



## STAFF REPORT ACTION REQUIRED

### Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the *Planning Act*

<b>Date:</b>	December 16, 2014
<b>To:</b>	Public Works & Infrastructure Committee
<b>From:</b>	Executive Director, Engineering & Construction Services Division
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2014\Cluster B\TEC\PW15007 (AFS#19147)

#### SUMMARY

---

The purpose of this report is to seek Council approval of a City policy titled "Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the *Planning Act*".

This policy updates and consolidates the City of Toronto's procedures and criteria for the acceptance of potentially contaminated lands conveyed to the City as a condition of a *Planning Act* application approval. The policy formalizes processes that have been in place and incorporates recently updated requirements for contaminated lands by the Ontario Ministry of the Environment and Climate Change (Ministry). The policy also responds to issues raised at recent consultations with representatives from the Ministry and the development industry.

Adoption of the policy will: 1) provide more certainty and clarity to City staff and the development industry about the City's expectations and requirements for accepting potentially contaminated lands; 2) minimize the City's liabilities related to accepting conveyed lands; and 3) safeguard public health and the environment.

## RECOMMENDATIONS

---

**The Executive Director of Engineering & Construction Services recommends that:**

1. City Council adopt the "Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the *Planning Act*, January 2015" as set out in Attachment 1, appended to this report.

### **Financial Impact**

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

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact statement.

### **DECISION HISTORY**

At its meeting on June 18, 2014, the Public Works & Infrastructure Committee considered the staff report titled "Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the *Planning Act*" as item PW32.14.

At its meeting on July 8 to 11, 2014, Council deferred consideration of item PW32.14 to the City Council meeting on August 25 to 28, 2014.

At its meeting on August 25 to 28, 2014, Council referred item PW32.14 back to the Executive Director, Engineering & Construction Services to undertake further consultations and to report the findings and recommendations from the consultations, including any modifications to the "Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the *Planning Act*", to the Public Works & Infrastructure Committee in the first quarter of 2015.

A copy of the Council decision can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PW32.14>

### **ISSUE BACKGROUND**

Through the *Planning Act* application approval process, the City often requires an applicant to convey lands to the City for new roads, road widenings, and parks. Prior to taking title to the lands, the City requires the applicant to demonstrate that the lands meet specific Ontario Ministry of the Environment and Climate Change (Ministry) standards for soil and groundwater quality.

Prior to amalgamation, some of the former local municipalities (i.e. Etobicoke, Scarborough and Toronto) developed procedures and criteria describing how applicants must demonstrate that lands to be conveyed meet acceptable soil and groundwater standards. In 2002, the newly amalgamated City established procedures and criteria that pre-dated any mandatory Provincial legislative requirements for such soil and groundwater quality work. This was called the Harmonized Peer Review Process and utilized a roster of third party Subject Matter Experts (now identified as Qualified

Persons) to review and confirm that the conveyed lands met acceptable soil and groundwater quality standards.

The City's 2002 Harmonized Peer Review Process required that:

1. The applicant submit environmental site assessment reports for review and acceptance by the City's peer reviewer;
2. The applicant complete a Record of Site Condition, filed by a Qualified Person on behalf of the applicant and acknowledged by the Ministry of the Environment and Climate Change, which:
  - i. document the existing soil and groundwater quality conditions on the land based on a particular point in time and the intended land use;
  - ii. may impose restrictions on future land use; and
  - iii. provide some limitation on scope of enforcement;
3. The applicant pay for the City's peer review costs prior to the lands being conveyed to the City.

In 2004, the Ministry of the Environment and Climate Change enacted Ontario Regulation 153/04 under Section XV.1 of the *Environmental Protection Act* (O. Reg. 153/04) to enshrine a requirement for a Record of Site Condition in law. The Regulation applies to all properties (including municipal lands), and makes the Record of Site Condition a legislative requirement when land use changes from a less sensitive use to a more sensitive use (e.g., when industrial or commercial lands are proposed to be converted to residential or parkland use).

According to O. Reg. 153/04, there are two approaches that can be followed in order to acquire a Record of Site Condition:

#### 1. Generic Approach

This approach requires the applicant to demonstrate that the property meets regulated soil, sediment and groundwater standards. The standards established by the Ministry of the Environment and Climate Change are published and described in the List of Tables in Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the *Environmental Protection Act*<sup>1</sup>. The standards are based on the intended land use and the physical characteristics of the property (e.g. potable groundwater area; non-potable groundwater area; shallow soils area).

Under the Generic Approach, the Ministry of the Environment and Climate Change has two types of standards: (a) "full depth site condition standards" (Tables 1, 2, 3, 6, 7, 8 and 9) that apply regardless of the depth of soil on the property; and (b) "stratified site condition standards" (Tables 4 and 5), which has two sets of standards, one set of standards for soils that are within 1.5 metres of the surface, and another set of less stringent standards for soils that are deeper than 1.5 metres below ground surface.

---

<sup>1</sup> <http://www.ontario.ca/environment-and-energy/soil-ground-water-and-sediment-standards-use-under-part-xv1-environmental>

## 2. Property-Specific Approach

This approach requires the applicant to obtain approval from the Ministry of the Environment and Climate Change for property-specific standards developed by the Qualified Person through a Risk Assessment, which allows soils containing contaminants to stay on site.

Engineering, land-use, and administrative controls are identified through the Risk Assessment and are put in place to ensure the contamination does not exceed the property-specific standards. This is done through a Certificate of Property Use, which is issued by the Ministry of the Environment and Climate Change, and requires the owner of the property to: (i) prevent or eliminate any problems with contamination on the property; (ii) monitor contamination; and/or (iii) follow specified land use or building restrictions set out in the Risk Assessment. The specific conditions and restrictions in the Certificate of Property Use are based on the Qualified Person's recommendations as agreed upon by the Ministry of the Environment and Climate Change.

A Certificate of Property Use is registered on the title of a property, so that future property owners, municipal officials, and occupants of a property will be aware of any property use restrictions, building restrictions or equipment installation required to ensure that contaminants remaining on a site meet Risk Assessment standard levels.

The City addressed the Risk Assessment approach by formulating specific requirements and conditions for the conveyance of risk-assessed lands as set out in the 2006 and 2007 City Council adopted reports.

