

Date: March 13th, 2009
To: Murray Thompson, URS Canada
From: Tyler Drygas, Senior Environmental Planner, URS Canada
Reference: Detroit River International Crossing Study
Subject: Response to Submission by City of Windsor including Planning Analysis Report dated March 2009 and GreenLink Planning Analysis prepared by Walker Nott Dragicevic Associates Ltd. dated March 17th, 2008

The following memo provides a response to the planning issues raised in the City of Windsor's February 27th 2009 submission, as summarized from the Planning Analysis report prepared by Peter Walker of Walker, Nott, Dragicevic Associates Ltd (WND) for the City of Windsor, dated February 2009. The memo also addresses the planning and policy issues and remarks outlined in the GreenLink Planning Analysis report prepared by Walker, Nott, Dragicevic Associates Ltd., dated March 17th, 2008, which was also included as part of the City of Windsor's submission.

The response has been structured to address the major themes from the two submissions. These two major themes relate to the overall study process and planning policy issues of the project, and to the general evaluation and selection of the Windsor-Essex Parkway as the recommended access road alternative.

Study Process / Planning Policy Issues

The first major theme from the two submissions relates to the overall study process and planning policy issues of the project. The March 2008 Planning Analysis report presents the following overarching conclusions concerning the Parkway alternative relative to the City's GreenLink Plan:

- The Parkway is not consistent with provincial planning policies and that the Parkway "...has evolved from a process that does not appear to have considered the Provincial Policy Statement or the provisions of the City's Official Plan in the comprehensive manner that both policy documents require."
- GreenLink is more responsive and in conformity with the Provincial Policy Statement and City of Windsor Official Plan
- GreenLink is "far more responsive to the EA process for...impact on existing and planned use of lands".

In reviewing the March 2008 planning analysis report, the DRIC study team disagrees with the WND interpretations of the process, policy requirements and context associated with the above noted conclusions. The comments and conclusions presented in the report appear to be made solely from a land use planning perspective rather than a transportation planning and environmental assessment perspective. Although land use issues are an important consideration in the study, the DRIC study has been undertaken under an environmental assessment (EA) process, which considers a broader range of factors to guide the evaluation of alternatives and the

selection of a preferred solution. The following outlines the details and rationale behind the DRIC study team’s observations on the March 2008 WND planning analysis report.

An underlying argument presented in the WND analysis report concerns the policy context and requirements associated with undertaking the DRIC study. The DRIC study team disagrees that the Ontario Planning Act is the “first level of legislation with respect to planning matters” for the DRIC undertaking and note that the planning process for DRIC is not a “planning matter” under the Planning Act. Transportation infrastructure projects are not addressed under Planning Act approvals. The Planning Act (and the Provincial Policy Statement) is triggered by a Planning Act application (which applies to official plans, official plan amendments, condominium and subdivision plans community improvement plans, zoning by-law amendments, minor variances etc.). The environmental assessment process is an entirely different legislative framework and looks at a much broader range of factors than those identified in the Planning Act (and Provincial Policy Statement). The definition of “environment” under the EA Act requires the evaluation of a range of factors beyond that which is considered under the Provincial Policy Statement. It is for these reasons that infrastructure projects are addressed under different legislation and that the Ontario Environmental Assessment Act is the operable legislation for infrastructure projects.

The Detroit River International Crossing EA is being undertaken consistent with the requirements of the Environmental Assessment Act (not the Planning Act). To meet the requirements of the EA, an EA Terms of Reference (ToR) was prepared and approved by the Ontario Ministry of the Environment. The approved ToR outlines the process to be employed to facilitate the identification of relative advantages and disadvantages of alternatives, including the natural, socio-economic, cultural and technical factors to be considered. The seven factors used in the DRIC study area are consistent with/representative of those identified in the approved ToR.

The Provincial Policy Statement, 2005 (PPS) provides policy direction on matters of provincial interest related to land use planning and development under the authority of and requiring approval under the Planning Act. Although the PPS policies relate to development under the Planning Act, they have been considered in developing the evaluation process for the DRIC EA.

This study has considered more than simply the “transportation-related policies” of the PPS. PPS policies have been referenced in the DRIC study as an input to criteria developed to identify the relative advantages and disadvantages of alternatives in selecting a preferred solution. The policies in Section 4 of the PPS have been used as one of the key inputs for establishing the criteria for assessing and evaluating alternatives, as illustrated in the approved ToR (refer to Supporting Document B4 and B5). For example, in Supporting Document B(6) of the ToR, criteria for considering Groundwater impacts (item 13) in the evaluation of illustrative and practical alternatives are identified. The rationale for the selection of this criterion includes reference to the PPS. To relate this to the seven factors used in the DRIC evaluation process, groundwater is identified as a criterion under the “Protection of the Natural Environment” factor.

