, the City had assumed the rights and liabilities of the former Town of Westminster on annexation. As a result, he stated that the agreement of February 4, 1983 (which amended a 1975 agreement) between the former Town and the City was now between the City and itself and the obligations in the agreement had merged in the City. A further opinion from a city solicitor that the agreements of 1975 and 1983 no longer affected the property (W12A landfill) was reported to the Planning Committee in a report of November 29, 2004.

The solicitors for landowners and residents in the former Township of Westminster near the W12A landfill have recently forwarded the attached letter addressed to the Mayor and Members
of City Council which has been forwarded to the City Clerk. The letter alleges that an agreement between the City and the former Township of Westminster contains a promise of the City to close the W12A landfill which constitutes a legal obligation which continues to be enforceable. The solicitors for wwwgethelp.com disagree with the opinion in the Planning Report and have requested that the City assure their clients that it will close the landfill by August 31, 2006.

The City Solicitor advises that the Ontario Municipal Board in 1975 approved the use of the W12A lands on the basis of an Indenture dated January 24, 1975 which provided for a maximum period of use of 20 years from the date that the site shall first come into operation "unless such use shall have been consented to by the Township". The Indenture provided that the City "will exercise reasonable efforts to accommodate grievances not otherwise legally enforceable of the abutting land owners who are effected by the establishment of the Landfill site; it being understood however, that this provision shall bind the city as a moral obligation only and not as a legally enforceable covenant". The Indenture of January 24, 1975, was subject to a Joint Use Agreement dated January 27, 1975 for joint use to continue in full force "until the Landfill Site shall have been fully utilized and completed" unless the Township terminated the January 27, 1975 agreement. The Township authorized this further agreement by By-law 75-7 and it was executed by the Township's signing officers.

The 1975 Indenture was modified by an amending agreement dated February 4, 1983 which prohibited the use of the landfill "after the 31st day of August, 2006 ... unless such use beyond the 31st day of August, 2006 shall have been consented to by the Township ...". A joint board approved this amendment by a decision of October 18, 1983. The January 27, 1975 agreement was not terminated and the parties continued to operate under that agreement reflecting the Township's continuing consent to the use of the landfill "until the Landfill Site shall have been fully utilized and completed".

The London-Middlesex Act, 1992 dissolved the Town of Westminster on January 1, 1993 (s.4) annexing the W12A lands to the City of London. Section 11 of the Act provided that assets and liabilities pertaining to an area annexed "become assets and liabilities of the annexing municipality ..., and the annexing municipality ... stand[s] in the place of the municipality from which land is annexed ...".

The City of London in 1995 instituted a Waste Management Plan as part of the planning process prescribed under the Environmental Assessment (EA) Act to ensure that necessary parts of an environmentally and economically sound integrated system are in place for 25 to 40 years. Landowners and residents in the former Township of Westminster were at all times aware of and involved in the planning process for the Waste Management Plan. Phase One of the planning process ended in late 1997 and was approved by City Council at its December 15, 1997 meeting:

That, on the recommendation of the Commissioner of Environmental Services & City Engineer, the recommended Waste Management Strategy for London/Middlesex (November 1997) BE APPROVED; it being noted that the Steering Committee for the City/County Waste Management Plan approved the strategy (i.e. the Continuous Improvement System) making specific reference to several key goals and objectives including demonstrating measurable improvement to reduce the amount of waste requiring disposal per capita while considering the environment and economic impacts of these actions (32.6.1)

Phase Two of the planning process focuses on the long-term disposal component of the overall plan. The planning process has stopped and started on several occasions, including the public participation components, as a result of changing processes with the Provincial Government including the most recent EA reform process. Previous publicly circulated reports have identified the use of the W12A landfill site beyond August 31, 2006 using the Certificate of Approval requirements to estimate the potential closing date (i.e., establishing the volume of garbage that may be contained in the landfill site based on a base contour plan (the depth of the excavation) and a final contour plan (the height of the closed landfill). This calculation is
presented each year in the annual report submitted to the Ministry of the Environment. The EA process is currently on hold pending the outcome of the EA reform.

From 2001 to 2003, the City voluntarily undertook a major redesign of the remainder of the approved disposal area of W12A including public consultation on the redesign. Public consultation included notices to area residents, an information meeting with nearby residents in June 2001, a general notice in the London Free Press on January 26, 2002 and an open house on January 31, 2002.

The Official Plan which was adopted after the London-Middlesex Act, 1992 was enacted provided in the explanatory text that the W12A landfill would reach capacity in the year 2015. Although the explanatory text does not form part of the official plan, it indicates City Council's intention with respect to the length of future use of the landfill site.

As well, in November 2002, the Ontario Municipal Board referred in Decision 1563 to evidence before it that the existing landfill was acknowledged to be under continuous development and use until the year 2015 to 2025 with a potential expansion to the year 2045. Residents in the vicinity of the W12A were involved in that OMB hearing.

On July 7, 2003, Municipal Council approved a report entitled "Long Term Contribution Strategy for the Sanitary Landfill Reserve Fund." This report, dealing with a 40 year time period, referenced that the existing timeframe for the W12A Landfill site was until 2025. The report identified the estimated funds that must be placed in the Reserve Fund to support the operation over this period plus the necessary funds for new disposal capacity from 2026 to 2042.

In June of 2004, Municipal Council approved the release of the Draft Terms of Reference for the W12A Landfill Area Study for comments and feedback. An Open House was held on September 21, 2004. The revised Terms of Reference were presented to the Planning Committee at a Public Participation meeting on November 29, 2004. Among the objectives cited in the report include providing a "long term vision for the future of W12A landfill facility" and "provide direction for the expansion of waste disposal and diversion activities."

In December of 2004, Terms of Reference for the City's W12A Landfill Area study were approved. Two public meetings have been held at Regina Mundi Catholic High School: June 29, 2005 (Presentations/Introductions/Issue identification) and November 10, 2005 (Open House - Landfill Evolution Alternatives). At the November 10 meeting, the project consultant described four options that are being considered as part of the Area Study:

Option 1: Status Quo
Option 2: Expand Landfill
Option 3: Develop Integrated Resource Recovery Centre
Option 4: Develop industrial Eco-park

Based on public feedback at this meeting, the City was asked and agreed to at the meeting to include three additional options:

Option 5: Close W12A Landfill Site on August 31, 2006
Option 6: Export Garbage to another Municipality after existing capacity has been used
Option 7: Look at aggressive diversion of household waste and do not accept commercial, industrial and institution waste

A third meeting is planned for June 2006. All reports are contained on a webpage designed for this project: www.london.ca/Planning/w12Apage.htm

In 2005 Municipal Council approved a project to bring a City water line around the W12A Landfill Site to benefit both landfill operations and the immediate neighbours. There is no requirement to do so. This activity has been undertaken, in part, as part of building a good relationship with the Immediate neighbours and others in the surrounding community (e.g., the extension of water services around the landfill site has lowered the cost of bringing water to the Glenworth.
This project will be completed in 2006 at an estimated cost of $1,100,000. Activities such as these are being further explored as part of the W12A Area Study.

In January 2006, the agricultural advisory committee of the City of London received a verbal report from the Manager of Solid Waste Engineering identifying options for the W12A Landfill Area Study, including, among others, the use of the existing landfill capacity, the expansion of the landfill and the closure the W12A Landfill site on August 31, 2006.

While every action taken by the municipal council to date since annexation in relation to the W12A landfill is consistent with the use of the landfill beyond August 31, 2006 and the former Town of Westminster agreed to its joint use until the landfill is fully utilized and completed, City Council has not explicitly addressed the question of the extension by by-law or resolution. The solicitors representing abutting landowners have requested City Council to address the question of whether it intends to close of the landfill on August 31, 2006. In order to complete an environmental assessment with respect to any expansion of the landfill as well as the W12A landfill planning study, it would appear to be necessary for the landfill to continue to operate until at the very least an environmental assessment and the landfill planning study and any approval processes stemming from them have been completed.

It is advisable out of an abundance of caution for the City Council to consider whether or not to give consent to the extension of the use of the W12A landfill. The former Town of Westminster ceased to exist by operation of the London-Middlesex Act, 1992 and the City of London is the successor municipality by reason of annexation. Even if there is no legal obligation to abutting landowners under any agreement with the former Town of Westminster, the issue as to whether municipal council consents to the extension of the landfill beyond August 31, 2006 has not been formally addressed by the municipal council to date and it would appear to be advisable for the municipal council to take a clear position as to whether it consents to an extension beyond August 31, 2006 in advance of that date.