Since 2007, the Ministry of the Environment and Climate Change has made the following changes to legislation:

- i. Expanded soil and groundwater standards to include more land uses (e.g. depth to bedrock; proximity to a waterbody);
- ii. Made some soil and groundwater contaminant standards more stringent and added new chemicals to the list of regulated contaminants;
- iii. Clarified that all supporting documents from a Qualified Person must be based on current data, assessment and evaluation (i.e., data cannot be older than 18 months prior to Record of Site Condition filing); and,
- iv. Developed a Modified Generic Risk Assessment process, which substantially reduces the Ministry of the Environment and Climate Change's approval timelines as compared to the full Risk Assessment approach. This approach is available to address only a limited range of contaminants and concentrations as opposed to the Generic approach or the full Risk Assessment approach. The Modified Generic Risk Assessment process continues to impose Certificate of Property Use restrictions and conditions on the land, like the full Risk Assessment process; however, these restrictions and conditions are prescriptive.

## COMMENTS

The City's Peer Review Process (last updated in 2007) needs to be revised to address the recent legislated changes made by the Ministry of the Environment and Climate Change. The proposed “Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the *Planning Act*, January 2015” (Attachment 1) consolidates the City's requirements and incorporates the recent legislated changes.

The objectives of the Policy are to:

- a) minimize the human health exposure risk to City staff, contractors and utility staff when conducting routine work on the conveyed lands;
- b) support ecological health;
- c) support unrestricted operations and ongoing administrative processes for issuing road occupancy permits and parks access agreements/licences;
- d) enshrine the Peer Review Process as a requirement in below-grade easement agreements so that exposure risk to City staff, contractors and utility staff can be minimized; and
- e) reduce the City's potential exposure to liability and unexpected costs by imposing additional requirements on the Qualified Person who submits documentation on behalf of the Applicant.

The following key requirements are included in the proposed policy:

1. The City does not accept cash in lieu of satisfying the conveyance requirements regarding soil and groundwater conditions.
2. The City's procedures and criteria cannot be amended or waived by staff. Only Council has the authority to amend or provide relief from the provisions of this report.
3. Exemptions regarding applicability of the City's procedures and criteria to small parcels of land for land conveyances under the *Planning Act* will be assessed first by size (to be either less than or greater than 100 m<sup>2</sup>), as summarized in Table 1 of the proposed Policy.
4. Importation of new soils onto the lands to be conveyed is to be conducted in accordance with the Ministry's guide, *Management of Excess Soil – A Guide for Best Management Practices* where applicable, as amended, to the satisfaction of the City's peer reviewer.
5. The City will accept lands with a Record of Site Condition that was obtained by using the Ministry of the Environment and Climate Change's (1) Full-depth Generic Tables 1, 2, 3, 6, 7, 8 and 9; or (2) the full Risk Assessment approach.
6. The City will accept lands with a Record of Site Condition obtained by using the Modified Generic Risk Assessment approach if the Certificate of Property Use is issued consistent with Section 5.4 of the proposed Policy.

7. The City will not accept lands with Records of Site Condition obtained by using the Ministry of the Environment and Climate Change's Stratified Tables 4 and 5.
8. The Peer Review Process shall be a requirement for below-grade easements in favour of the City of Toronto for new municipal infrastructure.
9. The Peer Review Process shall require a Reliance Letter, a Qualified Person Preliminary Statement Letter, and proof of insurance documentation in a form acceptable to the City.
10. Certificate of Property Use conditions that the City will accept on lands subject to a Record of Site Condition obtained through a Risk Assessment approach that was completed prior to the land being conveyed to the City, are:
  - a. the use of standard personal protective equipment such as: long pants; long sleeves; rubber boots and gloves; dust masks;
  - b. as-built/ site plan documentation and verification testing regarding installed risk management measures, with all documentation completed to the satisfaction of the City's peer reviewer; and
  - c. ongoing monitoring of and annual reporting on surface cap integrity.
11. Certificate of Property Use conditions that the City will not accept on lands subject to a Record of Site Condition obtained through a Risk Assessment approach that was completed prior to the land being conveyed to the City, are:
  - a. the use of special personal protective equipment such as: suits, gloves and boots that are chemically resistant; special respiratory masks; contained breathing apparatus;
  - b. undocumented as-built/ site plans or verification testing regarding installed risk management measures; and
  - c. ongoing groundwater or soil vapour monitoring and reporting requirements.
12. The acceptable un-impacted cap thickness in City parks and road rights-of-way must be at least 1.5 metres in depth. City parks and road rights-of-way may accept both hard and soft cap material, as negotiated by the applicant with the recipient City Division, to support tree planting, structural and operational requirements.
13. All new or replaced utilities constructed below the 1.5 metres un-impacted cap must be placed within a clean corridor (trench) of un-impacted material. The width and depth of the trench must provide acceptable access distances around the utility to the satisfaction of the Executive Director of Engineering & Construction Services.
14. At the completion of the site assessment/remediation process, a Statement from the Qualified Person shall be submitted to the Executive Director, Engineering &

Construction Services, for peer review and concurrence. This Statement is to address the likelihood and potential impact of contaminant movement resulting from past land uses off the development site and onto adjacent City lands.

The recommended “Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the *Planning Act*, January 2015” with revised procedures and criteria for the Peer Review Process, will provide certainty and clarity to City staff and the development industry, while continuing to safeguard public health, protect the environment and facilitate timely conveyance of lands under the *Planning Act*.

### **Consultation Process**

Staff from the Engineering & Construction Services and Legal Services Divisions held a series of meetings between June and November 2014 to solicit feedback on the proposed June 2014 policy from the Ontario Ministry of the Environment and Climate Change and stakeholders within the development industry.

The stakeholders represented builders, developers and development industry service professionals such as engineers, planners and lawyers. All stakeholders indicated that they planned to communicate the proposed policy and any amendments with their members. Following the stakeholder meetings, the City received written submissions regarding proposed policy amendments based on the June 2014 proposed policy discussed at the meetings.

City staff met with representatives from the Ministry on July 16, 2014. Ministry representatives included staff from the Standards Development Branch (Environmental Science and Standards Division) and Central Region (Operations Division), responsible for the review of risk assessment submissions and the soil and groundwater compliance program.