As illustrated in the criteria outlined in the approved ToR and subsequently the seven evaluation factors used to assess and evaluate alternatives, the Provincial Policy Statement and municipal Official Plans have been considered in the environmental assessment process that the DRIC project has followed. However, these are only two of several elements that are considered in

decision making under an environmental assessment process. Community and environmental factors have been considered in view of the full range or criteria used to evaluate alternatives, which considers but does not exclusively include those policies outlined in the PPS. There are over sixty statutes and supporting regulations and formal government policies, which are reviewed and interpreted to determine how each is applied to transportation planning, highway design and environmental protection under the EA process. Relevant polices were reviewed, considered and translated into factors to be considered in the EA as part of the approved EA Terms of Reference. Further, relevant polices have also been incorporated into the MTO Environmental Reference for Highway Design (2002/2006) which has also been considered in this study.

The goal of the DRIC project is “to provide for the safe, efficient and secure movement of people and goods across the Canada-U.S. border in the Detroit River area to support the economies of Ontario, Michigan, Canada and the U.S.” In addressing this primary goal, the process and factors considered in this study have been geared towards considering broader provincial objectives such as maintaining strong communities, a clean and healthy environment and strong economy as outlined in Section IV of the PPS.

With regard to the statement that changes to land use need to be made “in conformity with the Official Plan unless an amendment is being requested”, although municipal land use aspirations and approved planning documents are considered in the process of selecting a TEPA (in the assessment of advantages and disadvantages of the alternatives considered), the Provincial and Federal government do not need to conform to municipal official plans under the federal or provincial EA process. Nevertheless, the consideration of local municipal policies in this study has been consistent with the criteria outlined in the approved ToR and the Partnership has continued to consult and address municipal issues as the project moved forward.

While the March 2008 WND Report references the seven evaluation factors in its comparison of GreenLink and the Parkway, the comparison is largely portrayed from a land use planning perspective and appropriate EA considerations and policy documents have not been not fully considered. The DRIC study has followed a traceable and defensible process for generating and evaluating practical alternatives, consistent with the EA process outlined in the approved ToR. While it is acknowledged that GreenLink provides more parkland by virtue of the longer tunnel sections associated with this concept, and it can therefore be argued that GreenLink has advantages over the Parkway in this regard, the longer tunnels carry higher costs. In addition, constructing tunnels longer than those proposed in the Windsor-Essex Parkway would not provide additional improvements in air quality. The longer tunnels of the GreenLink proposal could actually result in *increased* emissions near tunnel portals because emissions that would otherwise be dispersed over a larger area would now be concentrated at the portals. The DRIC Study has been implementing a systematic and defensible process for the assessment of alternatives using criteria that reflects the Provincial Policy Statements, municipal Official Plans and other relevant policy documents.

The WND report notes that GreenLink is “far more responsive to the EA process for the element that involve...impact on existing and planned use of lands” and that “The Parkway does not provide the scale of relief that is needed...”. There is no planning legislation, which dictates an

appropriate “scale of relief” for mitigation or design measures to achieve project needs, goals and objectives or address potential adverse environmental effects. Although standard mitigation measures have been identified in government policies and guidelines for transportation projects, the appropriateness and applicability of such measures needs to be determined on a project basis through the EA process.

The March 2008 WND report also notes that the GreenLink proposal has been developed to provide significantly better mitigation of impacts than the Parkway. It must also be recognized that the scale or type of mitigation to address potential adverse environmental effects is considered in the context of tradeoffs relative to all seven environmental factor areas and not just the specific environmental effect the mitigation intended to address. In addition, it is noted that at the time of preparing the March 2008 report, complete mitigation and enhancement measures for the Parkway had not yet been developed. The Environmental Assessment Report (December 2008) prepared for the DRIC project outlines all necessary and recommended environmental protection and enhancement measures that have been developed in consultation with stakeholders at a preliminary / conceptual level.

Evaluation and Selection of The Windsor-Essex Parkway

In addition to the planning policy issues raised in the March 2008 submission and discussed above, the February 27th, 2009 submission by Walker, Nott, Dragicevic Associates Ltd asserts that “...DRIC had failed to undertake a “supportable, rational or accurate” examination and ranking of the planning impacts of the W-E Parkway as compared to the other practical alternatives”. Both the updated WND report and the City’s submission include overarching statements regarding the evaluation of the alternatives, in particular in relation to the “Protection of Community and Neighbourhood Characteristics” and “Maintain Consistency with Existing and Planned Land Use” factors. The complete evaluation and selection of practical alternatives in relation to these factors, along with a detailed description of how the evaluation was completed, is documented in the *Social Impact Assessment – Practical Alternatives Evaluation Working Paper, Existing and Planned Land Use – Practical Alternatives Evaluation Assessment Report*, and is summarized in the Environmental Assessment Report itself.