The certificate of approval does not provide for the W12A landfill site to close on August 31, 2006. It would appear to be a condition of the provisional certificate of approval for the waste disposal site for Approval Number A 042102 dated April 3, 1991 that based on the progression of landfilling at the site as indicated in the annual report concerning the capacity of the site, the City is under an obligation to give five (5) years' notice of its intention to close the landfill. The annual reports to the Director pursuant to the certificate of approval have not indicated that the landfill is intended to close on August 31, 2006 and the City has not provided any recommendation to the Director that this occur. Further, the City has not given five (5) years' notice of its intention to close in accordance with the approval certificate.

The Environmental Protection Act and regulations provide as follows:

Certificates of approval

27. (1) No person shall use, operate, establish, alter, enlarge or extend,

(a) a waste management system; or

(b) a waste disposal site,

unless a certificate of approval or provisional certificate of approval therefor has been issued by the Director and except in accordance with any conditions set out in such certificate. R.S.O. 1990, c. E.19, s. 27.

O. Reg. 232/98

31. The owner and the operator of a landfilling site shall ensure that a written report on activities for the closure of the site, activities for the post-closure care of the site and the proposed end use of the site is prepared not later than the date 90 per cent of the total waste disposal volume is reached or two years before the anticipated date of closure, whichever comes first."

Based upon his review of the history of this matter, the City Solicitor is of the opinion that there has been no breach of fiduciary duty or abuse of power in relation to the use of the W12A landfill. The City Solicitor concurs with the previous opinion that the City is the successor to the Town of Westminster under the 1975 Indenture as amended in 1983 as well as the 1975 Joint Use Agreement and stands in the place of the municipality from which land was annexed. The
City Solicitor believes out of an abundance of caution that the City Council should explicitly consider whether or not to consent to the extension of the use of the landfill beyond August 31, 2006 standing in the place of the municipality from which land was annexed.

The City has provided public notice with respect to its actions in relation to the W12A landfill to date and it would appear to be advisable to ensure that the public is fully informed and has an opportunity to address the question of any extension beyond August 31, 2006. The City Solicitor is of the opinion that it would be advisable to ensure that a public participation meeting is scheduled at which to address the issue of the extension of the use of the landfill beyond August 31, 2006 of which notice is published in the newspaper.

RECOMMENDED BY:

PETER W. STEBLIN, P.ENG.  
GENERAL MANAGER  
OF ENVIRONMENTAL & ENGINEERING SERVICES & CITY ENGINEER

JAMES P. BARBER  
CITY SOLICITOR

Attachment: Letter from Gowling, solicitors for www.gethelp.com

May 12, 2006
Y:\LPDESTURJ\recommendations\W12A May12-06
Alt.
April 21, 2006

DELIVERED VIA COURIER

Mayor Anne Marie DeCicco and Members of Council
Corporation of the City of London
City Hall
214-300 Dufferin Avenue
London, ON N6B 1Z2

Dear Mayor DeCicco and Councillors:

Re: W12A Landfill – Legal Obligation to Close by August 31, 2006

Introduction and Summary

We represent wwwgethelp.com, a group acting on behalf of landowners and residents in the former Township of Westminster, near the W12A landfill, who are very concerned about the City’s plans to expand the site and to extend its operating life.

These residents are extremely appreciative, based on City statements and actions, that the City has no intention of honoring its longstanding promise to close the landfill by August 31, 2006. The City now speaks of opening the landfill for at least the next 25 to 40 years. Not only that, the City is planning a major expansion of the landfill onto neighbouring land, as well as the construction at the expanded site of new long-term projects such as a leachate treatment facility for W12A leachate and hauled liquid waste.

As elaborated below, the City legally promised the residents of the former Township that the landfill would close by August 31, 2006, and this deadline is also entrenched in an order of the Ontario Joint Board (comprised of members of the Ontario Municipal Board and the former Environmental Assessment Board). The members of wwwgethelp.com have therefore been looking forward to the closure of the landfill in August. Many members have lived in the neighbourhood since before the landfill was built, and have based their decision to stay there on their reasonable expectation that the landfill would be shut down this year. Other members have moved to the neighbourhood on the same expectation. What everyone understood was a temporary inconvenience now looks set to be turned into a permanent and growing blight on the neighbourhood, with severe implications for their quality of life and property values.
The purpose of this letter is to remind Council of the City’s promise to close the landfill in 1985, to outline why the City is under a legal obligation to do so, and to request that the City confirm it will fulfill its commitments.

I. Background

As part of the initial approvals process for the W12A landfill in the mid-1970s, the City applied to the Ontario Municipal Board (OMB) for approval to acquire certain lands in the Township of Westmaster for the landfill. The OMB granted this approval, but on the condition that the landfill operate for only 20 years. Specifically, the OMB Order M73102, dated January 29, 1975, states that:

...as a condition of the approval given pursuant to clause 1 hereof [for the acquisition by the City of the lands to be used for the landfill as well as some contiguous lands], the acquisition or use by the Corporation of the City of London of that portion of the lands specified in clause 1 hereof as is more particularly described in Schedule "B" annexed hereto [the lands to be used for the landfill], shall be and the same is hereby declared to be subject to those certain restrictions, limitations and conditions contained in that certain Indenture dated the 24th day of January 1975 annexed as Schedule "C" hereto as amended by the provisions of Schedule "D" annexed hereto, and further the Corporation of the City of London is hereby directed to enter into and deliver such Indenture as amended by the provisions of Schedule "D" annexed hereto, to the Corporation of the Township of Westminster...

( emphasis added).

A fundamental restriction, limitation and condition set out in the indenture was the requirement that the landfill close down after 20 years. Section 9 of the indenture reads:

Maximum Period of Use of the Landfill Site. The City shall not utilize the Landfill Site for the disposal of Disposible Waste Materials for a period of more than twenty (20) years computed from the date when the Site shall first come into operation for such purpose unless such use beyond such period shall have been consented to by the Township and should any dispute arise in relation to such consent, unless approval shall, in such event, have been secured from the Ontario Municipal Board or its successor, legislatively empowered to consider the matter in the place and stead of the Ontario Municipal Board.

In 1983 the City and the Township amended Section 9 of the indenture to read as follows:

Maximum Period of Use of the Landfill Site. The City shall not utilize the Landfill Site for the disposal of Disposible Waste Materials after the 31st day of August, 2006, being twenty-nine (29) years from August, 1977, the month when the Site commences operation for such purpose, unless such use beyond the 31st day of August, 2006, shall have been consented to by the Township and should any dispute arise in relation to such consent, unless approval shall, in such event, have been secured from the Ontario Municipal Board or its successor, legislatively empowered to consider the matter in the place and stead of the Ontario Municipal Board.
secured from the Ontario Municipal Board or its successor, legislatively empowered
to consider the matter in the place and stead of the Ontario Municipal Board.

This amendment was approved by the Joint Board decision J820008, dated October 18, 1983:

The Joint Board hereby amends the order of the Ontario Municipal Board dated the
29th of January, 1975, ... by varying those certain restrictions, limitations and
conditions contained in that certain Indenture dated the 24th day of January, 1975,
amended to the said order as Schedule “C” thereto and as amended by the provisions
of Schedule “D” annexed thereto, in accordance with the provisions of the agreement
dated the 4th day of February, 1983, attached as Schedule “H” to this Decision and
forming part hereof.

On January 1, 1993, the City annexed the Township of Westminster. The London-Middlesex
Act, 1992 set out the terms of the annexation. Subsection 14(1) provided that:

Except as otherwise provided in this Act, the assets and liabilities of a municipality
from which land is annexed and its local boards pertaining to an area annexed to an
annexing municipality become assets and liabilities of that annexing municipality or
a local board thereof without compensation, and the annexing municipality and its
local boards stand in the place of the municipality from which land is annexed and its
local boards.

The City now argues that this provision has rendered the indenture a nullity, because the City
cannot enforce the indenture against itself. In the document called “Terms of Reference, W12A
Landfill Area Study”, dated November 2004, the City explains this position:

As a result of the annexation the Township’s rights and benefits contained in the
1975 and 1983 Agreements were transferred to the City. Where one party holds all
benefits and obligations associated with a piece of property (in this case the
agreement), those benefits and obligations merge, so that there is (sic) no further
obligations or benefits arising from the property (agreement). In this case, the
benefits to the Township and the obligations of the City arise out of the agreements
approved by the OMB. Since all benefits and obligations in the agreements became
the property of the City after annexation, and since the City cannot enforce the
agreement against itself, the agreements no longer affect the property (W12A
Landfill).

Were the City’s disingenuous argument to prevail, the result for our client and the other residents
of the former Township of Westminster would be manifestly unjust. For the reasons that follow,
however, that argument is utterly ineffectual. The City’s obligation to close the landfill is as
strong as ever.
2. Legal Analysis

(a) The conditions in the OMB order continue to operate despite the City's annexation of the Township

As mentioned, the OMB ordered that the landfill "shall be and the same is hereby declared to be subject to those certain restrictions, limitations and conditions contained in that certain Indenture dated the 24th day of January 1973".

