

## **Supplementary Report - No Fault Grant for Basement Flooding Damages**

**Date:** May 24, 2022

**To:** General Governing and Licensing Committee

**From:** General Manager, Toronto Water

**Wards:** All

### **SUMMARY**

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On October 1 and 4, 2021, City Council received a report on the eligibility criteria and financial implications of providing a one-time no-fault grant for residential property owners and/or tenants in the Rockcliffe neighbourhood of Ward 5, York South-Weston, and other similarly impacted areas, that experienced basement flooding. The report recommended that the City Council not proceed with a no-fault grant program, and noted practical and equity challenges. The report also highlighted that the City is not legally obligated to provide a no-fault grant program to residents, and that such a program would not reduce future risk of flooding.

City Council requested this supplementary report outlining the criteria, funding, funding sources and an implementation plan to provide a no-fault grant for residents that experienced basement flooding in the Rockcliffe area since 2000, until planned and approved improvements are made to the infrastructure in the area. Reporting on comparable costs and implementation options to implement a similar grant program through other areas in the City that are flood prone was also requested.

While it remains the recommendation that City Council not proceed with the no-fault grant, this report provides considerations on implementation options for appropriate properties in the Rockcliffe area or within Special Policy Areas identified in the Official Plan. The report outlines eligibility criteria and program details including a discussion of how the Ombudsman enquiry into basement flooding and sewer backup claims could be referenced in the development of a grant program. It also recommends that a no-fault grant program not be applied retroactively. This report provides information on options not recommended by staff for a no-fault grant program moving forward.

Council requested that this report identify alternative funding sources to fund a no-fault grant program other than the water rate. Considering that the damages caused by rain events in areas susceptible to flooding are not always or exclusively attributed to the performance of the sewer system, and that the grant payment would not contribute to

any alleviation of future flooding events, it would be appropriate that such a program be funded from the tax base.

## **RECOMMENDATIONS**

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The General Manager, Toronto Water, recommends that:

1. The General Government and Licensing Committee receive this report for information.

## **FINANCIAL IMPACT**

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There is no financial impact to the City resulting from the receipt of this report. There will be pressures created with options outlined in this report.

The following provides the approximate funding requirement of various implementation options should a no-fault grant program for basement flooding damages be initiated by the City:

Option 1: One time no-fault grant payment of \$7,500 per property, available to eligible properties within the Rockcliffe Special Policy Area and hydraulically connected sewer catchment, where beneficial works have been identified by a completed Basement Flooding EA Study but the work is not yet commissioned. Approximate one time program funding required is \$4 million over the several years duration of eligibility.

Option 2: One time no-fault grant payment of \$7,500 per property, available to eligible properties within any Special Policy Area and hydraulically connected sewer catchment, where beneficial works have been identified by a completed Basement Flooding EA Study but the work is not yet commissioned. Approximate one time program funding required is \$20 million over the several years duration of eligibility.

Option 3: Recurring no-fault grant payment of \$7,500 per property, available to eligible properties within the Rockcliffe Special Policy Area and hydraulically connected sewer catchment, where beneficial works have been identified by a completed Basement Flooding EA Study but the work is not yet commissioned. Approximate recurring program funding required is \$6 million over the several years duration of eligibility.

Option 4: Recurring no-fault grant payment of \$7,500 per property, available to eligible properties within any Special Policy Area and hydraulically connected sewer catchment, where beneficial works have been identified by a completed Basement Flooding EA Study but the work is not yet commissioned. Approximate recurring program funding required is \$29 million over the several years duration of eligibility.

Option 5: Recurring no-fault grant payment of \$3,500 per property, available to eligible properties within any Special Policy Area and hydraulically connected sewer catchment,

where beneficial works have been identified by a completed Basement Flooding EA Study but the work is not yet commissioned. Approximate recurring program funding required is \$14 million over the several years duration of eligibility.

Additional analysis is required to refine the budget estimates provided, this would entail detailed investigation to determine the number of properties eligible under each option. The budget numbers offered in this report are conservative and likely represent the mid to high end of what is expected in terms of funding requirements, but Toronto Water submits that these estimates are reasonable for the purposes of this report.

As with past flood damages grant programs, it is recommended that a future program would employ the services of an independent adjuster rather than administering the program internally. The independent adjuster would be used to adjudicate each application and determine qualification for the program. Based on existing costs for the services of an independent adjuster, administration costs would add an estimated additional 5 percent to the cost of a program.

In addition to the services of an independent adjuster, additional internal City staff would be required to administer the program, resulting in additional costs for up to 2 staff positions.

