

BY-LAW NO. 7099

BEING A BY-LAW of the City of Brandon to ensure adequate public facilities are available concurrently with the completion of new development, whereby this by-law is to be referred to as the “Adequate Public Facilities By-law”.

WHEREAS the Water and Wastewater By-law No. 6957 requires all properties to connect to the City of Brandon water distribution and wastewater collection system;

AND WHERE AS the Lot Grading and Drainage By-law No. 6626 requires properties to be properly graded and direct runoff water toward public facilities intended to handle said flow; and the proper management of storm water runoff from all properties is provided through a local drainage infrastructure system of storm water inlets, pipe, ditches, channel, gutters and detention ponds and the inter connection of this infrastructure to drainage systems beyond the city’s jurisdiction;

AND WHEREAS the Brandon & Area Planning District Development Plan in Section 1.6.2 General Objectives, Clause (c) states: “To ensure that future developments are serviced with appropriate levels of infrastructure, and to minimize public expenditures for construction, upgrading and maintaining infrastructure by means of sound land use planning and development”;

AND WHEREAS the Brandon & Area Planning District Development Plan in Section 1.6.2 General Objectives, Clause (d) states: “To provide for transportation systems which move people and goods safely and efficiently within and through the Brandon & Area Planning District, and provide suitable measure of protection for these systems”;

AND WHEREAS The Municipal Act, C.C.S.M. c.M225, Sections 231 and 232, enables the adoption of by-laws respecting life, safety and well-being of people and property in the City of Brandon;

AND WHEREAS The Planning Act , C.C.S.M. c. P80, at Section 13 thereof, confirms the council of a municipality is responsible for the adoption, administration and enforcement and by-laws respecting land use and development within the municipality;

AND WHEREAS it is deemed expedient and in the best interests of the City of Brandon to adopt the Adequate Public Facilities By-law;

NOW THEREFORE the Council of the City of Brandon, duly assembled, enacts as follows:

PART I: PURPOSE/DEFINITIONS/INTERPRETATION

1. PURPOSE

It is the purpose of the City of Brandon to preserve the welfare of current and future residents of Brandon and to facilitate growth in an orderly manner by ensuring that adequate public facilities are available concurrently with the completion of new development.

2. DEFINITIONS

For purposes of this By-law, the following terms, phrases, words, and their derivations shall have the meanings as set forth herein.

- a) **“By-law”** means this By-law and all subsequent additions or amendments thereto.
- b) **“Capital Improvements Program”** means the City’s adopted schedule of all major projects requiring the expenditure of public funds, over and above the City’s annual operating expenses, for the purchase, construction, and/ or replacement of physical assets for the community where the City owns such public facilities.. If the City does not own the road and/or water and/or wastewater and/or drainage system, then this means the schedule of all major projects relative to the capacity of the system in question, as adopted by the road and/or water and/or wastewater and/or drainage system of the Developer and/or the owner of the new development.

- c) **“City”** means the City of Brandon.
- d) **“Consultant”** means an individual employed by or acting on behalf of the Developer or the City, who shall be duly licensed to practise in Manitoba by the Association of Professional Engineers and Geoscientists of the Province of Manitoba, and qualified to review and analyze the adequacy of public facilities.
- e) **“Council”** means the duly elected Mayor and Councillors of the City.
- f) **“Developer”** means any individual who intends on obtaining the approval of Council or Administration where delegated by Council or by the Brandon & Area Planning District Board in order to plan for and proceed with a new development.
- g) **“Development Agreement”** means a contract made between the City and a Developer(s) which specifies the respective responsibilities and obligations as between the City and the Developer(s) for both existing and/or proposed and/or future public facilities which must be undertaken and fulfilled in conjunction with this By-law;
- h) **“Development Pipeline”** means approved, not sunsetted, and unbuilt lots for which there is an entitlement and expectation of use of the City of Brandon wastewater and/or water capacity for development projects of any type that are approved and under construction and bound by a Development Agreement;
- i) **“Engineer”** means the City Engineer or Senior Engineer employed by the City or any person delegated to act on behalf of the City;
- j) **“Equivalent Dwelling Unit”** means the flow of water or wastewater equivalent to the average flow of a single-family residential dwelling unit as calculated by the Consultant and confirmed by the Engineer;
- k) **“Individual”** means a natural person, partnership, firm, joint venture, corporation, association, club, not for profit entity or trust, including but not limited to the manager, lessee, agent, representative, employee, director, officer or shareholder thereof;
- l) **“New Development”** means new subdivisions, amendments to the Zoning By-law of the City, variances or conditional use which require approval by Council or by Administration where delegated by Council or by the Brandon & Area Planning District Board as of and following the effective date of this By-law.
- m) **“Phase”** means a period of construction within a new development resulting in the completion of construction of a number of units equal to or less than the total number of units approved for the new development.
- n) **“Public Facilities”** means the existing and/or proposed and/or future road transportation systems, water treatment and distribution systems, wastewater collection and discharge systems, and storm water management collection and discharge systems within the City.
- o) **“Shall”** means mandatory and the word “May” means permissive or discretionary.
- p) **“Start of Construction”** means the date upon which the breaking of ground or disturbance of soil commences for construction of an approved new development or a phase of that development as prescribed within in an approved development permit as issued by the Planning & Building Department of the City.
- q) **“Subdivision”** means the division of land for purposes of a new development as prescribed by The Planning Act (Manitoba).
- r) **“Unit-type”** means a simple description which implies the use, general size and general appearance of a building or structure, including but not limited to a townhome, single-family residence and apartment.

