

# **Attachment 1 - Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City as a Condition of a Development Application Approval**

## **POLICY FOR ACCEPTING POTENTIALLY CONTAMINATED LANDS TO BE CONVEYED TO THE CITY AS A CONDITION OF A DEVELOPMENT APPLICATION APPROVAL (revised as of May 5, 2021)**

### **1. STATEMENT**

- 1.1. Through this Policy, the City applies certain Soil and groundwater quality requirements to conveyances of land, or interests in land, to the City required as a condition of a development application approval, so that the City protects itself from acquiring lands having unacceptable liabilities associated with known or suspected environmental contamination.
- 1.2. Any amendment, waiver, deviation from or grant of relief from the provisions set out in this Policy requires authorization of City Council.

### **2. PURPOSE**

- 2.1. The purpose of this Policy is to ensure that the City does not accept lands, or interests in lands, conveyed to the City as a condition of a development application approval that present elevated environmental, worker safety, or public health risks.
- 2.2. To achieve this goal, this Policy establishes a consistent process requiring that, prior to conveyances within the scope set out in Section 3, an applicant must satisfy certain City criteria, provide certain information to the City, and make certain representations to the City, in addition to satisfying federal or provincial requirements that apply.

### **3. SCOPE**

- 3.1. This Policy applies when, as a condition of a development application approval, lands are to be conveyed to the City or easement interests are required in favour of the City for new below grade municipal infrastructure, as summarized in Table 1 of this Policy.
- 3.2. This Policy (May 5, 2021) applies in respect of the conveyance of land, or interests in land, to the City arising from development applications deemed complete on or after the date City Council approved this Policy (May 5, 2021). While applications that pre-date the adoption of this Policy (May 5, 2021) are

encouraged to comply with this Policy (May 5, 2021), as a minimum standard the Policy adopted by Council on February 10, 2015 will continue to apply, in addition to any minimum standards established by applicable statutes, regulations, by-laws or other laws applicable at the time of conveyance.

3.3. Despite Section 3.1, this Policy does not apply to:

3.3.1. surface related access easement interests such as walkways or passageways; or

3.3.2. easement interests required by the City for existing below grade municipal infrastructure, in which case the environmental requirements will be the subject of site specific development approval conditions.

#### 4. DEFINITIONS

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

**Adverse effect** has the meaning defined in the *Environmental Protection Act*.

**Aggregate Resources Act** means the *Aggregate Resources Act*, 1990 c.A.8.

**Certificate of Property Use or CPU** has the meaning defined in the *Environmental Protection Act* and described in O. Reg. 153/04.

**Chief Engineer** means the City's Chief Engineer and Executive Director, Engineering and Construction Services or his or her designate.

**City** means the City of Toronto.

**City Council** means the Council of the City of Toronto.

**City Lands** means lands currently owned by or within control of the City, including local boards as defined in the *City of Toronto Act*.

**City of Toronto Act** means the *City of Toronto Act, 2006*, S.O. 2006, c.11, Sched. A.

**Condominium Act** means the *Condominium Act, 1998*, S.O. 1998, c. 19.

**Conveyance Lands** means lands or interests in lands to be transferred to the City as a condition of development approval, the size, location, design and configuration of which is determined by the applicable Operating Division, and which may be secured in a legally binding agreement under legislation, including the *Planning Act*, the *City of Toronto Act*, or the *Condominium Act*.

**Corner Rounding** means lands to be conveyed to the City which are intended to

accommodate physical improvements to an intersection such as increasing corner radii.

**Development Site** means all the lands that are to be developed and/or subject to the development application.

**Environmental Protection Act** *Environmental Protection Act*, R.S.O. 1990, c. E. 19.

**Environmental Site Assessment** has the meaning defined in O. Reg. 153/04.

**Generic Standards** means the Site Condition Standards as presented in Tables 1, 2, 3, 6, 7, 8 and 9 of the document entitled Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the *Environmental Protection Act*, published by the Ministry.

**Granular Material** means aggregate sourced from a commercial sand and gravel pit or quarry licensed by the Ministry of Natural Resources and Forestry pursuant to the *Aggregate Resources Act*, or, if from a non-commercial source, granular material that has been deemed suitable by the applicant's Qualified Person and the City.

**Letter of Acknowledgement** means a letter from the Ministry confirming that the Record of Site Condition has been filed in accordance with O. Reg. 153/04.

**Ministry** means the Ontario Ministry of the Environment, Conservation and Parks or its successor Ministry.

**Modified Generic Risk Assessment** has the meaning described in O.Reg. 153/04.

**O. Reg. 153/04** means Ontario Regulation 153/04, entitled "Records of Site Condition – Part XV.1 of the Act", under the *Environmental Protection Act*.

