



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### Authority for Toronto Water Capital Construction Projects Pertaining to Real Property Interests

**Date:** November 29, 2019

**To:** General Government and Licensing Committee

**From:** Executive Director, Corporate Real Estate Management and General Manager,  
Toronto Water

**Wards:** All

#### REASON FOR CONFIDENTIAL INFORMATION

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The attachment to this report pertains to an approach to be applied to negotiations to be carried on by, or on behalf of, the City of Toronto.

#### SUMMARY

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Toronto Water has over 16,600 kilometer of linear underground infrastructure, the majority of which is old and requires replacement and rehabilitation. Toronto Water has allocated over \$5.5 billion in their 10 Year Capital Plan to replace, rehabilitate and add linear underground infrastructure located across the City.

To facilitate timely construction of critical Toronto Water Capital Projects, including the State of Good Repair projects, staff recommend that City Council authorize Toronto Water and Engineering and Construction Services, working with Corporate Real Estate Management, to approve the confidential instructions set out in Confidential Attachment 1. Staff further recommend that City Council amend the current delegated authority for Real Estate transactions to permit transactions involving this approach to proceed, where applicable.

#### RECOMMENDATIONS

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The Executive Director, Corporate Real Estate Management and the General Manager, Toronto Water, recommend that:

1. City Council authorize the General Manager, Toronto Water, and/or the Chief Engineer and Executive Director, Engineering and Construction Services, in consultation with Executive Director, Corporate Real Estate Management, to approve the payment of compensation for the purpose of securing property rights to implement a project funded by Toronto Water, provided that:

- a. Such compensation is paid pursuant to an agreement otherwise authorized and executed in accordance with EX27.12, City-Wide Real Estate - Delegated Authorities Framework and Transition Plan, as amended or codified; and
- b. Such authority is exercised in accordance with the confidential instructions contained in Confidential Attachment 1.

2. City Council amend the existing delegated approval and signing authorities adopted by City Council on October 2, 3, and 4, 2017 in Item EX27.12, as follows:

a. Repeal and replace the existing General Conditions (E) and (F) with the following General Conditions:

(E) Property interests are to be based on appraised market value and no interest shall be granted for an amount less than the appraised market value, nor additional compensation paid, unless specifically authorized by City Council.

(F) Authority to approve any transaction is subject to statutory anti-bonusing provisions.

3. City Council direct that the confidential information in Confidential Attachment 1 remain confidential in its entirety, as it pertains to an approach to be applied to negotiations to be carried on by, or on behalf of, the City of Toronto.

## **FINANCIAL IMPACT**

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There is no immediate financial impact as a result of this report. It is a condition to the exercise of the negotiation approach that all required funding be available in Toronto Water's 10 Year Capital Plan.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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At its meeting of October 2, 3 and 4, 2017, City Council adopted EX27.12 "City-Wide Real Estate - Delegated Authorities Framework and Transition Plan", which amended the existing delegated approval and signing authorities for real estate matters adopted by City Council at its meeting of May 11 and 12, 2010 in Item EX43.7 in the

manner indicated in Appendix A to the report (September 12, 2017) from the Deputy City Manager and Chief Financial Officer and the Chief Corporate Officer.

<https://www.toronto.ca/legdocs/mmis/2017/ra/bgrd/backgroundfile-109040.pdf>

At its meeting of May 11 and 12, 2010, City Council adopted EX43.7 “Delegation of Authorities in Certain Real Estate Matters”, which delegated certain approval and signing authorities to the City Manager, Deputy City Manager & Chief Financial Officer, Chief Corporate Officer and Director of Real Estate Services.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX43.7>

## **COMMENTS**

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### **Background**

Toronto Water has approximately 16,600 kilometers of linear underground infrastructure, which are sanitary and storm sewer pipes and watermains. Approximately 8.5% of the length of all Toronto Water sewers pass through approximately 9,100 private residential or commercial properties. Similarly, 5% of the length of all Toronto Water watermains pass through approximately 1,900 private residential or commercial properties. A majority of this linear underground infrastructure is 50 to 100 years old and requires replacement and rehabilitation.