3. INTERPRETATION

Within this By-law, words in the present tense shall include the future tense, the singular number shall include the plural and the plural shall include the singular. Headings and captions used anywhere within this By-law are inserted for convenience of reference only, and are not to be considered when interpreting this By-law.

PART II: ESTABLISHMENT & RESPONSIBILITIES

4. ADMINISTRATION OF BY-LAW

This By-law shall be administered by the Engineer or by its delegates. The Engineer or its delegates shall not recommend approval of any new development unless there are or will be public facilities which are deemed to be adequate in accordance with this By-law. Nothing within this By-law shall prevent the Engineer or its delegates from recommending approval of a Phase of a new development, if such Phase of the new development comply with the provisions of this By-law.

5. JURISDICTION

This By-law is applicable to all new development within the City, and all applications involving construction for a new development which are received by the City as of or following the date this By-law becomes effective.

6. REQUIRED REPORT AND COMPLIANCE

- (a) The Engineer shall determine if the Developer shall be required to provide a written report to the Engineer, verifying the adequacy of the existing and/or proposed and/or future public facilities provided for and/or impacted upon by the new development.
- (b) If the Engineer recommends that there be a written report, the application for the new development shall be held in abeyance until such time as the Developer completes the written report, submits it for review by the Engineer, and it is determined by the Engineer to be satisfactory for inclusion with the Developers application.
- (c) If a written report is required by the Engineer, and such written report concludes that all of the public facilities would be adequate to support the new development subject to the requirements as set forth in this By-law and/or any other by-laws of the City, and in the event the Engineer agrees with such conclusions from the written report, then in such circumstances the public facilities shall be deemed to be adequate and the new development deemed to be compliant with this By-law.
- (d) Should the Engineer determine that a written report verifying adequacy of existing and/or proposed and/or future public facilities for a new development is not required, the Engineer shall determine if the public facilities shall be deemed as adequate for the new development and if the new development shall be deemed to be compliant with this by-law.

PART III: WATER INFRASTRUCTURE

7. WATER

Any new development shall be served by a potable water supply and distribution system as deemed adequate in accordance with this By-law.

8. DEVELOPER SUBMISSION

A Developer shall submit a summary in writing of a planned new development to the Planning & Building Safety Department which shall include the following details:

- (a) An enumeration of the unit-types and number of each unit-type planned for the new development.
- (b) Equivalent Dwelling Unit figures for water in relation to each unit-type planned for the new development.

9. DETERMINATION OF WATER TREATMENT AND DISTRIBUTION SYSTEM ADEQUACY

- (a) In accordance with the instructions and directions provided by the Engineer, the Developer shall submit a written report to the Engineer, prepared by a qualified Consultant, addressing the adequacy of the City's water system to support a new development, recommend water system upgrades necessary to support new development, if any, and to provide a recommendation to the Engineer with respect to whether the water system of the City is adequate or inadequate if there is to be a new development. In particular, the written report prepared by a Consultant acting on behalf of the Developer shall, at a minimum, analyze and discuss the following elements:
 - i. The water treatment and distribution system's design capacity;
 - ii. The water system's supply source in terms of reliability of supply;
 - iii. The water treatment and distribution system's available capacity;
 - iv. The projected water flow of proposed new development including domestic consumption and fire protection;
 - v. Existing storage, treatment, and pumping facilities affected by the proposed new development;
 - vi. The impact of projects in the development pipeline within the boundaries of the City upon the water treatment and distribution system's available capacity;
 - vii. Projects appearing in the Capital Improvements Program that will affect the ability of the water treatment and distribution system to serve the new development;
 - viii. Other variables found to have an effect on the ability of the water treatment and distribution system to satisfy the projected water needs of the new development.
- b) In the event the written report of the Consultant acting on behalf of the Developer determines that the water treatment and distribution system of the City is inadequate, the Engineer shall deem the water treatment and distribution system to be inadequate for the purposes of this By-law, and not recommend approval of the new development or any application seeking approval for proceeding with construction of the new development, save and except in only the following situations where the Engineer may declare the water treatment and distribution systems to be adequate for the purposes of this By-law:
 - i. Projects in the Capital Improvements Program and/or improvements proposed by the Developer shall, according to the Consultant, and as agreed by the Engineer, allow the water treatment and distribution system's ability to support a new development, with there to be a Development Agreement specifying that the new development shall proceed in a manner such that the start of construction for a phase or phases of the new development, as determined by the Consultant and agreed by the Engineer to result in inadequate water treatment and distribution facilities without system improvements, does not proceed until such time as the water treatment and distribution improvements specified in the Capital Improvements Program and/or improvements proposed by the Developer are in place; and