It is clear from the plain language of this clause that the restrictions, limitations and conditions contained in the Indenture are incorporated by reference into the order. That is, by violating the terms of the Indenture, the City would not only be in breach of the Indenture but would also be in breach of the OMB order.

The OMB could have ordered the City to comply with the Indenture as amended from time to time, but it chose not to do so. Instead, the OMB adopted the restrictions, limitations and conditions contained in the Indenture as its own restrictions, limitations and conditions. Put simply, the OMB "cut and pasted" the provisions of the Indenture onto its own order. Once it did so, these provisions acquired a legal status entirely independent of the Indenture itself. Nothing in the order suggests that the OMB intended for the landfill approval to be a bilateral matter between the City and the Township.

The result is that today there is an operative OMB order (as amended by the Joint Board order) requiring the City to close the landfill by August 31, 2006. It is entirely beside the point whether or not the Indenture is still valid.

The City argues that, because the City now stands in the shoes of the Township by virtue of the London-Middlesex Act, 1992, the Indenture is unenforceable. It is of course correct that the Township, having ceased to be a legal entity, can no longer per se enforce its rights under the Indenture, but that is not to say that the City's obligation to close the landfill this August has evaporated. That obligation remains embedded in the OMB/Joint Board order.

It is important to understand that an order of the OMB (and of a Joint Board order varying an OMB order) may be enforced as an order of the Ontario Superior Court of Justice.

Section 86(1) of the Ontario Municipal Board Act provides:

A certified copy of any order or decision made by the Board under this Act or any general or special Act may be filed with the Ontario Court (General Division), and thereupon becomes and is enforceable as a judgment or order of the Ontario Court (General Division) to the same effect, but the order or decision may nevertheless be rescinded or varied by the Board.

Once the order is filed with the Court, disobedience of the order by the City Corporation, or by its councillors, officers, employees or contractors, constitutes contempt of court.
Although the requirements of the OMB/Board order are enough to settle this matter, we will briefly mention several other reasons why the City is legally bound by its promise to close the landfill in August.

(b) The indenture is still valid

The indenture is no ordinary agreement. It is not a contract that requires one party to enforce its rights against the other. Rather, the indenture is a unilateral legal commitment on the part of the City, signed both for the benefit of the Township of Westminster and people living in the Township, especially those living near the landfill. The City's legal commitments continue because the City continues to exist, and these commitments are in no way conditional on the continued existence of the Township.

The City's commitments go directly to residents as evidenced not only by section 9, which says that the landfill will close by August 2006, but by many other provisions including sections 4(b) and 5(g), which commit the City to allowing residents of the Township to dispose of garbage at the landfill free of charge; section 6, which requires the City to provide drinking water to local residents in the event that the normal water supply is contaminated by the landfill; section 10, which creates a "moral obligation" on the part of the City "to accommodate grievances not otherwise legally enforceable of the abutting land owners who are affected by the establishment of the Landfill Site"; and section 14, which requires the City (at the option of the Township) to lease the landfill site to a conservation area upon the closure of the site, so that it may be used "solely for recreational purposes".

The indenture also represents a declaration by the City that it will act in the capacity of a trustee for the rights to which it is committing. The effect is that the rights under the indenture are held in trust for the benefit of the area residents, including the members of wwwwgethelp.com. As such, these rights cannot be withdrawn or changed without the consent of the area residents. Doing so without their consent would constitute a breach of trust.

On either basis, i.e. that the indenture is a unilateral City commitment to area residents, or on the basis that it evidences the establishment of a trust relationship with them, area residents can legally enforce their rights despite the Township no longer existing as a legal entity.

Moreover, the indenture represents the City's commitments to the former Township. Because the City annexed the Township, it "stand(s) in the place of the municipality from which land is annexed", i.e. it has an obligation to assert, and not derogate or ignore, the rights provided to the former Township.

(c) It would be an abuse of power to renage on the promise to close the landfill

Although the courts will normally defer to the policy decisions of public officials so long as these are made within the scope of the decision-maker's authority, there is a limit to such compliance. In particular, the courts will step in to protect people who are led to expect that a
certain policy course will be followed, only to find that course reversed. The rationale is that in such cases the unfair frustration of someone's legitimate expectation amounts to an abuse of power. As the English Court of Appeal put it in R. v. North and East Devon Health Authority, ex parte Coughlan [2000] 3 All E.R. 850 ("Coughlan"): In the ordinary case there is no space for intervention on grounds of abuse of power once a rational decision directed to a proper purpose has been reached by lawful process. The present class of case is visibly different. It involves not one but two lawful exercises of power (the promise and the policy change) by the same public authority, with consequences for individuals trapped between the two.

At issue in Coughlan was the decision by the health authority to close a health care facility for disabled patients. Miss Coughlan had agreed to move from a hospital into the facility on the promise that she could live there for life. The Court quashed the decision and required the facility to remain open, holding that "negliging without adequate justification, by an otherwise lawful decision, on a lawful promise or practice adopted towards a limited number of individuals" was an abuse of process.

The situation at hand is no different than Coughlan. The City made a clear promise to close the landfill by August 2006. Were the City to renge on that promise, our client would be "trapped between" the old policy and the new one. The unfairness is glaring. The members of wwwwesthelp.com have been looking forward to the closure of the landfill. Many members, including the chairman Jack Sifton, have lived in the neighbourhood since the landfill was built, and have based their decision to stay there on their reasonable expectation that the landfill would be shut down this year. Other members have moved to the neighbourhood on the same expectation. What everyone believed to be a temporary inconvenience now looks set to be turned into a permanent and growing blight on the neighbourhood, with severe implications for their quality of life and property values.

Just as in Coughlan, it is irrelevant whether the City has good reasons for wanting to extend the operating life of the landfill. Having for so long led the people in the neighbourhood to expect that the landfill would close in August, it would be an abuse of power for the City now to leave those people in the lurch.

(d) The City owes a fiduciary duty not to break its promise

The Supreme Court of Canada held in K.L.R. v. British Columbia [2003] 2 S.C.R. 403 that "the traditional focus of breach of fiduciary duty is breach of trust, with the attendant emphasis on disloyalty and promotion of one's own or others' interests at the expense of the beneficiary's interests." The trustee-beneficiary relationship is the quintessential fiduciary relationship. For the reasons given above, the City is a trustee for the residents of the former Township of Westminster (particularly those living near the landfill). Thus the City owes a duty of loyalty to the residents: it must protect the interests of the residents under the indenture and the OMB/Joint Board order and cannot relinquish those interests without the consent of the residents.

It is worth noting that the City would be considered to be in a fiduciary position vis-à-vis the residents even if the City were not strictly speaking a trustee. That is because a fiduciary...
relationship will arise "where by statute, agreement, or perhaps by unilateral undertaking, one party has an obligation to act for the benefit of another, and that obligation carries with it a discretionary power": Guerin v. The Queen [1984] 2 S.C.R. 335 (Supreme Court of Canada). The City has an obligation to act for the benefit of the residents by virtue of the indenture and the OMBJoint Board order, and that obligation carries with it a certain amount of discretion as to how exactly to administer the various commitments contained in the indenture and the order.

Reasonable expectations are another factor that help determine whether a fiduciary relationship exists: Hodgson v. Simms (1994), 117 D.L.R. (4th) 161 (Supreme Court of Canada). As Michael Ng notes in Fiduciary Duties (looseleaf ed., Canada Law Book, 2005), "A claim that a defendant has breached a fiduciary duty is a claim that the defendant has contravened reasonable expectations arising from a trust reposed in the defendant". The residents reasonably expect the City to honour its promise to close the landfill. The City is thus in a position of trust, which lies at the heart of the fiduciary relationship.

For the City to break its promise to close the landfill would be the essence of disloyalty. As such, it would be a breach of the trust invested in the City by the residents of the former Township of Westmount. Unless the City obtains the consent of the residents, it cannot go back on its word.

3. Conclusion

For the reasons outlined above, the City has both a moral and a legal obligation to honour the promise it made to close the landfill by August 31, 2006. The members of our client organization have relied on that promise and fully expect it to be fulfilled.

We look forward to City Council in a timely way affirming that the City will abide by its promise.

Sincerely,

GOWLING LAFLUR HENDERSON LLP

David Rotrin
Certified Environmental Law Specialist
History of the W12A Landfill (Approvals and Agreements)

Key events in the history of the W12A Landfill are summarized in Table 1. More complete details of the site’s history follow the table.

