

FINANCIAL IMPLICATIONS:

NIL

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:

Staff from Legal Services, Facilities, and Transportation and Environmental Services were consulted during the preparation of the proposed Guideline.

ATTACHMENTS:

Appendix A - Proposed "Implementation Guideline for Road Allowance Dedications Adjacent to Known and Potentially contaminated Sites"

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APPENDIX A: IMPLEMENTATION GUIDELINE FOR ROAD ALLOWANCE DEDICATIONS ADJACENT TO KNOWN AND POTENTIALLY CONTAMINATED SITES

1 DEFINITIONS

- 1.1 For the purposes of this Guideline, definitions and requirements for environmental site assessments are adopted by reference to Part XV.1 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 (the "EPA") and Parts I and II of associated O. Reg. 153/04 (the "Regulation"). Where definitions and requirements of the Guideline differ from definitions and requirements of the EPA and the Regulation, the definitions and requirements of the EPA and the Regulation shall govern.
- 1.2 For the purposes of this Guideline, definitions and requirements for Regional source water protection and environmental and human health protection are adopted by reference to the *Protocol for the Review of Development Applications on or Adjacent to Lands which are Known, Suspected or Potentially Contaminated, 1997*, and to any subsequent documents that supersede the aforementioned Protocol.

2 LEGAL AUTHORITY

- 2.1 Consistent with section 41(8)(a)(i) of the *Planning Act*, R.S.O. 1990, c. P.13, (the "Planning Act") site plans shall not be approved until the Region of Waterloo ("the Region") has been advised of the development and afforded a reasonable opportunity to require the land owner to provide to the satisfaction of and at no expense to the Region, widenings of highways that are under the jurisdiction of the Region and that abut on the land.
- 2.2 Consistent with section 51(25)(b) and (b.1) of the *Planning Act*, as the approval authority for plans of subdivision, plans of condominium and consents, the Region has the legal authority to require, as a condition of approval, road widenings that the Region considers necessary. The Region is not the approval authority for plans of subdivision, plans of condominium and plans of consent within the City of Kitchener.

3 IDENTIFICATION OF PROPERTIES SUBJECT TO THIS GUIDELINE

- 3.1 IDENTIFICATION OF ROAD ALLOWANCE WIDENING REQUIRMENTS FOR LANDS ADJACENT TO HIGH AND MEDIUM POTENTIALLY CONTAMINATED SITES, AND KNOWN CONTAMINATED SITES
- 3.1.1 Sites subject to an official plan amendment, zoning by-law amendment, plan of consent, plan of subdivision, or plan of condominium may be identified as high and medium potentially contaminated and known contaminated sites through the development application review process. Sites identified during this process that abut a Regional road planned for widening will be subject to this Guideline.
- 3.1.2 Sites subject to site plan approval may be identified as high and medium potentially contaminated sites and known contaminated sites through the site plan approval process. Sites identified during this process that abut a Regional road planned for widening will be subject to this Guideline.
- 3.2 IDENTIFICATION OF ROAD WIDENING REQUIREMENTS

- 3.2.1 For zoning by-law amendments, plans of subdivision, and plans of condominium the potential requirements for road allowance widening will be identified for the pre-submission consultation meeting. For consent applications and where the pre-submission consultation meeting is waived, the need for a Record of Site Condition ("RSC") will be identified as early as possible through the application review process. Where the Region is the approval authority, official plan amendments will be identified as early as possible during the circulation and review process.
- 3.2.2 For site plan approvals, the potential requirements for a regional road allowance widening will be identified through the site plan approval process for sites subject to site plan approval.

4 REQUIREMENTS

Where the Region requires a road allowance widening adjacent to lands known, suspected or potentially contaminated, the Region will require one or more of the following as a condition of approval for official plan amendments, zoning by-law amendments, plans of subdivision, plans of condominium, plans of consent, and site plan approval. The final requirements for road allowance widening will be determined in consultation with the Region's Transportation Planning Division through the development application review process and the site plan approval process. Requirements can include:

- a. that lands to be dedicated be subject to a Phase I environmental site assessment (an "ESA") to the satisfaction of Regional staff, with the Region a reliant party to all supporting documentation for the severed parcel and that supporting documentation be requested for the retained parcel;
 - b. that lands to be dedicated be subject to a Phase II ESA if required by the findings of a Phase I ESA to the satisfaction of Regional staff and with the Region a reliant party to all supporting documentation for the severed parcel and that supporting documentation be requested for the retained parcel;
 - c. that lands to be dedicated be remediated to the satisfaction of Regional staff, with the Region a reliant party to all supporting documentation as to the final condition of the severed parcel with a request for the same information for the retained parcel;
 - d. with the consent of Region staff, that lands to be dedicated have a separate risk assessment, with the Region a reliant party to all supporting documentation addressing remaining environmental impacts on the severed parcel with a request for the same information for the retained parcel; and
 - e. that lands to be dedicated be covered by a Regionally acceptable form of security (see 5.1, Option 3), whereby the Region can recover costs related to contaminants encountered, be protected from third party claims and from any costs related to Ministry of the Environment ("MOE") actions.
- 4.1 WHERE A RECORD OF SITE CONDITION IS A REQUIREMENT OF THE ENVIRONMENT PROTECTION ACT, ONTARIO REGULATION 153/04, OR AS A CONDITION OF APPROVAL FOR THE REGION
- 4.1.1 Where an RSC is a requirement of the Regulation or as a condition of approval for official plan amendments, zoning by-law amendments, plans of subdivision, plans of condominium,

consent applications, or site plan approval:

- a. lands identified as part of a road allowance widening shall be excluded from the required RSC for the retained parcel;
- b. lands identified as part of a road allowance widening shall be subject to the same requirements as 4 a-e; and
- c. the Region shall be made reliant to all supporting documentation for the environmental condition of lands identified as part of a road allowance widening.

5 DETERMINING FINAL REQUIREMENTS

Applicants subject to this Guideline enter a consultation process with the Region's Transportation Planning Division to finalize regional requirements for road allowance widenings adjacent to lands known, suspected, or potentially contaminated.

5.1 FOUR AVAILABLE OPTIONS

There are four potential options for dedicating a road allowance, these include: requiring the applicant to remediate the dedicated lands; accept the conveyance of lands with a risk assessment addressing any remaining environmental impacts; accept conveyance of lands with an indemnity agreement; and finally, to accept the conveyance of lands as-is. The options available under various site conditions are explained below.

There are several *site-specific variables* that help to determine which option is most appropriate for a given application or site plan. These variables are listed in the Decision Making Matrix provided in 5.2.

OPTION 1

Request the development proponent to remediate the dedication lands prior to conveyance to the Region, thereby resolving the environmental impact at no cost to the Region. No RSC is required for the dedicated lands after confirmatory testing by a qualified person, which includes the Technical Standards and Safety Authority (TSSA) Alternative Process.

Site-specific variables requiring lands dedicated to be remediated with the Region a reliant party to all supporting documentation include, but are not limited to, sites:

- a. where remediation is required prior to development;
- b. where environmental and/or health concerns are significant; and
- c. where road construction and/or utility installation will pose a risk to ground water or public health.

Notwithstanding a, b, and c of Option 1, remediation may be required by the Region for the purposes of clean dedication.

OPTION 2

Accept conveyance of lands with a risk assessment that is completed by a qualified person, as defined in Ontario Regulation 153/04, and which details the remaining contaminants, potential

exposure pathways and an assessment of road worker health and safety. Option 2 is not the preferred first choice of the Region and may require additional requirements as found in Option 3.

The risk assessment must confirm that any remaining contamination is deeper than will be encountered during road construction or utility installation and that such construction will not pose any worker health or environmental risks.

In conducting its risk assessment of the severed parcel, the Region must be satisfied with all supporting documentation, as relying solely on an RSC offers no protection from third party claims related to contamination or migration of contamination. Without appropriate studies, the Region risks the possibility that taxpayers will bear the cost of treating or disposing of the contaminants and the associated increase in construction costs.

Site-specific variables requiring lands to be dedicated to have a risk assessment with the Region a reliant party to all supporting documentation includes, but is not limited to, sites:

- a. where the property is the source of contamination;
- b. where a risk assessment is required prior to development;
- c. where an RSC has been submitted prior to submission of official plan amendment, zoning by-law amendment, plan of subdivision, consent application, or site plan;
- d. where the source of contamination has been removed;
- e. where contamination is deeper than is typically encountered during road construction and utility installation; and
- f. where the Region is satisfied that no environmental or human health risks will result during normal road construction.

OPTION 3

Accept conveyance of the lands, with an acceptable form of security. An acceptable form of security will provide the Region will full compensation for contamination associated costs, provide the Region with protection from third party claims, and from any costs related to MOE actions. Option 3 will only be considered in cases where the proponent has the wherewithal to meet their contractual obligations and where road construction is planned in the next ten years.