- ii. A Development Agreement specifies that the Developer shall fund water treatment and distribution system improvements deemed necessary by the Consultant, and as agreed to by the Engineer, in order to provide adequate water treatment and distribution systems, and the Developer agrees that the new development shall proceed in a manner such that the start of construction for phases of the new development which were determined by the Consultant and as agreed by the Engineer, to result in inadequate water treatment and distribution systems without system improvements, does not proceed until the agreed upon Developer funded improvements are in place, or
- iii. A Development Agreement is entered into wherein the Developer and the City covenant and undertake jointly to improve the City's water treatment and distribution system according to the recommendations made by the Consultant, as agreed to by the Engineer, and which would require the Developer proceed in a manner such that the start of construction for phases of the new development, determined by the Consultant and as agreed upon by the Engineer to result in inadequate water treatment and distribution systems without system improvements, does not proceed until the agreed upon water treatment and distribution system improvements which are to be funded jointly by the City and the Developer are completed and in place.
- c) If the written report recommends that the water treatment and distribution systems be declared adequate then the Engineer shall verify said claim of adequacy by whatever means required before declaring the water treatment and distribution systems to be adequate for the purpose of this By-law.

PART IV: WASTEWATER INFRASTRUCTURE

10. WASTEWATER

Any new development shall be served by an adequate wastewater treatment and collection system.

11. DEVELOPER SUBMISSION

The Developer shall submit a summary of the planned new development to the Planning & Building Safety Department which shall include the following:

- a) An enumeration of the unit-types and number of each unit-type planned for the new development.
- b) Equivalent Dwelling Unit figures for wastewater in relation to each unit-type planned for the new development.

12. DETERMINATION OF WASTEWATER TREATMENT AND COLLECTION SYSTEM ADEQUACY

- a) In accordance with the instructions and directions provided by the Engineer, the Developer shall submit a written report to the Engineer, prepared by a qualified Consultant, addressing the adequacy of the City's wastewater treatment and collection system to support a new development, recommend wastewater system upgrades necessary to support new development, if any, and to provide a recommendation to the Engineer with respect to whether the wastewater system of the City is adequate or inadequate if there is to be a new development. In particular, the written report prepared by a Consultant acting on behalf of the Developer shall, at a minimum, analyze and discuss the following elements:
 - i. The wastewater treatment and collection system's design capacity;
 - ii. The wastewater treatment and collection system's available capacity;

