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February 2, 2021

City of Toronto  
Engineering & Construction Services  
Soil & Groundwater Quality Unit  
Scarborough Civic Centre  
150 Borough Drive, 2nd Floor  
Toronto, Ontario M1P 4N7

Sent via email: [SGQ@toronto.ca](mailto:SGQ@toronto.ca)

**Reference: Further Consultation on the City of Toronto's Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the Planning Act**

The Canadian Brownfields Network (CBN) appreciates the opportunity to participate in the City of Toronto (City) invitation to comment with respect to the proposed updates to the Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the Planning Act, 2015 (Policy). CBN's Technical Advisory Committee (TAC) has solicited and compiled comments from interested members for the purpose of making this submission on behalf of CBN. CBN has a diverse membership of site owners, developers, consultants, and industry association representatives who are active in the area of brownfield development within the City of Toronto and across Canada.

CBN is committed to supporting the redevelopment and reuse of brownfield properties through advocacy for regulations and policies that are founded on sound science and appropriate risk, are harmonized across jurisdictions, and provide clarity and certainty with respect to brownfield redevelopment.

CBN previously submitted a response to the City's consultation on the Policy in November 2019. Several comments have been addressed in the current draft, which is appreciated by our members, however many comments remain outstanding. We have therefore appended our November 2019 comments for your re-consideration.

Amongst the outstanding issues there are several that are critical to the industry's ability to continue to effectively develop brownfields in Toronto and need careful consideration before the proposed policy amendments are implemented:

- 1) As was discussed at length during the 2015 policy drafting, we respectfully submit that the City does not have the requisite jurisdiction to impose new **reporting requirements to the MECP**. The result of prior discussions on this matter resulted in omission of this requirement from the final 2015 policy. Further, the current draft appears to suggest that the proposed reporting

obligations in section 6.5 with respect to legacy contamination are consistent with the reporting obligations in the Environmental Protection Act. This is not the case. We respectfully submit that there is generally no statutory reporting obligation on an applicant with respect to legacy contamination that may have migrated from a Development Site onto adjacent City Lands. As a result, it is our view that section 6.5 is proposing to impose new reporting obligations on an applicant above and beyond those that currently exist under provincial law.

- 2) **Templates for Reliance Letters** are referred to, but have not been provided for consultation. Reliance letters are a particularly challenging issue throughout the environmental consulting industry and the City's acceptable reliance letter must be provided by the City for industry consultation before finalizing.
- 3) The **un-impacted corridor** for utilities installed below the 1.5m cap is stated to be required for any utilities within the conveyance lands, however it is not the City's jurisdiction to mandate a clean corridor for utilities not owned, controlled, or operated by the City, such as gas, hydro, telecommunications. We respectfully request the City clarify that this requirement is limited to utilities owned, controlled, or operated by the City.

Furthermore, several outstanding comments remain significant opportunities for the City to amend its Policy to enable land conveyances that support the City's own broader interests. The current Policy is so restrictive it frequently prohibits staff and peer reviewers from implementing solutions that meet the same goals of the Policy in a different manner in order to support broader City interests. Among others, the following remain great opportunities to make minor amendments to the Policy and effect positive outcomes for the City:

- 1) Several proposed amendments to the Policy are significant positive changes and ought to be accessible for all developments. Referencing the **2015 policy as the "minimum standard"** for development applications deemed complete prior to council approval of the policy seems unnecessary and unreasonable.
- 2) The Policy continues to require council approval for any amendments, relief, exemptions from the Policy, while remaining very restrictive in its language. We submit that qualified city staff and Qualified Persons, not council, are in the best position to evaluate and recommend solutions related to potentially contaminated lands that fall outside the current policy restrictions while maintaining the policy goals. In practice, the burden of **council approval of any flexibility in the policy** is preventing these solutions from being put in place.
- 3) The City continues not to accept lands with **CPUs requiring ongoing groundwater or soil vapour monitoring**, rather than restricting its acceptance of the financial burden of the same. We have observed the current trend within the MECF is to require some monitoring in most CPUs, therefore the City is effectively restricting its acceptance of most risk-assessed lands, losing many opportunities to enhance the public realm with use of these lands. Other methods of shielding the City from the financial burden of such monitoring activities are readily available to meet the intent of the Policy.
- 4) The City's **minimum requirement for 1.5m combined hard cap and fill cap** provides no flexibility for situations where such a cap would unnecessarily destroy existing mature vegetation or cause other issues with regards to grading (e.g. AODA accessibility requirements).