**O. Reg. 406/19** means Ontario Regulation 406/19, entitled "On-Site and Excess Soil Management" under the *Environmental Protection Act*.

**Operating Division** means the City of Toronto Division responsible for the operational management of Conveyance Lands.

**Peer Reviewer** means a Qualified Person and a representative of a third party environmental consulting firm retained by the City in order to direct the Peer Review Process.

**Peer Review Process** means the third party document review process used by the City in order to ensure the sufficiency and accuracy of environmental reports, documents, statements and opinions pertaining to the environmental condition of the Conveyance Lands.

**Phase One Environmental Site Assessment** has the meaning described in O. Reg. 153/04.

**Phase Two Environmental Site Assessment** has the meaning described in O. Reg. 153/04.

**Planning Act** means the *Planning Act*, R.S.O. 1990, c. P.13.

**Pre-submission form or PSF** means the form submitted to the Ministry describing the property to be assessed and the planned risk assessment approach, including an overview of the problem formulation and conceptual site model.

**Qualified Person** has the meaning described in O. Reg. 153/04.

**Qualified Person Preliminary Statement Letter** means a letter template obtained from the City and completed by the applicant's Qualified Person that is dated and signed, describing the Conveyance Lands, and identifying the environmental documentation that will be provided to the City's Peer Reviewer to support the conveyances of lands and/or interests in lands.

**Qualified Person Statement** means a dated and signed statement from the applicant's Qualified Person written in accordance with Section 6.4.5 of this Policy.

**Record of Site Condition or RSC** has the meaning described in the *Environmental Protection Act* and described in O. Reg. 153/04.

**Reliance Letter** means a completed letter template obtained from the City, dated and signed by the applicant's Qualified Person, confirming that both the City and the Peer Reviewer can rely on all submitted statements, opinions and environmental documentation and reports relating to the Conveyance Lands.

**Risk Assessment** has the meaning defined in the *Environmental Protection Act* and described in O. Reg. 153/04.

**Risk-based Property Specific Standards** means the standards specified in a Risk Assessment or a Modified Generic Risk Assessment for the Conveyance Lands as accepted by the Ministry.

**Site Condition Standards** means the Full Depth Background Standards, Generic Standards, and Stratified Standards as defined in O.Reg.153/04.

**Soil** has the meaning defined in O. Reg. 153/04.

**Stratified Standards** means the Site Condition Standards as presented in Tables 4 and 5 in the document entitled Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the *Environmental Protection Act*, published by the Ministry.

**Un-impacted Material** means materials that can be used in fill caps including Soil meeting the applicable Site Condition Standards, Granular Material, 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. TECHNICAL REQUIREMENTS

### 5.1. General

- 5.1.1. The City will not accept cash in lieu of satisfying the requirements for Conveyance Lands regarding Soil and groundwater conditions.
- 5.1.2. All work completed in accordance with this Policy is required to comply with all applicable laws and regulations that are in effect, including but not limited to the *Environmental Protection Act*, O. Reg. 153/04, and O. Reg. 406/19.
- 5.1.3. Work referred to in Section 5.1.2 that is subject to all applicable laws and regulations includes any importation of Soils onto the Conveyance Lands.
- 5.1.4. The Peer Review Process set out in Section 6.0 applies to all Conveyance Lands unless otherwise specified herein.
- 5.1.5. Where O. Reg. 153/04 requires a Record of Site Condition in respect of the Conveyance Lands, such Record of Site Condition must be provided as part of the Peer Review Process.
- 5.1.6. Where identified in Table 2 of this Policy, or where Council approves a development condition requiring a Record of Site Condition for the Conveyance Lands, then such Record of Site Condition must be provided as part of the Peer Review Process.

### 5.2. Environmental Site Assessment

- 5.2.1. The City will accept Conveyance Lands assessed using Ministry accepted:
  - 5.2.1.1. Generic Standards;
  - 5.2.1.2. Stratified Standards, provided that plans and cross-section drawings prepared and signed by a Qualified Person are submitted confirming that the Soil meets the applicable Site

Condition Standards and complies with Sections 5.3.6 and 5.3.7 of this Policy;

5.2.1.3. Risk Assessment approach provided that the Certificate of Property Use is issued consistent with Section 5.3 of this Policy; or

5.2.1.4. Modified Generic Risk Assessment approach provided that the Certificate of Property Use is issued consistent with Section 5.3 of this Policy.