- iii. The projected wastewater flow and loads to be generated by the proposed new development;
 - iv. The impact of projects in the new development pipeline within the boundaries of the City on the wastewater treatment and collection system's available capacity;
 - v. Projects appearing in the Capital Improvements Program that will affect the ability of the wastewater treatment and collection system to serve the new development;
 - vi. Other variables found to have an effect on the ability of the wastewater treatment and collection system to accept the projected wastewater flow and load from the new development.
- b) In the event the written report of the Consultant acting on behalf of the Developer determines that the wastewater treatment and collection system is inadequate, the Engineer shall deem the wastewater treatment and collection system to be inadequate for the purposes of this By-law, and not recommend approval of the new development or any application seeking approval for proceeding with construction of the new development, save and except only in the following situations when the Engineer may declare the wastewater treatment and collection system to be adequate for the purposes of this By-law:
- i. Projects in the Capital Improvements Program and/or improvements proposed by the Developer shall, according to the Consultant, and as agreed by the Engineer, allow the wastewater treatment and collection system's ability to support a new development, with there to be a Development Agreement specifying that the new development shall proceed in a manner such that the start of construction for a phase or phases of the new development, as determined by the Consultant and agreed by the Engineer to result in inadequate wastewater treatment and collection system facilities without system improvements, does not proceed until such time as the wastewater treatment and collection system improvements specified in the Capital Improvements Program and/or improvements proposed by the Developer are in place; and
 - ii. A Development Agreement specifies that the Developer shall fund wastewater treatment and collection system improvements deemed necessary by the Consultant, and as agreed to by the Engineer, in order to provide adequate wastewater treatment and collection systems, and the Developer agrees that the new development shall proceed in a manner such that the start of construction for phases of the new development which were determined by the Consultant, and as agreed by the Engineer, to result in inadequate wastewater treatment and collection systems without system improvements, do not proceed until the agreed upon Developer funded improvements are in place; or
 - iii. A Development Agreement is entered into wherein the Developer and the City covenant and undertake jointly to improve the City's wastewater treatment and collection system according to the recommendations made by the Consultant, as agreed to by the Engineer, and which would require the Developer proceed in a manner such that the start of construction for phases of the new development, determined by the Consultant and as agreed upon by the Engineer to result in inadequate wastewater treatment and collection systems without system improvements, do not proceed until the agreed upon wastewater treatment and collection system improvements which are to be funded jointly by the City and the Developer are completed and in place.
- c) If the written report recommends that the wastewater treatment and collection systems be declared adequate then the Engineer shall verify said claim of adequacy by whatever means required before declaring the

wastewater treatment and collection systems to be adequate for the purposes of this By-law.

PART V: DRAINAGE INFRASTRUCTURE

13. DRAINAGE

Any new development shall be served by an adequate storm water management, collection, and discharge system.

14. DEVELOPER SUBMISSION

The Developer shall submit a summary of the planned new development to the Planning & Building Safety Department which shall include:

- a) an enumeration of the unit-types and number of each unit-type planned for the new development; and
- b) a calculation of site coverage by impervious surface for pre and post development conditions.

15. DETERMINATION OF STORM WATER DRAINAGE SYSTEM ADEQUACY

- a) In accordance with the instructions and directions provided by the Engineer, the Developer shall submit a written report to the Engineer, prepared by a qualified Consultant, addressing the adequacy of the City's storm water drainage system to support a new development, recommend storm water drainage system upgrades necessary to support new development, if any, and to provide a recommendation to the Engineer with respect to whether the storm water drainage system of the City is adequate or inadequate if there is to be a new development. In particular, the written report prepared by a Consultant acting on behalf of the Developer shall, at a minimum, analyze and discuss the following elements:
 - i. The storm water drainage system's design capacity;
 - ii. The storm water drainage system's available capacity;
 - iii. The projected storm water drainage flow to be generated by the proposed new development and the projected storm water drainage flow for the lands to be developed in its pre-development condition using the City storm water drainage design criteria;
 - iv. Projects appearing in the Capital Improvements Program that will affect the ability of the storm water drainage system to serve the new development;
 - v. Storm water management techniques to be used by the Developer to mitigate impacts on the City storm water drainage system;
 - vi. Other variables found to have an effect on the ability of the storm water drainage system to accept the projected storm water flow from the new development.
- b) In the event the written report of the Consultant acting on behalf of the Developer determines that the storm water drainage system is inadequate, the Engineer shall deem the storm water drainage system to be inadequate for the purposes of this By-law, and not recommend approval of the new development or any application seeking approval for proceeding with construction of the new development, save and except only in the following situations when the Engineer may declare the storm water drainage system to be adequate for the purposes of this By-law:
 - i. Projects in the Capital Improvements Program and/or improvements proposed by the Developer shall, according to the Consultant, and as agreed by the Engineer, allow the storm water drainage system's ability to support a new development, with there to be a Development

Agreement specifying that the new development shall proceed in a manner such that the start of construction for a phase or phases of a new development, as determined by the Consultant and agreed by the Engineer to result in inadequate storm water drainage system facilities without system improvements, does not proceed until such time as the storm water drainage system improvements specified in the Capital Improvements Program and/or improvements proposed by the Developer are in place; and

- ii. A Development Agreement specifies that the Developer shall fund storm water drainage system improvements deemed necessary by the Consultant, and agreed to by the Engineer, in order to provide adequate storm water drainage systems, and the Developer agrees that the new development shall proceed in a manner such that the start of construction for phases of the new development, which are determined by the Consultant, and as agreed by the Engineer, to result in inadequate storm water drainage systems without system improvements, do not proceed until the agreed upon Developer funded improvements are in place; or
 - iii. A Development Agreement is entered into wherein the Developer and the City covenant and undertake jointly to improve the City's storm water drainage system according to the recommendations made by the Consultant, as agreed to by the Engineer, and which would require the Developer proceed in a manner such that the start of construction for phases of the new development, determined by the Consultant and as agreed upon by the Engineer to result in inadequate storm water drainage systems without system improvements, do not proceed until the agreed upon storm water drainage system improvements which are to be funded jointly by the City and the Developer are completed and in place.
- c) If the written report recommends, that the storm water drainage systems be declared adequate then the Engineer shall verify said claim of adequacy by whatever means required before declaring the storm water drainage systems to be adequate for the purposes of this By-law.