The following summarizes the major issues raised through the consultations.

### **Development Industry Issues and Comments**

Major issues raised by the stakeholders during consultations are outlined below:

- **Qualified Person Requirements:** Requirements that the City intended to place on the Qualified Person working on behalf of the developer that were considered overly onerous by the development industry, including requirements to:
  - a. stamp various template letters prior to submission to the City, where the use of the professional stamp was not allowed by the professional association,
  - b. submit documentation without any limitation regarding liability, indemnity or reliance and,
  - c. make statements on the likelihood of historic contaminant migration and resulting off-site impacts and their potential adverse effects on adjacent City lands.
- **Acceptance of the Modified Generic Risk Assessment approach:** The City's refusal to accept lands with a Record of Site Condition obtained by using the

Modified Generic Risk Assessment approach was raised as an issue because it provides another option to obtain a Record of Site Condition. Development industry stakeholders proposed that if the appropriate risk management measures consistent with the policy were put in place, the Modified Generic Risk Assessment Approach should be included as an option.

- **Imported Soil Standards:** Clarification was sought regarding which imported soil standards as prescribed by the Ministry, are acceptable to the City. It was proposed that the City should allow soil to be imported and buried on a site only when it does not exceed the Ministry standards for a given land use.
- **Risk management measures that are acceptable to the City for long-term site management:** Concern was raised that the same number of risk management measures as permitted by the provincial risk assessment process are not permitted by the City, and that this may limit the range of the risk assessment options for re-development where conveyance is to occur. The industry also suggested that these measures should be open for negotiation with the City, to the satisfaction of the Executive Director in consultation with the operating divisions.
- **Applicability of the Policy:** Clarification was sought about the effective date of this policy so that developers could plan their projects to ensure compliance with the policy.

### **Ministry of the Environment and Climate Change Issues and Comments**

The main issues discussed with the Ministry were:

- **Acceptance of the Modified Generic Risk Assessment approach:** The Ministry expressed that due to the increased use of the Modified Generic Risk Assessment approach by various proponents and resultant Certificates of Property Use within the City of Toronto, the City should consider a mechanism by which lands assessed in this manner could be accepted. The Ministry advised that they were currently reviewing their business process involving the Modified Generic Risk Assessment Approach and that they may be recommending revisions to their process before the end of 2014.
- **Site Plan Review by the Ministry:** The Ministry confirmed that review and acceptance of site plans/as-builts prior to City acceptance is not part of the Ministry's current operational pathway and requested that this requirement be removed from the policy.

### **Policy Revisions**

The proposed policy (Attachment 1) incorporates revisions made following the consultation process, addressing the issues raised. A summary of the issues raised by the stakeholders and the City's response can be found in Attachment 2. Below is a summary of the major changes that were made to the June, 2014 proposed policy in response to the stakeholder input.

1. **Qualified Person Requirements:** These requirements have been amended as follows:
  - The requirement to stamp a Qualified Person Preliminary Statement Letter or Reliance Letter by a Qualified Person before submission to the City was removed to be consistent with the requirements of the *Professional*



*Geoscientists Act*, which allows such documents to be signed but not stamped;

- The requirement to submit documentation without any limitation regarding liability, indemnity or reliance was amended to be consistent with current regulatory limits as set out by O. Reg. 153/04 which requires a minimum of \$1,000,000 insurance; and
  - The Qualified Person statements on historic contaminant movement were amended to be consistent with wording proposed by industry stakeholders. Based on submitted environmental documents, the Qualified Person will be required to provide their opinion on: (1) the likelihood of historic contaminant migration onto adjacent City lands; and (2) the potential impact of the historic contaminants on adjacent City lands.
2. **Acceptance of the Modified Generic Risk Assessment approach:** The Policy has been amended to allow for the acceptance of lands with a Record of Site Condition obtained by using the Modified Generic Risk Assessment approach. Environmental professionals will be able to use this approach and comply with the proposed City policy when the Ministry enacts their proposed revisions to the Modified Generic Risk Assessment process. Until such time that the Ministry amends their current Modified Generic Risk Assessment process, the development industry may continue to use the Streamline Risk Assessment approach as an alternative to the full Risk Assessment process.
  3. **Imported Soil Standards:** As requested by the industry, clarity on soil importation standards was provided. The importation of soil will now be consistent with the current Ministry guide titled *Management of Excess Soil – A Guide for Best Management Practices*.
  4. **Risk management measures which are not acceptable to the City for long-term site management:** The City could not meet industry requests to accept lands with risk management measures which restrict future use of the lands or pose ongoing cost implications to the City. Measures that are not acceptable to the City include the use of special personal protective equipment by workers, verification testing of risk management measures, ongoing groundwater and vapour monitoring and the reporting requirements associated with all of these. The City will not allow for such measures because of the long-term operational implications and the longer term real costs. The acceptability of risk management measures will not be open to negotiation on a site-by-site basis, as the aim of this policy is to streamline the approval process to facilitate timely review of applications.
  5. **Site Plan Review by the Ministry of the Environment and Climate Change:** The requirement for site plans/as-built drawings to be Ministry reviewed and accepted prior to submission to the City was removed from the policy, to align with current Ministry processes, as per their request. The Ministry currently asks that the Site Plan be available for review when requested, within the period of time specified by the Ministry.
  6. **Applicability of the Policy:** To meet industry requests for clarity, Section 7 was added. The proposed policy will apply to land conveyances arising from land use

applications submitted to the City following the date of Council approval of this policy.

As a result of this collaborative effort, the proposed policy will continue to safeguard public health, protect the environment and allow for timely conveyance of lands under the *Planning Act* while providing certainty and clarity to City staff and the development industry.

This report has been prepared in consultation with the City's Legal Services Division. Representatives from Legal Services participated in the consultation process and the drafting of the proposed policy. This report has also been discussed with and concurrence has been obtained from Toronto Water, Transportation Services and Parks, Forestry & Recreation.