Table 1: Milestone Dates In the History of the W12A Landfill Site

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>City of London commissions study to develop a long term solid waste disposal plan</td>
</tr>
<tr>
<td>1974</td>
<td>Ontario Municipal Board (OMB) held a public hearing to address planning issues related to establishment of a new landfill</td>
</tr>
<tr>
<td>1974</td>
<td>OMB approves new landfill. An agreement between the City and the Township of Westminster is included in the OMB decision. Agreement contains certain restrictions on the landfill including limiting the site life to 20 years.</td>
</tr>
<tr>
<td>1977</td>
<td>W12A Landfill begins operation</td>
</tr>
<tr>
<td>1983</td>
<td>City of London and Township of Westminster agree to changes to the 1974 agreement that was attached to OMB decision. The new agreement increases the site life to 28 years (closes in 2008) unless use beyond 2006 has been consented to by the Township.</td>
</tr>
<tr>
<td>1983</td>
<td>Township of Westminster is annexed by the City. Previous agreements no longer affect the landfill.</td>
</tr>
<tr>
<td>1995 (In progress)</td>
<td>The London/Middlesex Waste Management Plan, a cooperative project of the City and County, began.</td>
</tr>
<tr>
<td>2001 to 2003</td>
<td>City voluntarily undertook a major redesign/upgrade of the landfill with public consultation. The Certificate of Approval was amended on July 23, 2002 and November 14, 2003 to include these upgrades.</td>
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</tbody>
</table>

In 1980, the City of London commissioned James F. MacLaren Limited to develop a long term solid waste disposal plan. The results of the study are contained in the report entitled Report on Solid Waste Disposal for the City of London, dated October 1970. The report recommended that the City proceed with the necessary approvals, detailed design and land acquisition for the development of a new landfill referred to as W12 located on part of Lots 18, 19 and 20 Concession 5 in the former Township of Westminster.

During site investigations, it was determined that the geological setting of W12 was not suitable for a landfill because a spillway containing granular soils traversed the surficial silty clay soils that are generally predominant in the area. It was also determined that area of south of W12 had thick surficial deposits of silty clay. As a result the location of the new landfill was changed to the area referred to as W12A located on part of Lots 18, 19 and 20 Concession 5 in the former Township of Westminster.

In April 1973, the City of London filed an application for a Certificate of Approval for a Waste Disposal Site to the Ministry of Environment (MOE) for the W12A Landfill.
Subsequently, the Environmental Hearing Board held a public hearing in the former Township of Westminster from July 30, 1973 to August 3, 1973 to review the application for the W12A Landfill. The Environmental Hearing approved the application.

The Ministry of Environment issued a Provisional Certificate of Approval A042102 for the W12A Landfill on November 13, 1973. The Provisional Certificate of Approval did not permit the disposal of waste until final design plans and specifications were submitted and approved by the MOE.

In 1974, the Ontario Municipal Board (OMB) held a public hearing to address planning issues related to the establishment of a new landfill. As a result of the hearing the OMB issued an Order in January 1975 authorizing the City of London to acquire the necessary land to create the W12A Landfill and spend the necessary funds to construct the new landfill. The OMB also directed the former Township of Westminster to amend its zoning by-law and any other necessary by-laws to permit landfilling in the lands referred to as W12A.

The OMB decision included an agreement between the City of London and Township of Westminster that contained certain limitations, restrictions and conditions with respect to the landfill and its operations. The agreement included:

- Conditions on how the landfill was to be operated and the types of waste that could be accepted;
- Requirements for groundwater and surface water monitoring;
- Limited the use of the landfill to twenty (20) years from the first day of operation; and
- Required the City to pay the Township $0.10 per tonne of waste deposited plus a payment in lieu of taxes.

In 1976 the final design plans and specifications for the W12A Landfill were submitted to the MOE by MacLaren Engineers on behalf of the City. The original site design consisted of 14 cells covering 107 hectares, five stormwater management ponds, the use of berms and trees to provide screening, a perimeter leachate collection system and a surface and groundwater monitoring program. On August 16, 1976 the MOE re-issued Provisional Certificate of Approval A042102 for the W12A Landfill to permit the disposal of waste in accordance with the submitted plans. This certificate did not include a closure date for the landfill. The closure of the landfill is based on the volume of garbage that can be contained within specified contours (i.e., elevation above ground).

Waste was first disposed of in the landfill in the summer of 1977. Since this year the Provisional Certificate of Approval A042102 has been re-issued or amended ten times to permit changes in the operation of the landfill. These changes have included:

- Refinement of the existing monitoring programs;
- Requirement for an annual report;
- Approval for the construction and operation of a household special waste facility; and
- Approval for the construction of a new scale house and scale.

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- Refinement of the existing monitoring programs;
- Requirement for an annual report;
- Approval for the construction and operation of a household special waste facility; and
- Approval for the construction of a new scale house and scale.
In February 1983 the City of London and the Township of Westminster agreed to changes to the 1974 agreement that was attached to the OMB decision. The new agreement between the City and the Township required the landfill close on August 31, 2006 (or 29 years after operations began at the landfill) unless "use beyond the 31st day of August, 2006, shall have been consented to by the Township". The closure date for the landfill was extended because the City signed an agreement with the London Health Sciences Centre to accept residential waste collected by the City at its Energy From Waste facility.

On January 1, 1993, the Township of Westminster (except a small part that was annexed with the Township of Delaware) was annexed to the City of London pursuant to the London-Middlesex Act, 1992. Section 14(1) of the Act provides as follows:

14 (1) ... the assets and liabilities of a municipality from which land is annexed ... become assets and liabilities of that annexing municipality ... without compensation, and the annexing municipality ... stand(s) in the place of the municipality from which land was annexed....

As a result of the annexation the Township's rights and benefits contained in the 1975 and 1983 Agreements were transferred to the City. Where one party holds all benefits and obligations associated with a piece of property (in this case the agreement), those benefits and obligations merge, so that there is no further obligations or benefits arising from the property (agreement). In this case, the benefits to the Township and the obligations of the City arise out of the agreements approved by the OMB. Since all benefits and obligations in the agreements became the property of the City after annexation, and since the City cannot enforce the agreement against itself, the agreements no longer affect the property (W12A Landfill).

In 1995, the London-Middlesex Waste Management Plan, a cooperative project of the City of London and the County of Middlesex, began. The Plan is being developed to ensure that the necessary parts of an environmentally and economically sound integrated waste management system are in place to serve the needs of the City/County for a 23 to 40 year period. The Waste Management Plan is being completed in two phases. Phase One ended in December 1997 with London Municipal Council approving the long-term waste management strategy known as the Continuous Improvement System. Phase Two focuses on the long-term disposal component of the overall plan. The expansion of W12A has always been considered one of the options that can be examined under the Environmental Assessment Act (Note: several changes in direction at MOE and unforeseen circumstances with respect to the environmental assessment process as it applies to waste disposal facilities has significantly delayed this process).

From 2001 to 2003 the City voluntarily undertook a major redesign of the remainder of the approved disposal area (Phase 2) including public consultation on the redesign. Public consultation included notices to area residents, an "Info meeting" with nearby residents in June 2001, a general notice in the London Free Press on January 26, 2002 and an open house on January 31, 2002.

Since 1977, approximately 5.5 million tonnes of waste have been deposited at the W12A Landfill and the first seven cells. Less waste has been deposited in the landfill than originally estimated because of the implementation of waste diversion programs (e.g., curbside recycling), residential waste being sent to an EFW facility for a number of years...
and industrial, commercial and institutional waste from the City going to private landfills outside of the City. The majority of the waste deposited to-date are in the first six cells constructed (referred to as Phase 1) which covers 60 hectares. The remaining cells cover 47 hectares and will accommodate between 4 and 6 million tonnes. This area is referred to as Phase 2.

This remaining disposal area had a site life of approximately 20 years (as estimated in 2002). The redesign of the area included improvements to the stormwater management ponds, a full underdrain leachate collection system for the remainder of the landfill and a landfill gas collection and flaring system. The Certificate of Approval was amended on July 23, 2002 and November 14, 2003 to include these upgrades.
TO:  
CHAIR AND MEMBERS  
ENVIRONMENT & TRANSPORTATION COMMITTEE  
MEETING ON JUNE 19, 2006  

FROM:  
PETER W. STEBLIN, P. ENG.  
GENERAL MANAGER OF ENVIRONMENTAL & ENGINEERING SERVICES &  
CITY ENGINEER  

SUBJECT:  
SUSTAINABLE WASTE MANAGEMENT – FOCUS ON W12A LANDFILL SITE  

RECOMMENDATION  
That on the recommendation of the General Manager of Environmental & Engineering Services & City Engineer this report BE RECEIVED for information as part of the Public Participation meeting for the W12A Landfill Site.

