

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

**Date:** April 14, 2022

**To:** Infrastructure and Environment Committee

**From:** Chief Engineer and Executive Director, Engineering and Construction Services

**Wards:** All

### **SUMMARY**

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The purpose of this report is to seek Council approval to amend the City Policy entitled "Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the Planning Act" (the Policy).

The proposed amendments are intended to clarify the application of the Policy to land conveyances related to Development Applications, clarify the language of the Policy, further align City processes with existing Provincial regulatory requirements, and address concerns raised during consultation with internal and external stakeholders. The proposed amendments do not expose the City to additional environmental risk.

The amendments are captured in the updated new Policy titled "Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City as a Condition of a Development Application Approval", and is summarized as follows:

- Renaming of the Policy to better reflect conveyance of land to the City in a land development context that may be authorized through legislation other than the Planning Act, such as through the City of Toronto Act, 2006, and the Condominium Act, 1998.
- Inclusion of the Ministry of the Environment, Conservation and Parks Stratified Site Condition Standards (excluded from the 2015 Policy), to permit conveyance of lands where the quality of the surface soil (1.5 metre depth) standards are set to protect future intended uses, while less stringent standards are applied to the subsurface soil.
- Clearer description of the Applicant's responsibilities.
- New language that clearly outlines the Peer Review Process.
- Detailed description of situations that are exempted from the Peer Review Process.

Adoption of the amended Policy will simplify and expedite the development approval process for conveyance of potentially contaminated lands.

The report also responds to the November 2019, direction from Council to report back on potential amendments to the existing Policy and other measures as appropriate, in order to facilitate staff recommended dedication of small sized parks that will be designed as hard surface public spaces, built and managed by Parks, Forestry and Recreation.

This report has been prepared in consultation with Transportation Services, Toronto Water, Parks, Forestry and Recreation, City Planning and Legal Services.

## **RECOMMENDATIONS**

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The Chief Engineer and Executive Director, Engineering and Construction Services recommends that:

1. City Council adopt the "Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City as a Condition of Development Application Approval, May 2021" as described in Attachment 1 to the report.

## **FINANCIAL IMPACT**

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There are no additional financial impacts resulting from adopting the recommendations of this report beyond those associated with the current policy. The Chief Financial Officer has reviewed this report and agrees with the financial impact statement.

## **DECISION HISTORY**

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At its meeting on February 10 and 11, 2015, Council adopted the "Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the Planning Act (January 2015)". A copy of the Council decision can be found at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PW1.6>

At its meeting of November 26 and 27, 2019, Council adopted the "Parkland Strategy" as Toronto's parks planning framework and directed the General Manager, Parks, Forestry and Recreation, the Chief Engineer and Executive Director, Engineering and Construction Services, and the City Solicitor, in consultation with other appropriate Divisions, to report to the Infrastructure and Environment Committee before the end of the fourth quarter 2020, on potential amendments to the Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the Planning Act and other measures as appropriate, to facilitate the staff recommended dedication of small sized parks that will be designed as hard surface public spaces, built and managed by Parks, Forestry and Recreation. A copy of the City Council decision can be found at:

## COMMENTS

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### Current Policy

In 2015, Council adopted the existing "Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the Planning Act". The Policy was developed to ensure that the City did not accept lands, as a condition of a development application approval that presented elevated risks to the environment, worker safety, or public health. In addition to requiring applicants to comply with Provincial laws and regulations, the Policy established additional environmental requirements and criteria and described the processes that protect the City from acquiring lands that have unacceptable liabilities associated with known or suspected environmental contamination.

The Policy also established a Peer Review Process, which provides a mechanism for clear, consistent, and comprehensive review of environmental documentation prepared by the applicant to ensure lands meet the City's requirements prior to conveyance. The Peer Review Process is conducted by a City selected and competitively procured roster of third-party Qualified Persons (QPs) as defined under Ontario Regulation 153/04 of the Environmental Protection Act, entitled "Records of Site Condition – Part XV.1 of the Act" (O. Reg. 153/04). The City's Peer Reviewer confirms the lands meet the applicable environmental standards presented in O. Reg. 153/04, as well as all additional City requirements. The cost of the Peer Review Process is borne entirely by the applicant.

### Stakeholder Consultation

The proposed amendments to the Policy were circulated for review to internal and external stakeholders between September 2019 and August 2020 and again in January 2021.

Internal stakeholders included staff from Engineering and Construction Services, Legal Services, Parks, Forestry and Recreation, Transportation Services, Toronto Water, and City Planning. External stakeholders included the Ontario Ministry of the Environment, Conservation and Parks, Building Industry and Land Development Association (BILD), Ontario Environment Industry Association, Canadian Brownfields Network and Waterfront Toronto. These associations represent legislators, builders, developers, and development industry service professionals such as engineers, planners, and lawyers.