It should be noted that there is an inherent level of uncertainty in estimating the financial requirements of a program that is dependent upon the frequency and the intensity of the weather passing through City of Toronto.

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

## **DECISION HISTORY**

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On October 1 and 4, 2021, City Council directed the General Manager, Toronto Water, in consultation with the Director, Insurance and Risk Management, Finance and Treasury Services, and the City Solicitor to report to the General Government and Licensing Committee in the second quarter of 2022 on criteria, funding, alternative funding sources to the water rate, and an implementation plan to provide a no-fault grant for residents in the Rockcliffe area located in Ward 5 (York South-Weston) who have experienced basement flooding since 2000 until work is completed in Rockcliffe, and that the report include comparable cost and implementation options to provide similar benefits to other locations in the City with severe flooding issues similar to the Rockcliffe area. Link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.GL25.19>

On February 2, 2021, City Council adopted the Ombudsman Toronto Report (November 12, 2020) and accepted the Ombudsman's findings and directed the City administration to implement all the recommendations. Link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.GL20.1>

On February 2, 2021, City Council also directed the General Manager, Toronto Water, in consultation with the Director, Insurance and Risk Management, Finance and Treasury Services, and the City Solicitor to report to the General Government and Licensing Committee in the second quarter of 2021 on recommended eligibility criteria and financial implications of providing a one-time no-fault grant for residential property owners and/or tenants in the Rockcliffe neighbourhood of Ward 5, York South-Weston, and other similarly impacted areas, who were uninsurable for basement flooding insurance coverage and reported one or more sewer back-up/basement flooding incidents to the City of Toronto as a result of storm events during the time period January 1, 2018 to December 31, 2020 inclusive. Link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.GL20.1>

On September 26 and 27, 2007, City Council directed that there should be no extension of the 2005 Flood Damages Grant Program to provide grants to homeowners that were flooded as a result of sewer backups in Ward 39 in December 2006 or February 2007.

Link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2007.PW8.9>

On June 14, 2006, City Council adopted Terms and Conditions for the 2005 Flood Damages Grant Program. The 2005 Flood Damages Grant Program was created in response to the basement flooding that was experienced as a result of the August 19, 2005 storm event. Under this program, a maximum per applicant grant of \$3,000 could be obtained subject to City Council adopted eligibility criteria. Link:

<https://www.toronto.ca/legdocs/2006/agendas/council/cc060614/cofa>.

On March 6, 7 and 8, 2001, City Council determined that a City-Wide Basement Flood Grant Program not be established for flooded basements on the basis that it would not provide any beneficial effects for the City, the cost of the program is unpredictable and potentially excessive, and the program is not required under the Municipal Act. This decision was in response to the consideration of a flood grant program following the storm event of May 12, 2000. Link:

<https://www.toronto.ca/legdocs/2001/agendas/council/cc010306/wks3rpt/cl007.pdf>

## COMMENTS

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In Fall, 2021, the staff report to General Government and Licensing Committee recommended that City Council not proceed with a no-fault grant program. However, for information the report outlined considerations and potential eligibility criteria and the financial implications of providing a one-time no-fault grant for residential property owners and/or tenants in the Rockcliffe neighbourhood of Ward 5, York South-Weston, and other similarly impacted properties that reported sewer back-up/basement flooding incidents to the City of Toronto as a result of storm events during the period running from January 1, 2018 to December 31, 2020, inclusive.

The report provided information on how a no-fault grant program would require ratepayer support from all classes of water users, that there is no legal obligation by the City to provide a no-fault grant program, and how a no-fault grant program would not reduce future risk of flooding. The equity issues in providing a no-fault grant from all

ratepayers to the properties that receive a grant were outlined. The practical limitations of a grant program were also reported including that a no-fault grant will not reduce the risk of future flooding events, and the program's financial impacts are unpredictable due to the uncertainty associated with the frequency and severity of the weather systems that pass through the City and any resulting basement flooding.

On October 4, 2021, City Council directed the General Manager, Toronto Water, in consultation with the Director, Insurance and Risk Management, Finance and Treasury Services, and the City Solicitor to report on criteria, funding, alternative funding sources to the water rate, and an implementation plan to provide a no-fault grant for residents in the Rockcliffe area located in Ward 5 (York South-Weston) who have experienced basement flooding since 2000 until work is completed in Rockcliffe, and that the report include comparable cost and implementation options to provide similar benefits to other locations in the City with a history of flooding similar to the Rockcliffe area.