## **CONTACT**

Judy Tse  
Director  
Engineering Review  
Engineering & Construction Services  
Tel.: 416-392-0455  
E-mail: [jtse2@toronto.ca](mailto:jtse2@toronto.ca)

John Minor  
Manager, Soil & Groundwater Quality  
Engineering Review  
Engineering & Construction Services  
Tel.: 416-338-2824  
E-mail: [minor@toronto.ca](mailto:minor@toronto.ca)

## **SIGNATURE**

---

Michael D'Andrea, M.E.Sc., P.Eng.  
Executive Director  
Engineering & Construction Services

## **ATTACHMENTS**

- Attachment 1: Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the *Planning Act* (January 2015)
- Attachment 2: Summary Table of Stakeholder Issues & City's Response

**POLICY FOR ACCEPTING POTENTIALLY CONTAMINATED LANDS TO BE  
CONVEYED TO THE CITY UNDER THE *PLANNING ACT*  
(JANUARY 2015)**

**1. STATEMENT**

- 1.1. The soil and groundwater quality requirements outlined in this policy apply to land conveyances under the *Planning Act* and thereby ensure that the City is protected from acquiring lands having unacceptable liabilities associated with known or suspected environmental contamination.

**2. OBJECTIVE AND PURPOSE**

- 2.1. The purpose of this policy is to establish environmental procedures and criteria that:
  - 2.1.1. provide environmental guidelines and a consistent process for staff and the development industry with respect to the conveyance of lands under the *Planning Act*;
  - 2.1.2. protect the environment and safeguard public health; and
  - 2.1.3. ensure alignment with the City's programs and services.

**3. SCOPE**

- 3.1. This policy applies when, as a condition of a *Planning Act* application approval, lands are to be conveyed to the City or where below-grade easements in favour of the City are required for new municipal infrastructure, as summarized in Table 1.
- 3.2. This policy does not apply to surface easements such as walkways or passageways.

**4. DEFINITIONS**

For the purposes of this policy, the following definitions apply:

- 4.1. "Certificate of Property Use" – described in O. Reg. 153/04, as amended, under Part XV.1 of the *Environmental Protection Act*.

- 4.2. "Generic Tables – Tables 1, 2, 3, 6, 7, 8 and 9" as found in the Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the *Environmental Protection Act*, published by the Ministry of the Environment and Climate Change and dated April 15, 2011.
- 4.3. "Granular Fill" - granular fill from a commercial sand and gravel pit or quarry licensed by the Ministry of Natural Resources pursuant to the *Aggregate Resources Act*, R.S.O. 1990, c. A .8 or, if from a non-commercial source, granular fill that meets the applicable Generic or risk-based site specific standards.
- 4.4. "Ministry" – the Ontario Ministry of the Environment and Climate Change
- 4.5. "Modified Generic Risk Assessment" – described in O. Reg. 153/04, as amended, under Part XV.1 of the *Environmental Protection Act*.
- 4.6. "Phase I Environmental Site Assessment" - described in O. Reg. 153/04, as amended, under Part XV.1 of the *Environmental Protection Act*.
- 4.7. "Phase II Environmental Site Assessment" - described in O. Reg. 153/04, as amended, under Part XV.1 of the *Environmental Protection Act*.
- 4.8. "Pre-submission Form" - described in O. Reg. 153/04, as amended, under Part XV.1 of the *Environmental Protection Act*.
- 4.9. "Qualified Person" - as defined in O. Reg. 153/04, as amended, under Part XV.1 of the *Environmental Protection Act*.
- 4.10. "Qualified Person Preliminary Statement Letter" – a completed letter template from the proponent's Qualified Person that is dated and signed, describing the lands to be conveyed to the City, and identifying what environmental documentation will be provided to the City's peer reviewer to support this conveyance.
- 4.11. "Record of Site Condition" - described in O. Reg. 153/04, as amended, under Part XV.1 of the *Environmental Protection Act*.
- 4.12. "Reliance Letter" – a completed letter template that is dated and signed by the applicant's Qualified Person confirming that both the City and the City's Peer Reviewer can rely on the environmental documentation submitted and the Qualified Person's opinion as to the conditions of the site.
- 4.13. "Risk Assessment" - described in O. Reg. 153/04, as amended, under Part XV.1 of the *Environmental Protection Act*.

- 4.14. "Stratified Tables – Tables 4 and 5" as found in the Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the *Environmental Protection Act*, published by the Ministry and dated April 15, 2011.
- 4.15. "Un-impacted Material" - materials that can be used in fill caps including soil meeting the applicable Generic or risk-based site-specific standards, Granular Fill, inert non-soil materials such as crushed concrete free of asbestos and hazardous materials and that has been deemed suitable by a Qualified Person, cobbles, and/or armour stone, or such other materials that are specified in the Certificate of Property Use.

## 5. PRINCIPLES

### 5.1. General Conditions

- 5.1.1. The City's decision is final regarding whether the lands are acceptable for conveyance to the City.
- 5.1.2. The City does not accept cash in lieu of satisfying the conveyance requirements regarding soil and groundwater conditions.
- 5.1.3. The City's procedures and criteria cannot be amended or waived by staff. Only Council has the authority to amend or provide relief from the provisions of this policy.
- 5.1.4. Exemptions regarding applicability of the City's procedures and criteria to small parcels of land for land conveyances under the *Planning Act* will be assessed first by size (to be either less than or greater than 100 m<sup>2</sup>), as summarized in Table 1.
- 5.1.5. Importation of new soils onto the lands to be conveyed is to be conducted in accordance with the Ministry's guide, *Management of Excess Soil – A Guide for Best Management Practices* where applicable, as amended, to the satisfaction of the City's peer reviewer.

### 5.2. Site Assessment Conditions

- 5.2.1. The City will accept lands with a Record of Site Condition that was obtained by using the Ministry's (1) Full-depth Generic Tables 1, 2, 3, 6, 7, 8 and 9; or (2) the full Risk Assessment approach.
- 5.2.2. The City will accept lands with a Record of Site Condition obtained by using the Modified Generic Risk Assessment approach if the Certificate

of Property Use is issued consistent with section 5.4.

