

CITY OF MARKHAM

ENVIRONMENTAL POLICY AND PROCEDURES FOR THE CONVEYANCE OF LAND TO THE CITY

January 2024

1. PURPOSE

- 1.1. The purpose of this policy is to provide clear process and direction to City staff and the land development industry with respect to environmental requirements that:
 - 1.1.1. ensure protection of human and ecological health and safety;
 - 1.1.2. support reuse and development of contaminated and potentially contaminated sites;
 - 1.1.3. minimize environmental liability to the City associated with land development and/or City capital projects; and,
 - 1.1.4. ensure compliance with environmental legislation.

2. REQUIREMENTS

- 2.1. A Record of Site Condition acknowledged by the Ministry is required for all lands (not subject to exemptions in Section 3.4) prior to conveyance to the City.
- 2.2. The City will require Peer Review of environmental reports for all Conveyances.
- 2.3. The Director of Engineering at his or her sole and absolute discretion may require Peer Review for exemptions as listed in Section 3.4.
- 2.4. If the Director of Engineering determines that Peer Review of environmental reports for exemptions listed in Section 3.4 is required, Section 5 of this policy will not apply, and the procedure for environmental approval will be determined on a case-by-case basis.

3. APPLICATION

- 3.1. This policy shall be administered by the Director of Engineering, City of Markham.
- 3.2. This policy will be applicable following approval by City Council.
- 3.3. This policy applies to:
 - 3.3.1. All land development applications submitted to the City pursuant to the *Planning Act*, where the conveyance of land to the City is proposed, and
 - 3.3.2. All City capital projects where the conveyance of lands to the City is required.
- 3.4. This policy does not apply to the following:
 - 3.4.1. All Surface Easements granted to the City

- 3.4.2. Any land conveyances less than 200.0 m² (unless immediately adjacent to lands on which a Potentially Contaminating Activity has occurred or is occurring and there is confirmed contamination)
- 3.4.3. Areas of Natural Significance (as defined in Section 1(1) of O.Reg. 153/04, as amended)
- 3.4.4. Any lands as determined by the Director of Engineering, at his or her sole and absolute discretion.

4. PRINCIPLES

4.1. General

- 4.1.1. The City's decision regarding whether or not lands are acceptable for conveyance to the City is final.
- 4.1.2. Except as indicated in Sections 3.4 and 4.2.1.iii, this policy and associated procedures shall not be deviated from, amended or waived except with the approval from the Commissioner in consultation with the City Solicitor and the Director of Engineering when and if required.
- 4.1.3. No Conveyance associated with a development application submitted to the City as per Section 3.2 of this Policy shall be accepted by the City unless the requirements pursuant to this policy have been met.
- 4.1.4. All environmental reports submitted to the City in accordance with this policy and in support of any Conveyance must be prepared in accordance with the requirements of O.Reg. 153/04, as may be amended from time to time.
- 4.1.5. If a Phase One or Phase Two ESA report submitted to the City in accordance with this policy is dated more than 18 months prior to the date of its submission to the City, a report update prepared in accordance with the requirements of O.Reg. 153/04, as may be amended from time to time, must also be submitted.

4.2. Records of Site Condition and ESAs

- 4.2.1. The Director of Engineering at their sole discretion, may:
 - i) Accept a Conveyance with a Record of Site Condition that was filed for the Conveyance only; or,
 - ii) Accept a Conveyance with a Record of Site Condition that was filed for a larger property that includes the Conveyance provided there is sufficient information pertinent to the Conveyance in the environmental reports prepared to support the Record of Site Condition, to satisfy the Director of Engineering with respect to environmental conditions of the Conveyance.
 - iii) Waive the RSC and/or ESA requirements.
- 4.2.2. The City will accept a Conveyance with a Record of Site Condition that was filed based on the Ministry's Generic Site Condition Standards applicable to the

more stringent of the proposed use of the Conveyance and the most sensitive land use adjacent to the Conveyance.

- 4.2.3. The City may only accept a Conveyance with a Record of Site Condition that was filed based on a Risk Assessment or Modified Generic Risk Assessment if the Certificate of Property Use (CPU) is consistent with Section 4.5 of this policy, **and with** the approval of the Director of Engineering
- 4.2.4. The City will not accept any Conveyance requiring a Record of Site Condition until a copy of written acknowledgement from the Ministry confirming the filing of the Record of Site Condition in the Environmental Site Registry is provided to the City.
- 4.2.5. Once a Record of Site Condition has been filed for the Conveyance, no alteration (including construction staging, stockpiling of soils, importation of soils, storage of equipment and/or materials, etc.) to the Conveyance is permitted unless an update to the Phase One ESA report (and Phase Two ESA report, if required) is submitted to the satisfaction of the Director of Engineering following any such alteration.

