

Attachment 1

**PROPOSED (UPDATED)
IMPLEMENTATION GUIDELINE FOR ROAD ALLOWANCE DEDICATIONS ON AND
ADJACENT TO KNOWN AND POTENTIALLY CONTAMINATED SITES**

1.0 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 *Guideline for the Review of Development Applications Involving Known and Potentially Contaminated Sites, 2009*, and to any subsequent documents that supersede the aforementioned Guideline.

2.0 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*"), as amended, 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*, the Region has the legal authority to require, as a condition of approval for plans of subdivision, plans of condominium and consents, road widenings that the Region considers necessary.
- 2.3 Consistent with Policy 11.6.7 of the Regional Official Plan, the Region may obtain road dedications through development applications.
- 2.4 Pursuant to Regional Municipality of Waterloo By-law No. 01-028, Council has delegated to the Commissioner of Planning, Housing and Community Services (the "Commissioner") its authority under the *Planning Act* in respect of various development applications, including the authority to impose conditions provided the exercise of such authority substantially conforms with the Region's then current policies, standards and regulations.

3.0 IDENTIFICATION OF PROPERTIES SUBJECT TO THIS GUIDELINE

**3.1 IDENTIFICATION OF KNOWN AND POTENTIALLY CONTAMINATED SITES
SUBJECT TO ROAD ALLOWANCE DEDICATIONS**

- 3.1.1 Sites subject to an official plan amendment, zoning by-law amendment, consent, plan of subdivision, or plan of condominium may be identified in the Region of Waterloo's Threats Inventory Database (TID) 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 where a road allowance dedication is required will be subject to this Guideline.

- 3.1.2 Sites subject to site plan approval may be identified in the Region of Waterloo's TID as high and medium potentially contaminated sites and known contaminated sites through the site plan review process. Sites identified during this process that abut a Regional where a road allowance dedication is required will be subject to this Guideline.
- 3.1.2 Sites subject to an official plan amendment, zoning by-law amendment, consent, plan of subdivision, plan of condominium, and site plan that are identified in the Region's TID as low potential contaminated sites will not be subject to this Guideline.

3.2 IDENTIFICATION OF ROAD WIDENING REQUIREMENTS

- 3.2.1 For official plan amendments, zoning by-law amendments, plans of subdivision, and plans of condominium the potential requirements for road allowance widening will be identified through the pre-submission consultation meeting. For consent applications and where the pre-submission consultation meeting is waived for an application, the need for a road allowance widening will be identified as early as possible through the application review process.
- 3.2.2 For site plan applications, the potential requirements for a regional road allowance dedication will be identified through the site plan review process.

4.0 PRELIMINARY REQUIREMENTS

Where the Region requires a road allowance widening as a requirement/condition of approval for official plan amendments, zoning by-law amendments, plans of subdivision, plans of condominium, consent and site plan review on lands known or potentially contaminated, the Region will require that lands to be dedicated be subject to a Phase I Environmental Site Assessment (an "ESA"). If warranted by the Phase I ESA a Phase II ESA will be requested. For Regional due diligence purposes, a letter of reliance must be obtained for all supporting documentation related to the environmental condition of the lands to be dedicated. The final requirements to address the site condition of lands to be dedicated will be determined in consultation with the Region's Transportation Planning Division.

- 4.1 To meet the requirements of Section 4.0, lands to be dedicated may be included in any Phase I ESA or Phase II ESA conducted for the lands subject to the *Planning Act* application or site plan.
- 4.2 Subject to Section 4.0, where lands subject to a *Planning Act* application have a Record of Site Condition (RSC) requirement under Ontario Regulation 153/04 of the EPA as a condition of approval for the Region.
- a. that portion subject to a road allowance dedication should be excluded from the RSC requirement and thereby excluded from the requirements of any Certificate of Property Use (CPU) imposed on the subject parcel.
 - b. Where a CPU is already registered for the subject property (including the lands to be dedicated), the proponent will provide satisfactory assurance from the Ministry of the Environment (MOE) limiting the Region's potential liability for CPU obligations. Assurance may include a discretionary letter of clarification from the MOE District Office.

