

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

Internal Stakeholders Comments

	Comment	Response
Definitions		
	Soil capitalized	Definitions are capitalized throughout the Policy to indicate to the reader the word is associated with a specific meaning.
	Definition of Granular Material. Wording relies on the applicants QP. With this wording there is no ability for the peer reviewer to go back to the applicant to confirm the granular material.	Definition amended to add "and the City."
	Definition of Unimpacted Material. The use of crushed material (specifically concrete) has a high probability of increasing the pH. Consider alternative wording in the definition. In addition, clarify which crushed material would be suitable for use.	The definition of unimpacted material has not changed in this Policy update.
Environmental Site Assessment		
	We note that Clause 5.3.7 (formerly Clause 5.5.6) with respect to utility trenches remains. We suggest that the clause take into account those rare conditions that may arise where a "clean cap" of 1.5 meters resides over soils that meet the appropriate "at depth" stratified conditions which would provide a safe condition for utility workers using standard PPE.	The clean corridor will continue to be a requirement for any services and utilities installed below the 1.5 un-impacted material cap, and consistent with any City ROW construction standards.
	The un-impacted corridor for utilities installed below the 1.5m cap is stated to be required for any utilities within the conveyance lands, however it is not the City's jurisdiction to mandate a clean corridor for utilities not owned, controlled, or operated by the City, such as gas, hydro, telecommunications. We respectfully request the City clarify that this requirement is limited to utilities owned, controlled, or operated by the City.	The responsibility for compliance with applicable law lies with the Applicant and therefore inclusion in the Policy is appropriate.
Risk Assessment		
	Remove the requirement to complete Ministry-approved Risk Assessments (which comes with a CPU and associated Risk Management Measure obligations) especially when there is no provincial requirement to do so, and no adverse effects agreed upon between Qualified Persons. Maintaining this requirement ultimately results in the City taking on unnecessary administrative burden as well as significant costs and time by the conveyor to complete this work.	The City does not accept lands, as a condition of a development application approval that present elevated risks to the environment, worker safety, or public health. In addition to requiring applicants to comply with Provincial laws and regulations, the Policy establishes additional environmental requirements and criteria and describes the processes which protect the City from acquiring lands that have unacceptable liabilities associated with known or suspected environmental contamination.
	City should consider amending the restrictive language of Section 5.5.4 regarding the non-acceptance of Certificate of Property Use	The City does not accept these RMMs as the cost of monitoring and maintenance would be borne by the operating division and can

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	(CPUs) Conditions. BILD believes that room should be made in the policy to consider a science-based decision making approach that will empower staff and peer reviewers to evaluate on a case-by-basis appropriate measures that will protect the City's interests. As previously stated, this is particularly significant in light of the Ministry's direction to require ongoing monitoring for most CPUs - effectively not allowing Tier 3 Risk Assessments for conveyance lands. The Ministry's policy does not enable stratified (horizontal or vertical) CPUs and will frequently require monitoring which runs contrary to the City's Policy, despite monitoring obligations not being attributable to City conveyance stratified sections.	be quite substantial. Further, when required as a condition of a CPU, these types of environmental obligations are expected to continue in perpetuity until an application is made to the MECP to amend the CPU. These applications must be prepared and submitted by a QP and require substantial supporting technical data. The associated costs which would be borne by the City are unpredictable and escalating, presenting an unquantifiable long-term financial burden. By not accepting the conveyance of lands with onerous unquantifiable environmental obligations, the City as a public entity is mitigating its long-term management liabilities and operating costs.
	The City continues not to accept lands with CPUs requiring ongoing groundwater or soil vapour monitoring, rather than restricting its acceptance of the financial burden of the same. We have observed the current trend within the MECP is to require some monitoring in most CPUs, therefore the City is effectively restricting its acceptance of most risk-assessed lands, losing many opportunities to enhance the public realm with use of these lands. Other methods of shielding the City from the financial burden of such monitoring activities are readily available to meet the intent of the Policy.	See previous response
	Amendment of the City's policy to accept risk-based standards in the absence of MECP RA approval would meet the City's stated policy goals, while reducing administrative burden to City in implementing CPUs on its lands.	See previous response
Peer Review		
	Consider wording change. Such "acknowledged" Record of Site Condition.	The requirement for MECP Acknowledgement is addressed in 6.7.1.
	Consider wording change. Shall provide all documents related to the environmental review: a. Phase I ESA b. Phase 2 ESA (if applicable) c. Risk Assessment (if applicable) d. Remedial Action Plan (if applicable) e. Record of Site Condition (if applicable) f. Certificate of Property Use (if applicable)	This section has been revised to include all environmental documentation and reports relating to the Conveyance Lands to be submitted for review under the Peer Review Process.
	The wording is quite subjective. To whose definition does the contamination pose an adverse affect? Suggest adding more clarity.	Adverse effect is defined under Section 1 of the Ontario Environmental Protection Act. Additional language clarifying this definition is outside the scope of the Conveyance Policy.
	Notification of MECP. Has the City contemplated the framework for review associated with this aspect? For example, if groundwater contamination is present up to the	The framework for review and assessment of potential adverse effect on City lands is outside the scope of the Policy update. These notifications will be addressed on a site-specific basis.

