



CITY OF HAMILTON
PUBLIC WORKS DEPARTMENT
Engineering Services Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	February 22, 2018
SUBJECT/REPORT NO:	Changes to Transfer of Review Program with Ministry of Environment and Climate Change (PW18019 / PED18053) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Susan Jacob (905) 546-2424, Extension 2621
SUBMITTED BY:	Gary Moore, P.Eng. Director, Engineering Services Public Works Tony Sergi, P.Eng. Senior Director of Growth Management Planning and Economic Development
SIGNATURE:	

RECOMMENDATION

- (a) That the City Manager be authorized and directed to execute an Agreement with the Ministry of Environment and Climate Change enabling the continued participation of the City in the Transfer of Review Program in a form satisfactory to the City Solicitor;
- (b) That Staff designated in writing by either the General Manager of Public Works or General Manager of Planning and Economic Development be authorized to sign any application forms required by the Ministry of Environment and Climate Change as part of the Transfer of Review Program under the Ontario Water Resources Act;
- (c) That the General Manager of Public Works and General Manager of Planning and Economic Development be authorized to execute any further renewals and amendments to the Transfer of Review Program Agreement referred to in recommendation (a) as may be required by the Ministry of Environment and Climate Change from time to time with content satisfactory to the General Manager of Public Works and General Manager of Planning and Economic Development, and form satisfactory to the City Solicitor.

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EXECUTIVE SUMMARY

The purpose of this report is to seek authority from City Council to enter into an Agreement with the Ministry of Environment and Climate Change to be able to continue to participate in the Transfer of Review (TOR) Program. This process delegates the review to the City for specific sewage works associated with non-complex undertakings with a low potential for any environmental or public health impacts and have a low level of technical complexity. TOR takes lesser time for the issue of an Environmental Compliance Approval in comparison to a direct submission process. City of Hamilton has been a participant in the TOR Program from 1989. The Development Industry has also benefitted from the TOR process as it generally results in more timely approvals.

Alternatives for Consideration – See Page 5

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The updated Agreement will require City Staff to invest more time in the review process. The fees structure required to recover the costs for the same is still to be determined and may require updating.

Staffing: The TOR Program can be supported only if City has competent Review Engineers employed by the City. The participating Departments will have to review their resources and align the organizational structure to be able to support this Program.

Legal: If the proposed TOR Agreement is not authorized, all works that would otherwise be subject to it and which require ECA will be subject to direct applications to the MOECC.

HISTORICAL BACKGROUND

The TOR Program is a voluntary program that is designed to benefit applicants, Municipal partners and the Ministry of Environment and Climate Change (MOECC). The TOR Program is an efficient, effective and timely review process for specific sewage works associated with non-complex undertakings with a low potential for any environmental or public health impacts and have a low level of technical complexity. Under the TOR Program, the Environmental Compliance Approval (ECA) application and the corresponding fee are submitted directly to the participating Municipality which completes the administrative and technical review of the ECA application and prepares a draft ECA. A professional engineer in the participating Municipality documents the completed review in a letter of recommendation which is submitted to the Ministry together with the draft ECA and all the application information. Upon receipt the Ministry confirms that the documentation required has been submitted, and the Ministry's signing Director considers the Municipality's recommendation to issue or refuse the ECA. This process delegates the review to the City and takes lesser time for the issue of an ECA in comparison to a direct submission process. City of Hamilton has been a participant in the TOR Program from 1989. The Development Industry has also benefitted from the TOR process as it generally resulted in more timely approvals.

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On 10 November 2017, the Ministry informed the City that it is updating the TOR Program to provide clarity, increased rigor and efficiencies in program delivery. The Ministry has provided three options and would like to utilize an updated Agreement to ensure that all participants are following the same Program requirements. The options are to:

- Continue to participate in the Program under the updated Agreement
- Continue to participate in the Program under the updated Agreement and expand the works allowed to be reviewed
- Withdraw from the Program

As a current participant the City of Hamilton is required to notify the Ministry in writing, no later than January 31, 2018 as to which option to choose.

