

**Development Review Process: Review of Procedures and Updated Triggers for Environmental Site Assessment and Peer Review of Potentially Contaminated Lands being Conveyed to the City under the Planning Act,**

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| <b>Date:</b>             | June 13, 2007                          |
| <b>To:</b>               | Planning & Growth Management Committee |
| <b>From:</b>             | Executive Director, Technical Services |
| <b>Wards:</b>            | All                                    |
| <b>Reference Number:</b> |  |

**SUMMARY**

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Accepting land conveyances having unknown, or known but acceptable, liabilities associated with environmental contamination has been challenging to municipalities for many decades. Various programs and procedures have been developed to provide sufficient assessment and reporting (Proof of Performance) supported with affidavits from accredited professionals, or regulatory agencies, for reliance.

The purpose of this report is to: (a) seek Council's authority to amend certain requirements and triggers for the need for Environmental Site Assessments (ESAs), Records of Site Condition (RSCs) and Peer Review, under certain specific conditions, to be consistent with the new Ontario Regulation 153/04 as administered by Ministry Of Environment (MOE); and (b) clarify and summarize the current policies and procedures, including Risk Assessment (RA), for accepting potentially contaminated lands being conveyed to the City under the Planning Act.

This report provides a summary of existing requirements, with proposed amendments, in a single Table (Table 1, in Appendix A) to provide clarification of requirements. This Table will be distributed to appropriate staff to facilitate timely conveyance of acceptable lands.

## **RECOMMENDATIONS**

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It is recommended that Council:

- (1) approve the proposed amendment to existing procedures, to now require MOE acknowledged RSCs for conveyance of Right-Of-Way lands from only the development sites which require RSCs as per O. Reg. 153/04 (see Scenario R2 and R3 in Appendix A, Table 1), and
- (2) approve the proposed exemption to environmental requirements when conveyances are less than or equal to 1.0 metre width, from sites not requiring a RSC for the intended land use as per O. Reg. 153/04, (see Scenario R2 in Appendix A, Table 1), and
- (3) approve these updated procedures, requirements, and clarifications as described in Appendix A, Table 1 of this report (specifying the environmental site assessments, environmental reports, Ministry of Environment acknowledged Records of Site Condition and City Peer Review process) as the environmental requirements to be satisfied prior to conveyance of properties to the City under the Planning Act, and
- (4) authorize staff to implement the updated procedures effective immediately on new applications under the Planning Act, and to make any necessary administrative changes to the City's Peer Review process.

### **Financial Impact**

This report has no financial implications.

### **ISSUE BACKGROUND**

During the land development or redevelopment process under the Planning Act, parcels of land are sometimes conveyed to the City for creating new streets, widening existing streets or developing parks.

The following reports describe policies that have been developed, and amended from time to time, to protect the City from acquiring lands having unacceptable liabilities associated with known or suspected environmental contamination. These policies provide more certainty and clarity to City staff, and the development industry, while safeguarding public health and protecting the environment.

(1) Council Report titled “*Development Review Process: Harmonized Site Remediation Peer Review for Contaminated Sites*” (Clause 5, of the Works Committee Report No. 7, adopted by City Council on June 18, 19 and 20, 2002). This report recommended a harmonized procedure for the City of Toronto to require the completion of an RSC, acknowledged by the MOE, as well as the submission of all of the proponents consultants’ reports to a consultant hired by the City, for a Peer Review. The costs for the Peer Review are recovered from the land owner/applicant.

(2) Council Report titled “*Development Review Process: Harmonized Site Remediation Peer Review for Contaminated or Potentially Contaminated Sites - Report on Updated Procedures*” (Clause 7, of Works Committee Report 10, adopted City Council on November 30, December 1 and 2, 2004). This report provided clarification by rescinding all historic policies or directives from former municipalities that dealt with environmental site assessments, for land conveyances to the City. A clarification of requirements for conveyance of small parcels of land (less than 100 square metres) was also provided.