The evaluation of both illustrative and practical alternatives was based on consideration of seven key factor areas, with the recommended Area of Continued Analysis (ACA) and ultimately the Technically and Environmentally Preferred Alternative (TEPA) selected on the basis of the optimal balance of these factors. Each of the seven key factor areas were comprised of several individual elements that were considered and weighed in determining the preferred alternative for that particular factor area. The City’s submission overly simplifies the evaluation through its discussion of the individual elements of the factor areas, and appears to suggest that a preference in just one or two of these elements should automatically result in a preference for the factor as a whole.

As an example, the City notes that the W-E Parkway results in twice the number of residential displacements and residential land requirements as the full tunnel alternative, implying that as a result the W-E Parkway “...has particularly negative impacts with regards to the Protection of Community and Neighbourhood Characteristics”. The displacement of residential properties, while certainly an important consideration in the selection of a preferred access road alternative,

is just one of ten performance measures considered in the “Protection of Community and Neighbourhood Characteristics” factor area. In addition to residential displacements, performance measures included in this factor area included, among others, traffic impacts, noise and vibration, business and social feature impacts, and community/neighbourhood impacts. As discussed below, taking into consideration all of the negative and positive impacts of the alternatives, there is a slight preference for the W-E Parkway from a Community and Neighbourhood Characteristics perspective, despite the fact that it has the highest residential displacements.

Although the number of residential displacements does vary by alternative, all displacements are considered to create a hardship for residents, and as such the evaluation identifies a high impact. Even when considering the actual number of displaced residents, one must consider issues such as the nature of the displacement in terms of its impacts within the broader neighbourhood, or the likelihood that residents remaining very near the access road would experience future nuisance impacts were they not physically displaced. The majority of the additional residential displacements of the W-E Parkway result from its wider right-of-way to accommodate buffer zones between the roadway and the neighbourhood. Anecdotal evidence collected during public consultation events suggests that many residents would prefer to be displaced than to experience long term nuisance effects associated with living directly adjacent to a busy transportation corridor. The additional green space buffer provided by the W-E Parkway not only provides opportunity for new recreational space along the entire corridor, but the additional displaced properties are those that would otherwise have likely been the most impacted by future nuisance impacts such as noise and dust. The tunnel alternative results in nuisance effects unique to this design that the W-E Parkway or other alternatives do not. The ventilation buildings associated with the tunnel design create potential aesthetic and other nuisance effects for those neighbourhoods in close proximity to the access road.

In general terms and as detailed throughout the EA Report and the technical reports noted above, all practical access road alternatives were considered to have a high impact to the community due to the displacement of residents, social features and businesses. Simply because one alternative displaces less businesses than another is not necessarily grounds for preference of that alternative, as business loss along the corridor is offset by the ability of these businesses to locate elsewhere in the local area. While the tunnel alternative may result in slightly less business displacements than the W-E Parkway, the reduced visibility for remaining businesses is considered to offset the lower number of displacements.

All alternatives were equally preferred on the basis of the separation of local and international traffic, deterring infiltration of international traffic onto local municipal streets. Additional benefits of the W-E Parkway include a buffer area between residences and the roadway, an opportunity for additional parkland and recreational features, and connectivity between communities and community features that currently does not exist.

With regard to the factor area “Maintain Consistency with Existing and Planned Land Use”, the City’s submission and WND report note that the W-E Parkway results in the greatest area of land use impacts, and that placing the access road adjacent to a residential area is not consistent with established planning and zoning in the area. The evaluation of land use impacts was completed

in a thorough and comprehensive manner, and the DRIC study team is confident in the conclusions derived throughout the evaluation. The detailed evaluation of practical access road alternatives is described in the *Existing and Planned Land Use – Practical Alternatives Evaluation Assessment Report*, and is summarized in the Environmental Assessment Report. In addition, the amount of land that will be required for all alternatives represents a small percentage of the existing land use within each municipality affected. More importantly, the existing Highway 3/Huron Church Road corridor has evolved over the years into a major highway, and existing residential land uses along the corridor are not a compatible land use due to the volume of traffic already being experienced, and the numerous curb cuts that allow for direct access to these residential properties.