

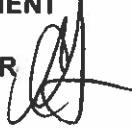

TO: GENERAL COMMITTEE

SUBJECT: PRE-SERVICING AGREEMENTS FOR DEVELOPMENT APPLICATIONS

WARD: ALL

PREPARED BY AND KEY CONTACT: C. PACKHAM, LEGAL COUNSEL Ext. #4511
F. PALKA, MANAGER OF DEVELOPMENT SERVICES Ext. #4445

SUBMITTED BY: I. PETERS, DIRECTOR OF LEGAL SERVICES  For:
RICHARD FORWARD, MBA, M.Sc., P. Eng., GENERAL MANAGER OF INFRASTRUCTURE & GROWTH MANAGEMENT 

CHIEF ADMINISTRATIVE OFFICER APPROVAL: C. LADD, CHIEF ADMINISTRATIVE OFFICER 

RECOMMENDED MOTION

1. That Staff in the Engineering Department be authorized to permit developing landowners the option to enter into Pre-Servicing Agreements prior to the registration of a Development Agreement on title to an owner's lands, at the direction of the General Manager of Infrastructure and Growth Management, and in form satisfactory to the Director of Legal Services.
2. That the Mayor and City Clerk be authorized to execute Pre-Servicing Agreements prior to the registration of a Development Agreement, upon all conditions of the Pre-Servicing Agreements being completed to the satisfaction of the Director of Legal Services and the Director of Engineering.

PURPOSE & BACKGROUND

3. The purpose of this report is to seek Council's authority to permit Staff in the Engineering and Legal Services Departments to develop a process which would allow the City to enter into an agreement with the owners of development lands permitting the early installation and construction by the landowner of site-servicing for the development lands (herein referred to as a "Pre-Servicing Agreement").
4. Pre-Servicing Agreements allow landowners to proceed with internal site-servicing works including, but not limited to, storm sewer and sanitary sewer, utilities, water mains and roads (herein referred to as the "Pre-Servicing Works") prior to registration of a Site Plan, Subdivision, or other Development Agreement (herein referred to as a "Development Agreement"), on title to the development lands.
5. This process shall be optional to landowners but affords them the ability to commence Pre-Servicing Works for the development lands prior to the completion of all matters required for registration of a Development Agreement on title to the development lands.
6. In the past, there has been no formal process in place to permit Pre-Servicing Works on development sites to commence prior to registration of a Development Agreement. There have, however, been various practices followed to permit Pre-Servicing Works to commence. It is Staff's view that none of these past practices fully encompass the scope of potential risk and liability to the City and the landowner associated with completing Pre-Servicing Works ahead of registration of a Development Agreement.

7. A developer's goal is to service land as quickly as possible so that when a Site Plan, Subdivision, or other Development Agreement is registered the lands will have already been serviced and buildings can then be built and purchase agreements closed with minimum delay. The current process, contemplates that registration is to occur before municipal servicing. This can result in a servicing delay through the City's structured process because in order to service land, a developer must enter into a Site Plan, Subdivision, or other Development Agreement with the City. By doing so, the developer is forced to deal with and address development requirements that relate to registration stage in the development process when the focus is really on what conditions need to be completed to allow for the servicing of the land. This conflict prolongs and often delays the servicing approval stage of the development process where timing is often most critical.
8. Staff and various members of the development community have discussed the importance for developers to be permitted to begin Pre-Servicing Works prior to registration of a Development Agreement to ensure timely completion of the development. Staff have stressed that the City requires appropriate security to ensure completion of Pre-Servicing Works along with acknowledgment from the developer that any works completed prior to registration of a Development Agreement would be done entirely at the developer's own risk. The Pre-Servicing Agreement helps ensure that both the developers' interests and the City's interests with respect to Pre-Servicing Works can be addressed.

ANALYSIS

9. Pre-Servicing Agreements will:
 - a) Provide clarity to both the City and landowners as to the obligations associated with permitting landowners to proceed with Pre-Servicing Works prior to registration of a Development Agreement on title;
 - b) Clearly define the legal ramifications of a landowner's failure to complete servicing in accordance with approved plans and the City's requirements;
 - c) Ensure that the City is satisfied that a landowner has provided sufficient information in order to proceed with Pre-Servicing Works;
 - d) Provide protection to the City while affording landowners the opportunity to begin Pre-Servicing Works ahead of registration of a Development Agreement, which enables developers to avoid additional costs and to complete development in a timely fashion.
 - e) Contribute to major improvements working towards streamlining the approval process by allowing a developer to commence servicing upon approval of the engineering design and conditions, but prior to completion of a Registered Development Agreement.
10. Terms of the agreement are expected to include the following:
 - a) Landowners will retain a Consulting Engineer to oversee Pre-Servicing works.
 - b) Landowners will acknowledge that all works completed under the Pre-Servicing Agreement shall be done solely at the risk of the landowner.
 - c) The Pre-Servicing works will be completed in accordance with all City requirements and approved plans; landowners are responsible for completion of any works required as a result of subsequent changes to the approved plans, at the landowner's own expense.
 - d) Landowners will obtain all necessary approvals from all regulatory authorities and from the City, where applicable. Pre-Servicing shall not proceed until such approvals are

