

Ravine Slope Stabilization - Update

Date: June 13, 2023

To: Infrastructure and Environment Committee

From: City Solicitor

Wards: All

SUMMARY

At the March 20, 2023 meeting of the Infrastructure and Environment Committee (the "IEC"), the IEC requested the City Solicitor, in consultation with Finance and other City divisions and the Toronto Region Conservation Authority as appropriate, to report back to the IEC on options for:

- a. Requiring the owners of adjacent private property, that would directly benefit from ravine slope stabilization, to contribute to the cost of such work, and/or to transfer ravine land to the city or the Toronto Region Conservation Authority (TRCA) in lieu of such payment,
- b. Notifying insurers of the adjacent private property of the risk of slope instability, and
- c. Registering the risk of slope instability against the title of directly affected adjacent lands.

This report has now been prepared in response to the request of the IEC.

RECOMMENDATIONS

The City Solicitor recommends that:

- 1. The Infrastructure and Environment Committee receive this report for information.

FINANCIAL IMPACT

There are no financial implications arising from the adoption of the recommendations in this report.

DECISION HISTORY

At its meeting on March 20, 2023, the Infrastructure and Environment Committee requested the City Solicitor, in consultation with Finance and other City divisions and

the Toronto Region Conservation Authority as appropriate, to report back on options contained in this Report:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.IE2.9>

COMMENTS

This report responds to the request for a report from the City Solicitor in response to Infrastructure and Environment Committee Item IE2.9 adopted at its meeting of March 20, 2023 by providing information regarding the various options available to the City to address the slope instability issues identified in the Item.

Query 1.a. requests options for requiring the owners of adjacent private property that would directly benefit from ravine slope stabilization to contribute to the cost of such work and/or transfer ravine land to the City or TRCA in lieu of such payment.

In response to Query 1.a., the following potential options have been identified for further consideration if desired:

Option 1: Local Improvement Charges

One option that could be pursued would be local improvement charges (an "LIC"), authorized pursuant to Ontario Regulation 596/06 of the *City of Toronto Act, 2006* ("COTA").

An LIC authorizes local infrastructure improvements and requires property owners in affected areas to share in the cost. LIC's can be initiated by the City, though an attempt by the City can be vetoed by a majority of owners representing at least one-half of the value of the affected lots.

If a veto by owners occurs, the City may apply to the Ontario Land Tribunal ("OLT") to undertake the work as a local improvement. If any owner files an objection to the City's application, a hearing is held and a decision rendered.

If the undertaking of an LIC is approved by the OLT (or not vetoed by owners in the first place), it is then registered on the title of affected properties.

It is also possible for agreements to be entered into with consenting private property owners for local improvements agreeing to be responsible for such costs.

Option 2: Toronto and Region Conservation Authority Private Landowner Contribution Framework (the "Framework")

Pursuant to this Framework, erosion control and slope stabilization works are funded through TRCA's Erosion Risk Management Program ("ERMP") for the benefit of private landowners.

ERMP offers assistance to the most seriously impacted private properties in TRCA's jurisdiction. Private landowners benefiting from publicly funded erosion control and slope stabilization works must contribute to the project in accordance with the terms of the Framework. Failure by a landowner to contribute to the project will result in cancellation.

For the purposes of this report, it is of note that there is no mechanism to obligate a private landowner to participate in a project if they do not wish to.

The contribution method is non-negotiable and shall be determined at the sole discretion of TRCA. Land conveyance is the default method of contribution where major structural works are constructed consistent with the following program objectives:

- (a) Ownership of the entire structure by one owner (TRCA) for future monitoring and maintenance through the ERMP.
- (b) To limit future development of lands where erosion and slope instability hazards have been remediated through the ERMP.
- (c) To foster the expansion of public lands where erosion and slope instability hazards have been identified through the ERMP.

For participating landowners, there are two types of agreements that may be entered into:

- Design Contribution Agreement: Provides for a refundable deposit of \$2,000 payable to TRCA to ensure that TRCA is compensated in part for the costs associated with design development should the landowner choose to withdraw from the project; and
- Erosion Control Agreement: Provides for a landowner to voluntarily consent to contribute to a project through the conveyance of land, financial contribution, or landowner reimbursement, and the introduction of a permanent easement for TRCA access. A restrictive covenant is also registered on title to protect the structural integrity of the works.

