

Ministry of the Environment, Conservation and Parks Consolidated Linear Infrastructure Permissions Approach for Low Risk Projects related to Sanitary Collection and Stormwater Management

Date: August 30, 2021

To: Infrastructure and Environment Committee

From: General Manager, Toronto Water

Chief Engineer and Executive Director, Engineering & Construction Services

Wards: All

SUMMARY

The Province is adopting a Consolidated Linear Infrastructure Permissions Approach (CLI) to replace the current Ontario environmental compliance approvals framework for low risk projects related to municipal sanitary collection and stormwater management, and is now rolling out implementation of the new permissions approach inviting the City of Toronto to apply on or before January 21, 2022 for a CLI Environmental Compliance Approval (CLI ECA) for these projects. The purpose of the CLI is to consolidate certain municipal sewage works approvals into the following: a single CLI ECA for all of a municipality's sanitary collection works and a single CLI ECA for all of a municipality's stormwater management works (collectively, CLI ECAs).

The Province's stated objective with transitioning to CLI and consolidating approvals under the CLI ECAs is to reduce administrative regulatory burden, provide clear and consistent requirements across the province and improve environmental protection.

The CLI will replace the current 'one-for-one' or 'pipe-by-pipe' environmental compliance approval system with a consolidated list of approved municipal sewage works, in one approval document for each type of municipal sewage system, that will cover all infrastructure, as applicable, within i) the City's sewage collection system and ii) the City's stormwater management system.

A separate application on behalf of the municipality is required for each of the CLI ECAs. This new permissions framework has been modelled after the existing provincial permissions framework for municipal drinking water systems implemented in recent years and reported to Council back in 2010.

All infrastructure identified in the CLI ECAs will be subject to updated and standardized Ministry of the Environment, Conservation and Parks (MECP) requirements. As a result, some older infrastructure will be subject to new and additional requirements. Also, certain future alterations to the infrastructure will be pre-authorized based on new (updated) MECP design criteria. Currently, all such requirements including MECP design criteria are under development by the Province. Assuming all applicable requirements of the CLI ECAs are met, it is intended that municipalities (and a third party such as developers and transit agencies constructing sewage infrastructure on behalf of the municipalities) will be permitted to proceed without having to obtain an additional MECP permission as is now currently required. The City will be responsible for ensuring that municipal sewage works constructed by a third party comply with such design criteria.

With the implementation and transition to CLI, the MECP will also be phasing out the Transfer of Review Program (TOR Program) for municipalities, like the City, that participate in it through agreements with the Province.

This report recommends that City Council designate the General Manager, Toronto Water, as the owner's representative for the purposes of the necessary CLI ECA applications to the MECP and seeks from City Council the necessary delegations of authority to the appropriate staff related to the CLI ECA applications and the administration of the CLI ECAs once issued to the City by the MECP. Staff will report further to City Council at a future date, as part of a separate report, regarding the establishment of any necessary City fees for the services to be provided by the City to the public under the CLI ECAs, and on any steps necessary to phase out the City's TOR Program.

RECOMMENDATIONS

The General Manager, Toronto Water, and the Chief Engineer and Executive Director, Engineering & Construction Services, recommend that:

1. City Council authorize the General Manager, Toronto Water, to represent the City, as owner, and designate the General Manager, Toronto Water, as the owner's authorized representative, for the purposes of any application, including any future renewal, extension or amendment application, to the Ministry of the Environment, Conservation and Parks (MECP) for a Consolidated Linear Infrastructure Environmental Compliance Approval (CLI ECA) for the City's Municipal Sewage Collection System and the City's Stormwater Management System.
2. City Council direct the General Manager, Toronto Water, to apply to the MECP, on behalf of the City, for an initial CLI ECA for each of the City's Municipal Sewage Collection System and the City's Stormwater Management System, and any future renewal, extension or amendment application, including the negotiation and execution thereof, as may be necessary in the determination of the General Manager, Toronto Water, on terms and conditions satisfactory to the General Manager, Toronto Water.

