



Report to: Development Services Committee

Meeting Date: April 9<sup>th</sup>, 2024

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**SUBJECT:** Environmental Policies and Procedures for Land Conveyance to the City, and Management of Excess Soil

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**RECOMMENDATION:**

- 1) That the staff report titled “Environmental Policies and Procedures for Land Conveyance to the City, and Management of Excess Soil” be received; and,
- 2) That Council adopt the revised Environmental Policy and Procedures for the Conveyance of Land to the City (“Land Conveyance Policy”) in substantial conformity with the Land Conveyance Policy set out in Attachment ”A”; and,
- 3) That Council adopt the Policy and Procedures for Managing Excess Soil (“Excess Soil Policy”) in substantial conformity with the Excess Soil Policy set out in Attachment ”B”; and,
- 4) That the Director of Engineering be authorized to waive the Environmental Site Assessments (ESA), including Record of Site Condition (RSC) and/or restrictions in the Certificate of Property Use (CPU), as set out in the Land Conveyance Policy and outlined in this report; and,
- 5) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

**EXECUTIVE SUMMARY:**

This report recommends that the Council adopts the revised Land Conveyance Policy and the new Excess Soil Policy. The revised Land Conveyance Policy includes changes related to renaming of the policy, adding ESA peer-review and RSC requirements for Capital Projects, provide description of situations that are exempted from ESA peer-review and RSC requirements, and clarify language or delegate authority to Director of Engineering (instead of Commisisoner) to waive or request certain requirements. The revised Land Conveyance Policy updates and supersedes the current policy, while maintaining the conformity with the City’s 2014 Official Plan (OP).

The new Excess Soil Policy has been developed in response to the new regulation approved in 2019 by the Province of Ontario, O. Reg. 406/19: On-Site and Excess Soil Management. The Excess Soil Policy is a comprehensive guidance to City of Markham project managers

and staff in effectively applying O. Reg. 406/19 to municipal projects. The primary objectives are to enhance project managers and staff understanding of the procedures involved in managing excess soils on City projects, thereby ensuring compliance with O. Reg. 406/19.

A Technical Advisory Committee (TAC) was created to foster collaboration among essential City departments - Engineering, Legal Services, Planning and Urban Design, Sustainability and Asset Management, and Operations. Its role is to gather feedback and input on proposed policies and procedures. Following consultations with these departments, revisions were made to accommodate their suggestions and ensure alignment with internal stakeholder interests.

The Land Conveyance Policy is forecasted to impose negligible financial burdens on the City, as expenses related to land conveyance will be covered by the initial landowners. Nevertheless, adherence to the Excess Soil Policy (O. Reg. 406/19) will necessitate project managers allocating ample budgetary resources for compliance. This could lead to potential augmentations in capital project budgets, contingent on project scope and compliance requirements under O. Reg. 409/19.

#### **PURPOSE:**

The purpose of this report is to obtain Council's endorsement and adoption of the revised "Environmental Policy and Procedures for the Conveyance of Land to the City" (Land Conveyance Policy), and the "Policy and Procedures for the Management of Excess Soil" (Excess Soil Policy).

#### **BACKGROUND:**

##### **Land Conveyance Policy**

In 2017, Council adopted the "*Environmental Policy and Procedures for the Conveyance of Land to the City Pursuant to the Planning Act*". This policy applied to the conveyance of lands to the City that were proposed as part of a *Planning Act* application.

Staff propose minor changes to further improve the development approval process.

##### ***Provincial standards and land conveyed to the City***

Lands and easements are often required to be conveyed to the City as a condition for approval pursuant to the Planning Act. The conveyed lands and easements play a crucial role in diverse urban development facets, including the establishment of new roads, road widenings, parks, open spaces, valleylands, stormwater management facilities, and the accommodation for municipal infrastructure.

As part of the conveyance process, the City stipulates that landowners and developers must validate that the lands to be conveyed are in accordance with the relevant requirements and standards set out by the Ministry of the Environment, Conservation and Parks (MECP) for soil and groundwater. This ensures adherence to environmental and regulatory guidelines.

##### ***City's Official Plan policies regarding land conveyance to the City***

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Section 3.4.2.12 of the City's 2014 OP outlines Council's policy regarding the requirement of a Record of Site Condition (RSC) submission for all land conveyances to the City of Markham. This section also stipulates that confirmation from MECP that an RSC has been filed and acknowledged for all land transfers, with an exemption granted for minor road widenings. Furthermore, Section 10.8.1.3 of the Official Plan highlights Council's policy that conveyed lands must be in an acceptable condition to the City, and which shall include an environmental clearance. This environmental clearance, as specified by the appropriate level of site assessment established in MECP regulations, is crucial for ensuring the environmental integrity of the conveyed lands.