5.2.2. The Conveyance Lands must be assessed using the Site Condition Standards or the Risk-based Property Specific Standards applicable to the intended land use of the Conveyance Lands.

### 5.3. Risk Assessment

5.3.1. Conveyance Lands undergoing Risk Assessment will be subject to the Peer Review Process set out in Section 6 of this Policy as well as the requirements set out below in Section 5.3.2 to 5.3.7 of this Policy.

5.3.2. Any conditions outlined in a Certificate of Property Use and associated Risk Assessment shall be to the satisfaction of the Chief Engineer, in consultation with all appropriate Operating Divisions.

5.3.3. The Risk Assessment must consider the future use of the Conveyance Lands including, but not limited to, construction workers in trenches as potential receptors, and the presence of underground municipal services and private utilities.

5.3.4. The City will accept the following Certificate of Property Use conditions and applicable Risk Management Plan on any Conveyance Lands subject to a Record of Site Condition obtained through a Risk Assessment that was completed prior to the Conveyance Lands being conveyed to the City:

5.3.4.1. the use of standard personal protective equipment such as: long pants; long sleeves; rubber boots and nitrile gloves; dust masks; and

5.3.4.2. inspection of and annual reporting on surface cap integrity.

5.3.5. The City will not accept the following Certificate of Property Use conditions and applicable Risk Management Plan on any Conveyance Lands subject to a Record of Site Condition obtained through a Risk Assessment that was completed prior to the Conveyance Lands being

conveyed to the City:

- 5.3.5.1. the use of special personal protective equipment such as: suits, gloves and boots that are chemically resistant; special respiratory masks; or contained breathing apparatus; or
  - 5.3.5.2. ongoing groundwater or Soil vapour monitoring and reporting requirements; or
  - 5.3.5.3. risk management measures or Certificate of Property Use conditions that will impact or restrict the intended use of the Conveyance Lands or will result in any significant future cost implications to the City.
- 5.3.6. The acceptable combined hard cap and Un-impacted Material fill cap thickness on Conveyance Lands must be at least 1.5 metres. Acceptable vertical cross-sections (profile) for Conveyance Lands may utilize both hard and soft material, to the satisfaction of the Chief Engineer, in consultation with all appropriate Operating Divisions. Subject to having received the prior approval of the Chief Engineer, an exemption will be applied where a Certificate of Property Use identifies access restrictions or other physical encumbrances which prevent cap installation to the required depth.
- 5.3.7. All new or replaced services and utilities constructed below the combined hard cap and Un-impacted Material fill cap on Conveyance Lands 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 Chief Engineer.

## **6. PEER REVIEW PROCESS**

- 6.1. The Peer Review Process has been established to ensure that there is a clear and consistent environmental procedure for City staff and the development industry to follow when preparing to convey lands, or interests in lands, to the City as a condition of a development application approval, as summarized in Table 2 of this Policy.
- 6.2. All statements, opinions, environmental documentation and reports relating to Conveyance Lands will be submitted to the Chief Engineer and undergo the Peer Review Process unless exempt from the Peer Review Process as set out herein.
- 6.3. The Peer Review Process requires a Qualified Person Preliminary Statement Letter, a Reliance Letter, a Qualified Person Statement, and proof of insurance

documentation in a format acceptable to the Chief Engineer.

6.4. The applicant shall be required to:

- 6.4.1. Pay all costs associated with the City retaining a Peer Reviewer, including all administrative costs to the City, and submit to the Chief Engineer an initial deposit towards the cost of the Peer Review Process in a form acceptable to the City. Submit further deposits when requested to cover all costs of retaining a Peer Reviewer (unused funds will be refunded to the applicant by the City);
- 6.4.2. Submit a Qualified Person Preliminary Statement Letter, dated and signed by the applicant's Qualified Person, describing the lands or interests in lands to be conveyed to the City and identifying what environmental documentation will be provided, consistent with O. Reg. 153/04;
- 6.4.3. Submit, to the satisfaction of the Peer Reviewer, all environmental documentation and reports prepared in accordance with O. Reg. 153/04 describing the current condition of the land to be conveyed to the City and the proposed remedial action plan based on the Site Condition Standards or Risk-based Property Specific Standards;
- 6.4.4. Provide a Reliance Letter that extends reliance to the City and the Peer Reviewer for each statement or opinion provided and each environmental document submitted in compliance with O. Reg. 153/04 and that indicates any limitation on liability or indemnification is consistent with O. Reg. 153/04 insurance requirements, or such greater amount specified by the Chief Engineer;
- 6.4.5. At the completion of the site assessment/remediation process, submit a Qualified Person Statement based on the submitted environmental documents and reports for peer review and concurrence, which states:
  - 6.4.5.1. The Conveyance Lands:
    - 6.4.5.1.1. meet Generic or Stratified Standards for the intended land use of the Conveyance Lands; or
    - 6.4.5.1.2. meet the Risk-based Property Specific Standards which were developed in accordance with the Risk Assessment requirements set out herein; or
    - 6.4.5.1.3. did not require intrusive investigation as has been determined by the Qualified Person



through the completion of a Phase One Environmental Site Assessment which did not identify any potentially contaminating activities that generated a potential area of environmental concern on the Conveyance Lands or on adjacent lands within the Phase One Environmental Site Assessment Study Area.

