



**STAFF REPORT  
ACTION REQUIRED**  
with Confidential Attachment

**Supplementary Report  
238, 240, 242, 244, 250, 252, 254, 256 & 258 Finch Avenue  
East – Official Plan Amendment, Zoning By-law  
Amendment, and Draft Plan of Subdivision Applications-  
Final Report**

<b>Date:</b>	December 13, 2013
<b>To:</b>	City Council
<b>From:</b>	Chief Planner & Executive Director, City Planning General Manager, Toronto Water
<b>Wards:</b>	Ward 24 – Willowdale
<b>Reason for Confidential Information</b>	This report involves the security of property belonging to the City or one of its agencies, boards, and commissions.
<b>Reference Number:</b>	12 243614 NNY 24 OZ and 13 211148 NNY 24 SB

**SUMMARY**

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This report highlights the issues arising from North York Community Council, Recommendation 6 from its meeting of November 19, 2013, in dealing with Item NY 28.30, entitled "Final Report – Official Plan Amendment, Zoning By-law Amendment, and Draft Plan of Subdivision Applications – 238, 240, 242, 244, 250, 252, 254, 256 & 258 Finch Avenue East". Recommendation 6 states that:

*"City Council direct City Staff to meet with the applicant and establish easement agreements, through the subdivision process, on properties where new catch basins are being installed and to provide maintenance of the catch basin, and that the City establish a reserve account or other method to fund the maintenance work, and the developer provide the funding, possibly in a manner similar to the funding provided for the maintenance of public art."*

The above Recommendation is contrary to the City's "Policy Regarding the Repair of Private Storm Drainage Systems". Additionally, it will pose additional maintenance, liability and cost implications to the City. It is recommended that Recommendation 6 as adopted by North York Community Council not be adopted by City Council and that as an alternative, staff be directed to (1) include additional provisions in the subdivision agreement to make it clear to future property owners that they are obligated to maintain the private storm drainage system on their property, (2) ensure by way of subdivision approval that a clause to that effect be included in the agreement of purchase and sale, and, (3) require by way of subdivision approval that any property owners with inter-connecting pipes to enter into a mutual easement and private cost sharing agreement with any benefiting neighbours to lessen the financial burden on any single individual property owner.

## **RECOMMENDATIONS**

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**The City Planning Division and the General Manager, Toronto Water, in consultation with the City Solicitor recommend that:**

1. City Council delete North York Community Council Recommendation 6 (hereinafter referred to as "NYCC Recommendation 6").
2. City Council request the Chief Planner to include, as a condition of subdivision approval a requirement that any owner of a lot containing a private storm drainage system ensures that catch basins and related storm sewer pipes are maintained in a state of good repair and kept free and clear of any debris, such that the private storm drainage system functions in an appropriate manner and does not cause flooding of nearby properties.
3. City Council request the Chief Planner to include as a condition of subdivision approval, a requirement for a warning clause in the agreement of purchase and sale for any units within the plan of subdivision that will contain catch basins or other storm drainage system components, warning individual purchasers that they will be assuming responsibility for maintenance of same.
4. City Council request the Chief Planner to include, as a condition of subdivision approval a requirement that property owners with pipes inter-connected to the catch basins, if any, be required to enter into a mutual easement and private cost sharing agreement, to ensure that the cost of maintaining the system does not fall to any single individual property owner.
5. City Council direct that the information contained in the Confidential Attachment remain confidential as it contains information respecting the security of property belonging to the City.

## **Financial Impact**

The recommendations in this report are in accordance with the current City's Policy for Repair of Private Storm Drainage Systems and the Property Standards By-law, and no financial impact from their adoption is anticipated. They direct City staff to include appropriate provisions in the subdivision agreement that would make clear to future property owners that they are obligated to maintain the private storm drainage system on their property. The report also recommends that if there are any inter-connected pipes, future property owners enter into a mutual easement and private cost sharing agreement, to ensure that maintenance costs do not fall to any single property owner.

However, if the recommendations in this report are not adopted, significant operating and capital costs to maintain, replace and renew any future assets associated with drainage systems on private properties are expected. Should the City assume these assets there will be considerable demand on City resources, which will result in additional budgetary pressures, since there is no funding allocated in the 2014 Recommended Operating Budget and the 2014-2023 Capital Budget and Plan for their maintenance and renewal. A detailed cost assessment will be required in order to identify additional funding requirements and include them for consideration with future year Operating and Capital Budget processes.