3. City Council delegate authority to the General Manager, Toronto Water, to administer any CLI ECAs issued by the MECP to the City including the authority to prescribe any related City form or procedure, and to amend or revise such City form or procedure.
4. Notwithstanding the delegation of authority to the General Manager, Toronto Water, set out in recommendation 3 above, City Council delegate authority to the General Manager, Toronto Water and the Chief Engineer and Executive Director, Engineering & Construction Services, in consultation, to designate in writing the appropriate staff within their respective divisions authorized to sign, on behalf of the City, any forms, letters of acceptance or such further documents, as may be required by the MECP related to the administration of the CLI ECAs.
5. For infrastructure work that does not fall within the scope of the CLI ECAs issued by the MECP to the City, City Council delegate authority to the General Manager, Toronto Water and the Chief Engineer and Executive Director, Engineering & Construction Services, in consultation, to either sign or designate in writing the appropriate staff within their respective divisions authorized to sign, on behalf of the City, any direct submission applications not covered by the pre-authorized process under the Ontario Water Resources Act and Environmental Protection Act, as may be required by the MECP.
6. City Council direct the General Manager, Toronto Water, to report back on any steps necessary to phase out the City's Transfer of Review Program, including the termination of the City's related existing agreement with the Province, as represented by the MECP, dated October 3, 2018, and the establishment of any new fees related to the administration of the CLI ECAs.

FINANCIAL IMPACT

The MECP will charge the City an administrative fee of \$100.00 for the processing of each CLI ECA application, for a total cost of \$200.00. This application expense will be included in Toronto Water's 2022 Operating Budget Submission as payment will be required at the time of the City's application submission to the MECP in 2022.

While delays are possible, it is expected that the CLI ECAs will be issued in 2022. Once issued, there may be costs arising from CLI ECA requirements imposed by the MECP for things like additional or upgraded processes, activities or construction specifications for future construction and operation of the City's sanitary collection and stormwater management systems. Since any such requirements and related costs are currently unknown, the additional costs, if any, are not currently reflected in Toronto Water's 10 - Year Capital Plan and annual operating budgets. Future Toronto Water capital and operating budget submissions will reflect any cost implications that arise through the establishment and administration of the CLI ECAs.

Otherwise, for the future services to be provided by the City in respect of the pre-authorized alterations to infrastructure under the future CLI ECAs, the City will need to establish fees to recover the City's costs associated with the related processing and

technical review of third party applications. It is intended that these new fees would replace the fees currently charged by the City under the TOR Program which will be phased out upon the issuance of the CLI ECAs. It is recommended that Staff report back at a future date regarding the establishment of any necessary new fees and on any steps required to phase out the City's TOR Program. Any related operating costs and associated revenues will be incorporated in Toronto Water's future operating budget submissions, as applicable.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

Transfer of Review Program

City Council, at its meeting on December 16, 2013, adopted, with amendments, Item EX36.17, 2014 Rate Supported Budgets – Toronto Water and 2014 Water and Wastewater Rates and Service Fees, authorizing the transfer of the fees falling under The Ministry of the Environment Transfer of Review Program from Engineering & Construction Services, formerly Technical Services, to Toronto Water and the appropriate Toronto Water Fee Schedule. This was the result of the Transfer of Review program review group being reassigned from Engineering & Construction Services to Toronto Water, through a City of Toronto restructuring, effective February 6, 2013. City Council's decision can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX36.17>

City Council, at its meeting on June 8 and 9, 2010, adopted, without amendment and without debate, Item PW33.1, Implementation of the Ministry of the Environment's Expanded Transfer of Review Program for Sewage Works, authorizing the City to participate in the current TOR Program (an expansion of the then program). Further, City Council delegated authority to staff, designated in writing by the then Executive Director of Technical Services (now Engineering & Construction Services) and the General Manager, Toronto Water, to sign on behalf of the City any application forms required by then Ministry of the Environment (MOE) (now MECP) as part of the TOR Program. In addition, by its adoption of this Item, City Council authorized the City's agreement with the Province, as represented by the MECP, dated October 3, 2018 governing the City's participation in the TOR Program (TOR Agreement). Lastly, City Council authorized the amendment of Municipal Code Chapter 441, Fees and Charges, to include the new TOR Program fees. City Council's decision can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.PW33.1>

The Municipality of Metropolitan Toronto Council, at its meeting on May 8, 1991, pursuant to Council Minute No. 430 (1991), adopted Metro Works Committee Report No. 11, Clause 3, Expansion of Transfer of Approvals Program to Include Stormwater Management Works, without amendment, authorizing participation in an expanded Transfer of Approvals program for municipal works which included stormwater management works. However, due to budget and staff resources constraints, the City's

participation in the program was not realized at that time. Subsequently, in 2007, the program was revisited with the Ministry and in a letter dated August 28, 2009, the then MOE confirmed its willingness to expand the scope of the City's participation in the Transfer of Review program resulting in the above-noted Council adoption of Item PW33.1.

The Municipality of Metropolitan Toronto Council, at its meeting on February 7, 1978, adopted Report No. 2 of the Works Committee, Transfer of Approval Responsibilities under Sections 41 and 42, Ontario Water Resources Act, without amendment, accepting the transfer of approvals responsibilities proposed by the MOE.