## **Options for the Initiation of a No-Fault Grant Program**

The following discussion is intended to inform Council on how the no-fault grant program may be implemented. It considers:

- A) Funding sources;
- B) Whether or not the grant should apply retroactively;
- C) Property eligibility criteria;
- D) Geographical areas to be included in the program;
- E) Recurrence of eligibility;
- F) Duration of the program, and,
- G) How program planning might benefit from the results of the Ombudsman Toronto Report on Third-Party Liability Claims for Basement Flooding and Sewer Backups.

### **A) Funding a No-Fault Grant**

#### ***Rate-Supported Budget***

Council requested that staff report on alternate funding sources to the water rate to provide a no-fault grant for basement flooding. The 2005 Flood Damages Grant Program utilized water rates through Toronto Water's reserves to fund the approximately \$778,000 paid out in grants. Water rates and sewer service rates fund services including the supply, treatment, conveyance of water, and the collection and treatment of wastewater and stormwater, including operations, maintenance of water and sewer infrastructure. It also funds Toronto Water's capital program, including level of service improvement programs to mitigate the risk of basement flooding, such as the Basement Flooding Protection Program and the Basement Flooding Subsidy Program. A no-fault grant program that compensates property owners for basement flooding is not included in the budget through Toronto Water's rate model, and the water rate model does not include programs such as the no-fault grant program.

Water rates are directed to construct infrastructure to better mitigate against severe storm events directly reduces future flood risk, and aligns with Toronto Water's rate model.

It is also the case that in Special Policy Areas, where conditions are such that properties are prone to flooding when significant weather systems pass through said areas, damages sustained during a rain events are not always or exclusively attributed to the performance of the sewer system. For example, in the case of the Rockcliffe area multiple studies, including the Rockcliffe Area Riverine Flood Mitigation Environmental Assessment and the Basement Flooding Study Area 4 and Combined Sewer Overflow Control Environmental Assessment, identified that works were necessary within the jurisdictions of Transportation Services, Toronto Water and third parties such as the Toronto and Region Conservation Authority (TRCA).

### ***Tax-Supported Budget***

The tax base could be an alternative funding source to provide a no-fault grant to property owners that experience basement flooding. Currently, where a basement flooding claim has been advanced and, on the basis of the evidence presented, there has been a determination that the damages a claimant alleges to have sustained were caused by the negligence of the City of Toronto, such claims are paid through the tax base. A no-fault grant could be included in a future property tax budget and funded by all properties that pay property tax. Special Policy Areas are susceptible to flooding events that are not always or exclusively attributed to the performance of the sewer system. Therefore, it would be appropriate to have the source of funding be tax based.

### ***External Funding Sources***

The Disaster Recovery Assistance for Ontarians program is a provincially funded program that helps cover emergency expenses, repairs or replacement of essential property after a natural disaster. Applications can only be submitted for natural disasters as defined by the province; as such not all flood events are eligible for funding, sewer backup is ineligible. However, the program includes a special provision to provide assistance to low-income households that experience flood damage caused by sewer backup. Individual households directly apply to the province for assistance.

Additional information is available at the following link:

<https://www.ontario.ca/document/guidelines-apply-disaster-recovery-assistance-ontarians-drao>

Given the uncertainty that Disaster Recovery Assistance can be provided to applicants, a no-fault grant program cannot be designed relying on external funding. Residents are encouraged to apply for this available provincial disaster assistance at their own accord.

## **B) Retroactive No-Fault Grant Feasibility**

Designing a retroactive no-fault grant program presents several challenges.

If asked to allocate public funds to compensate residents on a no-fault basis, the City requires that residents substantiate their claims. There are significant concerns surrounding the feasibility to properly adjudicate a claim retroactively. The eligibility criteria from previous no-fault grant programs generally required that property flooding

damages had to have occurred as a result of a storm event, the events reported to the City prior to a specified date, the damages consisted of uninsured losses, the damages were not as a result of actions taken by the applicant, and the property owner claimed damages against their own insurance. In addition, Toronto Water staff would be required to have investigated the reported flooding at the property to further validate the reported flooding.

The quality, availability and reliability of information and evidence that must be submitted and evaluated to substantiate a claim diminishes over time. The availability of a witness to corroborate accounts of events decreases, and records may be lost or destroyed with the passage of time. In cases where a residence experiences basement flooding and the property owner believes that they are eligible for compensation from the city, the resident is required to establish negligence on the part of the City and must take steps to initiate formal legal proceedings within a window of time prescribed by the applicable provincial legislation. As a general proposition, such claims must be brought within two years of the date on which a claimant knew or ought to have known of the claim.