In addition to the operating and capital costs required to maintain additional assets, there are other issues that may potentially result in financial implications to the City. These issues are identified in the confidential attachment.

The Deputy City Manager and Chief Financial Officer have reviewed this report and agree with the financial impact information.

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## **DECISION HISTORY**

At its meeting on July 16 and 17, 2007, City Council adopted a policy, entitled "The Repair of Private Storm Drainage Systems", that places the obligation to operate, maintain and repair private storm drainage systems entirely on the private property owner. The Council Decision Document can be found at:

<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-07-16-cc11-dd.pdf>

At its meeting on November 28, 2007, Public Works and Infrastructure Committee received a staff report, entitled "Back Lot Drainage Reserve Fund", as requested by City Council at its July 2007 meeting. The report presented staff's recommendation against establishing a back lot drainage reserve, funded by a surcharge on grading and paving permits, to assist with resolving local area community drainage problems. The report to Public Works Committee can be found at:

<http://www.toronto.ca/legdocs/mmis/2007/pw/bgrd/backgroundfile-8877.pdf>

At its meeting of November 19, 2013, North York Community Council adopted the amendments to a staff report, entitled "Final Report – Official Plan Amendment, Zoning By-law Amendment, and Draft Plan of Subdivision Applications – 238, 240, 242, 244, 250, 252, 254, 256 & 258 Finch Avenue East" for the development of those lands. The Decision Document can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.NY28.30>

## **BACKGROUND**

The proposed rezoning at 238 to 258 Finch Avenue East is for a 58-unit, 4-storey residential townhouse development accessed via a network of public streets, including a public lane. Within the proposed subdivision, a conventional storm water drainage system comprised of catch basins and connecting pipes is proposed by the applicant to manage storm water on private lands. The private drainage system is being designed to drain into the municipal sewer at the new public street.

The existing site currently slopes northeast towards Winlock Park Crescent. As such, the existing surface drainage from the site also flows northeast towards a pocket of existing homes on Winlock Park. As part of the development plan, it is proposed that the elevation of the site be raised and graded to redirect the surface drainage towards Finch Avenue East instead of its current drainage towards the adjacent lands. Due to the topography of the site, it is necessary for the developer to provide a private storm drainage system.

A private storm drainage system means that part of any drain or system of drains, located within the limits of private lands. This includes catch basins, drains, sumps or subsurface drainage pipe for surface or subsurface drainage of the land. Installation of a drainage system on private property is an accepted and very common measure to ensure that land and buildings are protected from the possibility of flooding. An example of a private storm drainage system is a swale leading to a catch basin that is typically located in the rear of a property where there is no overland flow path for surface water to leave the property. The catch basin is intended to provide a safe outlet for stormwater runoff to discharge to the municipal sewer on the adjacent City roadway.

The use of private drainage systems to convey/store storm water from private properties is a typical technique employed within the City to control surface drainage and to significantly reduce the potential of flooding. For new developments and re-developments, private storm drainage systems are installed by the private developer at the time of development. Under existing City policies and bylaws, the obligation to maintain and repair private storm drainage systems located entirely on private property rests with the private property owner.

The overall private storm drainage plan for this particular site is intended to protect the lands within the new subdivision. Additionally, the change in grade will improve the existing situation for the neighbouring residents along Winlock Park.

In this case, the developer is proposing back yard swales and catch basins sufficient to convey/capture the 100-year post-development overland flows from and along the rear of the development properties, and would be connected to and ultimately discharge to the storm sewer system on Finch Avenue East at a release rate acceptable to the City. The intention is for the private storm drainage system to protect not only the development site but also provide greater level of storm drainage protection to the surrounding adjacent neighbouring lots by redirecting storm drainage flow from the site to Finch Avenue East and reducing the risk of flow from the site up to a 100 year storm event.

Details about the system, such as the depth of the swale(s); and number of catch basins/leads and their respective locations are not yet known, but will be determined during detailed design.

The development applications for the site were presented at the November 19, 2013 meeting of the North York Community Council. The applications proposed to amend the Official Plan and the Zoning By-law to permit the redevelopment of the subject lands at 238 to 258 Finch Avenue East.

