Report - Standing Policy Committee on Public Works - November 19, 2002

3. Authority to Amend Shoal Lake Trust Agreement
File WW-3.1 (Vol. 3)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 4, 2002, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Public Works and recommends to Council:

1. That Council delegate the authority to approve amendments to the Shoal Lake Trust Agreement to the Executive Policy Committee.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing, including the execution of any documents related thereto.

Report - Standing Policy Committee on Public Works - November 19, 2002

STANDING COMMITTEE RECOMMENDATION:

On November 19, 2002, the Standing Policy Committee on Public Works concurred in the administrative recommendation:

RE: AUTHORITY TO AMEND SHOAL LAKE TRUST AGREEMENT

For submission to: Standing Policy Committee on Public Works

Original report signed by: Barry D. MacBride, P. Eng., Director

Report date: October 29, 2002

In camera item: No

Recommendation(s):

That council delegate the authority to approve amendments to the Shoal Lake Trust Agreement to the Executive Policy Committee.

Report Summary

Key Issues:

- The Shoal Lake Agreement was executed by the City of Winnipeg, Province of Manitoba and Shoal Lake Indian Band #40 in 1989. It has a 60-year term.
- The Agreement requires that the First Nation regulate development and take certain actions to preserve water quality in exchange for monetary consideration.
- Winnipeg and Manitoba contributed $3,000,000.00 each to a trust (the Shoal Lake Trust) to generate income for the First Nation. The First Nation receives the investment income from the trust annually, as well as a 1/60th interest in the principal for each year the First Nation participates in the agreement. The principal remains intact until the Agreement is terminated or expires.
- An Agreement committee consisting of the Mayor, Minister of Urban Affairs and the Chief provides agreement oversight. All decisions must be made by consensus.
- The Shoal Lake Working Group, comprised of two members each from Manitoba, First Nation #40 and Winnipeg, administers the agreement.
- The trust is administered and invested by a trustee under the terms and conditions of the Shoal Lake Trust Agreement. The trustee reports periodically to the Working Group and the Agreement Committee.
- From time to time it is necessary to change the trustee and amend the terms of the Shoal Lake Trust Agreement. In order to streamline this process, it is recommended that Council delegate Winnipeg's authority to approve amendments to the Shoal Lake Trust Agreement to the Executive Policy Committee.

Implications of the Recommendation(s):

General Implications

X	None
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment:

Policy implications

X	No
	Yes

Comment:

Financial Implications

X	Within approved current and/or capital budget
	Current and/or capital budget adjustment required

Comment:

Report

Recommendation(s):

That council delegate the authority to approve amendments to the Shoal Lake Trust Agreement to the Executive Policy Committee.

Reason for the report:

Council has authority to delegate the power to amend this agreement.

History:

June 1989: The Province of Manitoba, the City of Winnipeg, and Shoal Lake # 40 First Nations signed the Shoal Lake Agreement to protect Winnipeg's water supply. The agreement made provision for establishing a trust fund made up of equal contributions of $3,000,000.00 each from the City and the Province. The income from the trust was to be paid out to the First Nation on a regular basis for 60 years, provided the terms of the Shoal Lake Agreement were met. The Shoal Lake Trust Agreement was also signed by the parties to implement the trust fund provisions. These agreements were to come into force once a parallel agreement was signed between the First Nation and Canada.

September 1990: Shoal Lake First Nation #40 signed an agreement with Canada as required pursuant to the Shoal Lake Agreement.

September 1995: The Shoal Lake Agreement committee appointed CIBC Trust to replace Royal Trust as trustee for the Shoal Lake Trust. Several concerns were identified with respect to the Shoal Lake Trust Agreement. The Agreement committee, consisting of the Mayor, the Chief of First Nation #40 and the Minister of Urban Affairs passed a resolution, approving the revised trust agreement, subject to the approval of their respected jurisdictions.

December 1995: Council approved the revised Shoal Lake Trust Agreement.

Discussion:

The Shoal Lake Agreement was signed by Manitoba, Winnipeg and Shoal Lake Band #40 in June of 1989. The agreement contained language requiring that a parallel agreement be signed by the Indian Band and the Federal Government as a precedent condition to the Shoal Lake Agreement taking effect. The Shoal Lake Agreement has a term of 60 years. The objectives of the agreement are generally as follows:

- To protect and maintain the quality of Winnipeg's drinking water.
- To develop a comprehensive waste management system for Shoal Lake Indian Band #40 in order to protect the water quality at Indian Bay.
- To promote the economic viability of Shoal Lake Indian Band #40.

The Shoal Lake Agreement committee comprised of the Mayor of the City of Winnipeg, the Chief of Shoal Lake Indian Band #40, and a designated minister of the Province of Manitoba (currently the Minister of Urban Affairs) provides oversight concerning the administration of the

Agreement. Decisions of the Shoal Lake Agreement committee must be by consensus. Where there is no unanimity, any party may seek recourse to arbitration or mediation.

Day to day administration of the Shoal Lake Agreement is undertaken by the Shoal Lake Working Group, which consists of two representatives each from the City of Winnipeg, the Province of Manitoba, and Shoal Lake Indian Band #40, who are appointed by their respective representatives on the Agreement Committee.

The Shoal Lake Agreement Committee is required to meet at least once annually to consider a report from the Shoal Lake Working Group concerning the operation of the Agreement and to authorize actions required pursuant to the Agreement. This includes the disbursement of funds to Shoal Lake Indian Band #40 if they have conformed to the requirements of the Shoal Lake Agreement.

A trust fund, made up of equal contributions of $3,000,000.00 each from the City and the Province, was established when the Shoal Lake Agreement was executed. A trustee, under the terms and conditions of a Trust Agreement, invests this $6,000,000.00 principal. The First Nation receives the investment income from the trust annually provided that the terms of the Shoal Lake Agreement are met. The First Nation also receives a 1/60th interest in the principal for each year the First Nation participates in the agreement. The principal remains intact until the Agreement is terminated or the term of the agreement (60 years) expires.

The Shoal Lake Agreement Committee, upon recommendation from the Shoal Lake Working Group has, from time to time, changed the trustee for the Shoal Lake Trust, and made amendments to the Shoal Lake Trust Agreement. Changes to the Trust Agreement can result from a number of factors, including a change to the trustee, a change to the trustee act, or evolving case law as it pertains to taxation and trusts. At the present time Council must approve these amendments. In order to streamline this process it is recommended that Council delegate Winnipeg's authority to approve amendments to the Shoal Lake Trust Agreement to the Executive Policy Committee.

Financial Impact Statement:

There is no financial impact associated with this report.

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Moira L. Geer C.A.
Manager of Finance and Administration

In preparing the report, there was consultation with and concurrence by: the Legal Services Division of the Corporate Services Department.

This Report Submitted By:
Water and Waste Department
Water Services Division
Prepared by: T. R. Pearson, P. Eng.
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