Site-specific variables requiring lands dedicated to be covered by an acceptable form of security, whereby the Region can recover costs related to contaminants encountered, be protected from third party claims, and from any costs related to MOE actions includes, but is not limited to, sites:

- a. where there are restrictive site conditions or remediation would be disruptive to existing buildings or infrastructure;
- b. where the source of contamination has been removed;
- c. where contamination is not in ground water;
- d. where contamination is deeper than is typically encountered during road construction and utility installation; but where

- e. the Region is satisfied that environmental and human health risks are low for the anticipated road construction.

OPTION 4

Accept conveyance of land as-is. This will likely require either a Phase I or Phase II Environmental Site Assessment for the proposed road allowance widening.

This option is considered where the Region's risk is low, both of encountering contamination during construction or of third party liability. Typically, this would include lands that are not environmentally impaired, lands where contamination is widespread in the area, and where contamination is deeper than is typically encountered during road construction and utility installation. The Region may elect to take an impacted property where it considers it necessary.

Site variables requiring a separate Phase I and/or Phase II ESA, with the Region a reliant party to all supporting documentation, includes, but is not limited to, sites:

- a) where the applicant may be an innocent third party and is not considered the source of contamination;
- b) where the Region requires the property for strategic purposes and is willing to accept environmental risk on a case by case basis.

Note: *In any of the above cases where the Region may acquire land that does not meet applicable site condition standards, the Region should satisfy itself that the lands being conveyed do not constitute a source of contamination. Acquiring sources of contamination exposes the Region to increased risk of MOE actions or 3rd party liability. These risks must be quantified and weighed against the Region's need for the land.*

5.2 DECISION MAKING MATRIX

The Decision Making Matrix (DMM) is intended as a guide to help staff determine the planning requirements for lands subject to this Guideline. The DMM has three components, which include:

- a. Site-Specific Variables – Site conditions unique to each application that affect Regional planning requirements.
- b. Available Options – The four options available for expanding a road allowance. Please refer to section 5.1 of this Guideline for a description of each option.
- c. Policy – Refers to the policy direction given by the Guideline for a set of Site-Specific Variables.

STEPS FOR USING THE MATRIX

The options available for each Site-Specific Variable are indicated by white spaces in the Available Options column.

- a. Indicate which site-specific variable(s) do not apply to an application by using N/A, for “Not Applicable.”
- b. The option chosen by staff should be an Available Option beside each applicable Site-Specific Variable.

For the purposes of this matrix, the following acronyms apply:

- Record of Site Condition* = RSC
- Environmental Site Assessment* = ESA
- Official Plan Amendment* = OPA
- Zoning By-Law Amendment* = ZBA
- Development Application* = DA
- Site Plan* = *Site Plan*

Site-Specific Variables	Available Options				Policy
Regional Requirements	1	2	3	4	
Site is in a wellhead capture zone					Road allowance expansions shall be excluded from the RSC process; Phase I and II ESA may be a requirement of approval, but not for low risk properties.
Region requires an RSC as the approval authority					
Region requests an RSC as a commenting authority					
Site is not in a wellhead capture zone					If contamination is possible, a Phase I ESA is the minimum requirement for taking a road widening except for low risk properties.
Region does not require an RSC as the approval authority					

Region does not request an RSC as a commenting authority					
Subject to O.Reg 153/04	1	2	3	4	
Site requires remediation prior to development					Road allowance expansions shall be excluded from the RSC process; Phase I and II ESA shall be a requirement of approval.
Site requires a risk assessment prior to development					
An RSC has been filed prior to OPA, ZBA, Plan of Subdivision, Consent, DA, or Site Plan					The Region requires access to Phase I and II ESA for lands included in road allowance expansion. The Region can request new Phase I and II ESA to satisfy liability and health and safety concerns.
RSC has been filed based on a risk assessment prior to OPA, ZBA, Plan of Subdivision, Consent, DA, or Site Plan					
Contamination Status	1	2	3	4	
Site is in an area of known contamination					Phase I and II ESA to the satisfaction of Regional staff.
Site is in an area of suspected contamination					Phase I and II ESA to the satisfaction of Regional staff.
Site is in an area of potential contamination					Phase I and possibly a Phase II ESA.
Contamination Variables	1	2	3	4	
Environmental and/or Health concerns are significant.					
Contamination, from another source, impacts entire area.					
Source of contamination has been removed					
Applicant is not the source of contamination					
Contamination plume is shrinking or breaking down					
Contamination is not in ground water					