PREVIOUS REPORTS PERTINENT TO THIS MATTER  
Relevant reports that can be found at http://www.london.ca/Council/meetingpackages.htm include:  
W12A Landfill Site, Environment & Transportation Committee Meeting, May 29, 2006, Agenda Item #2

BACKGROUND  
PURPOSE:  
The purpose of this report is to identify and examine the fundamental role that the publicly-owned W12A Landfill Site has as part of the City’s sustainable waste management system and the implications to the City’s waste management system if the landfill site were to close on August 31, 2006.  

Residents and landowners near the W12A landfill have hired legal counsel in their efforts to have the landfill closed in August 31, 2006. The City plans to keep the landfill open beyond August 2006 until it has been completely utilized (15 to 20 years at current disposal rates) and the landfill may be expanded in the future. The W12A Landfill Area Study process is examining a number of long-term options for the W12A Landfill Site and the lands surrounding the site. The City of London/County of Middlesex Waste Management Plan, following the Provincial environmental assessment process, is currently on-hold pending the outcome of the Ministry of the Environment review of the Environmental Assessment (EA) Act. In 1997, Municipal Council approved the waste management strategy called the Continuous Improvement System for Waste Management.

CONTEXT:  
According to the Federation of Canadian Municipalities (FCM), the characteristics of a sustainable community with respect to solid waste management include a:  

"sustainable community [that] integrates economic, social and environmental issues to achieve a healthy and liveable community long-term... The economic and environmental benefits associated with waste reduction and resource recovery are key elements in establishing a sustainable community... These goals are pursued using fiscally and environmentally responsible policies that:  
• Make the most efficient use of resources;  
• Generate the least amount of waste;  
• Provide high quality service to community residents;  
• Live within the carrying capacity of a community’s natural resources—land, water and air."

1 From Solid Waste as a Resource, Guide for Sustainable Communities (Federation of Canadian Municipalities, 2004)
The City of London is in the process of an Area Study (Plan) for the W12A Landfill Site and will be relaunching the EA to finalize a long term sustainable waste management plan. This plan will need to strike a balance between the economic, social and environmental issues related to waste management. Part of any sustainable waste management plan is the ability to manage waste that is currently not recycled or composted as well as the residuals from facilities that process waste (e.g., composting facilities, material recovery facilities). If the W12A landfill is closed in August, 2006 the only option would be to export this waste.

The report London/Middlesex Waste Management Plan, EA to Provide Long Term Waste Disposal Capacity for the City of London & County of Middlesex, EA Terms of Reference, Draft #1 (December, 1998) included four alternatives for consideration for the disposal of waste. One alternative was the export waste after the W12A Landfill closed.

At the February 22, 2002 meeting of the City/County Waste Management Steering Committee, it was recommended that "no further consideration at this time be given to the export of City of London waste as part of a long term waste disposal solution". The export option was eliminated because export is:

- not sustainable
- costly
- has environmental and safety issues (more truck travel, more greenhouse gas emissions from trucks, etc.).

DISCUSSION:
The impact of exporting waste from the City of London should the W12A Landfill close in August 2006 is discussed below under three main headings: sustainability, cost and environment.

Waste Export is Not a Sustainable Approach
Waste export is not a sustainable waste management option for the City of London for four main reasons:

1. Cannot develop a long term plan with certainty
It is not possible to develop a long term waste management plan because it is impossible to predict the supply or cost of private sector haulage and disposal alternatives in the future (more than 5 to 10 years). In addition private sector companies are generally unwilling to commit to haul and accept waste or provide a price for the period of time covered by a waste management plan (i.e., 25 to 40 years). Recently both the City of Toronto and Region of Peel had to cancel long-term waste haulage contracts due to various reasons including waste disposal security, border crossing issues and unanticipated costs.

2. Waste disposal options in Ontario will remain unstable until garbage from Greater Toronto Area (GTA) and continued concerns about disposal in Michigan State are resolved
A significant portion of both municipal and private sector waste from Ontario is currently exported to private landfills in Ontario or the United States. The ability to export waste to the United States may change in the future as there are several on-going efforts by the State of Michigan to stop the flow of waste from Ontario.

The Ontario Waste Management Association has reported (The Private Sector IC&I Waste Management System in Ontario, 2005) that private landfills in Ontario do not have sufficient capacity to accept the existing quantities of waste being generated for which there is no municipal landfill and that this situation is likely to get worse as existing private landfills reach capacity. Only under Ministerial Order (emergency adjustments to Certificates of Approval for landfills), "fast-tracking" with approvals and timely waste disposal (landfill cell) development will this situation correct itself.

3. Waste export is not a local option
The definition of a sustainable community is one that lives within the carrying capacity of the local community. Exporting waste is not a local solution. It transfers the issues associated with waste that is not recycled or composted onto another community. A sustainable community should have the infrastructure in place to address its own waste management needs.

4. Can adversely impact waste diversion
Contracts with private sector landfills often have "put or pay" clauses. These clauses require the municipality to pay for space in the landfill if waste quantities fall below a set threshold. This provides no economic incentive to the municipal to divert waste below the threshold in the contract.
Waste Export is Significantly More Expensive

The cost of continued landfilling at W12A as well as the cost of exporting waste were estimated for the City of London. The cost for each option is calculated for the existing 2006 waste management system (37% waste diversion) and for the scenario whereby the waste diversion rate increases to 60% by 2012. In each case, the cost that would be incurred over the next 40 years was calculated. This timeframe is consistent with that proposed in the W12A Landfills Site Area Study and the City's Long-term Financing Options for the Sanitary Landfill Reserve Fund report to ETC (June 30, 2003).

Costing of the export option used the lowest reasonable costs for tipping fees, haul and transfer stations that could be expected. Costing of the continued landfilling option used conservative estimates of the costs expected. Calculation of the costs for the two disposal options is summarized in Table 1 for:

#1: Current 2006 Waste Management System
#2: 60% Diversion Rate Waste Management System.

Supporting documentation for the data used in Table 1 is contained in Appendix A.

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Estimated Cost of Waste Export Versus Continued Use of the W12A Landfill Site</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option</td>
<td>Total Cost (2006 to 2045)</td>
</tr>
<tr>
<td>#1: Current 2006 Waste Management System – Continue with existing waste diversion initiatives</td>
<td></td>
</tr>
<tr>
<td>a) Continued Landfilling at W12A</td>
<td>$170,000,000 -</td>
</tr>
<tr>
<td>b) Close W12A &amp; Export Garbage</td>
<td>$410,000,000</td>
</tr>
<tr>
<td>Cost Increase</td>
<td>($240,000,000)</td>
</tr>
<tr>
<td>#2: 60% Diversion Rate Waste Management System – Introduction of new waste diversion initiatives to increase diversion rate to 60% by the year 2012</td>
<td></td>
</tr>
<tr>
<td>a) Continued Landfilling at W12A</td>
<td>$140,000,000 -</td>
</tr>
<tr>
<td>b) Close W12A &amp; Export Garbage</td>
<td>$320,000,000</td>
</tr>
<tr>
<td>Cost Increase</td>
<td>($180,000,000)</td>
</tr>
</tbody>
</table>

Note: All costs are in 2006 dollars.

As noted on Table 1, the waste export option will cost between $180 and $240 million more over a 40 year period than landfilling at the City of London W12A Landfill (today's dollars). This is equivalent to an increase of $4.5 to $6.0 million per year over current waste disposal costs or between a 130% and 140% increase in waste disposal costs per year.

Waste Export has Environmental and Safety Impacts

Exporting waste will add traffic to the highways heading west of the City of London and create more greenhouse gases and smog forming emissions. It would take approximately 7,000 transfer trailer loads a year (about 30 transfer trailers each direction per day) to haul waste from the City to its new disposal location. This will add 5,000 to 20,000 tonnes of greenhouse gases depending on the location of the final disposal facility.

CONCLUSIONS

Export of waste after August 2006 would result in a waste management system that is not consistent with being a sustainable community, significantly increase waste management costs and result in environmental and safety impacts.

ACKNOWLEDGEMENTS

This report was prepared with assistance from Wesley Abbott, Manager, Solid Waste Engineering.
Appendix A  Cost Calculations - Estimates

June 15, 2006  /Shared/SolWasteETC_BoC Reports/REP060706.doc
Appendix A
Cost Calculations - Estimates

This appendix provides a summary of the information used to calculate the cost of continued landfilling at W12A as compared to the cost of exporting waste.

Quantities
It is estimated that the City of London will require approximately 8.1 and 9.4 million tonnes of disposal capacity over the next 40 years. This quantity consists of 3.0 to 4.2 million tonnes of residential waste (remaining after accounting for waste diversion programs) as well as 3.2 million tonnes of other waste produced by the City (Pollution Control Plant - PCP sludge, ash, street sweepings, etc.). A breakdown of the waste quantities is provided in Table A-1.