	Comment	Response
	<p>property boundary (adjacent to City lands); however, the Applicant/QP have dug out the Site and filed a generic RSC for the development Site and conveyance lands – what documentation is the City expecting to be submitted for review to validate their statements? Technically the development and conveyance lands would be clean but there is typically never any off-site testing done to confirm off-site conditions. In that case, would they be expected to perform a due diligence risk assessment to support their statements (i.e. evaluate trench worker/pedestrian based on historic maximums or former concentrations at boundary)? In the absence of a clear framework for submittals to support this claim it could result in a lot of back and forth that could require the city to intervene.</p> <p>Further, without having confirmed off-site impacts, the MECP may request additional off-site investigations be completed to support the notification process. Is the City prepared for all this work that may need to be done, and/or this could also result in significant push back from the development industry.</p> <p>In addition, if the Applicant/QP undertakes a risk assessment to manage the groundwater impacts (including those up to the property boundary) – are they required to undertake further communication with the MECP over and above those required under the RA approval process?</p>	<p>Additional due diligence, remediation, litigation will be determined at that time in consultation with the relevant Operating Division.</p>
Exemptions		
	<p>Do the exemptions apply to each specific conveyance piece, or the cumulative volume associated with a site plan/sub division. For example – if there is a park as well as a road widening associated with a Site Plan Application – do the areas/width combine to determine if exempt, or is each parcel assessed separately to the Table 2 specs?</p>	<p>The small parcel exemption will be clarified in the Directives. For clarity, each parcel subject to an agreement is assessed separately. Multiple non-contiguous parcels which meet the exemption criteria will be assessed separately. The rationale for this being that investigation is not feasible on parcels below a certain size. Contiguous parcels that collectively do not fall below the small parcel exemption area are not considered exempt. However, if environmental investigation and due diligence is being conducted on the adjacent development property prior to conveyance, it is expected that the exempt conveyance parcel(s) would be included in the investigation.</p>
Table Revisions		
	<p>A new addition (in red) to footnote 4 in Table 1 to flag the timing issue regarding construction of below grade infrastructure: 4 Environmental requirements 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 receiving division. Timing for the fulfillment of environmental requirements will also be determined in the context of</p>	<p>Footnote 4 has been adjusted to include below grade municipal infrastructure as a site specific condition of approval from the receiving division.</p>