6.4.5.2. In the opinion of the Qualified Person:

6.4.5.2.1. it is either likely or unlikely that there is contamination resulting from past land uses on the Development Site that has migrated onto adjacent City Lands; and

6.4.5.2.2. to the extent that the opinion in paragraph 6.4.5.2.1 is that past migration is likely, it is either possible or unlikely that such contamination on adjacent City Lands poses an adverse effect to the environment or human health.

6.5. If the Qualified Person's Statement, referenced in Sections 6.4.5.2.1 and 6.4.5.2.2 above states, that it is likely that there is contamination resulting from past land uses on the Development Site that has migrated onto adjacent City Lands and that it is possible that such contamination on adjacent City Lands poses an adverse effect to the environment or human health, the applicant will be expected to formally notify the Ministry if required by the *Environmental Protection Act* or other applicable law. In addition, the applicant will be required to formally notify the Chief Engineer, describing the nature of the possible contamination and rationale for potential adverse effect.

6.6. For any Conveyance Lands requiring a Certificate of Property Use, the applicant shall:

6.6.1. comply with all requirements and conditions outlined in the associated Certificate of Property Use and Risk Assessment up to the latter of the time of transfer of ownership or operational control / assumption of services to the City; and

6.6.2. submit all associated documents, including, without limitation, plans, cross-sections with surveyed elevations, and as-built drawings verifying the installation and location of the specified risk management measures, all to the satisfaction of the Chief Engineer and the Peer Reviewer.

6.7. For any Conveyance Lands requiring a Record of Site Condition, the applicant's Qualified Person shall:

- 6.7.1. submit the Record of Site Condition for Ministry review, acknowledgement and filing on the Ontario Environmental Site Registry; and
- 6.7.2. submit the Ministry's Letter of Acknowledgement of Filing to the Chief Engineer and the Peer Reviewer.

## **7. SMALL PARCEL EXEMPTIONS FROM PEER REVIEW PROCESS**

7.1. Exemptions to the Peer Review Process contemplated in this Policy may apply based on the use and size of the Conveyance Lands.

7.2. To initiate the small parcel exemption process, the applicant must submit a Qualified Person Preliminary Statement Letter, dated and signed by the applicant's Qualified Person, describing the lands and/or interests in lands to be conveyed to the City and identifying what environmental documentation consistent with O. Reg. 153/04 will be provided, with a rationale for the exemption based on Table 2 of this Policy.

7.3. In order for the Conveyance Lands to qualify for the small parcel exemption from the Peer Review Process, the following criteria must be met (as summarized in Table 2):

7.3.1. The former use of the Conveyance Lands is Residential, Parkland or Institutional use as defined in O. Reg. 153/04, and the area of the Conveyance Lands is less than or equal to 100 square metres; or

7.3.2. The former use of the Conveyance Lands is Residential, Parkland or Institutional use as defined in O. Reg. 153/04, and the area of the Conveyance Lands is more than 100 square metres and the width of the Conveyance Lands is less than or equal to one metre; or

7.3.3. The former use of the Conveyance Lands is Industrial, Commercial, Community, Residential, Parkland or Institutional use and the intended use is Community use as defined in O. Reg. 153/04, for the purposes of a right-of-way Corner Rounding having an area less than or equal to 12.5 square metres, which is not contiguous with any other parcel of Conveyance Lands; or

7.3.4. The former use of the Conveyance Lands is Industrial, Commercial or Community use and the intended use is Industrial, Commercial or Community use as defined in O. Reg. 153/04, and the width of the Conveyance Lands is less than or equal to one metre.

7.4. Notwithstanding Section 7.3, no exemption to the Peer Review Process will be

permitted for Conveyance Lands subject to Certificate of Property Use obligations.

## **8. INTERPRETATION**

8.1. Reference in this Policy to statutes, regulations, by-laws, and other laws or policies includes any amendment, replacement, subsequent enactment or consolidation of such laws.