4.3. Peer Reviews

- 4.3.1. The following reports/documents, relating to the Conveyance or relating to a larger property including the Conveyance, shall be submitted to the City for peer review and concurrence:
 - Phase One ESA report
 - Phase Two ESA report (if applicable)
 - Remediation Verification report (if applicable)
 - Risk Assessment Pre-submission Form (if applicable)
 - Risk Assessment report (if applicable)
 - Draft Certificate of Property Use (if applicable)
 - Letter of Acknowledgement of Record of Site Condition (if applicable)
 - Clearance and Reliance Letter
- 4.3.2. The applicant shall be responsible for all costs associated with the Peer Review Process, including the City's administrative fees.

4.4. Risk Assessments

In addition to conditions listed above, the following conditions apply to all Conveyances undergoing Risk Assessment or Modified Generic Risk Assessment.

- 4.4.1. The Risk Assessment Pre-Submission Form and Risk Assessment report must consider the intended use of the Conveyance by the City and must address all potential receptors associated therewith.

4.5. Certificates of Property Use

- 4.5.1. In addition to the Ministry's process in approving CPUs, applicants are required to meet or satisfy City's requirements.

- 4.5.2. The City will not accept the following Certificate of Property Use conditions that endure following conveyance of the land:
- 4.5.2.1. any requirement for the use of special personal protective equipment such as but not limited to: chemically resistant PPE (including suits, gloves or boots); respiratory masks; contained breathing apparatus;
 - 4.5.2.2. on-going groundwater monitoring or soil vapour monitoring or reporting requirements;
 - 4.5.2.3. any surface cap required as a condition of a Certificate of Property Use on a Conveyance that is not constructed of non-impacted material or is less than 1.5 m thick. Acceptable surface caps may consist of both hard and soft material as negotiated by the applicant with the Director of Engineering; or,
 - 4.5.2.4. any other Certificate of Property Use conditions as determined at the sole and absolute discretion of the Director of Engineering.
- 4.5.3. The Director of Engineering reserves the right to waive any or all of the conditions set out in Section 4.5.2 of this Policy on a case-by-case basis.
- 4.5.4. Any condition of a Certificate of Property Use and associated Risk Assessment that applies to a Conveyance shall be to the satisfaction of the Director of Engineering, in consultation with appropriate City staff with responsibility for the intended use of the Conveyance.

4.6. Management of Excess Soils

- 4.6.1. The management of excess soils within any Conveyance shall be conducted in adherence with the requirements of O.Reg. 406/19 and the City's Excess Soil Policy prior to the City assuming the Conveyance lands.

5. PROCEDURE

For all Conveyances, the following procedure shall apply prior to the conveyance.

- 5.1. The applicant shall be responsible for all costs, including the City's administrative fees, and the City's cost to retain a Peer Reviewer to review all ESAs, other applicable environmental reports and to provide advice to the City with respect to the Conveyance. Prior to or with the first submission of environmental reports for review, the applicant shall submit an initial deposit in the form of a certified cheque to, and in an amount to be determined by, the Director of Engineering. The applicant shall submit further deposits upon request to cover the cost of the peer review process.
- 5.2. All environmental documentation submitted to the City in support of any land development application or capital projects shall be prepared in accordance with the requirements of O.Reg. 153/04 and O.Reg. 406/19 (if required), as amended.
- 5.3. The applicant shall submit, to the satisfaction of the Director of Engineering, a Phase One ESA report prepared for a property that either is, or includes, the Conveyance in its entirety (the "Phase One Property").