- 5) Amendment of the City's policy to **accept risk-based standards in the absence of MECP RA approval** would meet the City's stated policy goals, while reducing administrative burden to City in implementing CPUs on its lands.
- 6) The policy currently requires **RSCs for all subdivision parcels**, regardless of whether or not there is a change in land use that would trigger a mandated RSC. Subdivisions within the City of Toronto represent its greatest opportunities to create complete communities and require navigation of a myriad of interests from different City departments and the public. The rigidity of the Policy as it relates to subdivision applications restricts the City from effectively using these opportunities for great City-building and public realm enhancements in many cases.

The City of Toronto's conveyance policy was initialized in 2015 to place environmental limitations on the land conveyed to the City through specified triggers in the Planning Act. CBN strongly supports many of the changes being proposed with regards to the Policy, but urges the City to consider further changes that would vastly improve the effectiveness of the Policy, while respecting the City's stated objectives of protecting the environment and safeguarding worker and public health, in a fiscally-responsible manner.

In closing, we thank you for the opportunity to provide comments and input on the Policy.

Kindest Regards,



Monisha Nandi  
Co-Chair, Technical Advisory Committee  
Canadian Brownfields Network



Chris De Sousa  
President  
Canadian Brownfields Network

**ATTACHMENT 1:**

**CBN Comments to City of Toronto dated November 11, 2019**



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November 11, 2019

City of Toronto  
Engineering & Construction Services  
Soil & Groundwater Quality Unit  
Scarborough Civic Centre  
150 Borough Drive, 2nd Floor  
Toronto, Ontario M1P 4N7

Attn: Agata Zurawska, H.B.Sc.

Sent via email: [Agata.Zurawska@toronto.ca](mailto:Agata.Zurawska@toronto.ca)

**Reference: Submission Regarding Confidential Draft of Updated City of Toronto Conveyance Policy**

Dear Ms. Zurawska,

The Canadian Brownfields Network (CBN) appreciates the opportunity to participate in the City of Toronto (City) invitation to comment with respect to the proposed updates to the Policy for Accepting Potentially Contaminated Lands to be Conveyed to the City under the Planning Act, 2015 (Policy). CBN's Technical Advisory Committee (TAC) has solicited and compiled comments from interested members for the purpose of making this submission on behalf of CBN. CBN has a diverse membership of site owners, developers, consultants, and industry association representatives who are active in the area of brownfield development within the City of Toronto and across Canada.

CBN is committed to supporting the redevelopment and reuse of brownfield properties through advocacy for regulations and policies that are founded on sound science and appropriate risk, are harmonized across jurisdictions, and provide clarity and certainty with respect to brownfield redevelopment.

The City of Toronto's conveyance policy was initialized in 2015 to place environmental limitations on the land conveyed to the City through specified triggers in the Planning Act. CBN strongly supports many of the changes being proposed with regards to the Policy, but urges the City to consider further changes that would vastly improve the effectiveness of the Policy, while respecting the City's stated objectives of protecting the environment and safeguarding worker and public health, in a fiscally-responsible manner.