	Comment	Response
	any requirement to construct new below grade municipal infrastructure in the Conveyance Lands.	
Other		
	The overall wording of the policy does not differentiate between a Record of Site Condition that has been acknowledged pre-2011 O. Reg 153 amendment. From experience RSCs Pre-Reg 153 amendment n 2011 may pose potential issues for the City. Consider adding additional wording to the document to mention RSC as per O. Reg 153 (as amended).	Currently, pre-2011 RSCs are addressed on a site-specific basis. Requiring updated RSCs is not always necessary depending on site conditions. Peer reviewer discretion is used assess whether a pre-2011 RSC is acceptable for Conveyance Lands.
	Adding language pertaining to the requirements for Indemnity Agreements noting this may require consultation with Legal Services (Scott Pasternak)	Indemnity Agreements are out of scope for the Conveyance Policy and are to be negotiated by the affected receiving divisions.
	Consider wording change. To be conveyed to the City or "where" easement interests are required.	The Conveyance Policy applies when easements interests are required. Wording has not been adjusted at this time.
	Please clarify that this does not apply to TS and that it applies to Toronto Water infrastructure,	This section of the Policy describes existing below grade infrastructure.
	Definition of O. Reg. 153/04. Consider adding in brackets "as amended".	Amendments to regulatory requirements are covered in Section 8.1 of the amended Policy.
	Consider wording change. The Conveyance Lands must be assessed "at a minimum" using the Site Condition Standards.	The selection of a minimum standard for Conveyance Lands is determined by the Applicant. The Applicant may select generic or site-specific standards developed through MECP-accepted Risk Assessment.
	Would the City accept terminology regarding allowing controls that are consistent with MOL procedures for confined space/narrow trench scenarios? This is something that has come up in the past; or modifying Section 5.3.5 to indicate that these items will not be required unless deemed necessary per MOL procedures?	The City will review this internally.
	Did SGQ internal and external consultation held in the summer 2020 include the City standards for T-985-100, T-985-200 and T-985-300	Consultation between 2019 and 2021 focused on the Conveyance Policy updates. Consultation on updates to ECS Construction Standards was not included in the Conveyance Policy update process.
	Format of clause 6.4.3	Noted.
	Who is responsible to remediate/risk assess, should we enter into Indemnity Agreement. We are requesting additional language in the policy that requires Indemnity Agreements	Indemnity Agreements are out of scope for the Conveyance Policy and are to be negotiated by the affected receiving divisions.
	Add definition of transfer of ownership operational control and assumption of service. Make the following change "ownership or operational control or assumption of services"	The definition is operational/internal and outside the scope of the Policy other than in relation to the timing of fulfillment of environmental requirements.
	Consider wording change. Submit to the Peer Reviewer the RSC and associated files.	See previous comment.

External Stakeholders Comments

	Comment	Response
Peer Review		
	<p>We suggest that Draft Policy consider proposing and committing to timelines for the City to complete their peer reviews. In the past, sometimes the peer review process resulted in delays in registering a subdivision. As a result, funds appropriated for the conveyance of the roads were restrained due to the government's budgeting cycle. If the reviews could be done in a committed timeframe, the peer reviews would not have held up other matters needing to be finalized before the subdivision could be registered.</p>	<p>Turnaround times are stipulated for the Peer Review process. Peer reviewers are contractually obligated to respond within specific timelines for each review cycle (3 weeks), however the number of review cycles depends on issues identified during the review and sometimes the quality of the submission. The Peer Reviewer is not responsible for ensuring the completeness of information submitted for review and therefore cannot control the iterative nature of the review process.</p>
	<p>We acknowledge that in section 6.5 of latest draft, the City is indicating that notification to Ministry is required by Environmental Protection Act if "it is possible" that contamination on adjacent City Lands poses an adverse effect. BILD members are concerns that the City is imposing reporting obligations to the Ministry that are well over and above the EPA which states that reporting is required for contamination "likely to cause" an adverse effect. We kindly ask that you reconsider this direction.</p>	<p>The intent of this section is to ensure the City is notified only if MECP is notified of an adverse effect as a result of contaminant migration onto City owned lands. No additional reporting is required.</p>
	<p>As was discussed at length during the 2015 policy drafting, we respectfully submit that the City does not have the requisite jurisdiction to impose new reporting requirements to the MECP. The result of prior discussions on this matter resulted in omission of this requirement from the final 2015 policy. Further, the current draft appears to suggest that the proposed reporting obligations in section 6.5 with respect to legacy contamination are consistent with the reporting obligations in the Environmental Protection Act. This is not the case. We respectfully submit that there is generally no statutory reporting obligation on an applicant with respect to legacy contamination that may have migrated from a Development Site onto adjacent City Lands. As a result, it is our view that section 6.5 is proposing to impose new reporting obligations on an applicant above and beyond those that currently exist under provincial law.</p>	<p>See previous response.</p>
Exemptions		
	<p>The City's minimum requirement for 1.5m combined hard cap and fill cap provides no flexibility for situations where such a cap would unnecessarily destroy existing mature vegetation or cause other</p>	<p>The City recognizes that, in certain circumstances, such as existing large trees or underground structures, it may not be possible to place the surface cap to the full 1.5 m depth, or may prevent cap installation at all. Section 5.3.6 provides relief for access restrictions around cap</p>