The implementation of this transfer was intended to aid in eliminating unnecessary delays in the approval process and in the end give added authority to the municipality in the regulation of these essential works. The program was entirely voluntary. The MOE indicated that they were open to all suggestions as to other options should they arise during the initial stage of the transfer procedure. A Standards Committee was formed to finalize the draft design guidelines intended for use in the program.

Municipal Drinking Water Licencing Program

City Council, at its meeting on June 8 and 9, 2010, adopted, on consent, Item PW33.2, User Fee for Administration of Ministry of the Environment's Municipal Drinking Water Licensing Program, establishing a new user fee to recover the cost to the City of conducting technical reviews of drinking water works required under the then new Municipal Drinking Water Licensing Program, mandated by Ontario's Safe Drinking Water Act, and for the administration of the Licensing Program. The Council decision can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.PW33.2>

City Council, at its meeting on November 30, December 1, 2, 4 and 7, 2009, adopted, on consent, Item PW28.11, Signing Authority for Municipal Drinking Water Licensing Program, delegating authority to the appropriate City staff to sign various verification forms and applications required by the MOE under its then new Municipal Drinking Water Licensing Program. The Council decision can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.PW28.11>

City Council, at its meeting on July 16, 17, 18, and 19, 2007, adopted, without amendment, Item PW7.9, Designating the General Manager of Toronto Water as owner Representative for Implementation of the Drinking Water Quality Management Standard, authorizing the designation of the General Manager, Toronto Water, as the Owner Representative for Toronto Water's Quality Management System. The Council decision can be viewed at:

<http://www.toronto.ca/legdocs/mmis/2007/pw/bgrd/backgroundfile-5146.pdf>

COMMENTS

Background

In Ontario, Section 53 of the Ontario Water Resources Act (OWRA) requires municipalities and developers to obtain an environmental compliance approval (ECA) to use, operate, establish, alter, extend or replace new or existing sewage works. ECAs, and their predecessor, certificates of approval, form the basis for the current approval framework for sewage works in Ontario dating back to the 1970s. Under this approvals framework, the City has been issued over 4000 individual ECAs in respect to Toronto Water infrastructure. Each ECA is for a specific segment or element of the City's sanitary and stormwater management systems. The conditions of each ECA are site specific.

The CLI ECAs will consolidate information on all Toronto Water infrastructure for the sanitary collection system and the stormwater management system into two separate documents, one for each system and will apply consistent requirements to the infrastructure regarding its maintenance and operating conditions. Any existing ECAs for works covered by the new CLI ECAs will be revoked. Most Toronto Water infrastructure will be covered by the CLI ECAs but there will be some 'non-standard', or more complex elements that will maintain existing ECAs, or still require MECP approval, outside of the CLI ECA process (e.g. wastewater treatment plants).

The Current ECA Framework – Transfer of Review Program

The City has participated in the TOR Program for many years. The TOR Program dates back to 1978 and permits municipalities to review (on behalf of the MECP) and recommend approval of ECA applications for eligible sewage works to the MECP; primarily non-complex, low risk or less environmentally-sensitive works. Currently, the City's participation in the TOR Program is governed by the TOR Agreement.

Under the TOR Program, the City collects fees for reviewing ECA applications seeking approval for alterations to Toronto Water infrastructure. Currently, these fees are included in Municipal Code Chapter 441, Fees and Charges.

A key component of the MECP's implementation and transition to CLI is the phase out of the TOR Program. The MECP has expressed an intention to work with TOR municipalities like the City to ensure a smooth transition to the new permissions framework under CLI. While the details have yet to be determined, it is anticipated that the end date for the City's TOR Program will be the issuance/effective date of the CLI ECAs. As part of this transition, it is expected that the TOR Agreement will be terminated. Similarly, the fees charged by the City under the TOR Program will need to be replaced by new CLI ECA related fees. In these circumstances, staff recommend that City Council direct the General Manager, Toronto Water, to report back on any steps necessary to phase out the City's TOR Program, including the termination of the TOR Agreement and replacement of TOR fees with the establishment of any new fees related to the administration of the CLI ECAs.

The New Permission Framework – Consolidated Linear Infrastructure Environmental Compliance Approval

The CLI ECAs will incorporate a new process which will replace the City's current TOR Program. Certain alterations to Toronto Water infrastructure will be pre-authorized and the requirement that the MECP has to approve these alterations on a 'one-for-one' or 'pipe-by-pipe' basis will be transferred to the City with the CLI ECA. The City will instead be required to review the proposed alterations to confirm they meet the conditions of the CLI ECA and the MECP 'Design Criteria for Sanitary Sewers, Storm Sewers and Force mains for Alterations Authorized under Environmental Compliance Approval'. The specific activities that will not be included as "pre-authorized" alterations has not been finalized as some negotiations are expected through the CLI ECA application process (e.g. maximum pipe sizes). The greater the number of activities included, the greater the efficiencies and the shorter the time period for authorization, which will be a benefit to the City.