Table A-1
Key Assumptions and Breakdown of Estimated Future Waste Disposal Requirements

<table>
<thead>
<tr>
<th>Waste Category</th>
<th>Estimated Disposal Needs¹ (tonnes)</th>
<th>Key Assumptions/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Current 2006 Waste Management System | 4.3 million | • No change in per capita generation rate in future  
| |                                    | • No fundamental changes to waste diversion system; minor increase in waste diversion from 37% to 40% by 2008 |
| 60% Diversion Rate Waste Management System | 3.0 million | • No change in per capita generation rate in future  
| |                                    | • New waste diversion initiatives increases waste diversion rates from 37% to provincial waste diversion target of 60% by 2012 |
| City Operations|                                    |                          |
| Biosolids (biosolids from Pollution Control Plants) | 0.5 million | • Biosolids are incinerated most of the year except when incinerator is shut down for annual maintenance  
| |                                    | • No change to management of biosolids for the foreseeable future |
| Biosolids Ash (ash from the incineration of biosolids) | 0.2 million | • No change to management of biosolids ash for the foreseeable future |
| “Other Municipal” (street sweepings, grit from sewage treatment plants, etc.) | 2.5 million | • Potential for reducing quantities |
| Industrial, Commercial and Institutional (IC&I) | | |
| Portion to W12A Landfill | 1.9 million | • No change to existing situation; some IC&I waste generated goes to W12A landfill, majority is diverted/exported |

Notes:
1. Site life and waste quantity projections for the period 2006 to 2045

Landfill Disposal Costs
Landfill disposal costs are estimated to be $27 per tonne. This includes operating, capital, financing, post closure, administration and indirect overhead charges for the existing W12A Landfill plus an expansion to provide capacity for 40 years.

Landfill Revenue
Tipping fees at the W12A Landfill for business waste varies from $38.5 per tonne to $75 per tonne. It has been assumed that tipping revenue will average $42 per tonne.

Waste Export Cost
The cost to export waste is estimated to be $70 per tonne. This cost includes the transfer station cost, the haul cost and tipping fees at the disposal site. The estimated cost for each of these components is discussed on the next page.
Transfer Stations Costs

The City of Toronto operates seven transfer stations. Operating costs vary from $7 per tonne (facility handles 200,000 tonnes per year) to $11 per tonne (facility handles 80,000 tonnes per year).

Capital costs must be added to operating costs to get the total cost of a facility. The Toronto facilities were constructed in the 1970's and early 1980's and therefore their capital costs may not be representative of today's cost because of changing technology and approval requirements in the waste industry. Capital costs for a new transfer station shipping 100,000 tonnes per year is estimated to be between $5 and $10 per tonne.

For the purpose of this assessment it was assumed the minimum transfer station costs will be $12 per tonne for capital and operating costs.

Haul Costs

Haul costs were based on using a transfer trailer hauling an average of 30 tonne per load and a operating cost of $120 per hour. It was also assumed that the total travel time (loading, unloading and travel to disposal facility and back) would be 2 hours. This results in a haul cost of $8 per tonne.

Tipping Fees

The increased difficulties in shipping waste to the United States coupled with the dwindling disposal capacity in Ontario has resulted in increasing tipping fees over the last couple of years. It is estimated that the tipping fee to dispose of waste from the City of London will be between $50 and $60 per tonne. For the purposes of this report it is assumed that the tipping fee would be $50 per tonne.

Alternatives to Export for Waste from City Operations

Approximately, 3.2 million tonnes of waste requiring disposal comes from City operations. This includes biosolids, biosolids ash and "other municipal" waste (e.g., street sweepings, grit, garbage from parks and City projects). Some of this material such as street sweepings could be processed and re-used locally for less than the cost of exporting. For costing purposes, it has been assumed that 2.5 million tonnes of waste could be handled locally for the same cost as the existing landfill ($27 per tonne).

Calculation of Total Cost

Calculation of the cost of disposal for the next forty years for continued landfill and for export is presented in Table A-2. The cost for each disposal method is calculated for the current 2006 waste management system and for the scenario whereby the waste diversion rate increases to 60% by 2012.

Table A-2: Estimated Waste Disposal Costs for the Next Forty Years

<table>
<thead>
<tr>
<th></th>
<th>Unit Cost ($/tonne)</th>
<th>Quantity (million tonnes)</th>
<th>Cost ($ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current 2006 Waste Management System</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Continued Landfilling at W12A</strong></td>
<td>$27</td>
<td>9.4</td>
<td>$250 -</td>
</tr>
<tr>
<td>Landfill Costs</td>
<td>$42</td>
<td>1.9</td>
<td>$80</td>
</tr>
<tr>
<td>Net City Cost</td>
<td></td>
<td></td>
<td>$170</td>
</tr>
<tr>
<td><strong>Close W12A &amp; Export Garbage</strong></td>
<td>$70</td>
<td>4.9</td>
<td>$340 +</td>
</tr>
<tr>
<td>Landfill Costs (Residential, Biosolids, Biosolids Ash)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Processing Costs (Other Municipal Waste)</td>
<td>$27</td>
<td>2.5</td>
<td>$70</td>
</tr>
<tr>
<td>Net City Cost</td>
<td></td>
<td></td>
<td>$410</td>
</tr>
<tr>
<td><strong>60% Diversion Rate Waste Management System</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Continued Landfilling at W12A</strong></td>
<td>$27</td>
<td>8.1</td>
<td>$220 -</td>
</tr>
<tr>
<td>Landfill Costs</td>
<td>$42</td>
<td>1.9</td>
<td>$80</td>
</tr>
<tr>
<td>Net City Cost</td>
<td></td>
<td></td>
<td>$140</td>
</tr>
<tr>
<td><strong>Close W12A &amp; Export Garbage</strong></td>
<td>$70</td>
<td>3.6</td>
<td>$250 +</td>
</tr>
<tr>
<td>Landfill Costs (Residential, Biosolids, Biosolids Ash)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Processing Costs (Other Municipal Waste)</td>
<td>$27</td>
<td>2.5</td>
<td>$70</td>
</tr>
<tr>
<td>Net City Cost</td>
<td></td>
<td></td>
<td>$320</td>
</tr>
</tbody>
</table>

Note 1. All numbers rounded to the nearest $10 million.
This technical memorandum addresses the role of municipal landfill sites in sustainable waste management systems by discussing:

- The need and role of municipal landfills in integrated waste management systems in order to:
  - Provide a Local Option to Dispose of Residuals Left After Residential Diversion Programs;
  - Provide a Local Option for Disposal of Commercial Waste;
  - Ensure the Cost Effectiveness of Integrated Waste Management Systems; and
  - Provide Flexibility and Security for the Management of Materials.

Examples of municipalities with secure long-term municipal landfill disposal capacity;

Examples of municipalities without secure long-term municipal landfill disposal capacity.

It is important to note that the majority of new municipal disposal capacity approved under the Environmental Assessment Act over the past 10 to 15 years has been for the expansion of existing municipal landfills with a good environmental and operating record.

**Need and Role for Municipal Landfills**

1. **Provides a Local Option to Dispose of Residuals Left After Residential Diversion Programs**

Even in municipal jurisdictions with advanced diversion systems, and where alternatives are used to process the residual waste left after diversion, there are always some materials that require landfill disposal. Having a local option to dispose of the residues left after residential diversion programs:

- Allows the municipality time to develop a diversion system that can address the often ‘unique’ needs of the residential sector in their community;
- Results in lower disposal costs for the municipalities integrated waste management system, so that greater municipal resources can be dedicated to expand diversion programs.
- Provides municipalities with flexibility in diversion system design, as the landfill is available to provide a low-cost disposal option for many materials. For example, a municipality with a local landfill disposal option, may choose to use film plastic in their organics or recyclables programs in order to increase the convenience factor for residents and to support diversion in multi-unit residential buildings, knowing that contaminated plastic residues from the composting plant or MRF can be easily and cost effectively disposed in the landfill.
- Can allow for non-disposal use of residues from diversion such as the use of unmarketable compost as landfill cover.

MacViro Consultants Inc. 600 Cochrane Drive, Suite 500, Markham, ON L3R 5K3
tel: (905) 475-7270 fax: (905) 475-5994 www.macviro.com
2. Provides a Local Option for Disposal of Commercial Waste

The business sector of many municipalities, particularly the small business sector, often depends on the use of local landfill options for a cost effective method of disposing of their waste:

Municipalities with sufficient local disposal capacity may often provide specialized collection services to their downtown businesses and have greater ability to provide curbside collection services to businesses that generate the same type and quantities of waste as residential households without incurring high service delivery costs. Many municipalities without local disposal capacity offer a very limited range of commercial services, notwithstanding that the commercial sector contributes to the cost of waste management services through taxation.