- 5.2.3. The City will not accept lands with a Record of Site Condition obtained by using the Ministry's Stratified Tables 4 and 5,
- 5.2.4. The site condition standards in force at the time of conveyance must meet the standards of the intended land use or the standards of the most sensitive adjacent land uses, whichever are more stringent.
- 5.2.5. A letter of acknowledgement of filing is required from the Ministry when a Record of Site Condition is required for conveyance.

### 5.3. Peer Review Conditions

- 5.3.1. All Phase I and Phase II Environmental Site Assessment Reports, the Pre-submission Form if any, Risk Assessment Report if any, Certificate of Property Use if any, and Record of Site Conditions if any, relating to lands to be conveyed will be submitted to the City for peer review and concurrence (subject to exemptions set forth in section 5.1.4 of this policy).
- 5.3.2. The Peer Review Process shall be a requirement for below-grade easements in favour of the City of Toronto for new municipal infrastructure.
- 5.3.3. The Peer Review Process shall require a Reliance Letter, a Qualified Person Preliminary Statement Letter, and proof of insurance documentation in a form acceptable to the City.
- 5.3.4. The owner will be responsible for all costs associated with the peer review, including the City's administrative fees.

### 5.4. Risk Assessment Conditions

In addition to the conditions listed above, the conditions listed below also apply to conveyances undergoing the Risk Assessment process.

- 5.4.1. Any conditions outlined in a Certificate of Property Use and associated Risk Assessment shall be to the satisfaction of the Executive Director, Engineering & Construction Services and in consultation with any division heads with responsibility for maintenance or ongoing use of the lands.
- 5.4.2. The Pre-submission Form must consider the future use of the conveyed lands including, but not limited to, construction workers in trenches as

potential receptors, and the presence of underground municipal services and private utilities.

- 5.4.3. There are to be no risk management measures or Certificates of Property Use associated with the conveyed lands that will impact or restrict the intended use of the conveyed lands or will result in any significant future cost implications to the City.
- 5.4.4. Certificate of Property Use conditions that the City will accept on any lands subject to a Record of Site Condition obtained through a Risk Assessment approach that was completed prior to the land being conveyed to the City, are:
  - 5.4.4.1. the use of standard personal protective equipment such as: long pants; long sleeves; rubber boots and gloves; dust masks;
  - 5.4.4.2. provision of as-built/ site plan documentation and verification testing regarding installed risk management measures, with all documentation completed to the satisfaction of the City's peer reviewer; and
  - 5.4.4.3. ongoing monitoring of and annual reporting on surface cap integrity.
- 5.4.5. Certificate of Property Use conditions that the City will not accept on lands subject to a Record of Site Condition obtained through a Risk Assessment that was completed prior to the land being conveyed to the City, are:
  - 5.4.5.1. the use of special personal protective equipment such as: suits, gloves and boots that are chemically resistant; special respiratory masks; contained breathing apparatus;
  - 5.4.5.2. undocumented as-built/ site plans or verification testing regarding installed risk management measures; and
  - 5.4.5.3. ongoing groundwater or soil vapour monitoring and reporting requirements.
- 5.4.6. The acceptable un-impacted material barrier thickness in City parks and rights-of-way must be at least 1.5 metres in depth. Acceptable vertical cross-sections (profile) for City parks and road rights-of-way may utilize both hard and soft material, as negotiated by the applicant with the recipient City Division.

- 5.4.7. All new or replaced utilities constructed below the 1.5 metre un-impacted material barrier must be placed within a corridor (trench) of un-impacted material. The width and depth of the trench must provide acceptable access distances around the utility to the satisfaction of the Executive Director of Engineering & Construction Services.

## 6. PROCEDURE

The following procedure has been established to ensure that a consistent process is followed by staff and the development industry when preparing to convey lands to the City under the *Planning Act*, as summarized in Table 1.

The applicant must:

- 6.1. Submit a Qualified Person Preliminary Statement Letter, that is dated and signed by the applicant's Qualified Person, as defined in O. Reg. 153/04, as amended, describing the lands to be conveyed to the City, and identifying what environmental documentation will be provided to the City's peer reviewer to support this conveyance; all environmental documentation consistent with O. Reg. 153/04 requirements shall be submitted with reliance extended to the City and its peer reviewer and any limitation on liability and indemnification is to be consistent with Ontario Regulation 153/04, as amended, insurance requirements or such greater amount specified by the Executive Director of Engineering & Construction Services;
- 6.2. Pay all costs associated with the City retaining a third-party peer reviewer including all administrative costs to the City, and submit an initial deposit towards the cost of the peer review in the form of a certified cheque, to the Executive Director, Engineering & Construction Services. Submit further deposits when requested to cover all costs of retaining a third-party peer reviewer (unused funds will be refunded to the applicant by the City);
- 6.3. Submit, to the satisfaction of the City's peer reviewer, all Environmental Site Assessment reports prepared in accordance with the Record of Site Condition Regulation (Ontario Regulation 153/04, as amended) describing the current conditions of the land to be conveyed to the City and the proposed Remedial Action Plan based on the site condition standards approach, to the Executive Director, Engineering and Construction Services;
- 6.4. At the completion of the site assessment/remediation process, submit a Statement from the Qualified Person based on the submitted environmental documents, to the Executive Director, Engineering & Construction Services for peer review and concurrence, which states:



6.4.1. In the opinion of the Qualified Person:

- 6.4.1.1. It is either likely or unlikely that there is off-site contamination resulting from past land uses on the development site that has migrated onto adjacent City lands that would exceed the applicable Site Condition Standards; and
- 6.4.1.2. To the extent that the opinion in 6.4.1.1 is that past migration is likely, it is either possible or unlikely that such off-site contamination on adjacent City lands poses an adverse effect to the environment or human health.

6.4.2. Land to be conveyed to the City meets either:

- 6.4.2.1. the applicable Ministry Generic Site Condition Standards (Tables 1, 2, 3, 6, 7, 8 and 9) for the most environmentally sensitive adjacent land use; or
- 6.4.2.2. the Property Specific Standards as approved by the Ministry for a Risk Assessment/Risk Management Plan which was conducted in accordance with the conditions set out herein.