- obtained and the landowner receives written confirmation from the City that it can proceed.
- e) Landowners will indemnify and hold harmless the City and its agents, contractors and employees for any claims, actions, liens, and so forth resulting from the Pre-Servicing works.
 - f) Landowners will obtain any necessary permits or agency approvals as determined by the City (ie. Site Alteration Permits, Right-of-Way Activity Permits, M.O.E.C.C.).
 - g) Approval of the engineering design drawings for the works to be constructed, including receipt of M.O.E.C.C. Certificate of Approval, a detailed grading plan and an erosion and sedimentation control plan.
 - h) Ensure all sedimentation and erosion controls are in place prior to any earthworks on the site.
 - i) Arrange for a pre-construction meeting for construction of the Works.
 - j) Conduct a pre-condition survey of residences within 100 meters of the said works if applicable.
 - k) The Landowners will provide evidence of insurance satisfactory to the City prior to commencing the Pre-Servicing works.
 - l) The Landowners will provide sufficient Securities in order to ensure completion of the Pre-Servicing works to the satisfaction of the City. The City may draw down upon the Security in certain situations where the Pre-Servicing works are not completed or are deemed deficient by the City.
 - m) Any Pre-Servicing works, repairs, modifications or relocation of works required by the City that are not completed by the landowner may be completed by the City. The costs of such work undertaken by the City shall be recoverable from the landowner.
 - n) Landowners will pay a fee to the appropriate City departments for preparation and administration of the Pre-Servicing Agreement, to be determined by Staff.
 - o) The Pre-Servicing Agreement may be registered on title, the costs of such registration being recoverable by the City from the landowner.
 - p) Deliver a copy of the approved construction drawings in a digitized electronic format acceptable to the City.
11. Developers will be required to obtain draft plan approval prior to staff considering whether a Pre-Servicing Agreement is appropriate for each development application. For other forms of development, such as site plan applications, staff will review each application where requested by the developer in order to determine whether or not a Pre-Servicing Agreement would be appropriate. In certain exceptional situations, it is anticipated that developers may be permitted by staff to enter into Pre-Servicing Agreements prior to draft plan approval where providing early servicing is desired by the City due to timing and other circumstances. Such permission shall be given to developers at the discretion of the General Manager of Infrastructure and Growth Management in consultation with the Director of Finance.

ENVIRONMENTAL MATTERS

12. There are no environmental matters related to the recommendation.

ALTERNATIVES

13. The following alternatives are available for consideration by General Committee:

Alternative #1 General Committee could choose not to authorize staff to develop the process for having landowners enter into Pre-Servicing Agreements and permit pre-existing informal practices to survive.

This alternative is not recommended as it is desirable to put in place a more formal process with a detailed agreement that clearly defines the roles and obligations of the landowners and the City with respect to Pre-Servicing for development applications. The process is also optional – landowners need only go through this process and execute a Pre-Servicing Agreement if they desire to commence Pre-Servicing works prior to registration of the Development Agreement.

Alternative #2 General Committee could choose not to authorize staff to develop the process for having landowners enter into Pre-Servicing Agreements and require that landowners are only permitted to begin site-servicing upon registration of the development agreement on title.

This alternative, while preferable to alternative #1, is not recommended, as it would prevent developers and landowners from having the ability to proceed with site-servicing in advance of registration of the development agreement, even where Staff can be satisfied that it would be acceptable to allow Pre-Servicing to commence. Additionally, Pre-Servicing Agreements would not be mandatory.

FINANCIAL

14. The City would require landowners to submit a fee to Staff in the Legal Services Department for full cost recovery for preparation and administration of the Agreement. Any costs incurred by the Engineering Department in the administration of the Agreement would likewise be recoverable.

LINKAGE TO 2014-2018 STRATEGIC PLAN

15. The recommendation(s) included in this Staff Report support the following goals identified in the 2014-2018 Strategic Plan:
- Vibrant Business Environment
 - Responsible Spending
 - Inclusive Community