Written comments were received from internal and external stakeholders that were consulted and are detailed in "Summary of Stakeholder Consultation #1- September 2019 to August 2020" (Attachment 2). Comments received were typically related to the scope of the Policy, definition of terms, risk assessment requirements, procedures, and general conditions of the Policy. Many of the valuable comments submitted were incorporated in a revised Draft Policy. Given the substantive changes to the Policy, a second round of consultations was undertaken on the revised Draft Policy, in January 2021. The comments received were minor in nature and no new substantive comments

were received. The comments received are summarized in the "Summary of Stakeholder Consultation #2 - January 2021" (Attachment 3). Stakeholders were supportive of the amended Policy, describing it as more harmonized with Provincial requirements and based on sound science and the application of professional judgment.

## **Proposed Policy Amendments**

The proposed amendments will further align the Policy with the existing Provincial regulatory framework and provide additional detail for the Peer Review Process including clarification of exemptions. Together, these changes will simplify and expedite the development approval process for conveyance of potentially contaminated lands.

The amended 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) assist with expediting the City's Peer Review Process; 3) minimize the City's liabilities related to accepting land, or an interest in land, in the development context; and 4) continue to safeguard public health and the environment.

The overarching objectives and the Peer Review Process remain unchanged in the amended Policy, presented in Attachment 1. The proposed amendments, detailed below by Section in the Policy, do not expose the City to additional environmental risk.

## **New Policy Title**

The title of the amended Policy is proposed to be changed from "Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the Planning Act" to "Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City as a Condition of a Development Application Approval". This change is proposed to highlight that conveyance of land to the City in a land development context may be authorized through legislation other than the Planning Act, such as through the City of Toronto Act, 2006, and the Condominium Act, 1998.

## **Clarification of Terminology and Addition of New Definitions (Section 4)**

Council originally adopted the current Policy in 2015. Over the six years that the Policy has been in effect, questions have arisen related to the interpretation and application of the terms of the Policy. In order to mitigate the need for ongoing clarification, Staff have thoroughly reviewed the language in the Policy and have made minor amendments throughout to clarify terminology and requirements related to the Peer Review Process.

The current Policy includes definitions for fifteen (15) terms. These definitions, presented in Section 4. "Definitions", were reviewed and updated to ensure accuracy and provide clarity. For completeness, an additional 24 new definitions have been added. Thirteen (13) of these new definitions relate to Provincial regulations and eleven (11) relate to terms used within the amended Policy.

## **Environmental Site Assessment (Section 5.2)**

### **Use of Stratified Site Condition Standards**

Under Ontario Regulation 153/04, a Stratified Site Condition refers to a site where the soil below a depth of 1.5 metre (subsurface soil) is subject to environmental standards that are less stringent than those for the top layer of 1.5 metre depth (surface soil).

To align with the Provincial legislation, the use of these Stratified Site Condition Standards is proposed to be added under the amended Policy. If an applicant wishes to apply the stratified standards, the Applicant's Qualified Person will be required to provide cross-section and site plan drawings outlining the extent and depth of clean soil placement. Furthermore, any new utilities and services installed below 1.5 metres must be placed within a corridor of soil of the same quality as the top 1.5 metres. This requirement ensures that worker health and safety is protected and no significant costs are incurred by the City when future maintenance is required on those utilities.

### **Risk Assessment (Section 5.3)**

For properties where it is not physically or economically feasible to remove all the contamination, the Ministry of the Environment, Conservation and Parks has an approved Risk Assessment Process whereby the property can be risk assessed and site specific soil and groundwater standards can be developed that ensure the safety of the intended users. Any lands that have been risk assessed and are being conveyed to the City, require a top layer of soil, referred to as a soil cap, with a minimum depth of 1.5 metres to be constructed of clean fill material that provides a barrier to underlying contaminated soils to protect future users of the lands. However, in certain circumstances, where lands to be conveyed to the City contain existing large trees or underground structures, it may not be possible to construct the clean fill surface cap to the full 1.5 metres depth, or conditions may preclude the ability to provide a clean fill cap. Section 5.3.6 of the amended Policy proposes relief for these extenuating situations on a case-by-case basis, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and in consultation with all appropriate operating Divisions.

### **Peer Review Process (Section 6)**

A new Section dedicated to the Peer Review Process has been added which strengthens the City's requirements of the Applicant, the Applicant's Qualified Person, and the documentation to be provided as it pertains to the conveyance of lands to the City.

Further, under the amended Policy (Section 6.5), the Applicant will be required to notify the Chief Engineer and Executive Director, Engineering and Construction Services, for conveyances where it is likely that contamination from the Development Site has migrated onto adjacent City Lands and poses a possible adverse effect to the environment or human health. This aligns with requirements under existing environmental law, where the Ministry of the Environment, Conservation and Parks must be notified when a contaminant has migrated off-site onto an adjacent City

property and the contaminant has the potential to cause an adverse environmental effect.

This new formal notification of migration of contamination onto City owned lands will enable the City to develop suitable safety precautions, remediation plans, and undertake additional due diligence testing or other actions as may be warranted up to, and including, any legal action as deemed appropriate in consultation with Legal Services.