After considering the application, the North York Community Council adopted Recommendation 6 that speaks to the obligation for the storm drainage system on private properties. It directs staff to (1) establish easement agreements for a private storm drainage system such that the City would assume the obligation to maintain the infrastructure and (2) set up a maintenance account with funds provided by the developer for the private storm drainage system.

## **COMMENTS**

Toronto Water has identified several issues arising from the NYCC Recommendation 6. Specifically, the Recommendation:

- Is contrary to existing City policy, namely the "Policy Regarding the Repair of Private Storm Drainage Systems";
- Potentially compels the City to undertake unplanned operational and maintenance actions on private property;
- Potentially establishes a precedent that could have a serious impact upon future operational and maintenance costs: and,
- Would impose unnecessary risk, costs and liability on the City.

These issues are summarized below.

### Contrary to Current City Policy

NYCC Recommendation 6 is contrary to City's "*Policy Regarding the Repair of Private Storm Drainage Systems*" adopted by Council on July 16-19, 2007 which places the sole obligation to operate, maintain and repair private storm drainage systems on the private

property owner and confirmed that privately owned facilities are the sole responsibility of the owner and that no financial assistance will be provided by the City to a private property owner for the operation, maintenance or repair of a private drainage system.

As noted in the Report 11.7 dated Nov. 12, 2007 to the Public Works and Infrastructure Committee, the creation of a Back Lot Drainage Reserve Fund was determined to not be practical. The creation of a reserve account to fund the maintenance of a private catch basin under this proposal shares similar issues.

### Maintenance Requirements

To ensure the system is working as it should, regular inspection and maintenance is required. When a 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. Any repairs are the responsibility of the private landowner. The private property owner is in the best position to observe whether there is any ponding occurring in their backyard and to regularly check his or her property to ensure that the catch basin on their property remains unobstructed and maintained. Neighbouring property owners potentially affected by the operation of the catch basin are also in a position to observe whether the catch basin is being kept clear of obstructions and properly maintained.

If a private property owner is failing to maintain the catch basin on their property or has obstructed it in some manner and refuses to address the issue, those persons affected by the private property owner's failure to keep the catch basin in a proper state of repair can refer the matter to the City's Municipal Licensing and Standards for investigation and enforcement. A Municipal Standards Officer may issue a Notice of Violation, or an Order to Comply to a homeowner requiring that the deteriorated private catch basins and private drain connections located on their property be repaired. If the owner fails to complete the necessary repair prescribed in the Order to Comply in the specified time, and the Order to Comply has been confirmed as required by the Building Code Act, 1992, the City may undertake the needed repair and recover the amount spent on the repair by adding the amount to the tax rolls.

For the City to properly maintain the catch basin, a minimum easement width of 3 metres must be conveyed to the City so that the catch basin is readily accessible by City staff and equipment. In this case, the site (and almost any other development proposal that requires private drainage) would need to be reconfigured to achieve the required access.

There are practical difficulties to implementing NYCC Recommendation 6. For the City to properly maintain the catch basin, the easement would have to prohibit the placing, building or installing of any obstructions, structures or buildings on the easement lands including fences, sheds, garages, trees, pools and landscaping features. The City would

also have to have an unrestricted right to access the easement lands at any time for the purpose of inspection, maintenance and/or repair. A control manhole may also need to be installed. These easement rights reserved to the City would restrict the property owner's use of his or her lands and the encumbrance would potentially lessen the value of the owner's lands. Additionally, as has been experienced with City sewer easements, owner's often place obstructions or structures on the easement notwithstanding the terms of the easement which makes access, inspection, maintenance and repair more difficult, more time-consuming and more expensive and may lead to conflict with the property owner.

Given that there is a process in place in addressing the maintenance of private drainage systems, it is not advisable for the City to take over such obligations.

Risk, Liability and Cost Implications

These items are discussed in the confidential attachment to this report.

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**SIGNATURE**

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**ATTACHMENT 1**

238, 240, 242, 244,250, 252, 254, 256 & 258 Finch Avenue East- Official Plan  
Amendment, Zoning By-law Amendment, and Draft Plan of Subdivision Applications-  
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