



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### **Assumption of Services, University Square (Hucknall) Limited, Plan 66M-2493, Subdivision File: 04 138822 NNY 08 SB, 102-134 Hucknall Road - Litigation**

**Date:** December 6, 2021

**To:** City Council

**From:** City Solicitor and Chief Engineer and Executive Director of Engineering & Construction Services

**Wards:** Ward 7 - Humber River - Black Creek

#### **REASON FOR CONFIDENTIAL INFORMATION**

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This report is about litigation or potential litigation that affects the City of Toronto and the attachment to this report contains advice or communications that are subject to solicitor-client privilege.

#### **SUMMARY**

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A Subdivision Agreement was registered on December 1, 2011 for Plan 66M-2493, between University Square (Hucknall) Limited and the City of Toronto. The subject subdivision is shown on the attached map, Attachment 1 Plan of Subdivision 66M-2493. The site has frontage on Sentinel Road and Hucknall Road.

The construction of Mantello Drive and the services within the road were completed on or about July of 2013. The up-stream portion of the sanitary sewer that was constructed under Mantello Drive (the road shown in Attachment 1 which has yet to be assumed) contains a 21.9 metre length of sanitary sewer located between two manholes (MH3A and MH4A) that was not constructed according to the original accepted design and the City's design criteria applicable at the time of construction. This section of sewer in question essentially has a 1.28 percent slope rather than the 2 percent minimum slope applicable at the time of construction. All other deficiencies in the services to be assumed have been rectified to the satisfaction of Engineering & Construction Services (ECS).

There is litigation concerning this matter. The purpose of this report is to request instructions from Council regarding the on-going litigation.

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Staff from Toronto Water have also been involved in the preparation of this report.

## **RECOMMENDATIONS**

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The Chief Engineer and Executive Director of ECS and the City Solicitor recommend that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to this report.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1, if adopted by City Council, at the discretion of the City Solicitor.
3. City Council direct that all other information contained in Confidential Attachment 1 is to remain confidential, as it contains advice which is subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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The financial implications are set out in Confidential Attachment 1. The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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At the September 16, 2019 meeting of the East York Community Council, the July 15, 2019 Report from the Director, Engineering Review, Engineering and Construction Services regarding Assumption of Services, University Square (Hucknall) Limited, 102-134 Hucknall Road (<http://www.toronto.ca/legdocs/mmis/2019/ey/bgrd/backgroundfile-136310.pdf>) was referred back to the Director, Engineering and Construction Services, for further consultation with the Ward Councillor.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EY8.13>

## **COMMENTS**

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Although the section of sanitary sewer did not meet the applicable requirements at the time it was constructed, it does meet reduced design standards that have since been adopted by ECS for sanitary sewers that cannot be constructed to meet the minimum 2 percent slope design standard.

This sanitary sewer has been in use since approximately the fall of 2012. It services several townhouse blocks that have been constructed as part of the development. To date there have been no issues reported in regards to the performance of the sanitary sewer constructed under Mantello Drive.

The municipal services have not been assumed by the City. As a result of the services not being assumed, University Square (Hucknall) Limited began a Superior Court action against the consultant engineer, Politis Engineering Ltd and Tim Politis and the site service contractor, Sterling Earth Works Inc. for \$1,000,000.00 plus interest and costs. Politis Engineering Ltd and Tim Politis have commenced a third party action against the City, seeking contribution and indemnity if they are found liable for any damages to University Square (Hucknall) Limited.

Confidential Attachment 1 to this report contains confidential instructions to staff and legal advice relating to on-going litigation and should be considered by Council in camera.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

Michael D'Andrea  
The Chief Engineer and Executive Director of Engineering & Construction Service

## **ATTACHMENTS**

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Public Attachment 1 - Map of Plan of Subdivision 66M-2493

Confidential Attachment 1- Confidential Recommendations and Confidential Information

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