CBN has several reservations and concerns regarding misalignment of their Policy with provincial regulations and resulting impediments to brownfield redevelopment which are outlined as follows:

- 1) The Policy is inconsistent with provincial brownfield regulations and provides an unnecessary burden on City resources and the development community. The City has set requirements for conveyed public spaces that their own City divisions do not comply with or need to comply with. The City policy requirements also exceed the provincial requirements creating a patchwork system of differing requirements through City public space. Applying provincial brownfield rules, will yield the same or better outcomes for the City in a more cost-effective, timely, and sustainable manner and will simplify future City management of these spaces.
- 2) City Staff and third-party Peer Reviewers must be empowered to apply professional judgment and sound science to support solutions that manage the City's liability and meet the City's objectives with regards to the Policy, while still supporting the City's broader goals around City building. The City Policy needs to provide the tools for the City Soil and Groundwater Quality Unit and their third-party peer reviewer to apply professional judgement while still complying with the objectives of the City Policy. City Council approval for minor allowances to the City Policy is an extraordinary measure and in our members' experience has not been supported by City staff.
- 3) The City Policy requires Record of Site Condition (RSC) for all blocks being conveyed as part of a subdivision, even if no change in land use that would require RSC by provincial regulation. Other measures to manage the City's risk may be more protective than the use of an RSC. An RSC, with an encumbered Certificate of Property Use (CPU) ultimately transfers the burden of ongoing documentation, tracking and inspection to the City. The RSC obligation is also uploaded to the province to manage, review, approve or acknowledge non-required RSCs and affiliated Risk Assessment documents contrary to the Province's streamlining mandate.
- 4) The City Policy does not allow ongoing groundwater and soil vapour monitoring in a CPU despite being permitted in a provincial Certificate of Property Use. It is rare for a brownfield site not to have requirements for groundwater monitoring and soil vapour monitoring. We understand the City's absolute requirement to limit their longterm costs, however, we contend that financial assurance tools already embedded in provincial regulation serve the requirement to limit the City's costs.

CBN greatly supports the following proposed changes to the Policy, as these changes bring the Policy closer to harmonization with provincial requirements and are based in sound science and application of professional judgment:

- Allowing conveyances using Stratified Standards (Table 4 and 5).
- Allowing conveyances based on QP's statement that no additional investigation is warranted on the basis of a Phase One Environmental Site Assessment.
- Allowing for deviation from preferred Timing for Fulfillment of Environmental Conditions in consultation with SGQ and Legal Services.
- Allowing use of Site Condition Standards applicable to the intended land use of the Conveyance Lands, instead of the most sensitive adjacent use.

The City has an opportunity to advance City Policy and think beyond traditional land conveyances. City building is progressing in more innovative and collaborative scenarios with stratified ownerships, district energy considerations, unique storm water and green infrastructure, and smart networks. CBN strongly recommends that a comprehensive consultation be undertaken with industry, with other City departments, and with the Province, in an effort to improve the effectiveness of this City Policy. Let's set the direction for smart City building. CBN would welcome working together to consider the unique possibilities and common solutions and further discussing our comments.

In closing, we thank you for the opportunity to provide comments and input on the Policy.

Kindest Regards,



Monisha Nandi  
Chair, Technical Advisory Committee  
Canadian Brownfields Network



Chris De Sousa  
President  
Canadian Brownfields Network

**Table 1: Specific Proposed Policy Issues and Suggestions for Improvement**

Clause	Issue Type	Issue Description	Comment
3.1/3.2	Clarity	Although implied, the scope of the Policy does not explicitly exclude below-grade easements for existing municipal infrastructure.	3.2 should be amended to include: “, or below-grade easements for existing municipal infrastructure.”
4.2	Clarity	Definition of City Lands as lands currently owned by the City.	We are interested in confirming that the definition includes City stratified ownership and ABCCs. In reviewing the City website on City public land, public property includes land owned by TRCA and Agencies, Boards, Commissions and Corporations (ABCC). Of note, is that TCHC is listed as private. Could the City clarify land owned by the City?
4.6	Clarity	Definition of Granular Fill indicates that material from a non-commercial source must meet the Risk-based Standards.	Definitions of Granular Fill and Risk-Based Standards should be clarified and made consistent. CBN agrees that granular fill should meet applicable risk-based standards with may mean environmental quality comparable to the PSSs defined in an RA. (see comment re section 4.19 below)
4.19	Clarity	Definition for Risk-based Site Specific Standards is inclusive of all standards established via an RA or MGRA, meaning this could be Property-specific Standards (PSS) (protective of human or ecological health when RMMs are applied) and capping standards (which are protective of human and ecological health when applied at surface).	Often, two (or more) sets of risk-based standards are evolved in an RA. Typically, this can include: 1) the PSSs which are usually based on the maximum observed concentrations (+20%) at the Site and are protective of site receptors only if applied with Risk Management; and 2) the cap standards which are evolved as part of the Risk Management Plan and are developed to be protective of site receptors if applied at surface.  The Granular Fill definition should align with the definition of Risk-based Site Specific Standards.
4.23	Harmonization with Provincial Regulation	Definition of Un-impacted Material has been revised to limit soil material to soils meeting Full Depth/Generic Standards only, therefore excluding soils meeting stratified generic or risk-based site specific standards for capping. It is noted that the definition for Granular Fill – which can be un-impacted material – includes material that also meets Stratified or Risk-Based Site-Specific Standards so the change is inconsistent from material to material.	Definition of un-impacted material should be expanded to include soil that meets Stratified or Risk-Based Site-Specific Standards, specifically Risk-Based standards developed to be protective when applied at surface. These standards would be appropriate for un-impacted fill caps and utility trenches.