The Ministry will be contacting the City to enter into the new Agreement. Staff is requesting the City Council's approval for the City Manager to enter into this Agreement on behalf of the City.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

An ECA is required under Part II.1 of the Environmental Protection Act for unique types of operations, such as landfill sites or wastewater treatment plants and must meet the specific conditions set out in the ECA.

By entering into an Agreement with the Ministry to participate in the TOR Program, the City ensures that all applications and their supporting documentation for an ECA meet all applicable Terms and Conditions set by the Agreement and Schedules attached to the Agreement, prior to submitting them to the Ministry for approval. The City can conduct a review of its own Municipal works and also on behalf of other parties whose projects are entirely within City boundaries and where there is an Agreement with the Municipality pursuant to the Planning Act that the ownership of the system may be transferred to the Municipality.

This Agreement comes into force on the day that the Agreement is signed by the Municipality.

In accordance with section 9 of s.179.1 of Environmental Protection Act (EPA), the Municipality has the authority to collect the fee.

The City and Ministry mutually agree on the works that can be processed under TOR Program. The works can be amended by either party at any time. Subject to some exceptions set out in the TOR Agreement, the following sewage works can be processed under the Program:

- New or modified Municipal or private sanitary sewers, forcemains or siphons that are not combined sewers
- New or modified, Municipal or private sanitary sewage pumping stations that do not discharge directly to a sewage plant

- New or modified Municipal or private storm sewers, ditches, culverts and grassed swales
- New or modified Municipal or private oil/grit separators

Sanitary Sewage works that provide any treatment are not allowed to be submitted through this program. Similarly storm sewer works that are located on or service industrial lands, super pipes, that requires monitoring of effluent criteria etc. cannot be included under this Program.

The Ministry lists the works that cannot be considered under TOR under any circumstances. If the works listed in an application has been constructed or are being constructed before an ECA has been issued, the Municipality has to inform the Ministry and also return the application and fees to the applicant and they must apply to the Ministry directly.

Consultation and clearance, approval or permit from other Agencies such as Conservation Authorities, Ministry of Natural Resources and Forestry, Niagara Escarpment Commission etc. are to be in place before the application is accepted for review.

The City must ensure that all applications satisfy the requirements for Indigenous Consultation per the Environmental Assessment Act.

The City is responsible for conducting the technical review and evaluation of the applicant's information in accordance with Ministry guidelines. Only Professional Engineers employed by the City are allowed to conduct the technical review under this TOR program. Due to additional responsibilities and procedures added to the City, the time taken by the City Staff to participate in the TOR will increase. The participating Departments will have to review their resources and align the organisational structure to be able to support this Program.

The Ministry will endeavour to issue the Approval in 30 business days.

The Ministry will conduct audits of applications submitted under the program and it may lead to the Ministry to take action including alteration of works or even termination of the program.

The City is also required to provide an annual summary list of the projects that were reviewed and submitted to the Ministry for the previous calendar year on March 31st of each year.

This Agreement may be reviewed and amended at any time by mutual Agreement of the signing parties.

RELEVANT CONSULTATION

The following have been consulted during the process:

- Hamilton Water

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- Road Operations
- Growth Management
- Engineering Services
- Legal Services

A presentation was provided to the Development Industry Liaison Group (DILG) on January 15, 2018, regarding changes to the TOR Program and potential operational impacts.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The City is a current participant of the TOR Program since 1989. Both City and Development Industry have benefitted from this Program and staff recognizes good value in continuing with this participation.

The Ministry has allowed three options of continuing to participate, withdrawal from the program or continue with additional work. At this time City would like to inform and enter into an Agreement with the Ministry only for Standard Works. This would help us to continue with the current program status quo with some additional works which can be handled with the current staffing structure.

There has to be more clarity on the additional works that are offered to be added to the TOR Program. Staff resources have to be trained and aligned to be able to take on additional responsibilities. Fee structure for the additional review time required for these expanded works also has to be investigated before the City commit to take on the review of these works. The City also has the ability of requesting amendment of the Agreement at any time.

ALTERNATIVES FOR CONSIDERATION

City can chose not to participate in the TOR Program. This would lead to the expiry of the current program by a date announced by the Ministry. All works requiring ECA will have to be direct applications which could take up to about 8 months by the Ministry for its processing.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

None