	Comment	Response
	issues with regards to grading (e.g. AODA accessibility requirements).	installations whereby the minimum 1.5 metres Un-impacted Material cap requirement may be reduced in situations where installation restrictions are identified. Relief will be considered 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.
	Enable City staff and peer reviewers the ability to evaluate exemptions where they make sense. Currently, BILD Toronto Chapter finds the City's exemption process to be arbitrary with no means of considering site-specific conditions.	The 2015 Policy established exemptions to the Peer Review Process for small parcels of land where the intended use was not changing to a more sensitive use. This scenario which includes former residential land being used as a parkland, or and former industrial land being used for road widening. However, any lands that are repurposed for a more sensitive use, such as a parkland being developed on former industrial, commercial or community land will require a Record of Site Condition (RSC) to be completed and filed with the MECP in accordance with O. Reg. 153/04. This requirement is provincially legislated and cannot be exempted by City Policy. In order to apply for these exemptions, the applicant's QP must provide rationale describing how the conveyance lands meet the exemption criteria. The proposed amendments do not change the exemptions, but rather provide clarification of the exemption criteria and process. It is anticipated that these amendments will streamline the exemption process and therefore expedite approvals.
Table Revisions		
	The Policy continues to require a Records of Site Condition (RSC) for all conveyance blocks for subdivision applications regardless of whether or not there is a change in land use that would mandate a RSC. Subdivision applications are the most complex development applications in the City, requiring significant negotiation with many City departments and public interests. These subdivision applications also represent the greatest opportunities for City-building in Toronto, and great opportunities for the City to work towards its broader interests. To unfairly burden these applications with unnecessary environmental requirements is counter-productive to the City's interests. We kindly ask that you reconsider this direction.	This requirement is driven by the language in Subdivision Agreements and the fact that conveyance parcels in Subdivisions are typically larger and more numerous than those associated with the other application types. This poses a larger risk to the City as the new owner of these lands, therefore RCSs are required for all Subdivision conveyances.
	The policy currently requires RSCs for all subdivision parcels, regardless of whether or not there is a change in land use that would trigger a mandated RSC. Subdivisions within the City of Toronto represent its greatest opportunities to create complete communities and require navigation of a myriad of interests from different City departments and the public. The rigidity of the Policy as it relates to subdivision applications restricts the City	See previous response.

	Comment	Response
	from effectively using these opportunities for great City-building and public realm enhancements in many cases.	
Other		
	The Policy continues to require council approval for any amendments, relief, exemptions from the Policy, while remaining very restrictive in its language. We submit that qualified city staff and Qualified Persons, not council, are in the best position to evaluate and recommend solutions related to potentially contaminated lands that fall outside the current policy restrictions while maintaining the policy goals. In practice, the burden of council approval of any flexibility in the policy is preventing these solutions from being put in place.	The Policy's purpose is to streamline the review process for conveyance lands and emphasize consistency in the application of its requirements. In rare cases where technical circumstances merited an exemption, staff have recommended one, however approval was always obtained through a Council decision. There are no plans to amend the current process.
	There may be cases with respect to crown lands where additional implementation flexibility may be appropriate or required. In particular, as crown agent Infrastructure Ontario has unique operating and legislative authorities and restrictions, very different from private landowner. In addition, the Province's review and approvals process for land conveyances may not necessarily align with the City's typical process or timing. We would therefore request that something to the effect of the following language be included in the new policy: Notwithstanding any other policy or requirement outlined in the Policy, in cases where the conveyance involves lands owned or controlled by another level of government or crown agency there may be unique project-specific considerations and/or legislative and operating authorities that are applicable, therefore alternate mutually agreeable implementation arrangements may be negotiated, provided that all such arrangements are in compliance with all applicable law.	The Policy applies to applications made under the Planning Act, Condominium Act, City of Toronto Act etc. Crown Lands being conveyed to the City are typically not subject to development approvals.
	Several proposed amendments to the Policy are significant positive changes and ought to be accessible for all developments. Referencing the 2015 policy as the "minimum standard" for development applications deemed complete prior to council approval of the policy seems unnecessary and unreasonable.	The reference to the 2015 Policy as a minimum standard has been deleted. Applicants are encouraged to apply the amended Policy. However, applications submitted under the 2015 Policy are entitled to apply the 2015 Policy.
	Templates for Reliance Letters are referred to, but have not been provided for consultation. Reliance letters are a particularly challenging issue throughout the environmental consulting industry and the City's acceptable reliance letter must be provided by the City for industry consultation before finalizing.	The reliance letter template will be reviewed and updated following the Policy update.