## Development Applications Subject to the Conveyance Policy Table 1

| Application Type <sup>1</sup>  | Application Type Description  | Authority   | Scenario Where Conveyance Policy Applies <sup>2</sup>  | Typical Timing for Fulfillment of Technical Requirements <sup>3,4,5</sup>   |
|--------------------------------|---|---|--|---|
| <b>Consent Application</b>     | To seek approval to sever/divide a parcel of land.<br>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 lands to the City, including for road/road widening purposes, parkland and/or convey easements for new below-grade infrastructure.   | Prior to issuance of any Building Permit (if <u>no</u> Consent Agreement, then prior to issuance of Certificate of Consent Approval). |
| <b>Site Plan Application</b>   | 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 City Council. | Applicant is required to convey lands to the City, including for road widening purposes, parkland (in accordance with Section 42 of the Planning Act), and/or convey easements for new below-grade infrastructure. | Prior to Final Site Plan Approval.  |
| <b>Condominium Application</b> | To seek approval of unit and common element descriptions.   | Authority to approve Condominium applications is delegated to the Chief Planner.  | Applicant is required to convey lands to the City, including for road/road widening purposes, parkland and/or convey easements for new below-grade infrastructure.   | Prior to registration of Condominium.   |
| <b>Subdivision Application</b> | 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, including for road/road widening purposes, parkland and/or convey easements for new below-grade infrastructure.   | Prior to registration of Plan of Subdivision.   |

**Notes:**

<sup>1</sup> Application type may include a minor variance, or combined applications with Official Plan or Zoning By-law amendments and any associated agreements.

<sup>2</sup> Conveyance may include a stratified conveyance of a horizontal layer of land having a defined profile within a vertical column having multiple layers and ownerships.

<sup>3</sup> The supporting materials prepared in accordance with O.Reg.153/04 (as amended) should be submitted in conjunction with the development application, or as soon as the requirement for land conveyance to the City is known.

<sup>4</sup> Technical requirements set out in Section 5.0 must be satisfied prior to conveyance to the City. Timing of conveyance to the City is determined in the context of City policies, By-laws, and site specific conditions of approval from the Operating Division such as any requirement to construct new below grade municipal infrastructure in the Conveyance Lands.

<sup>5</sup> Technical requirements include all environmental work up to and including acknowledgement of a RSC (if required), but does not include implementation of CPU obligations or provision of site plan (as-built) drawings.

**Requirements for Peer Review and Record of Site Condition filing under the  
Conveyance Policy  
Table 2**

| Former Use of Conveyance Land Parcel <sup>1</sup> | Intended Use of Conveyance Land Parcel <sup>1</sup> | Size of Conveyance Land Parcel (square metres) | Width of Conveyance Land Parcel (metres) | Peer Review Required? | RSC Required <sup>4</sup> |
|---|---|--|--|-----------------------|---------------------------|
| RPI   | RPI or ICC  | ≤ 100  | ANY                                      | NO <sup>3</sup>       | NO                        |
| RPI   | RPI or ICC  | > 100  | ≤ 1                                      | NO <sup>3</sup>       | NO                        |
| RPI   | RPI or ICC  | > 100  | > 1                                      | YES                   | NO                        |
| RPI or ICC  | ICC <sup>2</sup><br>(future Corner Roundings only)  | ≤ 12.5   | ANY                                      | NO <sup>3</sup>       | NO                        |
| RPI or ICC  | ICC <sup>2</sup><br>(future Corner Roundings only)  | > 12.5   | ANY                                      | YES                   | NO                        |
| ICC   | ICC   | ANY  | ≤ 1                                      | NO <sup>3</sup>       | NO                        |
| ICC   | ICC   | ANY  | > 1                                      | YES                   | NO                        |
| ICC   | RPI   | ANY  | ANY                                      | YES                   | YES                       |

**Notes:**

<sup>1</sup> Land use change will be supported by the Preliminary Statement Letter from the applicant's Qualified Person (QP) and stated on the application. ICC = Industrial/Commercial/Community Use; RPI = Residential/Parks/Institutional Use, as per O. Reg. 153/04.

<sup>2</sup> This refers to stand-alone parcels that are to be conveyed to the City to be used as Right-Of-Way corner roundings that are not contiguous with any other conveyance land parcel.

<sup>3</sup> This exemption to the Peer Review requirements does not apply to Conveyance Lands subject to Certificate of Property Use (CPU) obligations i.e. Peer Review is always required for Conveyance Lands with a CPU.

<sup>4</sup> In addition to the above, RSC filing and Peer Review are required for all land conveyances as part of a Subdivision Agreement and may be required as a condition of other development agreements.