Clause	Issue Type	Issue Description	Comment
4.9	Clarity	Peer Review Process	The defined term for “Peer Review Process” refers to the “typical” third party document review process. This definition is overly vague. “Typical” should be deleted and replaced with a review process to be conducted by a Qualified Person in accordance with generally accepted practices in Ontario for such third party document reviews.
5.1.3	Flexibility	Only City Council has authority to amend or provide relief from the provisions of this Policy	City’s response during prior stakeholder consultations suggests that “existing procedures and practices are already in place to facilitate timely review of applications which can accommodate special technical circumstances”. Development industry experience suggests that reasonable special technical circumstances are not being accommodated solely because of an unwillingness to support any deviation from Policy as written, and an unwillingness to support Council consideration of deviations.
5.1.5	Harmonization with Provincial guidance	Imported soil to be conducted in accordance with BMP or applicable laws or regulations.	Imported soil restricted to ‘per BMP, law or regulation’. Expansion to include By-laws, and provincial legal instruments would be consistent with the BMP.
5.2	Flexibility	Current exemptions are based on what appears to be somewhat arbitrary size-exemptions. The rationale for selecting these particular sizes is not clear.	City Staff and Peer Reviewers should be empowered to use professional judgment to review and accept conditions where an exemption is reasonable based on size, accessibility & practicality of completing an assessment, and relative risk to City.
5.3.1.2	Clarity	Stratified Standards are acceptable if “in compliance with section 5.5 of this policy”	Given that the majority of section 5.5 of the Policy refers to risk assessment, we interpret that the section requiring compliance is section 5.5.6 which requires a corridor of un-impacted material around utilities deeper than 1.5m. We interpret that section 5.5.5 regarding fill cap thickness does not apply since the surface/subsurface stratified standards would already correlate to the required 1.5m fill cap thickness. For clarity, the reference to section 5.5 should be amended to refer to section 5.5.6 of the Policy.
5.4.3	Clarity	Peer Review Process requires Preliminary Statement, Reliance Letter, QP Statement, in a format acceptable to the City	Form of these documents has not been released for industry consultation. We request that these forms be circulated for review and comment.
5.5.2	Clarity	Consideration of a private utility in the Risk Assessment.	In practice, the requirement for additional RMM for a private utility over and above the 1.5 m cap does not apply. Section 5.5.6 speaks to the clean corridor requirement for all new or replaced services and utilities. Clarity should be provided consistent with implementation that the clean corridor is only required for public utilities.