Toronto Water has allocated over \$5.5 billion in their 10 Year Capital Plan to replace, rehabilitate and add linear underground infrastructure located across the City. Specific capital projects that are funded from Toronto Water's 10 Year Capital Plan are delivered by staff teams in either Toronto Water and/or Engineering and Construction Services Divisions.

### **The Need for Additional Property Interests for Projects Funded by Toronto Water**

For linear underground infrastructure passing through or in the vicinity of private property, the City generally has a permanent easement to operate, access, maintain and repair the infrastructure. Yet there can be circumstances that lead staff to conclude that additional rights are required to move forward with the construction project.

For example, sometimes the City's existing right-of-way cannot be safely or efficiently used to reach its infrastructure so new or supplementary access rights are required. The City may also discover when preparing design to complete remedial work that there is no direct access to City's existing right-of-way and additional easement rights are required to access the City's existing right-of-way. There are cases where the City's existing easement rights are not always sufficiently broad to authorize the full extent of the infrastructure replacement or rehabilitation and/or the City's existing easement area is too small to accommodate the full scope of the construction project.

In all of these situations, unless the existing easement can be supplemented by the City's limited statutory rights to enter upon and carry out certain activities on private

lands, additional permanent and/or temporary property rights are required in order to move forward with the construction project.

## **Current Delegated Authority for Real Estate Transactions**

Council has delegated authority to permit various City Officials to obtain easements and licences, provided that the fee paid by the City in exchange for the easement or licence is based on the appraised market value. For real estate transactions above the appraised market value, prior City Council approval is required.

The market value of the supplementary easement or licence is occasionally less than \$2,000 for developable land and less than \$1,000 for non-developable lands. In these cases, the amount that the City Staff are currently authorized to offer in exchange for the easement or licence may not be commensurate with the discretionary work that property owners sometimes undertake to finalize an agreement with the City.

This work may include, engaging with City staff to understand the need for an additional easement or licence, the proposed construction work and the restoration plan, finding and engaging a lawyer, finalizing the legal agreement terms and executing of the agreement and coordinating with the City and, if applicable, its contractor throughout construction.

Due to additional costs that property owners may incur, exceeding the market value of supplementary easement or license, they may not respond or decline to negotiate. This results in a delay and can put the construction project at risk. When supplementary rights cannot be secured, critical repairs or upgrades to infrastructure are delayed and/or the work is carried out in a less cost effective manner or at a higher risk to safety. This report and the negotiation approach set out in the Confidential Attachment 1 address this challenge and help facilitate timely construction of capital projects funded by Toronto Water.

## **Summary**

Staff recommend City Council delegate authority to the General Manager, Toronto Water and the Chief Engineer and Executive Director, Engineering and Construction Services, working together with staff in Corporate Real Estate Management, to approve the confidential instructions set out in Confidential Attachment 1.

The anticipated benefits of this negotiation approach would include:

- increased willingness on the part of property owners to negotiate with the City of Toronto and to provide timely response;
- preventing construction delay, and the additional or wasted costs associated therewith, for Toronto Water's Capital Projects which is crucial when delivering projects coordinated through the City of Toronto's Major Capital Infrastructure Coordination Office;
- greater likelihood that infrastructure can be accessed in a safe and cost-effective manner;
- a reduced need for expropriations; and

- clarity between the distinct but cooperative roles of Toronto Water and Real Estate Services staff when negotiating with property owners

Toronto Water and/or Engineering and Construction Services will only be permitted to implement the negotiation approach outlined in Confidential Attachment 1 when necessary to mitigate the challenges outlined in this report as related to capital projects funded by Toronto Water. This report was prepared in consultation with Engineering and Construction Services staff.

The negotiation approach will be exercised in conjunction with the authority delegated for real estate transaction, including adherence to statutory anti-bonusing provisions and documents having received the City Solicitor's prior "Approval as to Form".

## **CONTACT**

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## **SIGNATURE**

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Patrick Matozzo  
Executive Director, Corporate Real Estate Management

Lou Di Gironimo  
General Manager, Toronto Water

## **ATTACHMENTS**

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Confidential Attachment 1 - Confidential Instructions to Staff