PART VI: TRANSPORTATION INFRASTRUCTURE

16. TRANSPORTATION SYSTEM

Any new development shall be served by a transportation system which includes an adequate network of roads and pedestrian systems.

17. DEVELOPER SUBMISSION

Any Traffic Impact Study completed subject to the requirements of this By-law shall include in its scope those projects in the development pipeline which are geographically proximate to the new development being evaluated under this By-law. The Developer shall include a plan showing the connection of the new development roads and pedestrian systems to the existing City transportation system.

18. DETERMINATION OF TRANSPORTATION SYSTEM ADEQUACY

- 1. In accordance with the instructions and directions provided by the Engineer, the Developer shall submit a written report, prepared by a qualified Consultant, to the Engineer addressing the adequacy of the City's road network and pedestrian transportation system to support new development, recommend transportation system upgrades, if any, necessary to support new development and recommend the Engineer find the transportation system adequate or inadequate if there is to be a new development.

In particular the written report prepared by the Consultant acting on behalf of the Developer shall at a minimum analyze and discuss the following elements:

- i. Existing transportation system capacity and expected capacity taken up by the proposed new development;
 - ii. Traffic flow analysis both pre and post development;
 - iii. Proposed new development road network street classification, and design;
 - iv. On-site and off-site improvements;
 - v. Public transportation routes;
 - vi. Traffic impact study analysis per City standard;
 - vii. Pedestrian walkways and crossings; and
 - viii. Other variables found to have an effect on the ability of the transportation system to function satisfactory.
2. In the event the written report of the Consultant acting on behalf of the Developer determines that the transportation system is inadequate, the Engineer shall deem the transportation system to be inadequate for the purposes of this By-law, and not recommend approval of the new development or any application seeking approval for proceeding with construction of the new development, save and except only in the following situations when the Engineer may declare the transportation system to be adequate for the purposes of this By-law:
- i. Projects in the Capital Improvements Program and/or improvements proposed by the Developer will, according to the Consultant and confirmed by the Engineer, allow the transportation system's ability to support new development, and a binding agreement specifies that new development will take place in a manner such that the start of construction for phases of new development, found by the Consultant and confirmed by the Engineer to result in an inadequate transportation system without system improvements, does not occur until the transportation system improvements specified in the Capital Improvements Program and/or improvements proposed by the Developer are in place, and
 - ii. A Development Agreement specifies that the Developer shall fund transportation system improvements deemed necessary by the Consultant and confirmed by the Engineer to provide adequate transportation systems, pursuant to this By-law, and the Developer agrees that development will take place in a manner such that the start of construction for phases of new development, found by the Consultant and confirmed by the Engineer to result in inadequate transportation systems without system improvements, do not occur until the agreed upon Developer funded improvements are in place, or
 - iii. A Development Agreement is entered into wherein the City and Developer covenant and undertake to jointly improve the City's transportation system according to recommendations made by the Consultant and confirmed by the Engineer, and which would require the Developer to proceed in a manner such that the start of construction for phases of new development, found by the Consultant and confirmed by the Engineer to result in inadequate transportation systems without system improvements, do not occur until such time as the agreed upon City and Developer funded transportation system improvements are in place.
3. If the written report recommends, that the transportation systems be declared adequate then the Engineer shall verify said claim of adequacy by whatever means required before declaring the transportation systems to be adequate for the purposes of this By-law.

19. This by-law shall come into full force and take effect on the day following its passage.

DONE AND PASSED by the Council of The City of Brandon duly assembled this 2nd day of September A.D. 2014.

"S. Decter Hirst"

MAYOR

"H. Ewasiuk"

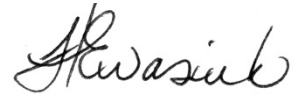
CITY CLERK

Read a first time this 18th day of August A.D. 2014.

Read a second time this 2nd day of September A.D. 2014.

Read a third time this 2nd day of September A.D. 2014.

I, Heather Coreen Ewasiuk, Clerk of the City of Brandon, DO HEREBY CERTIFY the above within to be a true and correct copy of By-law No. 7099.



H. Ewasiuk, City Clerk