6.5. The Qualified Person's statement, referenced in 6.4 above, will include a Reliance Letter that is dated and signed by the applicant's Qualified Person, as defined in O. Reg. 153/04, as amended, confirming that both the City and the City's peer reviewer can rely on the environmental documentation submitted, consistent with O. Reg. 153/04 requirements, and the Qualified Person's opinion as to the conditions of the site; all environmental documentation consistent with O. Reg. 153/04 requirements and opinions shall be submitted with reliance extended to the City and its peer reviewer and any limitation on liability and indemnification is to be consistent with Ontario Regulation 153/04, as amended, insurance requirements or such greater amount specified by the Executive Director of Engineering & Construction Services.

6.6. For conveyance of lands requiring a Record of Site Condition:

- 6.6.1. File the Record of Site Condition on the Ontario Environmental Site Registry; and
- 6.6.2. Submit the Ministry's Letter of Acknowledgement of Filing of the RSC confirming that the RSC has been prepared and filed in accordance with O. Reg. 153/04, as amended, to the Executive Director, Engineering & Construction Services.

## **7. APPLICABILITY**

- 7.1 This policy is applicable in respect of land conveyances arising from land use applications submitted to the City following the date of Council approval of this policy.

**Table 1**  
**Application Requirements**  
 Procedures and Criteria of the Peer Review Process for land conveyances under the *Planning Act*

Application Type <sup>1</sup>	Description / Purpose	Authority	Scenario Where Procedures and Criteria Apply	Requirements				Timing for Fulfillment of Environmental Conditions
				Conveyance Size (each parcel of land)	Type of Land Use Change <sup>3</sup>	Record of Site Condition	Peer Review	
Consent Application	To seek approval to sever/divide a parcel of land. Applicant has 1 year from the date of the Committee's decision to satisfy all conditions.	Authority to approve Consent applications is delegated to the Committee of Adjustment.	Applicant is required to convey/grant lands for parks, road/road widening purposes and/or easements to the City.	Area ≤ 100 m <sup>2</sup>	RPI→RPI	NO	NO	Prior to: Issuance of Any Building Permit (if <u>no</u> Agreement, then prior to Issuance of Certificate of Consent Approval).
					ICC→RPI	YES	YES	
					ICC→ICC	NO	NO, if average width ≤ 1.0 m YES, if average width > 1.0 m	
Site Plan Application	To seek approval to develop property that is currently in compliance with the existing zoning by-law.	Authority to approve site plan applications is delegated to the Chief Planner. However, a Councillor may request that the application be "bumped up" to Community Council.	Applicant is required to convey/grant lands for parks (in accordance with Section 42 of the Planning Act), road widening purposes and/or easements to the City.	Area > 100 m <sup>2</sup>	ICC→RPI	YES	YES	Prior to: Final Site Plan Approval. [or Condo Registration in rare cases regarding parkland]
					RPI→RPI	NO	NO, if average width ≤ 1.0 m YES, if average width > 1.0 m	
			Stratified Conveyance <sup>2</sup>	ICC→ICC				Prior to: Final Site Plan Approval (preferred), [or Condo Registration in rare cases].
Subdivision Application	To seek approval to sever and divide land into lots, blocks, parks, and roads.	Authority to approve Plan of Subdivision applications is delegated to the Chief Planner.	Applicant is required to convey lands to the City for road, road widening, easements, and/or parks.	All roads, blocks, and parks conveyance require Peer Review and Record of Site Condition.				Prior to: Registration of Plan of Subdivision.

Notes:

<sup>1</sup> Application type may include combined applications with Official Plan or Zoning by-law amendments.

<sup>2</sup> Stratified Conveyance is defined as conveyance of a horizontal layer of land having a defined profile within a vertical column having multiple layers and ownerships.

<sup>3</sup> Land use change will be supported by a letter from the applicant's Qualified Person (QP, as per O. Reg. 153/04, as amended) and stated on the application.

ICC = Industrial/Commercial/Community Use; RPI = Residential/Parks/Institutional Use, as per O. Reg. 153/04 (as amended).

Summary Table of Stakeholder Issues & City’s Response

The proposed policy, appended as Attachment 1, was revised based on comments from the parties involved in the consultation process as follows:

Clause	Issue Description	Stakeholder Comments	City Response	Issue Status
4.4	Definition for MOECC	June 27 - Include definition for MOECC	A new definition of the term 'Ministry' was added to mean: the Ontario Ministry of the Environment and Climate Change. References to the Ministry of the Environment were replaced with the word 'Ministry' throughout the document.	Stakeholders found this clause acceptable, as changes were made to address previous comments.
		November 27 – No additional wording changes were requested.		
4.10, 4.12	Stamping of the Qualified Person Preliminary Statement Letter and the reliance Letter by a Qualified Person	June 27 - This clause contradicts the requirements of the Association of Professional Geoscientists of Ontario.	The requirement to stamp a Qualified Person Preliminary Statement Letter or Reliance Letter by a Qualified Person prior to submission to the City was removed to be consistent with the requirements of the Association of Professional Geoscientists of Ontario which allows such documents to be signed but not stamped.	Stakeholders found this clause acceptable, as changes were made to address previous comments.
		November 27 – No additional wording changes were requested.		
4.15	Definition of 'Un-impacted Material'	June 27 - Expand definition to include: "non-soil products for amending soils (such as compost, bar fines, wood chips, fertilizer and peat moss)"	The definition of 'Un-impacted material' was expanded to include "...other materials that are specified in the Certificate of Property Use." to ensure consistency.	Stakeholders found this clause acceptable, as changes were made to address previous comments.
		November 27 – No additional wording changes were requested.		
5.1.4	Exemption from peer review for parcels that are less than 1 meter in width regardless of total area	Staff Amendment - Lands that were greater than 100 m <sup>2</sup> and less than 1 m wide are exempt from the peer review requirement, which is inconsistent.	For consistency, the 1 meter width exemption will be applied, under specific circumstances, to lands both greater than and less than 100 m <sup>2</sup> in area (Table 1 of the policy has also been amended).	Stakeholders found this clause acceptable.
		November 27 – No additional wording changes were requested.		
5.2.2	Modified Generic Risk Assessment approach	June 27 - Amend wording to read " The City will <i>only</i> accept lands with a Record of Site Condition obtained by using either (1) the Ministry's Stratified Tables 4 and 5; or (2) the Modified Generic Risk Assessment approach <i>where a proponent commits to satisfy requirements under section 5.4.6 and 5.4.7 of this policy pursuant</i>	This clause was amended, and states: "The City will accept lands with a Record of Site Condition obtained by using the Modified Generic Risk Assessment approach if the Certificate of Property Use is issued consistent	Stakeholders found this clause acceptable. A request was made to provide clarification what the City's position is prior to the Ministry making the