- 5.4. If the Phase One ESA report identifies any Areas of Potential Environmental Concern, the applicant shall submit, to the satisfaction of the Director of Engineering, a Phase Two ESA report prepared for a property that is, or includes, the Conveyance in its entirety (the “Phase Two Property”). If the Phase Two Property includes but is larger than the Conveyance, the Phase Two ESA report must include sufficient data to satisfy the Director of Engineering with respect to the environmental conditions of the Conveyance.
- 5.5. If the Phase Two ESA report identifies a concentration of any contaminant in soil, groundwater or sediment that exceeds the Generic Site Condition Standards applicable to the Phase Two property the applicant shall complete remediation activities to the satisfaction of the Director of Engineering or undertake a Risk Assessment to establish Property Specific Standards for the Phase Two property. A Remediation Plan shall provide details of the method by which the applicant will manage the Phase Two Property to meet either i) the applicable Generic Site Condition, or ii) Property Specific Standards approved by the Ministry and the Director of Engineering prior to the Conveyance.
- 5.6. The applicant shall obtain a Record of Site Condition, for a property that is the Conveyance or includes the Conveyance in its entirety, to be filed on the Environmental Site Registry for all Conveyances that are not exempted as per Section 3.4.
- 5.7. Where a Record of Site Condition is filed, the applicant shall submit to the City a copy of a Letter of Acknowledgement from the Ministry confirming that the Record of Site Condition has been filed on the Environmental Site Registry.
- 5.8. A Clearance and Reliance Letter prepared by the applicant’s Qualified Person must provide the City with a Clearance and Reliance Letter using the City’s standard template, authorizing The Corporation of the City of Markham and its Peer Reviewer to rely on each environmental report submitted supporting the Conveyance. Changes to the Clearance and Reliance Letter template, other than as and where indicated on the template, will not be accepted by the City.
- 5.9. Where the management of excess soils is required on the Conveyance, the applicant shall, prior to the City assuming the Conveyance:
 - 5.9.1. Ensure that the management of excess soils is conducted in accordance with the requirements of O.Reg. 406/19 and the accompanying “Rules for Soil Management and Excess Soil Quality Standards” document, as may be amended from time to time; and
 - 5.9.2. Ensure that all planning documentation required under O.Reg. 406/19 has been completed and that a Notice has been filed on the Excess Soils Registry (if required). (please refer to the City’s Policy titled “Policy and Procedures for Managing Excess Soils”)

6. CITY AUTHORITY

This policy updates and supersedes “Environmental Policy and Procedures for Conveyance of Land to the City Pursuant to the Planning Act”, adopted by City Council on November 8th, 2017.

This policy is adopted by City Council in support of the City of Markham Official Plan, adopted in 2014 in accordance with the Ontario *Planning Act*.

- Section 3.4.2.12: *“It is the policy of Council to require that a record of site condition, confirmed by the Ministry of Environment, be submitted for all land conveyances to Markham. Conveyances for minor road widenings may be exempt from the requirement of a record of site condition.”*
- Section 10.8.1.3: *“It is the policy of Council that lands to be conveyed to Markham shall be in a condition acceptable to Markham and shall include suitable access and an environmental clearance based on the appropriate level of site assessment as established in Ministry of Environment guidelines.”*

7. DEFINITIONS

For the purpose of this policy, the following definitions apply:

- 7.1. **Area of Potential Environmental Concern** – as defined in Section 1(1) of O.Reg. 153/04
- 7.2. **Change in Land Use** – any change in land use as a result of the development application, on the development site or on the Conveyance, as described in Section 168.3.1 of the Environmental Protection Act and Part IV of O.Reg. 153/04
- 7.3. **City** – The Corporation of the City of Markham
- 7.4. **Conveyance** – any land to be conveyed to the City or any Easement (except for Surface Easements) in favour of the City arising as a condition of approval of any land development application pursuant to the Planning Act or capital project submitted to the City
- 7.5. **Certificate of Property Use** – A Certificate of Property Use issued by the Ministry under Section 168.6 of the Environmental Protection Act
- 7.6. **Director of Engineering** - Director of Engineering of the City of Markham or his/her designate
- 7.7. **ESA** – Environmental Site Assessment
- 7.8. **Generic Site Condition Standards** – the standards for soil, groundwater and sediment published in Tables 1 to 9 of the Ministry’s Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act (April 15, 2011, as may be amended from time to time)
- 7.9. **Ministry** – the Ontario Ministry of the Environment, Conservation and Parks
- 7.10. **Modified Generic Risk Assessment** – as described in O.Reg. 153/04
- 7.11. **Non-impacted Material** – Soil that meets (at a minimum) the applicable Generic Site Condition Standards for the more stringent of the proposed use of the Conveyance and the most sensitive land use adjacent to the Conveyance, or inert

non-soil material that is free of organic material and contaminants, and is deemed suitable by a Qualified Person in accordance with applicable Regulations

