

Consolidated Clause in Policy and Finance Committee Report 7, which was considered by City Council on July 19, 20, 21 and 26, 2005.

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Risk Assessment and Management Plan for West Don Lands

City Council on July 19, 20, 21 and 26, 2005, adopted this Clause without amendment.

The Policy and Finance Committee recommends that City Council adopt the staff recommendations contained in the Recommendations Section of the Report (June 28, 2005) from Deputy City Manager, Fareed M. Amin:

Purpose:

The purpose of this report is to request Council authorization for the initiation of a Risk Assessment and Management Plan process by Ontario Realty Corporation, in partnership with the Toronto Waterfront Revitalization Corporation, to address the soil/groundwater conditions of the flood protection landform and the first two development districts within the West Don Lands. These areas include some existing City-owned lands as well as other lands that the City would assume later for new roads, parks and other public uses. The Ministry of the Environment requires formal authorization from the landowners in order to proceed with the Risk Assessment.

Financial Implications and Impact Statement:

There are no financial implications arising from the adoption of this report. Staff will report back on potential financial impacts of the Risk Assessment and Management Plan prior to its completion and the filing of a Record of Site Condition.

Recommendations:

It is recommended that:

- (1) Council authorize the Ontario Realty Corporation, in co-operation with the Toronto Waterfront Revitalization Corporation, to initiate a Risk Assessment and Management Plan process to address soil/groundwater conditions of the flood protection landform and the first two phases of development within the West Don Lands;
- (2) the Deputy City Manager responsible for the Waterfront initiative, in consultation with the Waterfront Secretariat, Legal Services, Technical Services, Finance, and Facilities and Real Estate, be directed to report back to Policy and Finance Committee on potential financial, legal and other implications completing the proposed Risk Assessment and

Management Plan addressed in Recommendation (1) above, prior to its completion and the filing of a Record of Site Condition;

- (3) the City be authorized to execute a Pre-Submission Form, and enter into one or more access agreements to permit Ontario Realty Corporation and others as required to have access to City-owned lands for purposes relating to the preparation of the Risk Assessment and Management Plan and that all such agreements include an indemnity in favour of the City and satisfactory to the City Solicitor;
- (4) the Deputy City Manager responsible for the Waterfront initiative be authorized to execute the Pre-Submission Form, and access agreements; and
- (5) The appropriate City Officials be authorized and directed to take any other action necessary to give effect to the foregoing resolutions.

Background:

The Ontario Realty Corporation (ORC) wishes to file a “Pre-Submission Form” (PSF) to the Ministry of the Environment (MOE) for the purpose of seeking approval of a Risk Assessment (RA) and Management Plan for the area of the flood protection landform and the first two phases of development at the West Don Lands. The Environmental Protection Act, as amended by the Brownfields Statute Law Amendment, 2001, provides for the use of a Risk Assessment approach. The Record of Site Condition Regulation (Regulation 153), which took effect on October 1, 2004, formalizes the RA process and standards.

As the City owns roads, closed lanes and other property in this part of the West Don Lands, City authorization from an official able to bind the Corporation is required in order for ORC to make the pre-submission to the MOE. Authorization from the Province (Management Board of Cabinet) is also required as a landowner. ORC and TWRC will also need authority to access City lands to undertake work related to the RA (e.g. soil testing).

The ‘Pre-Submission Form’ is being filed by ORC as it will be responsible for preparing the Risk Assessment for the flood protection landform (site of future public park) and the first two development districts (Districts 1 and 3) in the West Don Lands (see Attachment 1). The ORC pre-submission will outline the purpose, approach and process for conducting the RA. ORC is currently carrying out a ‘Phase 1 Environmental Site Assessment’ to provide an overview of existing site conditions and will conduct detailed soil investigations later.

Following the RA, TWRC and ORC have agreed that ORC will carry out the site remediation for the area of the flood protection landform. ORC is also responsible for the design and construction of the flood protection landform, and the associated removal, relocation and construction of roads (e.g. Bayview Avenue) and water, stormwater and sanitary lines, and utilities.

The TWRC will be responsible for the site remediation of the development lands addressed in the RA (i.e. Districts 1 and 3). A protocol between the Province, ORC and TWRC to confirm their respective roles and responsibilities is to be completed by July 31, 2005.

ORC is developing a comprehensive groundwater monitoring and sampling program for the West Don Lands that will be used to inform the RA process. TWRC is preparing a soil management strategy for the reuse of soil excavated during site preparation and construction within the West Don Lands, and exploring MOE requirements for a potential soil management facility for the West Don Lands. Much of the excavated soil will be used to construct the flood protection landform and for site grading.

Public consultation is a requirement of the RA process, and of the ORC Class Environmental Assessment (EA) for the sale of land and demolition of buildings. A community meeting with the West Don Lands stakeholder group was held in June, and the first formal public information meeting is on July 7. Further stakeholder meetings and a second public meeting will be held this fall. ORC has established a technical steering group that includes staff from the City (Waterfront Secretariat, Technical Services, Health, City Planning), MOE, other Provincial ministries, and the Toronto and Region Conservation Authority (TRCA).

Comments:

The proposal by ORC and TWRC to develop risk management plans for all of the development districts within the West Don Lands is appropriate given the extensive public land ownership. This provides for a more effective area-wide remediation process for lands that may become public or private, and has administrative efficiencies.

Subject to Council approval, the City's letter of authorization for the Pre-submission Form for the RA would be executed by the Deputy City Manager responsible for the Waterfront initiative. This would occur upon receipt of an agreement between the Province, ORC and TWRC that, among other matters, confirms respective roles of ORC and TWRC, identifies who will undertake the clean-up and pay the clean-up costs, and receipt by the City of an indemnity relating to work on City lands, to the satisfaction of the Waterfront Project Director and City Solicitor.

MOE approval of the Risk Assessment for current and future public lands could result in conditions that have financial, legal or other implications for the City. As the RA is being prepared by a third party rather than the City, it is important that the City have safeguards to ensure its interests are addressed. RAs can result in built engineering controls that require long term operational, maintenance and reporting; land use restrictions that limit changes to future use; and, contaminants remaining on public lands (e.g. roadway, park). As a result, concurrence of City staff with the outcome of the studies and risk management plans and further approval by Council will be required prior to the filing of the Record of Site Condition (RSC) and the transfer of any lands to the City. As well, City staff will require a peer review by the City's peer reviewer, at ORC or TWRC's expense, of the Environmental Site Assessment studies consistent with the City's practice for former industrial lands to be transferred to the City.

Conclusions:

The ORC is preparing to make an initial submission (Pre-Submission Form) to the Ministry of the Environment to formally start the Risk Assessment process for the West Don Lands in accordance with Regulation 153 of the Environmental Protection Act. It requires authorization

from the City of Toronto, as a landowner within the affected area. Staff are satisfied that it is appropriate for the City to authorize the ORC submission provided that an indemnity or other agreement is provided to the City that ensures that the City's interests will be addressed as an existing and a future owner of risk-assessed lands in the precinct.

During the RA process, a number of issues related to the level of remediation and potential liability of the City as future owner of risk-assessed roads, parks and other public sites will need to be clarified. City staff will be actively involved during the RA process and report back to Council prior to its completion and the filing of a Record of Site Condition, and any transfer of the lands to the City.

This report was prepared by the Waterfront Secretariat in consultation with Legal Services, Technical Services and Facilities and Real Estate.

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Attachment - Map of West Don Lands

Attachment No. 1
West Don Lands