### **Small Parcel Exemption from Peer Review Process (Section 7)**

The existing Policy established exemption criteria to the Peer Review Process for small parcels of land where the intended use is not changing to a more sensitive use as defined in O.Reg. 153/04. This includes former residential land to be used as parkland, or former industrial land used to be used for road widening.

In order to apply for these exemptions, the Applicant's Qualified Person must provide rationale describing how the conveyance lands meet the exemption criteria.

There are no proposed changes to the small parcel exemption. Section 7 provides details of the exemption process and clarifies the established exemption criteria and process. It is anticipated that this clarification will streamline the exemption process thereby expediting approvals

### **Dedication of Small Sized Parks**

Under the existing Policy, lands to be conveyed and intended for parkland use are exempt from the Peer Review Process if they meet the following conditions:

- The lands were formerly used for residential, institutional or park purposes.
- The area of the lands to be conveyed is less than or equal to 100 square metres.
- The area of the lands to be conveyed is greater than 100 square metres and less than 1.0 metre in width.

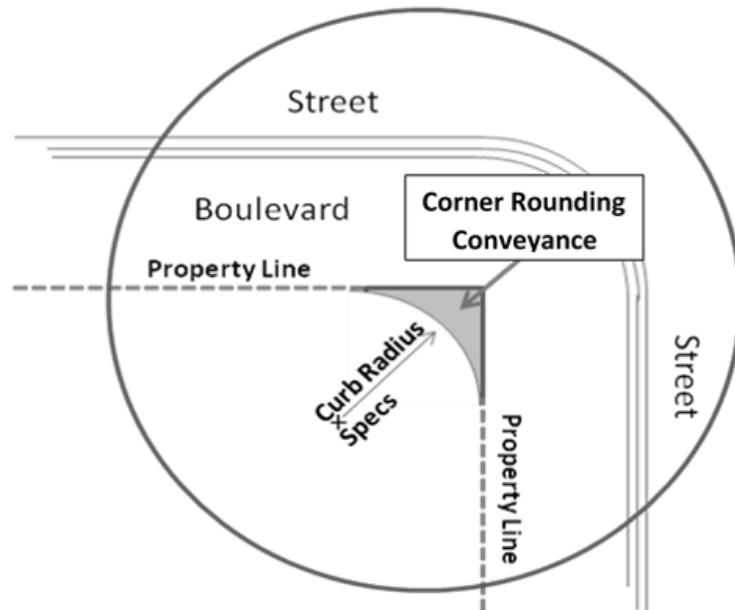
Further to Council's direction of November 26 and 27, 2019, it is the opinion of the Parks, Forestry and Recreation and Engineering and Construction Services staff, that the current exemptions are consistent with the "Parkland Strategy" and provide sufficient opportunity for the conveyance of small land parcels and ensure that the City is not subject to increased environmental risk or liability while remaining compliant with Provincial legislation.

### **Exemption for Corner Roundings**

For situations where a development property is adjacent to municipal Right-of-Way on two sides, and the property boundaries are squared off, it is in the City's interest to round off the property to provide adequate safe sight lines for pedestrian and vehicle safety. Typically, the conveyance land is triangular with one curved side parallel to the curve of the curb line at the intersection as shown in Figure 1. Conveyance of small corner rounding areas have proven problematic in the past, as their irregular shape has

made it difficult to determine whether any of the exemptions in the current Policy apply. The existing exemption relies on calculating the average width of a land parcel to be conveyed, a task that is difficult with an irregular shape such as a corner rounding.

**Figure 1 - Corner Rounding Conveyance Lands**



Therefore, a new exemption from the Peer Review Process is proposed for lands being conveyed for the purposes of Right-of-Way corner roundings that are less than or equal to 12.5 square metres in total area.

Staff recommend exempting small corner roundings as the soil conditions of lands to be conveyed will be similar to the adjacent Right-of-Way property already in City ownership and the potential for increased environmental liability is expected to be insignificant.

The small parcel and corner rounding exemptions from the Peer Review process do not apply to lands to be conveyed to the City that are subject to a Record of Site Condition or a Certificate of Property Use.

### **Amendments to Policy Table 1 - Application Requirements**

The current Table 1, Application Requirements in the 2015 Policy, provided information related to what types of development applications were covered by the Policy and whether a Record of Site Condition, and/or Peer Review were required.

For greater clarity, two new tables have been created in the Policy (Attachment 1). Table 1 summarizes the criteria and conditions for which the new Policy applies; and Table 2 summarizes the conditions for which the Peer Review Process and/or a Record of Site Condition is required.

## **CONTACT**

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## **SIGNATURE**

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

## **ATTACHMENTS**

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Attachment 1 - Policy for Accepting Potentially Contaminated Lands to be Conveyed to  
the City as a Condition of A Development Application Approval, May 2021.

Attachment 2 - Summary of Stakeholder Consultation #1 - September 2019 to  
August 2020.

Attachment 3 - Summary of Stakeholder Consultation #2 - January 2021.