Using the applicable provincial legislation as a guide, or frame of reference, claims in relation to incidents that occurred more than two years prior to when such claims are pursued will involve the consideration of evidence. These claims can be impossible to verify so cannot form a sound basis for adjudication. For these reasons, among others, it is not feasible to establish a retroactive no fault grant process.

### **C) Property Eligibility Criteria for a No-Fault Grant**

Further to the above, a go forward design of a no-fault grant program should reflect the following criteria:

- Limited to the registered owner of a single-family residential, duplex or triplex property within the City of Toronto, similar criteria used for eligibility in the basement flooding subsidy program.
- Properties are eligible for a no-fault grant only on dates following the establishment of the no-fault grant program
- The flooding damages must have occurred due to a storm event, as defined on the City's website and in communications materials. The storm event definition is appended to this report as Attachment 1.
- Residents must report flooding to the City through 311, and a Toronto Water investigator must attend the site and validate the flooding and the damage. The necessity of residents reporting to 311 must be clearly communicated on the City's website and in communications materials.
- The damage must consist of uninsured losses and the property owner needs to demonstrate that damages were claimed against their own insurance. The specific process to demonstrate this to the City will be identified clearly on the City's website and in communications materials.
- The damages claimed cannot be due to actions taken by the applicant, and the damages cannot result from local private property or plumbing issues (non-infrastructure related).

- Only properties in the Black Creek floodplain or that are hydraulically connected to the effects of flooding in the floodplain, and properties that will benefit from the Rockcliffe Riverine Flood Mitigation Project and Jane St. Crossing work and the associated Basement Flooding Protection Program projects, are eligible. The location of eligible properties will be identified for each storm event and published on the City's website.
- Properties are eligible until the Rockcliffe Flood Mitigation Project and Jane St. Crossing are substantially completed, and the associated Basement Flooding Protection Program projects are completed. The completion of these projects, and which properties the upgrades benefit, will be documented on the City's website.
- There are limitations to the future flood mitigation performance of the Rockcliffe Flood Mitigation Project, Jane St. Crossing work, and the associated Basement Flooding Protection Program projects. Should a very severe, generational storm event occur that exceeds the design performance of the proposed works, flooding could still occur despite constructed infrastructure. Properties are eligible for no-fault grants for storm events within the design performance of the proposed infrastructure only, as documented in the EA studies.

This eligibility criteria is dependent on the full funding of the Rockcliffe Riverine Mitigation Project, which is in the EA stage. Should the project not be funded and scheduled for construction, a no-fault grant program reliant on the completion of these works must be reconsidered.

#### **D) Geographical Area**

##### ***Similar Locations in the City to the Rockcliffe Area for a City-Wide No-Fault Grant Program***

Council requested staff report on comparable cost and implementation options to provide similar benefits to other locations in the city that may experience severe flooding similar to the Rockcliffe area.

The Rockcliffe area is at risk of riverine flooding due to its location in the Black Creek floodplain and is one of ten Special Policy Areas (SPA) in Toronto's Official Plan. Special Policy Areas are parts of the community that have historically existed in the floodplain; they have been designated as Special Policy Areas in the Official Plan to regulate development to mitigate the impact of the hazard of riverine flooding.

Addresses in the ten defined Special Policy Areas were tabulated to provide a comparison cost should a no-fault grant program be applied city-wide. The ten Special Policy Areas are located in 13 wards (Wards 1, 2, 3, 5, 6, 7, 10, 13, 14, 15, 20, 21, 22), as depicted in Attachment 2.

It should be noted that Special Policy Area policies and mapping are currently under appeal at the Ontario Land Tribunal – formerly the Local Planning Appeal Tribunal. The number of addresses may vary based on the results of the appeal; for the interest of this



comparison, addresses using the mapping in Toronto's current Official Plan have been applied.

The total number of addresses located in the ten Special Policy Areas is 2,597 addresses. This includes 494 addresses located in the Rockcliffe SPA. A variety of commercial, industrial, and residential property categories are located within the Special Policy Areas. Staff analyzed historical data of claims and flooding complaints in the last two years, by property classification, to refine the total number of addresses. Although practically, some buildings may not have basements and these properties have lower probability of flooding, the data suggests that many different property types may experience flooding. From the perspective of providing a high level comparison, and noting that property use may change over time, all 2,597 addresses in the Special Policy Area are included in the cost estimate calculations. A breakdown of property type in the ten SPAs is provided in Attachment 3.