<p>5.5.4.2/ 5.3.1.3</p>	<p>Flexibility</p>	<p>Non-acceptance of Conveyance Lands with CPUs requiring ongoing groundwater or soil vapour monitoring</p>	<p>The MECP is requiring ongoing monitoring and reporting requirements in CPUs in nearly all Tier 3 Risks Assessments in Toronto as a matter of course. The City’s refusal to accept Conveyance Lands with CPUs containing such ongoing requirements is effectively prohibiting Conveyance Lands from being risk assessed. We respectfully submit that this current inflexibility is a key regulatory barrier to the redevelopment of brownfields in Toronto.</p> <p>For example, many redevelopment sites across Toronto are impacted by deep (often regional) groundwater impacts. It is often not commercially reasonable to remediate these deep impacts to generic standards. As a result, the shallow groundwater impacts are often remediated to generic standards and the deeper impacts are often addressed by way of a risk assessment. By refusing to accept Conveyance Lands with CPU requirements to address the ongoing monitoring of the deep impacts, the City is potentially sterilizing parcels of land that could otherwise be used for community centres and/or parks. In our view, the City can reasonably protect itself by ensuring that there is adequate financial assurance in place with the MECP to address any such CPU requirements. Further, the City could enter into indemnity agreements with the developer to conduct the requisite monitoring/reporting (backstopped by the financial assurance).</p> <p>Further, in the event that the City is not willing to rely solely on financial assurances and/or contractual arrangements in these situations, developers had proposed horizontal severances with two separate CPUs for the vertical column. One CPU, if required, would be for the upper strata (i.e., the City lands, which would be “clean”) and one CPU would attach to the lower strata (which would not be owned by the City). This approach would mean that there would be no risk management measures for ongoing groundwater or soil vapour monitoring/reporting of the City lands. While the City had been generally agreeable with this approach (i.e., a separate CPU for the upper strata), the MECP in Toronto will not issue two CPUs for a vertical column. As a result, the Policy continues to effectively sterilize lands that could be better used for much needed city building. Over the next decade, it is our view that these “strata” parks or community centres could facilitate healthy neighbourhoods in increasingly intensified communities.</p>
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Clause	Issue Type	Issue Description	Comment
			<p>Given the MECP’s position, we would recommend that the City consider, at a minimum, amending its prohibition in section 5.5.4.2 to clarify as follows: <i>“ongoing groundwater or soil vapour monitoring and reporting requirements that require ongoing groundwater or soil vapour monitoring of the Conveyance Lands. For greater certainty, this Section 5.5.4.2 in no way prohibits the City from accepting Certificate of Property Use conditions that may require ongoing groundwater or soil vapour monitoring and reporting requirements of a lower strata parcel that is not being conveyed to the City of Toronto pursuant to this policy.”</i></p> <p>Furthermore, in addition to ongoing groundwater and soil vapour monitoring, there are instances where passive risk management measures may be desirable, potentially even as contingency measures. Providing the land owner can provide financial assurance, these may be worthwhile opportunities for City consideration and a Policy that restricts these options restricts innovation.</p>
5.5.3/ 5.5.4	Clarity	City will/will not accept the following CPU conditions on Conveyance Lands subject to an RSC obtained through RA.	Is there a provision for situations where Conveyance Lands are not subject to RSC (per Table 1), but meet property-specific standards derived through a Ministry-approved RA? Current language suggests CPU conditions are only acceptable where Conveyance Lands are subject to an RSC.
5.5.4.3	Clarity	Prohibition for ongoing RMM that restrict use of land or result in a significant cost to the City.	Most CPUs restrict land use in some way. This clause should be re-evaluated to consider the unintended consequences and the difficulty in City Peer Review in validating that there is no restricted land use.
5.5.5	Clarity	Indicates acceptable fill cap thickness is 1.5 m.	<p>The language suggests that hard caps would not be required to have a 1.5 m thickness. If the intent is that all conveyances must have at least 1.5m un-impacted from the surface, regardless of surface treatment (presence of hard cap), then clarity is needed. Also, per the comment regarding section 4.23 above, if there is any intent to allow fill-cap standards developed in an RA and accepted by the Director to be used in the cap (i.e., as part of the un-impacted material), then this needs to be further clarified as well.</p> <p>MECP CPU often provide for access restriction conditions where a 1.5 m cap cannot be installed. This provision for access restriction should be incorporated into the City Policy.</p>