Option 3: Land-Use Planning Measures

Land use planning tools are relevant only in so far as there is an application for development, whereby the nature of the proposed development may have an impact on the ravine. A variety of planning approvals allow for the City to impose certain conditions on a proposed development, depending on the statutory framework and the nature of the proposed development. For example, if the application for development is

subject to site plan control, the City's authority under s. 114 of COTA provides that the City may impose conditions to the approval of plans and drawings, as is set out in the legislation. In respect of a development application for a consent to sever, or plan of subdivision under the Planning Act, the City may impose conditions on the approval of the application, having regard to the nature of the development proposed. In respect of a development application for a minor variance under s. 45 of the Planning Act, the Committee of Adjustment may impose conditions of approval, where the Committee finds it advisable, and such conditions are reasonably related to the variances.

Depending on the nature of the proposed development application, and the applicable statutory framework, the City may be able to require a conveyance of land through the development review process to either the City or the TRCA, but the availability of this can only be determined on a site-by-site basis and upon review of the application for development.

Option 4: Incentive Measures

While not strictly speaking a legal option, consideration might be given to programs which could encourage private owners to participate in slope stabilization projects. Some options for consideration might include:

(a) **Financial Assistance Programs:** Such programs could provide grants, loans, or subsidies to non-commercial property owners for slope stabilization projects. These programs may be able to help offset costs associated with engineering studies, construction, or materials needed for such projects.

(b) **Expedited Permitting and Approval Process:** In the event that property owners undertake projects related to slope stabilization, the City could consider the establishment of an expedited permitting and approvals process. If such a dedicated process were created, it might be seen as advantageous to property owners.

Query 1.b. requests options for notifying insurers of the adjacent private property of the risk of slope instability.

In response to Query 1.b., it appears that there are practical impediments to making such direct communications.

Insurance contracts are not registered on title to a property. Nor is there a public registry of home or property insurers of individual properties. Without a means to identify the insurer for a given property, there may be no practical way for the City to notify insurers of the risk arising from slope instability. Moreover, even if there were a means to identify the insurer of a particular property, it appears that the majority of insurance policies in Canada exclude the risk of landslide damage that may arise from slope instability. If coverage is excluded, it is likely that notifying the insurer would have little if any effect on the insurer's risk calculation relevant to coverage.

The potential for liability as a result of the City involving itself, without specific statutory authority, in the private contractual relationship between a homeowner and their insurer is also something that would have to be seriously considered.

Instead of directly contacting an insurer, the City could recommend to property owners that they may wish to advise their property insurer of the risk relating to slope failure. By avoiding direct communication with the insurer, the City would avoid the practical and potential legal issues discussed above. Such communications might cause insurers to inform property owners about uninsured risks, which could help to persuade property owners to contribute to the project.

Query 1.c. requests information regarding the possibility of registering the risk of slope instability against the title of directly affected adjacent lands

In response to Query 1.c., consideration of the real estate tools available to the City have been canvassed.

Registrations on title are limited to instruments related to title itself. The City cannot register information about the physical condition of the lands on title to those lands absent the statutory authority to do so. Where the City has entered into an agreement with a landowner for certain works on a ravine under a City by-law pursuant to Section 105.2 of COTA, the City may register notice of such an agreement against the land to which the agreement applies. Use of this provision is limited to agreements with property owners undertaking certain improvement works. While helpful to register the existence of an agreement for site-specific work within a ravine, Section 105.2 cannot be used solely for the purpose of providing universal notice of the physical condition of lands.

CONTACT

Matt Harding, Solicitor, Municipal Law; Tel: (416) 392-8080; Fax: (416) 397-5624 Email: matt.harding@toronto.ca;

Rebecca Hartley, Deputy Director, Real Estate Law; Tel: (416) 397-5415; Fax: (416) 397-5624; Email: rebecca.hartley@toronto.ca;

David Gourlay, Solicitor, Litigation; Tel: (416)-338-6970; Fax: (416) 397-5624; Email: david.gourlay@toronto.ca;

Adrienne deBacker, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 397-5412; Fax: (416) 397-5624; Email: adrienne.debacker@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

N/A