As there are additional residential properties that are hydraulically connected to the Special Policy Areas, the flooding impacts within the Special Policy Areas may extend upstream so it would be consistent to consider these properties for inclusion in the no-fault grant eligibility. Determining a definitive list of such properties would require extensive hydraulic analysis, which could be established while designing a no-fault grant program.

The implementation and eligibility criteria for a larger no-fault grant program applicable to properties within the Special Policy Area floodplains would be similar. However, the program would potentially be costlier with more eligible properties. A one-time no-fault grant of \$7,500 was identified in the October, 2021 report to Council for the purposes of financial assessment. Applying this value to 2,597 addresses in the Special Policy Areas would cost a maximum of \$19.5 million. If this was applied to the 494 properties in the Rockcliffe Park SPA only, the cost could be \$3.7 million. Additional properties located outside of the Special Policy Areas but affected by flooding in the Special Policy Areas through the sewer system would increase the number of eligible addresses and the estimated maximum fee.

The spatial distribution, frequency and severity of rainfall and flooding is highly variable, which makes a no fault grant program cost indeterminable.

## **E) Recurrence of Eligibility**

### ***Eligibility for a Recurring or One-Time No-Fault Grant Program***

Residents may experience more than one sewer backup/basement flooding incident until benefitting infrastructure is completed. The design of a no-fault grant program including funding, administrative resources and eligibility criteria is based on the no-fault grant being available as a one-time only grant, or if the program is applicable to recurring flooding.

Since 2018, there have been four severe storms identified that align with the City's definition of a storm event: August 7, 2018; July 17, 2019; January 11, 2020 and July 8, 2020.

The spatial distribution and severity of storms varies, and storms impact different geographical areas of the City differently. Upon review of existing third-party data, the number of properties that made recurring claims during these four events is low. Less than ten individual addresses made claims for more than one storm event, and no addresses made claims for all four, over four years, city-wide. Despite this, a recurring no-fault grant program would result in a much higher potential maximum cost, as there is no cap on the number of no-fault grants issued until infrastructure is completed.

The estimate for a recurring grant program in the Rockcliffe area, for cost information purposes, using a no-fault grant cost of \$7,500 is approximately \$5.6M. This accounts for all properties receiving one no-fault grant, and an allowance for additional, recurring claims of 50% of properties making a repeat claim.

The estimate for a recurring grant program in any Special Policy Area, for cost information purposes, using a no-fault grant cost of \$7,500 is approximately \$29.2M. This accounts for all properties receiving one no-fault grant, and an allowance for 50% of properties making an additional claim.

The estimate for a recurring grant program in any Special Policy Area, for cost information purposes, using a no-fault grant cost of \$3,500 is approximately \$13.6M. This accounts for all properties receiving one no-fault grant of \$3,500, and an allowance for additional 50% of properties making an additional claim.

## **F) Duration of the Program**

Council requested staff report on a no-fault grant that would be eligible until work is completed in the Rockcliffe Area to address flooding. The flooding that has occurred in the Rockcliffe area is substantially linked to the occurrence of riverine or overland flooding as a result of Black Creek overtopping its banks during extreme weather events. Basement flooding and sewer surcharge can be complex and may involve multiple infrastructure systems including watercourses, the sewer system, overland flow, and local private property issues.

The direction given by Council was to present the parameters and the feasibility of a no-fault grant program that will remain accessible to residents until work is completed in the Rockcliffe area to address flooding.

It is important to recognize how the steps being taken by the City to make improvements to its infrastructure, in keeping with the direction to do so given by Council, are steps being taken in response to observed weather systems passing through the City, including the number and frequency of intense, localized storm events and heavy rainfall. Those steps are being taken in a professional manner, in accordance with the appropriate process, and in good faith.

### ***Rockcliffe Area Riverine Flood Mitigation Environmental Assessment***

The location of the Rockcliffe area is identified on a map in Attachment 2.

The Jane Street Crossing Improvements will expand the Jane Street Crossing over the Black Creek, allowing for increased conveyance capacity of Black Creek floodwaters. This work will enable the implementation of measures to mitigate riverine flooding. Based on the preliminary schedule, the Jane Street Crossing Improvements are anticipated for construction start as early as 2025, with targeted completion in 2030.

The Toronto and Region Conservation Authority, in collaboration with the City of Toronto are undertaking the Municipal Class Environmental Assessment (EA) to determine a preferred riverine flood mitigation strategy for the Rockcliffe- Smythe Area. The EA is scheduled to be completed and approved in Fall 2022. Following the completion of the EA, design of the preferred solution will commence, followed by construction of the preferred solution.