Environmental clearance of conveyed lands is typically obtained through the submission of a Phase One Environmental Site Assessment (ESA) and, if deemed necessary, a Phase Two Environmental Site Assessment (ESA). A Phase One ESA involves a non-intrusive evaluation, incorporating a site walk-through, interviews with relevant parties, and a review of background documents. This aims to ascertain whether the land, encompassing soil and/or groundwater, may have been contaminated by current or past land uses. More details are provided at the following link: <https://www.ontario.ca/page/guide-completing-phase-one-environmental-site-assessments-under-ontario-regulation-15304>.

Recommendations from the Phase One ESA may necessitate the undertaking of a Phase Two ESA, characterized by an intrusive site investigation targeting strategic areas to identify contaminants exceeding MECP's permissible limits. The Phase Two could include a few steps, with the first one being the sampling of the soil and/or groundwater, and providing recommendations for site remediation to address any exceedances or contamination. The next steps would involve the complete removal of contaminated soil and/or groundwater, or the application of a Risk Assessment (RA) which basically means managing certain levels of contamination and capping it within specific area. With the application of the RA, the MECP typically issues a Certificate of Property Use (CPU) which details specific requirements for managing the contamination on site. More details are provided at the following link: <https://www.ontario.ca/page/guide-completing-phase-two-environmental-site-assessments-under-ontario-regulation-15304>.

***Provincial legislation that governs contaminated and potentially contaminated lands***

The *Environmental Protection Act*, enacted Ontario Regulation 153/04, as amended (O. Reg. 153/04) which is also known as the Record of Site Condition (RSC) regulation. This regulation applies to all properties, and prescribes that a Record of Site Condition (RSC) must be filed when the use of land changes from a less sensitive use to a more sensitive use (such as when industrial or commercial lands are changed to residential or parkland land uses). A Record of Site Condition summarizes the environmental condition of a property, based on the completion of an ESA. The requirements for preparing and filing Records of Site Condition are set out in O. Reg. 153/04.

***Ontario Regulation 153/04 allows different approaches for remediating contaminated lands***

O. Reg. 153/04 offers two distinct avenues for addressing environmental concerns:

- a) **Generic Approach:** This method enables applicants to address land remediation prior to submitting a Record of Site Condition for the designated lands. It necessitates

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compliance with soil, sediment, and groundwater standards established by the MECP corresponding to the intended land use (e.g., residential, parks, commercial, etc.).

- b) **Property-Specific Approach:** This alternative mandates adherence to MECP-approved property-specific standards, crafted by a Qualified Person as defined in O. Reg. 153/04. These standards, coupled with engineering design and administrative controls, are formulated through a comprehensive RA process. The property-specific approach allows for the retention of soils and/or groundwater with certain levels of contaminants, as sanctioned by the MECP, within the property, subject to on-site management (mainly by capping the contaminated area). Additionally, it may involve the issuance of a CPU by the MECP, recorded on the MECP Environmental Registry website. This ensures that future parties engaging with the property are informed about any usage restrictions and administrative controls implemented to manage permissible contaminants on the property.

### **Ontario Regulation 406/19: On-Site and Excess Soil Management**

In December 2019, the Ontario Ministry of the Environment, Conservation and Parks (MECP) introduced a new regulatory framework O. Reg. 406/19: On-Site and Excess Soil Management. O. Reg. 406/19 is designed to foster responsible management of excess soil, preventing the wasting of soil resources, and establishing guidelines and protocols for the handling and repurposing of excess soil in construction projects. Applicable to all construction projects generating and importing excess soil, this regulation has profound implications for municipalities.

Implemented through a phased approach, O. Reg. 406/19 commenced its initial phase on January 1, 2021, incorporating reuse rules, waste designation, and approval processes. The final phase, scheduled for January 1, 2026, marks the end of the exemption period for grandfathered contracts.

Key facets of O. Reg. 406/19 encompass:

- **Clear Excess Soil Reuse Rules:** Providing guidelines on the reuse of excess soil and when excess soil is not classified as waste.
- **Enhanced Reuse Planning for Larger and Riskier Sites:** Imposing rigorous standards for sites with heightened risk (e.g., gas stations, industrial sites), such as tracking, registration, and, soil sampling
- **Assurance Measures for Reuse Sites:** Ensuring that reuse sites do not receive waste soil, mandating larger reuse sites to establish protocols for tracking and inspecting soil before acceptance.
- **Restrictions on Sending Clean Excess Soil to Sensitive Sites:** Prohibiting the disposal of clean excess soil to landfill sites.

