

Policy Regarding the Repair of Private Storm Drainage Systems

Date:	May 14, 2007
To:	Public Works and Infrastructure Committee
From:	Lou Di Gironimo, General Manager, Toronto Water
Wards:	All
Reference Number:	P:\2007\Cluster B\TW\pw07020 (AFS# 3052)

SUMMARY

The purpose of this report is to propose the adoption of a policy regarding requests made to the City to repair private storm drainage systems located entirely on private property (the “Policy”).

The Policy is based on the principle that private storm drainage systems are constructed, owned and maintained by or on behalf of private property owners while public storm drainage systems are constructed, owned and maintained by or on behalf of the City. The obligation to maintain and repair private storm drainage systems located entirely on private property rests entirely with the private property owner. In accordance with the terms and conditions of the City’s Drain Grant Policy, however, the City may provide financial assistance to the private property owner, for the repair of a blocked drain on private property, but only in instances where the blockage is caused by roots from a City-owned tree.

RECOMMENDATIONS

The General Manager of Toronto Water recommends that:

1. City Council adopt a Policy entitled “The Repair of Private Storm Drainage Systems” as follows:
 - (a) A private storm drainage system located entirely on private property is one which has been or is constructed, operated, owned and maintained by or on behalf of the private property owner;

- (b) The obligation to operate, maintain and repair a private storm drainage system rests entirely with the private property owner;
- (c) The City will not undertake the operation, maintenance or repair of a private storm drainage system;
- (d) Unless otherwise available under the City's Drain Grant Policy, no financial assistance will be provided by the City to a private property owner for the operation, maintenance or repair of a private storm drainage system; and
- (e) For the purposes of this Policy, "private storm drainage system" means that part of any drain or system of drains, including catch basins, drains, sumps or subsurface drainage pipe for surface or subsurface drainage of the land, lying within the limits of the private lands.

FINANCIAL IMPACT

There are no financial implications resulting from the adoption of this report.

DECISION HISTORY

City Council at its meeting on April 25, 26 and 27, 2006, authorized the construction by the City of a new catch basin to address drainage problems on private property caused by a deteriorated private catch basin, on an equally shared 50-50 costs basis with the private property owners, at the rear of 220 to 244 Waverley Avenue, 79 to 91 Norway Avenue and 233 to 241 Kenilworth Avenue subject to certain conditions (Policy and Finance Committee Report 3, Consolidated Cause 9). At that time, City Council also requested the General Manager, Toronto Water, to report back with a proposed policy on how to fairly respond to similar future requests to fund drainage repairs on private property, given that Council has, from time to time, historically made decisions to undertake and/or fund portions of such repairs.

An electronic copy of the report is available at:

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060425/pof3rpt/cl009.pdf>

ISSUE BACKGROUND

In several areas across the City, storm drainage systems have been permitted on private property to ensure that land and buildings are protected from the possibility of flooding.

An example of such a storm drainage system is a backyard catch basin. The backyard catch basin is typically located in the rear of a property where there is no overland flow

path for surface water to leave the property. It provides a safe outlet for stormwater runoff to discharge to the municipal sewer on the adjacent City roadway. When the drainage system is blocked or not functioning properly, stormwater runoff can begin to pond, rising to a level that may flood surrounding land and buildings.

In some cases, a blocked rear yard catch basin can cause ponding of surface water on a number of adjacent properties. Problems arise when there are no existing arrangements between benefiting private property owners to share the costs of maintenance or repair of the catch basin. The Executive Director of Municipal Licensing and Standards provided an information report on the approach used to resolve issues related to deteriorated private catch basins and private drain connections which was received by the Works Committee at its meeting on March 7, 2006. The report confirms that, Chapter 629, Property Standards, of the Toronto Municipal Code (the City's Property Standards By-law) provides that all catch basins, storm drains, ditches and swales shall be maintained free from defects and obstructions and also imposes a duty upon the owner of a property to repair, maintain and keep clean the property in accordance with the standards, and take immediate action to eliminate an unsafe condition.

An electronic copy of the report is available at:

<http://www.toronto.ca/legdocs/2006/agendas/committees/wks/wks060307/it015c.pdf>

COMMENTS

When staff conducts an investigation of a drainage problem on private property and determine that the cause of the problem is with the private storm drainage system, the owner of the drainage system is advised that it is their responsibility to repair the drains.

Where the drainage problem is affecting neighbouring properties and where the owner of the malfunctioning drainage system refuses to undertake the necessary repairs, the matter can be referred to the Municipal Licensing and Standards Division for resolution in accordance with the City's Property Standards By-law as described in the report referred to above.

Past history has shown that on occasion, especially if the repairs are costly, it will be suggested by the property owners that because more than one property benefits from the system, the system should be assumed by the City and repaired. Staff does not recommend this option for the following reasons:

1. Assumption of sub-standard installations - There are approximately 5,000 private storm drainage systems consisting of backyard catch basins in the City. Assumption of these installations would add significantly to the amount of infrastructure the City would be responsible to maintain, without adding any offsetting revenue. Further, the City would be acquiring infrastructure that was installed by others and may not meet current City standards. Moreover, there is a risk that the infrastructure has not been properly maintained over the years by the private owners. The effects of this would

be more frequent maintenance and repairs, complicated by non-standard materials, and reduced life expectancy of the infrastructure.

2. Liability - There are potential significant legal and financial liability risks associated with the assumption of any such private systems ranging from liability related to improper design, construction and installation to ongoing maintenance and repair.
3. Requirements for easements - Since these private systems are located entirely on private property, the City would have to obtain, potentially at a cost, registered easements from the private property owners involved in order to access the infrastructure for maintenance, repair and reconstruction purposes. Many of these easements would have existing encroachments, such as sheds, garages or other structures, which severely limit access to the private storm drainage system. Easements would also limit property owners' rights to their own property.

Therefore, it is recommended that the current practice be affirmed as policy, whereby the operation, maintenance and repair of private storm drainage systems on private property remain the sole responsibility of private property owners.

CONTACT

Ted Bowering, P.Eng.
Manager
Program & Policy Development
Toronto Water
Phone: 416-338-5473
Fax: 416-338-2828
Email: tbowerin@toronto.ca

Michael D'Andrea, P.Eng.
Director
Water Infrastructure Management
Toronto Water
Phone: 416-397-4631
Fax: 416-338-2828
Email: mdandre@toronto.ca

SIGNATURE

Lou Di Gironimo
General Manager, Toronto Water