Although the preliminary recommended solutions have been shared with the community, the EA preferred solution has not been approved, and the phasing schedule to implement a preferred solution is not fully defined at this time. Also, with the exception of the Jane Street Bridge replacement, the full Rockcliffe Riverine Flood Mitigation Project, which is in the EA stage, is unfunded at this time.

From the perspective of introducing no-fault grants that are available until flood mitigation infrastructure is completed, it should also be noted that the Rockcliffe area is unique in that flood mitigation projects are viable and being advanced. Other areas of the City in floodplains, including Special Policy Areas, do not have flood mitigation plans, and in many cases projects to mitigate flooding and protect properties may be infeasible, so a timeline is indeterminate.

### ***Basement Flooding Protection Program***

In addition to riverine flood risk in the Rockcliffe area from the Black Creek overtopping its banks, basement flooding may also occur when the capacity of sewer and drainage systems is exceeded by severe storms. Sewer capacity may also be impacted by high water levels in the Black Creek floodplain which impact the performance of the sewer system, and can result in backup into basements.

The Basement Flooding Protection Program studies the performance of the sewer and drainage systems and recommends infrastructure, such as larger sewers, underground storage, high capacity catchbasins and inlet control to mitigate the risk of basement flooding. The Rockcliffe area falls within the boundaries of Basement Flooding Protection Program (BFPP) study areas 4 and 45. Both studies have been completed. BFPP Project 45-48 is scheduled for construction start in 2027. Other BFPP projects in this area are sequenced and advanced through design and construction as per Council direction. Construction completion schedule can vary based on coordination, design complexities, and available budget envelopes.

As per 2020 Council direction ([IE17.5](#)), BFPP projects are implemented according to council-directed prioritization criteria, and projects that exceed the cost per benefitting property threshold of \$68,000 will be deferred for future implementation. These projects will be prioritized and advanced using the greatest impact criteria at a later time, when all projects under \$68,000 per benefitting property have been advanced to design.

## ***Flooding and Local Property Issues***

Riverine flooding and sewer surcharge can be mitigated through upgrades to infrastructure as noted above. However, flooding can also occur on private property due to non-infrastructure related causes such as private plumbing.

Following a severe storm in August 2018, many properties reported flooding. Toronto Water staff investigated approximately 100 properties that reported flooding, including site visits, camera investigation of sewers and connections (CCTV), and dye testing and other investigative techniques.

The investigation determined that flooding of private property had occurred due to a variety of localized issues, which were the result of the actions taken by private property owners in failing to properly install or maintain their private infrastructure including: improperly connected or disconnected backwater valves, downspouts connected internally to plumbing, cross-connections to sewer infrastructure, and other issues. The investigation identified that many properties increased their flood risk due to these practices.

These findings, among other potential private property issues, suggest that flooding may be a result of factors unrelated to riverine flooding or the functioning of the sewer system and all future flooding cannot be rectified by infrastructure improvements to the Black Creek and/or public sewer and drainage systems. Investigation, subsequent to a 311 call, would need to be undertaken to determine the flooding was not the result of private property issues. This type of investigation would need to inform the provision of a no-fault grant to properties.

### **G) Implementation of a No-Fault Grant Program**

As with past flood damages grant programs, it is recommended that a future program would employ the services of an independent adjuster rather than administering the program internally. The independent adjuster would be used to adjudicate each application and determine qualification for the program. Based on existing costs for the services of an independent adjuster, administration costs would add an estimated additional 5 percent to the cost of a program. Authority would need to be granted to expand the terms and conditions of the City's existing agreement with the incumbent independent adjusting firm providing insurance adjusting services to include adjudication of the no-fault grant claims.

Toronto Water's Customer and Technical Support section would respond to 311 calls and document flooding, while the independent adjuster would evaluate the no-fault grant application.

Depending upon the scope of the program and the role of Toronto Water, it is anticipated that 1-2 staff resources within Toronto Water's Customer Care Centre will be required to initiate and sustain the program. Additional analysis is required to determine the specific staffing requirements and impacts of the council approved program. This analysis would consider new business processes, supporting tools including online

digital forms, and staff resources within Toronto Water, other City Divisions, and an independent adjuster, and would be included in the 2023 Budget process.

The implementation of a no-fault grant would integrate all recommendations from the Ombudsman Toronto's report to implement a transparent and defined program that is clearly articulated so potential applicants can understand the process. Strategic Communications and Insurance and Risk Management would work with Toronto Water to ensure public facing resources are clear, and the program design reflects the recommendations of the Ombudsman.