Other small businesses, will often self-haul waste residues from their operations to local disposal facilities, and depend on the ready access to disposal sites with reasonable tipping fees to be able to compete in the local marketplace with larger operations that contract out their waste disposal services. Access to local disposal facilities, when considering the potential impacts on private landfill tipping fees that could be associated with the closure of the border with the U.S. for waste shipment to Michigan, is expected to be an asset to attracting commercial investment to communities in Ontario.

It is important to note that many of the costs associated with landfill disposal are "fixed" and do not vary significantly when less or more waste is managed at the sites. As a result, tipping fee revenues from the disposal of commercial materials can often offset a significant portion of the waste management budget, reducing the net cost of the service that is passed on to the taxpayer through property taxes (or other user charges).

3. Ensures Cost Effectiveness of Integrated Waste Management Systems

The availability of local landfill disposal capacity plays a key factor in the cost effectiveness of municipal integrated waste management systems:

Examination of Municipal Benchmarking results for the past few years, indicates that municipalities with local landfill disposal facilities tend to have lower than average cost for disposal and for their waste management system as a whole, when considering the degree of variation in municipal services and economies of scale;

Local landfill facilities reduce or eliminate the need for the transfer and haul of waste, so that these costs are not incurred by a municipality unless it is more cost effective to do this then to direct haul waste to their landfill sites;

Local landfill facilities offer a cost effective location for the development of other waste management facilities such as composting sites and public depots, where the cost of site infrastructure and staffing costs can be shared across many operations. In many municipalities, landfill sites are used as convenient "one stop" locations where the public can access facilities to divert and dispose of self-hauled materials at a reasonable cost;

As noted above, local landfill sites can provide a cost effective method of disposing residues generated by diversion operations;

Outside of the waste management system, local landfill facilities can provide a cost effective back-up method of disposing of materials generated by other municipal operations, including residues from water and wastewater treatment, street sweepings etc. In some municipalities, municipal landfill sites are the location where the bulk of the inert waste materials (concrete, rock, soil etc.) generated by municipal and other local projects are stored and diverted for other use. Without local landfill sites, these materials must be managed or disposed of elsewhere, often at a much higher cost.
4. Provides Flexibility and Security for Management of Materials

Municipalities with local landfill capacity have greater flexibility in the design and management of their waste management system, and have greater security in service provision to their residents:

- **Landfill disposal** is the most flexible means of managing residual waste, and can adjust easily to the variation in quantities and the nature of the materials disposed.
- Municipalities with local landfill capacity can easily vary the design and management of their system. For example, if a new market were to emerge for a recycled material it could easily be removed from the disposal stream without a negative impact. This may not be the case for other disposal options such as Energy from Waste (EFW) facilities or export. EFW facilities require a constant supply of waste, such facilities and export contracts often include a 'put or pay' clause which requires payment regardless of the amount of waste shipped. In regards to program design, a municipality can more easily decide to not divert a certain material (for example not including diapers in with organics for collection) until costs and/or technologies improve, knowing that landfill capacity is available to manage these materials.
- In regards to 'security', the availability of local landfill capacity can ensure that the cost of managing waste that is passed onto the taxpayer does not escalate unreasonably over time.
- In the event of an emergency such as a severe weather event, local municipal landfills are often the best option to manage the materials that must be disposed or managed as a result of this emergency.

**Brief Profile of Municipal Systems with Secure Long-term Landfill Sites**

**Region of Waterloo**

The Region currently operates one large (72 hectare) municipal landfill site, that began operation in 1972 and that was expanded with EA approval in the early 1990’s. Over 30 years of long-term landfill capacity remains, and the Region has ongoing efforts to more efficiently use the landfill space in order to preserve this capacity. In the order of 230,000 tonnes per year has been disposed at the site for the past few years. The Waterloo landfill is large enough to support the collection and recovery of ‘green energy’ from landfill gas.

Waterloo has one of highest diversion rates in Ontario, and one of the lowest net cost waste management systems. There is a municipal policy of providing fair and reasonable disposal fee for local commercial sector. The current disposal fee of $56/tonne offsets both landfill disposal costs and provides revenue to offset costs for municipal waste reduction programs. Commercial fees result in revenues of $6.5 million per year. A number of municipal operations are co-located at the landfill site, including a recycling facility, public drop-off depot, leaf & yard waste composting, an operations centre and training complex.

**Essex-Windsor Solid Waste Authority (EWSWA)**

The EWSWA owns and operates one large landfill (58 hectare footprint) on behalf of its member municipalities, that was opened on July 2, 1997 and has 12.2 million cubic meters of landfill capacity, 2.4 million of which has been consumed to-date. This landfill provides a cost effective local option for disposal of commercial waste, with a tipping fee of $48.50 per tonne that provides almost $2 million in annual revenue to offset operating costs.

Between 200,000 and 275,000 tonnes of waste is disposed at the site annually, with one quarter to one third of this waste originating from the commercial sector of the local municipalities. Methods have been used at the site to extend the landfill life, almost doubling the quantity of waste that can be disposed within each landfill cell.

The net cost for disposal, including the debt associated with the capital cost to develop the landfill is in the order of $45 per tonne for the member municipalities, well below the average cost reported in the
Municipal Performance Measurement Program (MPMP) for Ontario Municipal Benchmarking Initiative (OMBI) municipalities.

**Brief Profile of Municipal Systems without Secure Long-term Landfill Sites**

**Region of Peel**

Peel has two disposal sites, the Caledon landfill (with only 40,000 tonnes of capacity remaining) and the Algonquin Power energy-from-waste (EFW) facility which combusts approximately 160,000 tonnes of Peel waste (60% of the residential waste stream) and 15,000 tonnes of commercial waste (from Pearson Airport). Peel exports just over 100,000 tonnes per year of waste to Michigan, with the closure of the Britannia landfill site in 2002. Currently, the Region and the private sector operator of the EFW facility are examining options to expand the facility to manage more of the Region’s waste.

Reported disposal costs for the 2005 MPMP were $123 per tonne, higher than the OMBI average. Peel offers limited programs to the commercial sector. Commercial wastes are largely managed by private companies. Peel has invested significant capital in new community recycling centres, a new MRF and a new composting facility to support expansion of its diversion programs.

**York Region**

York Region does not have a disposal facility, and hauls in the order of 225,000 tonnes of waste annually to Michigan or to a private sector landfill in Ontario, at a cost of $69/tonne. Very little commercial waste is managed by the Region, and few commercial waste management services are offered.

The Region is investing in an Environmental Assessment (EA) process in partnership with Durham, to find a long-term solution to process residual waste from the residential sector through mechanical, biological or thermal treatment. The Region has also signed a contract with Dongara, to process a portion of its residual waste into fuel pellets, at a cost that will vary from $73 to $100 per tonne to process and haul the pellets to a fuel user (cement kiln). Current reported disposal costs for York are in the order of $80 per tonne, above the OMBI average cost.

The Region has invested in a new MRF, which opened in 2005 and has a contract with Conestoga Rovers to develop a composting facility located in London for the processing of Organics from its expanded Source Separated Organics program at a cost of over $150 per tonne. The cost of managing residual waste is expected to escalate to over $100 per tonne with the implementation of new residual waste processing facilities.

**Region of Durham**

The Region of Durham operates one small landfill in Brock Township, with the majority of its waste (150,000 tonnes per year) hauled to Michigan. Most of this waste is generated by the single-family residential sector and a very small amount by the multi-unit residential sector. Little to no commercial waste is managed or disposed by the Region.

The Region has invested in expanded diversion programs reaching 36% diversion in 2005. The cost for disposal reported for the 2004 MPMP was $89/tonne (haul, post-closure landfill costs, Michigan tip fees), well above the OMBI average. As noted above Durham is investing with York in an EA process to secure long-term residual waste processing capacity. The cost of managing residual waste is expected to escalate to over $100 per tonne with the implementation of new residual waste processing facilities.

**City of Toronto**

Up until 2002 the majority of Toronto’s waste (and other GTA municipal waste) was disposed at the Keele Valley landfill owned by the City and located in Vaughan. With closure of Keele in late 2002, 806,000 to 1,000,000 tonnes per year of Toronto’s municipal waste and wastewater residues were exported to Michigan, and the cost for disposal escalated by over 400% from $12 to $52 per tonne.
Toronto offers limited programs for the commercial sector, including a 'yellow bag' user pay system. When the Keele Valley landfill closed and disposal costs escalated, there was a 30% reduction in the volume of waste managed by the City and a decrease in revenues for the waste management system, as over 200,000 tonnes per year of commercial waste left the City's system to be managed by the private sector.