(3) Council Report titled “*New Provincial Regulation for the Clean Up of Contaminated Sites*” (Clause 3, of Planning and Transportation Committee Report 7, adopted by City Council on September 28, 29 and 30, 2005). This report explained the province's new Regulation 153/04, effective October 1, 2005, which provided new rules for the clean up of contaminated sites when a change in land use occurs to a more sensitive use. Due to this regulation, the City’s Harmonized Site Remediation Peer Review Process no longer applies to private land development applications under the Planning Act, except for the portion of land being conveyed to the City as part of the approval of the applications.

(4) Council Report titled “*The Use of Risk Assessment Approach to Manage Contaminated Lands Prior to Land Conveyances to the City Under the Planning Act*” (Clause 18, of Works Committee Report 2, adopted by City Council on April 25, 26 and 27, 2006). This report provided for the use of the MOE acknowledged Risk Assessment process, as per O. Reg. 153/04, as one of the accepted methods to manage soil and groundwater contamination prior to land conveyances to the City.

(5) Council Report titled “*Delegation of Authority to Submit and Execute Documents Required Pursuant to the Environmental Protection Act for Council Approved Projects*” (Clause 19, of Policy and Finance Committee Report 4, adopted by City Council on May 23, 24 and 25, 2006). This report provided the delegation of appropriate authority to the Deputy City Managers and his/her designates, within their respective jurisdictions, to approve the submission of, and to execute, on behalf of the City, all documents within the MOE’s process for brownfield redevelopment under the *Environmental Protection Act* including Risk Assessment Pre-Submission Forms (PSFs) and Records of Site Condition (RSCs) for lands owned by the City.

## COMMENTS

- (1) Environmental Requirements for Conveyance from Lands Not Requiring a RSC, as per O. Reg. 153/04.

The conveyance of land from development sites, not undergoing a change to a more sensitive use, has become problematic since the inception of O. Reg. 153/04. This is due to the City's prior requirement for a MOE acknowledged RSC and City Peer Review process on parcels being conveyed from former Industrial/Commercial/Institutional (I/C/C) lands. These I/C/C lands may now be developed into a similar use without the MOE requiring a RSC, as per O. Reg. 153/04. The City needs to amend its requirements, to be consistent with the MOE regulation, by no longer requiring that an acknowledged RSC be provided for such conveyed lands. The City will still require a successful Peer Review process to be completed prior to conveyance, if the width of the conveyance is greater than 1.0 metres (see scenario R2 in Appendix A, Table 1). Narrow parcels of land (typically less than 1.0 metres wide) are difficult to properly test to evaluate the environmental conditions. Staff are comfortable with receiving such narrow parcels of land as the associated increase in environmental liability will be small and the soil conditions will be similar to the adjacent property already in City ownership.

- (2) Conveyance of Small Land Parcels ( $\leq 100$  square metres)

The conveyance of small parcels of land for lane/road widenings and site triangles has also become problematic since the inception of O. Reg. 153/04. This is due to the City's prior requirement for a Environmental Site Assessments and City Peer Review process on small parcels ( $\leq 100$  square metres) being conveyed from former Industrial/Commercial/Institutional (I/C/C) lands. These I/C/C lands may now be developed for a similar use without the MOE requiring a RSC, as per O. Reg. 153/04. The City needs to amend its requirements, to be consistent with the MOE regulation. Staff recommend that the conveyance process for small parcels ( $\leq 100$  square metres), being conveyed from former Industrial/Commercial/Institutional (I/C/C) lands, now follow either the existing R1 scenario, or the above amended R2 scenario, as determined by MOE RSC requirements in O. Reg. 153/04. Either of these scenarios will provide the necessary protection to the City regarding such conveyances.

- (3) Clarification and Summary of Environmental Requirements Prior to Conveyance

The prior reports to Council over the preceding five years have created a series of substantial and defensible policies and procedures to protect the City from acquiring lands having unacceptable environmental liabilities. The many changes to these policies and procedures have occurred due to both changing provincial legislation and the City's need manage its environmental liabilities while facilitating acceptable land development processes. For clarification, the attached Table 1 (in Appendix A) summarizes the current requirements necessary to be satisfied prior to conveyance of land to the City.