Clause	Issue Type	Issue Description	Comment
5.5.5	Flexibility	Minimum un-impacted material fill cap must be at least 1.5m	Policy provides no flexibility for situations where 1.5m fill cap would result in destroying existing mature vegetation, or would cause other issues with regards to grading. City Staff and Peer Reviewer should be empowered to exercise professional judgment to the benefit of the City's broader objectives.
6.5.1.2	Flexibility	Acceptance of Property Specific Standards for Conveyance Lands requires Risk Assessment to be approved by the Ministry.	<p>In the absence of an RSC requirement, there is no requirement for an evaluation of risk-based standards to have Ministry review. The Peer Review process could provide the City with comfort that the risk assessment is adequately completed, and could result in risk-based standards with appropriate risk management measures that could be managed by the City more effectively in the absence of the administrative burden of a CPU.</p> <p>At minimum, the Modified Generic Risk Assessment (MGRA) offers a low-risk management option through the Modified Ecological Protection (MEP) modifier. The use of this modifier provides assurance that the resulting property-specific standard is protective of human health, while simply acknowledging a reduced level of protection for ecological receptors that in many cases would be more applicable in urban environments. There is no associated RMM for this option, and it allows for modified standards for many ubiquitous urban fill contaminants. Acceptance of this MEP-modified property specific standard in the absence of a full Ministry-approved MGRA would alleviate many unnecessary remediations being undertaken in the City today for Conveyance Lands without affecting risk to worker or public health.</p>
6.5.2	Clarity	The term "Development Site" is included.	The term Development Site was not included in the last version of the Policy, and has not been defined in this version. It is unclear if this term is to reference the entire property that may be the Site of interest (i.e. subject property Site Plan Approval or Subdivision Application) within which the Conveyance Lands originate, or just the Conveyance Lands themselves. A definition should be included to provide clarity.

Clause	Issue Type	Issue Description	Comment
6.6	Clarity and Harmonization with Provincial Regulation	Responsibility to report to the MECP offsite migration onto existing City Lands.	In 2015, developers, qualified persons and the City worked closely and cooperatively to draft the scope of the obligations set out in section 6.5.1 of the Policy. New section 6.6 would impose on developers/qualified persons reporting requirements that do not otherwise exist at law with respect to contamination that may have migrated from past land uses on the development site onto adjacent City lands. As discussed at length in 2015, we respectfully submit that the City does not have the requisite jurisdiction to establish reporting requirements to the MECP. Again, to the extent that the City determines that it is prudent to advise the MECP with respect to any such potential legacy contamination on City lands, the City could report to the MECP.
6.7	Clarity	Comply with all conditions of the CPU prior to transfer of ownership or operational control.	Conditions of a CPU often include long term monitoring (cap inspection) and additional plans (soil management, health and safety) and sometimes conditions that are unrelated to the Conveyance Lands. Reconsideration of this clause would be beneficial so there are no unintended consequences.
7.1	Flexibility	Policy indicates applicable for land conveyances arising from applications submitted to the City following date of Council approval of the policy	Given the Policy improvements being proposed, it is recommended that the proposed Policy apply to applications submitted to the City prior to Council approval of the policy amendments, if the applicant so desires.
Table 1	Harmonization with Provincial Regulation	Policy requires RSC for all subdivision roads, blocks and parks conveyances as per Table 1.	Provincial regulation does not require an RSC unless there is a change to a more sensitive land use. RSC requirements for Conveyance Land parcels outside of subdivision applications appropriately reflect provincial requirements as per Table 1. Subdivision applications should be similarly treated to require RSC filing only for blocks where change to more sensitive land use is to occur.
Table 1	Typo	Row 2, Column 4 typographical error	Correction: “and/or below-grade easements for new <del>infrastructure to the</del> <i>infrastructure</i> ”
Table 1	Clarity	Although implied, the Table does not clearly define the requirements for below-grade easements for new infrastructure in the context of Subdivision Application.	Section 5.4.2 clearly indicates the Peer Review Process is required for below-grade easements for new infrastructure. Table 1 clearly indicates that the Conveyance Policy Applies to below-grade easements for new infrastructure, and it is implied by the absence of “below-grade easements” in Table 1, row 4, final column that Peer Review and Record of Site Condition would not apply.