In conjunction with the MECP 'Modernization of Approvals' initiative under Schedule 7 of Bill 68, of the Open for Business Act, 2010; on October 31, 2011 the Environmental Protection Act (EPA) and OWRA were amended to add "use" and "operate" to the list of activities for which an ECA is required. This change resulted in all equipment and works, subject to the EPA and OWRA, having to have an approval notwithstanding that their installation predated the issuance of approvals by the MECP. This removed the "grandfathering" status for sewage works that were in place prior to the requirement for 'Ministry approval to construct'. CLI ECAs granted to an Ontario municipality will result in a Ministerial approval for all the sewage works covered in the CLI ECAs.

Staff consider the CLI ECA to be advantageous for the City because it will:

- provide Ministerial approval for older infrastructure that pre-date the existing ECA process,
- facilitate adjustments to or reconstruction of infrastructure that is not currently subject to an ECA,
- overall be a more efficient and faster permissions process for alterations to the systems,
- MECP will phase out the TOR Program for works covered by a CLI ECA, and
- provide consistent requirements across all the infrastructure within each system.

The modernization of municipal sewage system approvals is also consistent with related MECP initiatives such as encouraging low impact development with the removal of barriers to the development of innovative source control measures.

City Application for the Consolidated Linear Infrastructure Environmental Compliance Approvals

The City will need to prepare and submit to the MECP an application that includes a description of all existing sanitary collection and stormwater management works infrastructure it owns (or which may be transferred to it) within its municipal boundaries.

By letter dated August 6, 2021, the MECP has notified the City that its applications for the CLI ECAs are required on or before January 21, 2022.

While in the coming weeks, the MECP will be providing additional information on how to prepare the CLI ECA applications, it has released a 'Guide to Applying for the First Consolidated Linear Infrastructure Environmental Compliance Approval' (Guide). Among other things, the Guide indicates that the applications must be signed by an authorized representative of the City and must include a "Statement of the Owner" to the effect that the application is signed by an individual authorized to represent the owner for the purposes of the application. For this reason, staff recommend that City Council designate the General Manager, Toronto Water, as the owner's representative for the purposes of the necessary CLI ECA applications to the MECP and seeks from City Council the necessary delegations of authority related to the CLI ECA applications, including any future renewal, extension or amendment application, and the negotiation and execution thereof.

Future Administration of the Consolidated Linear Infrastructure Environmental Compliance Approvals

Once issued, the CLI ECAs will need to be administered on behalf of the City. Given their nature, staff recommend that City Council delegate authority to the General Manager, Toronto Water, to administer any CLI ECAs issued by the MECP to the City including the authority to prescribe any related City form or procedure, and to amend or revise such City form or procedure.

Moreover, staff recommend that City Council delegate authority to the General Manager, Toronto Water and the Chief Engineer and Executive Director, Engineering & Construction Services (ECS), in consultation, with each other, to designate in writing the appropriate staff within their respective divisions authorized to sign, on behalf of the City, any forms, letters of acceptance or such further documents, as may be required by the MECP related to the administration of the CLI ECAs.

Given the engineering expertise and specialized support services that ECS provides to Toronto Water, such as engineering design and engineering review of third party construction designs, it is recommended that there be additional authority for the General Manager, Toronto Water and the Chief Engineer and Executive Director of ECS to further delegate certain activities to staff of their respective divisions.

Once the CLI ECAs are issued and in effect, the City will be required to administer the new pre-authorization process, which will be similar to the established process under the City's Drinking Water Work Permit and Municipal Drinking Water License. This process will provide an efficient mechanism to review, process and administer pre-authorized alterations.

ECS will continue their role as the primary service contact for the development industry, third parties and administrators of capital projects. Under the new CLI ECAs, ECS will provide the initial review and sign the MECP Record of Future Alteration forms as owner verification to confirm specific criteria, and submit design packages to Toronto Water. The Toronto Water unit currently performing the TOR Program duties will conduct the technical review of the design, issue an acceptance letter, maintain records of alterations, and any other administrative processes necessary to support and comply

with the CLI ECA. While the CLI ECA pre-authorization process will cover most alterations of the sanitary collection and stormwater management systems, any alterations that do not meet the pre-authorization conditions of the CLI ECA and MECP design criteria will require a direct ECA application submission to MECP for review and approval. ECS will continue to sign the Statement of the Municipality for direct submission ECA application forms, and other duties as necessary under this existing permissions process.

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