Clause	Issue Description	Stakeholder Comments	City Response	Issue Status
		<p><i>to an agreement registered on title to the development site" Certificate of Property Use or an agreement registered on title to the development site."</i></p> <p>July 29 - Amend wording to read " The City will <i>only</i> accept lands with a Record of Site Condition obtained by using either (1) the Ministry's Stratified Tables 4 and 5; or (2) the Modified Generic Risk Assessment approach <i>where the proponent commits to satisfy requirements under section 5.4.6 and 5.4.7 of this policy pursuant to a Certificate of Property Use or an agreement registered on title to the conveyance lands.</i>"</p> <p>November 27 – Amend wording to read: "The City will accept lands with a Record of Site Condition obtained by using the Modified Generic Risk Assessment approach if the Certificate of Property Use is issued consistent with section 5.4 <i>or the conditions set forth in section 5.4 are otherwise secured in a form acceptable to the Executive Director of Engineering &amp; Construction Services.</i>"</p>	with section 5.4."	changes required in order for this approach to be acceptable to the City. The City's interim approach is to continue to accept the Streamline Risk Assessment process.
5.4.1	CPU conditions to be negotiated to the satisfaction of the Executive Director in consultation with operating divisions	<p>June 27 - Expand this clause to read "...<i>The priority in exercising such discretion shall be to ensure that there are no risk management measures or Certificates of Property Use associated with the conveyed lands that will unreasonably impact or restrict the intended use of the conveyed lands or will result in any significant future cost implications to the City. Proponents are encouraged to discuss such conditions with the City early in the redevelopment process.</i>"</p> <p>November 27 – No additional wording changes were requested.</p>	Existing procedures and practices are already in place to facilitate timely review of applications which can accommodate special technical circumstances.	Stakeholders found this clause acceptable.
5.1.5	Requirements associated with imported/exported soil	<p>June 27 – Amend wording to read "...new contaminated soil <i>above applicable generic standards</i> cannot be imported and buried in the lands to be conveyed <i>without City approval</i>".</p> <p>July 29 – Amend wording to read "<i>Only in-situ contaminated materials [consistent with existing conditions are permitted] on the lands to be conveyed, (i.e., new contaminated soil above applicable generic [or risk assessment] standards subject to the most sensitive adjacent land use standards, cannot be imported and buried in the lands to be conveyed). Importation is to be conducted in accordance with the Ministry's guide, Management of Excess Soil – A Guide for Best Management Practices.</i>"</p>	A statement was added to clarify soil importation standards as follows: "Importation is to be conducted in accordance with the Ministry's guide, <i>Management of Excess Soil – A Guide for Best Management Practices</i> , where applicable, to the satisfaction of the City's peer reviewer."	Stakeholders found this clause acceptable, as changes were made in accordance with previous comments.

Clause	Issue Description	Stakeholder Comments	City Response	Issue Status
		November 27 – Amend the wording to read: " <i>Any importation of materials to the lands to be conveyed is to be conducted in accordance with the Ministry's guide, Management of Excess Soil – A Guide for Best Management Practices as amended from time to time, and to the satisfaction of the City's peer reviewer.</i> "		
5.4.5	CPU conditions which restrict future use and impose cost implications on the City are not acceptable	June 27 - Delete this clause	This clause will not be deleted, as it limits City liability and ensures that future land use will not be restricted.	Stakeholders are aware that the City will not accept environmental risk management measures which may restrict future land use and impose cost implications on the City.
	July 29 - Amend the wording to read "...intended <i>land</i> use of the conveyed lands..."	Wording will not be amended and will read "...intended use of the conveyed lands..."		
	November 27 – No additional wording changes were requested.			
5.4.5.1	CPU obligations which impose the use of special personal protective equipment on workers are not acceptable	June 27 - Add wording to read "...the use, by <i>City workers and agents</i> of special personal protective equipment..."	The clause was amended to read "...the use of special personal protective equipment such as: suits, gloves and boots <i>that are chemically resistant</i> ; special respiratory masks; contained breathing apparatus"	Stakeholders are aware that the City will not accept environmental risk management measures which impose the use of special equipment on City workers and impact City operations.
	July 28 – Add wording to read "...suits gloves and boots <i>that are chemical resistant...</i> " "... <i>except where acceptable to the Executive Director of Engineering &amp; Construction Services in consultation with the peer reviewer...</i> "			
	November 27 – No additional wording changes were requested.			
5.4.5.2	Ministry review of CPU mandated site plans prior to submission to the City	Ministry Amendment - The Ministry indicated that reviewing this documentation in the manner described in the draft policy is not part of their current operational pathway.	The requirement for site plans/as-built drawings to be 'Ministry of the Environment reviewed and accepted' was removed after consultation with the Ministry.	Stakeholders found this clause acceptable.
	November 27 – No additional wording changes were requested.			
5.4.5.3	CPU conditions which impose long-term monitoring obligations on the City are not acceptable	June 27 – Add wording to read "...ongoing groundwater or soil vapour monitoring and reporting requirements <i>to be undertaken by the City</i> "	No change to the wording was made. Exemptions will have to be obtained in conformance with section 5.1.3.	Stakeholders are aware that the City will not accept environmental risk management measures which may impose long-term obligations with difficult to define costs on the City.
	July 29 – Amend wording to read "... groundwater or soil vapour monitoring and reporting requirements, <i>except where acceptable to the Executive Director of Engineering &amp; Construction Services in consultation with the peer reviewer</i> "			
	November 27 – No additional wording changes were requested.			