### **OPTIONS/ DISCUSSION:**

*Consultation with affected City Departments*

A Technical Advisory Committee (TAC) was created to engage relevant staff from various City departments (Engineering, Legal Services, Planning and Urban Design, Sustainability and Asset Management, and Operations) to discuss these policies and receive feedback on required revisions. The proposed policies and procedures have been developed and updated addressing the respective comments from internal stakeholders.

### **Land Conveyance Policy**

#### ***Strengthening City's Environmental Policies and Soil Management Strategies:***

The City has engaged Watermark Environmental, an environmental consultant specialized in ESAs and excess soil investigation, within the municipal sector, to revise the existing land conveyance policy and to formulate a new policy for the effective management of surplus soil.

The revised Land Conveyance Policy updates and supersedes the current policy, while maintaining the conformity with the City's 2014 OP.

Minor changes are captured in the revised Land Conveyance Policy. These changes are summarized as follows:

- 1- Renaming the policy to reflect that it applies to conveyances of land to the City for development applications, and Capital Projects, as well;
- 2- Adding ESA peer-review and RSC requirements when lands are conveyed to the City as part of Capital Projects
- 3- Detailed description of situations that are exempted from the peer-review process and RSC requirements
- 4- Clarify language regarding CPU when RA is required
- 5- Further align City processes with existing Provincial regulatory requirements (include excess soil requirements for conveyance of lands to the City)
- 6- Delegate authority to Director of Engineering (instead of Commissioner) to waive or request certain requirements where such modifications are deemed necessary, as applicable (for example, ESA peer-review and/or RSC).

The revised Land Conveyance Policy would simplify and expedite the development approval process for conveyance of lands to the City.

Both, the Land Conveyance Policy and the Excess Soil Policy align seamlessly with provincial legislation and the City's 2014 OP. In developing these policies, Watermark Environmental followed industry best practices, including an in-depth examination of policies from neighboring Greater Toronto Area (GTA) municipalities. By assimilating best practices, policies serve to safeguard the interests of the City of Markham.

#### ***Highlights of the Revised Land Conveyance Policy: Key Principles and Procedures***

The primary objectives of this policy are to:

- 1- Safeguard human and ecological health and safety.

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- 2- Facilitate the responsible remediation and then reuse and development/redevelopment of lands that are contaminated or potentially contaminated.
  - 3- Mitigate environmental risks and liabilities associated with the acquisition of lands through the Planning Act or Capital projects.
  - 4- Guarantee adherence to and alignment with the latest and pertinent environmental legislation enforced by the MECP.

The policy is grounded on several fundamental principles, delineated as follows:

- 1- The policy is applicable to the transfer of land and permanent easements, excluding surface easements, mandated as a prerequisite under the Planning Act and for Capital Projects.
- 2- A meticulous peer review of pertinent environmental reports, such as Environmental Site Assessments (ESAs), conducted by an impartial third-party Qualified Person is mandatory for all land transfers and easements to the City. Exceptions to this requirement include minor conveyances (i.e., below 200 m<sup>2</sup>) and those deemed by City staff as presenting minimal to no contamination risk to the City, such as Areas of Natural Significance and valley lands, unless otherwise determined by the Director of Engineering.
- 3- For all land transfers, excluding minor conveyances (i.e., lands with a surface area of less than 200 m<sup>2</sup>) and those posing minimal to no contamination risk (e.g., Areas of Natural Significance, valley lands, etc.), the submission and acknowledgment of a Record of Site Condition by MECP are mandatory.
- 4- Records of Site Condition (RSC) for land transfers may be submitted based on either MECP's generic approach, utilizing generic site condition standards, or a site-specific approach established through the RA process. The latter requires approval from the Director of Engineering.
- 5- Any conditions imposed by the MECP on the CPU for lands destined for conveyance to the City must be deemed acceptable by the Director of Engineering before the Record of Condition is filed.

***Council's Adoption of Revised Land Conveyance Policy: A Comprehensive Framework for Environmental Responsibility and Development Compliance***

Upon Council's adoption of the revised Land Conveyance Policy staff will develop a definitive and uniform guide for both City staff and the development industry in providing assistance and consistency in addressing the environmental requirements for land conveyance.