DETERMINING FINAL REQUIREMENTS

Applicants subject to this Guideline will enter a consultation process with the Region's Transportation Planning Division to finalize requirements for road allowance dedications on known or potentially contaminated sites.

5.1 FOUR OPTIONS

There are four options that may be considered when addressing contamination on lands to be dedicated. These are: requiring the applicant to remediate the dedicated lands; accepting the conveyance of lands with a risk assessment addressing any remaining environmental impacts; accepting conveyance of lands with suitable security; and finally, accepting the conveyance of lands as-is. The options available under various site conditions are explained below.

OPTION 1 – Remediation

Require the development proponent to remediate the dedication lands to Provincial standards for non-sensitive land uses prior to conveyance to the Region, thereby resolving the environmental impact at no cost to the Region. There may be circumstances where the Region requires remediation to a more stringent standard, such as for the installation of water mains. No RSC is required for the dedicated lands after confirmatory testing by a Qualified Person, as defined in Ontario Regulation 153/04.

Factors where remediation is the preferred alternative with the Region a reliant party to all supporting documentation include, but are not limited to, sites:

- a) where remediation of the subject parcel is required prior to development;
- b) where the site exposes the Region to certain liability risk; and
- c) where road construction and/or utility installation will cause the migration of contaminants.

Notwithstanding a, b, and c of this option, remediation and other alternatives may be required by the Region for the purposes of clean dedication. The Region recognizes that some site conditions make remediation an impractical option. Under these circumstances the following three options apply.

OPTION 2 – Convey with Risk Assessment

Accept conveyance of lands with a risk assessment that is completed by a Qualified Person and which details the remaining contaminants, potential exposure pathways and an assessment health and safety. The Risk Assessment option will require the consent of the Region and may also require a form of security. The risk assessment must confirm that any remaining contamination is deeper than will be encountered during road construction or utility installation, or that such construction will not pose a risk to worker health and safety or the environment.

Site conditions where a risk assessment is considered with the Region a reliant party to all supporting documentation include, but are not limited to, sites:

- a) where the property is the source of contamination;
- b) where removal of contaminants is impractical or undesirable (buildings or utilities interfere, road work planned or just completed);

- c) where road work is planned or recently completed;
- d) where contaminants are deep and will not be disturbed; and
- e) where remaining contaminants are inert.

OPTION 3 – Convey with Security

Accept conveyance of the lands, with an acceptable form of security. An acceptable form of security will provide the Region with full compensation for contamination associated costs, provide the Region with protection from third party claims, and from any costs related to Ministry of Environment (MOE) actions. Option 3 will only be considered in cases where the proponent has the wherewithal to meet its contractual obligations.

Site conditions 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 include, but are not limited to, sites:

- a) where there are restrictive site conditions or remediation would be disruptive to existing buildings or infrastructure; and
- b) the Region is satisfied that the risk of Regional liability is low for the dedicated lands.

OPTION 4 – Convey As-is

Accept conveyance of land as-is.

This option is considered in cases where Options 1, 2, and 3 are not appropriate, as determined by the Commissioner, and where the Region's liability risk is low, both of encountering contamination during construction and of third party liability. Typically, this would include lands that are not environmentally impaired or lands where contamination impacts multiple properties. The Region may elect to take impacted land where it considers it necessary.

Site conditions where lands will be considered for dedication as-is, with the Region a reliant party to all supporting documentation, include, but are not limited to, sites:

- a) where the Region requires the property for strategic purposes and is willing to accept environmental risk on a case by case basis, and the applicant may be an innocent third party and is not considered the source of contamination; and
- b) where contamination is considered to be of lower environmental risk, including but not limited to circumstances of low, stable and/or declining concentration; low potential for migration; low potential to affect human health; low threat potential for potable groundwater; is located at significant depth; or other circumstances where the risk and potential liability to the Region of Waterloo is considered to be lower as determined on a case by case basis, and the applicant may be an innocent third party and is not considered the source of contamination.

Regional road dedications (in both greenfield and built-up areas) may be accepted in an "as-is" condition, at the discretion of the Commissioner, with the Region a reliant party to all supporting documentation, under the above circumstances.

In instances where a higher level of risk or potential liability is expected than described in this

Implementation Guideline, the Commissioner shall seek direction from Regional Council, if no other options are viable under this Guideline.”