Clause	Issue Description	Stakeholder Comments	City Response	Issue Status
5.4.6	The acceptable total thickness of un-impacted soft and hard cap material in parks and rights-of-way is to be 1.5 meters	<p>June 27 - This clause should only apply to caps made of a combination of hard and soft materials as opposed to caps made of <b>hard materials only</b>.</p> <p>November 27 – No additional wording changes were requested.</p>	This requirement will apply to all types of caps as it is an operational requirement meant to be protective of worker health and safety and minimize the requirements for complex health and safety measures on site.	Stakeholders found this clause acceptable.
6.1 and 6.5	Liability, indemnity and reliance clause	<p>June 27 - Amend the wording to read "...any limitation <i>in such submission</i> regarding liability, indemnity or reliance <i>is to be acceptable to the City</i>" instead of "...all environmental documentation shall be submitted without any limitation regarding liability, indemnity or reliance"</p> <p>July 29 - Amend the wording to read "...all environmental documentation shall be submitted <i>with reliance extended to the City and its peer reviewer and any limitations on liability and indemnification are to be consistent with O. reg. 153/04 insurance requirements or such greater amount specified by the Executive Director of Engineering &amp; Construction Services</i>"</p> <p>November 27 – Add wording to read: "...all environmental documentation <i>prepared in satisfaction of O. Reg. 153.04</i> shall be submitted..." wherever environmental documentation is referenced.</p>	The phrase "...all environmental documentation shall be submitted without any limitation regarding liability, indemnity or reliance..." was replaced with "...all environmental documentation consistent with O. Reg. 153/04 requirements shall be submitted with reliance extended to the City and its peer reviewer and any limitation on liability and indemnification is to be consistent with Ontario Regulation 153/04 insurance requirements or such greater amount specified by the Executive Director of Engineering & Construction Services."	To address stakeholder concern, wording was amended to clarify that the requirements of this clause apply only to documentation submitted to the City as required by the proposed policy and current legislation, if applicable.
6.4	Qualified Person statements on contaminant migration	<p>July 29 – Proposed wording to read "...based on environmental documents <i>in the possession of the applicant</i>"</p> <p>November 27 – Proposed wording to read: "At the completion of the site assessment/remediation process, submit a Statement from the Qualified Person, to the Executive Director, Engineering &amp; Construction Services, for peer review and concurrence:"</p>	A change was made, to read: "At the completion of the site assessment/remediation process, submit a Statement from the Qualified Person based on the submitted environmental documents, to the Executive Director, Engineering & Construction Services for peer review and concurrence, which states"	To address stakeholder concern, wording was amended to clarify that the requirements of this clause apply only to documentation submitted to the City as required by the proposed policy and current legislation, if applicable.
6.4.1	Qualified Person statements on contaminant migration	November 27 – Proposed wording to read: " <i>At completion of the site assessment/remediation process, submit a Statement from the Qualified Person, to the Executive Director, Engineering &amp; Construction Services, for peer review and concurrence that, based on environmental documents in the possession of the applicant, in the opinion of the Qualified Person:</i> "	A change was made, to read: "In the opinion of the Qualified Person:"	To address stakeholder concern, wording was amended to clarify that the statements required here are based on the opinion of the Qualified Person.

Clause	Issue Description	Stakeholder Comments	City Response	Issue Status
6.4.1.1	Qualified Person statements on contaminant migration	June 27 – Proposed wording to read " <i>...Submit a statement from the Qualified person to the Executive Director...for peer review and concurrence that, based on all supporting documentation available to the Qualified Person, it is unlikely that there is any off-site contamination resulting from past land uses on the development site that has migrated onto adjacent City lands that would exceed the applicable Site Condition Standards</i> "	This section was amended to read: "It is either likely or unlikely that there is off-site contamination resulting from past land uses on the development site that has migrated onto adjacent City lands that would exceed the applicable Site Condition Standards; and"	This section was amended as per industry request.
		November 27 – Proposed alternate wording to read: "It is <i>either likely or unlikely</i> that there is off-site contamination resulting from past land uses on the development site that has migrated onto adjacent City lands that would exceed the applicable Site Condition Standards; <i>and</i> "		
6.4.1.2	Qualified Person statements on contaminant migration	June 27 - Proposed alternate wording to read " <i>...If a statement pursuant to section 6.4.1.1 cannot be provided, provide a disclosure to the Executive Director of Engineering &amp; Construction Services of information in the proponent's control with respect to (i) potential off-site migration from past land uses on the development site onto adjacent City lands and (ii) any unidentified potential adverse impacts</i> "	This section was amended to read: "To the extent that the opinion in 6.4.1.1 is that past migration is likely, it is either possible or unlikely that such off-site contamination on adjacent City lands poses an adverse effect to the environment or human health."	This section was amended as per industry request.
		July 29 – Proposed alternate wording to read "6.4.1.2 <i>It is unlikely that there is any contamination resulting from the occupancy of the development site by the applicant that has migrated onto adjacent City lands that would exceed the applicable Site Condition Standards or such contamination is unlikely to present adverse impacts to human health or the environment; or</i> 6.4.1.3 <i>any off-site contamination that has migrated from the development site above Site Condition Standards onto adjacent City lands does not pose an adverse effect to the environment or human health.</i> "		
		November 27 – Proposed alternate wording to read: " <i>To the extent that the opinion in 6.4.1.1 is that past migration is likely, it is either possible or unlikely that such off-site contamination on adjacent City lands poses an adverse effect to the environment or human health.</i> "		



<b>Clause</b>	<b>Issue Description</b>	<b>Stakeholder Comments</b>	<b>City Response</b>	<b>Issue Status</b>
6.4.2.1	Soil and groundwater standards that are acceptable to the City	June 27 - Acceptable standards should include those that are set out in the Ministry's Tables 4 and 5 of the <i>Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act</i>	Standards set out in tables 4 and 5 of the <i>Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act</i> will not be accepted by the City as they allow for fill that is of unacceptable quality to be placed 1.5 meters below ground surface.	Stakeholders found this clause acceptable.
		November 27 – No additional wording changes were requested.		
Section 7	Date of applicability of the policy	June 27 - Clarity regarding the applicability date, for example "This policy is applicable in respect of land conveyances arising from land use applications submitted to the City following the date of Council approval of this report."	Section 7, titled 'Applicability', was added for clarity.	Stakeholders found an effective date same as the Council approval date to be acceptable.
		November 27 – No additional wording changes were requested.		