***Highlights of the Excess Soil Policy: Key Principles and Procedures***

The policy is built upon several key premises, aiming to provide comprehensive guidance to City of Markham project managers and staff in effectively applying O. Reg. 406/19 to municipal projects. The primary objectives are to enhance their understanding of the procedures involved in managing excess soils on City projects, thereby ensuring compliance with O. Reg. 406/19. The key elements of the policy include:

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- 1- **Guidance for Project Managers:** The policy offers explicit guidance to City of Markham project managers and staff on the application of O. Reg. 406/19, ensuring clarity on procedures associated with the management of excess soils on City projects.
  - 2- **Scope of the Policy:** Emphasis is placed on the policy not being exhaustive in detailing all aspects of O. Reg. 406/19, recognizing its focus on essential elements relevant to City projects.
  - 3- **The policy defines the scope, purpose, principles, and procedures:** governing the management of excess soil across various City projects.
  - 4- **Applicability to different City Projects:** The Policy articulates the applicability of its guidelines to diverse City projects, including those related to land development applications, capital/infrastructure projects, park construction, operations and maintenance projects, stormwater management (SWM) ponds maintenance, and retrofits.
  - 5- **Roles and Responsibilities:** Clear delineation of roles and responsibilities is established for the City as the owner/operator/Project Leader of the project area or the owner/operator of the reuse sites.
  - 6- **Procedures for Excess Soil Management:** The policy lays out detailed procedures for managing excess soil at project areas, covering situations where O. Reg. 406/19 does not apply, its application, excess soil reuse planning documentation requirements, filing notices on the Excess Soil Registry, and integrating plans into the project procurement/construction cycle.
  - 7- **Specific Reuse Site Management Procedures:** Specific procedures for managing excess soil at reuse sites are outlined to ensure comprehensive compliance with O. Reg. 406/19.
  - 8- **Engagement of Qualifies Person (QP):** The policy advises the retention of a Qualified Person (QP) to assist City staff in navigating the complexities of the Excess Soil policy, ensuring that all City projects align with the stipulations of O. Reg. 406/19.
  - 9- **Incorporation of Best Management Practices (BMP):** Best Management Practices (BMPs) are incorporated into the policy to guide City Projects in effectively managing excess soils, aligning with the MECP O. Reg. 406/19.

***Navigating Excess Soil Management: City of Markham's Comprehensive Policy for Regulatory Compliance***

Upon Council's adoption, the Excess Soil Policy will serve as a comprehensive guide for City staff, explaining the application of O. Reg. 409/19 to City projects. This policy streamlines the intricate procedures associated with excess soil management on City projects, ensuring strict adherence to the Ontario Regulation titled "O. Reg. 406/19: On-Site and Excess Soil Management" ("O. Reg. 406/19").

Under O. Reg. 406/19, Project Leaders (City of Markham and its representatives) bear the responsibility for ensuring regulatory compliance with O. Reg. 406/19 in City projects. As such, it is imperative for Project Leaders to possess a thorough understanding of the

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requirements and processes delineated in this policy. City of Markham staff must ensure the City's compliance with O. Reg. 406/19 under the following circumstances:

- 1- As a municipality or public body overseeing an infrastructure project (e.g., Capital Projects).
- 2- As the owner of a property or a developer of a property, whether owning or leasing the property for development purposes (e.g., building a City facility, park, road, etc.).

### **FINANCIAL CONSIDERATIONS**

The Land Conveyance Policy is anticipated to have no financial impacts on the City, as all expenses related to the conveyance will be borne by the initial landowners. However, under the Excess Soil Policy (O. Reg. 406/19), the City's project managers are obligated to ensure their projects adhere to this regulation. Consequently, the capital projects must allocate an adequate budget to ensure compliance with O. Reg. 409/19. This has the potential to increase the capital budget for projects depending on the scope of work.

### **HUMAN RESOURCES CONSIDERATIONS**

Not applicable

### **ALIGNMENT WITH STRATEGIC PRIORITIES:**

The proposed "Environmental Policy and Procedures for the Conveyance of Land to the City, and Policy and Procedures for Managing Excess Soil" are in harmony with the overarching strategic objective of fostering a Safe & Sustainable Community. This is achieved through the responsible development and/or redevelopment of both contaminated and potentially contaminated lands, as well as construction projects, all while prioritizing the safeguarding of human and ecological health and safety.

### **BUSINESS UNITS CONSULTED AND AFFECTED:**

The Legal Services, Planning and Urban Design, and Sustainability and Asset Management, and Operations Departments were consulted via various TAC meetings, and their comments have been incorporated in this report.

### **RECOMMENDED BY:**

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Frank Clarizio, P.Eng  
Director, Engineering

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Arvin Prasad, MCIP, RPP  
Commissioner, Development Services

### **ATTACHMENTS:**

Attachment "A" – "Environmental Policy and Procedures for the Conveyance of Land to the City, and

Attachment "B" – "Policy and Procedures for Managing Excess Soil"