The City has undertaken unsuccessful competitive processes to find temporary or permanent alternatives to the export of its solid waste and wastewater residues. Toronto recently initiated the preparation of EA Terms of Reference, to undertake an EA process and find a long-term solution for the management of residual waste.

Yours truly,

MacViro Consultants Inc.

To: Members of City of London Environment & Transportation Committee

From: Jack Sifton, W12A Area Resident

I am writing this letter, hoping that it will help to provide information that members of the Committee can use when deliberating the W12A issue.

I think it is unfortunate that the previous report you received from Peter W. Steblin and James P. Barber, dated May 12, 2006, leaves erroneous impressions of the way this issue has evolved.

Reading this report would suggest:
(i) that there has been very active Community participation in recent years since annexation
(ii) that we have been informed of all aspects of the evolution of W12A
(iii) that there was an organized, active, W12A Site Liaison Committee in recent years
(iv) that the City of London, standing in the place of the Township (Town) of Westminster has done so by maintaining the policies and agreements of that Municipal Government, as those relate to the W12A Landfill.

Speaking for myself, I have been unaware of the City’s expansionist activities until 2004. The issuance of the draft terms of reference for the W12A Area Study was a wake up call.

This was despite the more than passing interest I previously had in the issue. I was Co-chair of the Citizens’ Committee that participated in the Environmental and Municipal Board Hearings in the 1970’s, when the W12A Site was established. The committee had legal representation with official standing at those hearings.

Since that time, I have relied on the local municipality to represent the interest of the area, which they had done until 1993.

Since 1993, I have been relying on the City of London to continue to represent local interest and to maintain the conditions mandated by the Ontario Municipal Board orders of 1975.

I was more than disappointed when I learned in 2004, through the draft terms of reference for the W12A Area Study that the City had taken the position for more than 10 years that they had no legal obligation to honor those hard fought for agreements, but also had not made this decision known.

Since then I have come to realize that the City has been increasingly failing to honour or intending to fail to honour the terms of those agreements as the years have passed.

Included below are examples of some of the ways the City ignored the terms of those agreements. Is it at all surprising that W12A area residents want this Landfill closed?

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1975 Indenture, Section 12
section 12. Regional Use of the Landfill Site or Use by

Other Municipalities. The City will not take any initiative to allow the Landfill Site to become a regional landfill site and will not permit other municipalities to use the Landfill Site without the consent of the Township; provided, however, that the disposal of processed waste at the Landfill Site previously processed at a regional resource recovery centre authorized by law to serve the London area shall not be deemed to constitute a breach of the foregoing provisions of this Section.

A/ According to the Report of May 12, "The City of London in 1995 instituted a Waste Management Plan ..." with the intention of offering other Municipalities the use of W12A.

B/ The Upgrades to Hauled Liquid Waste Receiving Facilities Class Environmental Assessment Schedule 'C' Environmental Study Report, April 2006

Would establish an on Site a Treatment Plant that would not only treat site leachate but also receive and treat leachate from another Municipality and would receive domestic septage, holding tank, waste chemical toilet waste, non-hazardous commercial and industrial from outside the City of London. (See Executive Summary)

II 1975 Indenture, Section 5 (b) and Section 1 (d)

(b) utilize the Landfill Site solely for the purposes of the disposal of Disposable Waste Materials;

(d) "Non-Disposable Waste Materials" means:

(i) explosive or highly combustible material of any nature;

(ii) car bodies;

(iii) sheet iron and other scrap metal;

(iv) tree stumps and trees having a diameter greater than ten inches or a length greater than four feet;

(v) any corrosive or toxic materials;

(vi) any carcasses of animals larger than a dog;

(vii) waste building materials unless specified under subparagraphs (vi) and (vii) under the definition of Disposable Waste Materials above; and
(viii) liquid wastes; including waste of every nature and kind as is now or may hereafter at any time be prohibited for disposal at a landfill site by reason of any statute or regulation of the Province of Ontario now or hereafter enacted, promulgated or amended.

(A) Household Special Waste Facility on Site

(B) Explosives Storage on Site

(C) PCB Storage Area on Site

(D) Pad to Stockpile and Grind Wood on Site

(E) Ammo Burn Designated Area on Site

(F) Hauled Liquid Waste Pretreatment Facility Proposed for on Site

III 1975 Indenture, Section 11

Section 11. Resource Recovery Centre Prohibited. The City shall not locate at the Landfill Site any centre for resource recovery, separation or similar processing facilities without the consent of the Township.

Household Special Waste Depot (See Section 3.7 of 2004, W12A Annual Report)

IV 1975 Indenture, Section 5 (q)

(q) prohibit the entry into the Landfill Site of all vehicles having a registered gross weight of 7,000 pounds or less in circumstances when the operators thereof intend to dispose of Disposable Waste Materials originating from residential premises outside of the Township; it being understood that vehicles of such
weight coming to the Landfill Site for the purpose of disposing of Disposablc Waste Materials originating from any points within the Township shall be allowed the privilege of entry free of charge, subject only to any direction hereafter given by the Ministry of the Environment which may require such waste to be taken to any resource-recovery centre hereafter established to serve the City of London.

A/ Now allowing access to London residents

B/ Now not allowing access to all of former Westminster Township

V 1975 Indenture, Section 5 (n)

(n) ensure that no burning shall be performed at the Site and that accidental fires will be controlled by the provision of a stock pile of earth in or adjacent to the working area to smother such fires; suitable fire extinguishers shall be kept and maintained in working order in all structures and equipment and a water tank truck shall be either maintained at the Site or available to the Site on short notice;

for the year 2004, AMMO burns were reported on February 10, April 19, June 2, and October 29. (See 2004 W12A Annual Report)

The City has known for years that the W12A Site Liaison Committee was not meeting and that the community involvement would not be wide-spread as a result of any notifications directed to that entity.

I am further disappointed by the misquoting of an excerpt from the indenture, dated January 24, 1975, which
provided for a maximum period of use of 20 years from the date that the Site shall first come into operation "unless such use shall have been consented to by the Township" rather than what the agreement actually says - "unless such use beyond such period shall have been consented to by the Township and should any dispute arise in relation to such consent, unless approval shall, in such event, have been secured from the Ontario Municipal Board.

In that same paragraph on Page 8 of Agenda Item #2 and elsewhere, the Report suggests that the January 27, 1975, joint use agreement Section 14, was intended to supersede the terms of the January 24, 1975, indenture rather than what it actually was, a clause of the joint use agreement specifying that the joint use agreement would continue in effect for as long as the City continued to use W12A for waste disposal unless the Township terminated the joint use agreement of January 27, 1975.

Note 1975, Indenture, Section 9

Section 9. Maximum Period of Use of the Landfill Site. The City shall not utilize the Landfill Site for the disposal of Disposable Waste Materials for a period of more than twenty (20) years computed from the date when the Site shall first come into operation for such purpose unless such use beyond such period shall have been consented to by the Township and should any dispute arise in relation to such consent, unless approval shall, in such event, have been secured from the Ontario Municipal Board or its successor, legislatively empowered to consider the matter in the place and stead of the Ontario Municipal Board.

1983 Amended, Section 9

2. Section 9 of the said indenture is struck out and the following substituted therefor:

Section 9. Maximum Period of Use of the Landfill Site. The City shall not utilize the Landfill Site for the disposal of Disposable Waste Materials after the 31st day of August, 2006, being twenty-nine (29) years from August, 1977, the month when the Site commences operation for such purpose, unless such use beyond the 31st day of August, 2006, shall have been consented to by the Township and should any dispute arise in relation to such consent, unless approval shall, in such event, have been secured from the Ontario Municipal Board or its successor, legislatively empowered to consider the matter in the place and stead of the Ontario Municipal Board.
Subsequently the report suggests that this agreement provides only for a moral obligation to area residents rather than the numerous legal obligations of the City, some of which I have previously referred to as being ignored by the City. Even those moral obligations carry less and less weight.

For Example:

A/ The City has gone from walking crews regularly picking up debris on Wellington Road to driving by in a truck resulting in a large loading pallet laying in the ditch in front of my property for 9 months (as a test by me) until I called the City.

B/ The City experienced a large fuel spill at W12A that migrated off Site, required weeks of clean up, is under investigation by the Ministry of the Environment and yet to my knowledge has not informed area residents of the problem. I only learned of this by reading the 2004 W12A annual report.

I hope that the words provided in that report are a result of unfortunate errors and omissions and that the authors would choose to provide further clarifications as to the nature of these agreements being referenced to the members of the Environment and Transportation Committee prior to the meeting on June 19, 2006.

I would further urge the Committee Members to read those agreements prior to the June 19, 2006, meeting.

Jack Sifton

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C.C. Peter W. Steblin, General manager of Environmental & Engineering Services
James P. Barber, City Solicitor
Members of London City Council