- 7.12. **O.Reg. 153/04 - Ontario Regulation 153/04** – Records of Site Condition, as amended, under Part XV.1 of the Environmental Protection Act
- 7.13. **O.Reg. 406/19 - Ontario Regulation 406/19** – On-Site and Excess Soil Management, as amended, under the Environmental Protection Act
- 7.14. **Peer Reviewer** – An independent third-party Qualified Person retained by the City to peer review on its behalf environmental documentation submitted in support of land development applications pursuant to the Planning Act or for a capital project
- 7.15. **Phase One ESA** – Phase One Environmental Site Assessment conducted in accordance with the requirements O.Reg. 153/04
- 7.16. **Phase One Property** - as defined in Section 1(1) of O.Reg. 153/04
- 7.17. **Phase Two ESA** – Phase Two Environmental Site Assessment conducted in accordance with the requirements of O.Reg. 153/04
- 7.18. **Phase Two Property** - as defined in Section 1(1) of O.Reg. 153/04
- 7.19. **Potentially Contaminating Activity** - as defined in Section 1(1) of O.Reg. 153/04
- 7.20. **Property Specific Standard** – a standard specified for a contaminant in a Risk Assessment
- 7.21. **Qualified Person** – as defined in Sections 5 and 6 of O.Reg. 153/04
- 7.22. **Risk Assessment** – a Risk Assessment conducted in accordance with the requirements of O.Reg. 153/04
- 7.23. **Easement** – permanent easement over land. Easement does not include temporary easement or Surface Easement
- 7.24. **Surface Easement** – permanent easement that grants the right to use the above-grade surface of the land only. Surface Easement does not include temporary easement.

ATTACHMENTS

Attachment 1	Template Clearance and Reliance Letter
Attachment 2	Procedure Flow Chart

**ATTACHMENT 1
TEMPLATE CLEARANCE & RELIANCE LETTER
(To be provided on Consultant's Letterhead)**

(Insert Date)

File: **(Insert Consultant's File No.)**

City of Markham
Engineering Department
101 Town Centre Boulevard
Markham, ON L3R 9W3

Attention: Mr. _____, P.Eng.
Manager, Environmental Engineering

**Re: Environmental Clearance and Reliance Letter for
(Insert the subject property address/identification information)
(Insert legal description of lands to be conveyed to the City)
Amanda File Number: _____**

Dear Mr. _____:

(Insert name of Qualified Person's firm) has prepared the following reports/documents (the "Reports") pertaining to environmental conditions of the property at **(insert property address/identification information)**:

- **Name of Report, Prepared for, Date**
-
-

1.0 Clearance

(Insert name of Qualified Person's firm) confirms that notwithstanding any qualifications or limitations included in the Reports:

- 1) The Environmental Site Assessment and remediation and/or risk assessment (**delete those not applicable**) documented in the Reports have been conducted in accordance with the requirements of Ontario Regulation 153/04, as may be amended from time to time.
- 2) The land to be conveyed to the City of Markham (the "City") meets: (**choose whichever is applicable**)
 - a) the applicable MECP Generic Site Condition Standards for the most environmentally sensitive adjacent land use; **or**
 - b) the Property Specific Standards for a Risk Assessment approved by the MECP and the Director of Engineering.

Note: This letter will not be accepted by the City of Markham with any changes other than as and where indicated on this template.

- 3) Based on a Phase One and/or Phase Two ESA completed in compliance with O. Reg. 153/04, it is unlikely that there is any contamination on the lands to be conveyed which has resulted from past land uses on the development site, contamination that has migrated, or may migrate, onto adjacent public rights-of-way or other City-owned land, at a level that would exceed the applicable Site Condition Standards.

2.0 Reliance

Notwithstanding any limitations contained in the reports, (*Insert name of Qualified Person's firm*) agrees that The Corporation of the City of Markham and its Peer Reviewer may rely on the Reports, including any information, representations, assumptions, opinions, conclusions and recommendations contained therein, for the purpose of accepting a conveyance of land pursuant to a condition of development approval or capital project.

(*Insert name of Qualified Person's firm*) further agrees that in the case of any inconsistency between this Clearance and Reliance Letter and any limitations within the Reports, this Clearance and Reliance Letter shall take priority over any such limitations.

(*Insert name of Qualified Person's firm*) further agrees that it has valid Professional Liability insurance coverage of \$2,000,000 per claim and in the aggregate, and that it shall provide, at the City of Markham's request, proof of such insurance to the City.

Signed and sealed by a Qualified Person _____ Date: _____

Signed by Person authorized
to Bind the Company: _____ Date: _____

**ATTACHMENT 2
PROCEDURE FLOW CHART**

ENVIRONMENTAL PROCESS FOR LAND CONVEYANCE