Conveyance requirements for Parkland are summarized in scenarios P1 to P3, and are not being amended by this report. Conveyance requirements for Right-Of-Way are summarized in scenarios R1 to R3, including the above recommended amendments to R2 and R3. It is recommended that this Table 1 be approved and distributed to appropriate City staff to facilitate timely conveyance of acceptable lands.

These requirements and procedures have been discussed with other divisions in the City and no concerns have been raised. This report has been reviewed by Legal Services, Building, Planning, Transportation Services and Parks, Forestry & Recreation and was found to be acceptable.

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## **SIGNATURE**

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## **ATTACHMENTS**

Appendix A – Table 1 : Environmental Requirements for Conveyance of Land to the City Under the Planning Act.

Appendix A

TABLE 1 : Environmental Requirements for Conveyance of Land to the City Under the Planning Act

**Right Of Way (ROW) CONVEYANCE**

**PARK CONVEYANCE**

**Standard** = MOE Generic Tables 1/2/3, March 9, 2004 (as amended from time to time), or RA/RMP to the satisfaction of the MOE and the City of Toronto process (Council Report; April 2006)

**Standard** = Always R/P/I, MOE Generic Tables 1/2/3, March 9, 2004 (as amended from time to time), or RA/RMP to the satisfaction of the MOE and the City of Toronto process (Council Report; April 2006)

| SCENARIOS |   | PROOF OF PERFORMANCE REQUIREMENT                         |   |
|-----------|---|--|---|
|           |   | RSC  | PEER REVIEW   |
| R1        | Development Site RSC is <u>required</u> for CBO     | YES to the <u>Intended</u> use Standard                  | YES to the <u>most sensitive adjacent</u> use Standard                          |
| R2        | Development Site RSC is <u>not</u> required for CBO | NO   | If width is > 1.0 m ,<br>YES to the <u>most sensitive adjacent</u> use Standard |
|           |   |  | If width is ≤ 1.0 m ,<br>NO   |
| R3        | Size of Conveyance ≤ 100m <sup>2</sup>              | If former I/C/C use, <b>follow scenarios R1/R2 above</b> | If former I/C/C use, YES to the <u>most sensitive adjacent</u> use Standard     |
|           |   | If former R/P/I use,<br>NO                               | If former R/P/I use,<br>NO  |

| SCENARIOS |   | PROOF OF PERFORMANCE REQUIREMENT |             |
|-----------|---|----------------------------------|-------------|
|           |   | RSC                              | PEER REVIEW |
| P1        | Park Usage, if former I/C/C use                                       | YES                              | YES         |
| P2        | Trail Usage, apply <b>Rails-To-Trails Exemption</b> in O. Reg. 153/04 | NO                               | YES         |
| P3        | Park Usage, if former R/P/I use                                       | NO                               | YES         |

**DEFINITIONS:**

- RSC Record of Site Condition, acknowledged by the MOE as per O. Reg. 153/04, and posted on the Environmental Site Registry with MOE assigned registry number [ or acknowledged by MOE via prior legislation, with concurrence of City Peer Reviewer ].
- PEER REVIEW City hired 'Peer Reviewer' provides concurrence of environmental reports which were produced, signed, dated, and stamped by a qualified person (QP). Minimum requirement is a Phase I ESA (Environmental Site Assessment). Additional requirements may include Phase 2/3 ESA, Remedial Action Plan (RAP) or Risk Assessment/Risk Management Plan (RA/RMP) reports that are based predominantly on data from the lands to be conveyed.
- CBO Chief Building Official requires RSC prior to issuing building permit, as per O. Reg. 153/04
- I/C/C Industrial/Commercial/Community Use, as per O. Reg. 153/04
- R/P/I Residential/Parks/Institutional Use, as per O. Reg. 153/04
- Council Report; April 2006 Clause 18, Works Committee Report 2; approved by City Council on April 25, 26 and 27, 2006. Report titled "The Use of Risk Assessment Approach to Manage Contaminated Lands Prior to Land Conveyances to the City Under the Planning Act".