### ***Ombudsman Toronto Report on Third-Party Liability Claims for Basement Flooding and Sewer Backups***

On February 2, 2021 City Council adopted the findings of the Ombudsman Toronto's report: Enquiry into How the City of Toronto Handles Homeowner Third-Party Liability Claims for Basement Flooding and Sewer Backups, and directed the City administration to implement all of the recommendations.

The Ombudsman's report found that the City can improve its service level by providing clear and accurate information about the claims process for basement floods and sewer backups, and how claims are assessed. The report found that residents must be better informed on the approach and information required to submit a successful claim, and that more transparency in the claims process, including defined processes and procedures, is needed.

The report made nine recommendations to improve the fairness and transparency of the City's third-party liability claims process for basement floods and sewer backups. Full details are provided in the Ombudsman Toronto's November 12, 2020 report, located at the following link:

<https://www.ombudsmantoronto.ca/Publications/News-Releases/News-Folder/Ombudsman-Toronto-Enquiry-Third-Party-Liability.aspx?ext=.pdf>

On January 21, 2022, the Ombudsman confirmed that all nine recommendations were implemented to their satisfaction.

The Ombudsman's report expressly stated that whether or not the City should have a no-fault financial support program for basement flooding and sewer backups is a policy question for City Council. Ombudsman Toronto does not oversee policy making by Council or its committees. As a result, the Ombudsman's report did not examine that question.

The report recommendations, and the steps taken by the City in responding to it, provide a framework that one can look to in order to establish how information about any no-fault grant program can be communicated to residents. In summary:

- Available resources and brochures must include clear information about how the any no-fault grant process is handled. The City would need to communicate to potential

claimants the onus they bear in providing sufficient evidence to qualify for any grant and to substantiate their claim.

- Relevant sections on the City's website must provide consistent and detailed information on how Toronto Water investigates basement floods and sewer backups and how this will impact the any no-fault grant process.
- The City must provide clear information on the City's website about the importance of reporting a basement flood or sewer backup to 311, and how taking this action would be critical to any claimant's eligibility for any no-fault grant.
- The City must develop a written "business process" to coordinate the investigation process, including a clear definition of a storm event, roles and responsibilities and a formal communications strategy, and this process be posted on the City's website.
- City staff should share the results of any investigations and data with sections within the City responsible for mitigating flood risk, with the intent of sharing knowledge and improving outcomes.

## Conclusion

It remains the recommendation of staff that a no-fault grant program not be adopted. A no-fault grant program does not reduce future flood risk, and there are equity issues with funding a program from all rate or tax payers to a select group of residents. The City is under no legal obligation to provide a no-fault grant for basement flooding damages.

## CONTACT

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**SIGNATURE**

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Lou Di Gironimo  
General Manager, Toronto Water

## **ATTACHMENTS**

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### **Attachment 1 - Storm Event Definition**

As identified on the City's website, a storm event can be defined as intense and sustained precipitation (rain and/or snow) that:

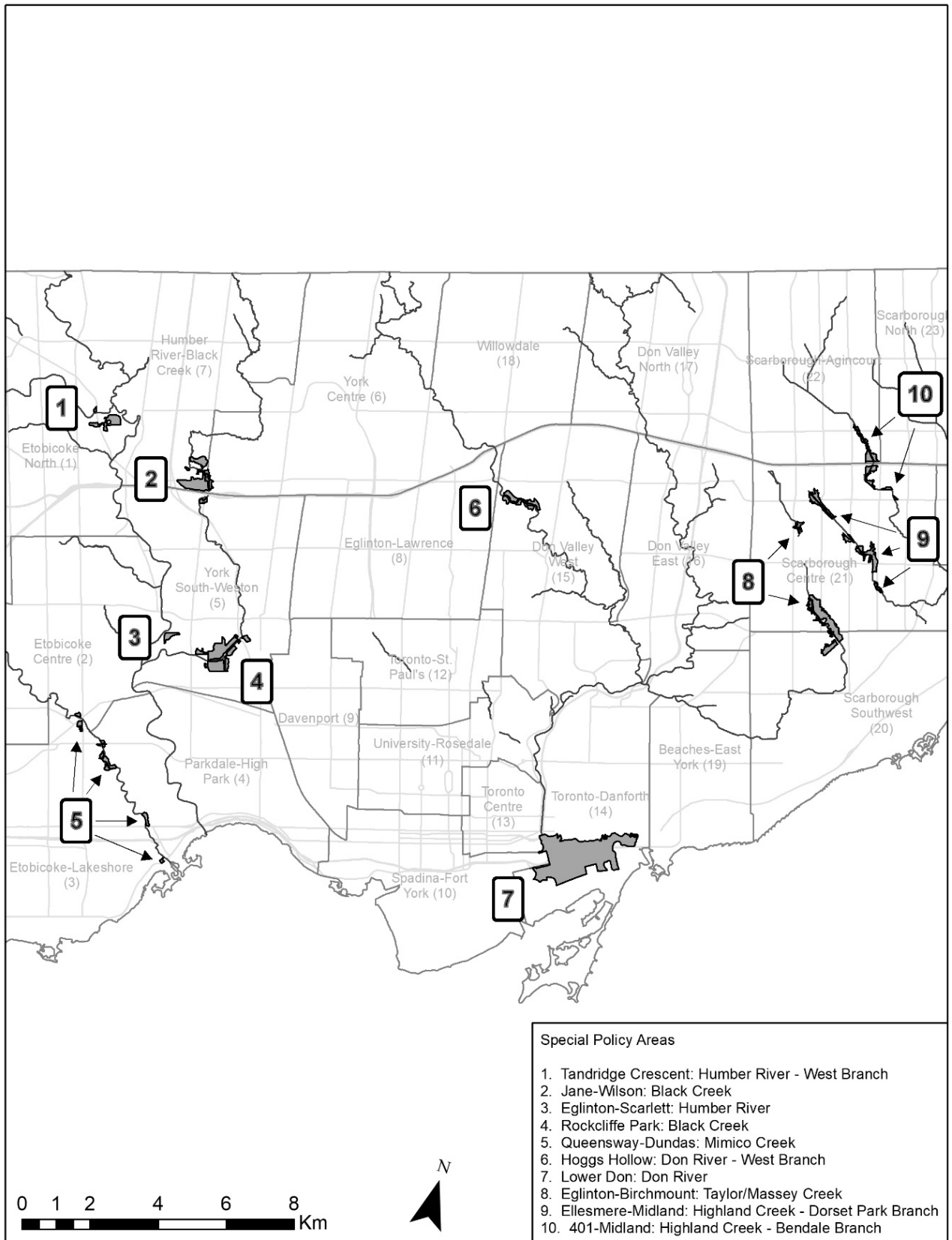
- Exceeds the design capacity of local sewers and/or trunk sewers;
- Results in a sudden and significant increase in customer service calls reported to 311 of basement flooding and/or blocked sewer service lines, and;
- Customer Care & Technical Support, Water Service Technicians, are unable to meet the standard four hour customer service response time to investigate basement flooding and/or blocked sewer service lines due to a sudden increase in customer service calls to 311. Depending where in the city the rain fell during the storm event, the calls may be localized, include multiple distinct areas of the city, or can be city-wide.

This storm definition can be found at the following link:

<https://www.toronto.ca/city-government/accountability-operations-customer-service/complaints-claims-compliments/make-a-claim-against-the-city/flood-claims/>



## Attachment 2 - Map of Special Policy Areas



### Attachment 3 - Property Type in Special Policy Areas

		<b>Total Addresses</b>	Commercial	Industrial	Institutional	Residential	Other (Vacant, Utilities, Unknown)
<b>Area 1</b>	Tandridge Crescent: Humber River West Branch	<b>67</b>	1	0	0	56	10
<b>Area 2</b>	Jane-Wilson: Black Creek	<b>226</b>	68	4	11	138	5
<b>Area 3</b>	Eglinton-Scarlett: Humber River	<b>74</b>	11	0	0	61	2
<b>Area 4</b>	Rockcliffe Park: Black Creek	<b>494</b>	5	42	5	433	9
<b>Area 5</b>	Queensway-Dundas: Mimico Creek	<b>146</b>	6	0	0	135	5
<b>Area 6</b>	Hoggs Hollow: Don River - West Branch	<b>118</b>	0	0	0	111	7
<b>Area 7</b>	Lower Don: Don River	<b>996</b>	50	185	4	620	137
<b>Area 8</b>	Eglinton-Birchmount: Taylor/Massey Creek	<b>326</b>	1	14	0	307	4
<b>Area 9</b>	Ellesmere-Midland: Highland Creek-Dorset Park Branch	<b>132</b>	18	29	1	80	4
<b>Area 10</b>	401-Midland: Highland Creek- Bendale Branch	<b>18</b>	8	8	0	0	2
<b>Totals</b>		<b>2597</b>	<b>168</b>	<b>282</b>	<b>21</b>	<b>1941</b>	<b>185</b>