



## STAFF REPORT ACTION REQUIRED

### Development Charge By-law – Technical Amendment

<b>Date:</b>	June 17, 2014
<b>To:</b>	Executive Committee
<b>From:</b>	City Solicitor and Deputy City Manager and Chief Financial Officer
<b>Wards:</b>	All
<b>Reference Number:</b>	P:\2014\Internal Services\Cf\Ec14015Cf (AFS #19895)

#### **SUMMARY**

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This report presents a proposed amendment to Development Charge By-law No. 1347-2013 for consideration at a statutory public meeting. The sole purpose of the amendment is to clarify the time at which development charges are calculated, payable and collected in cases where a development is built out in phases.

This technical amendment to the by-law has been developed in consultation with Toronto Building, and is recommended in addition to procedural changes that have been implemented to avoid confusion and potential loss of development charge revenue.

#### **RECOMMENDATIONS**

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**The City Solicitor and Deputy City Manager and Chief Financial Officer recommend that:**

1. Council adopt the proposed amendment to Development Charge By-law No. 1347-2013, attached to this report as Appendix 1.
2. Council authorize the City Solicitor, in consultation with the Deputy City Manager and Chief Financial Officer, to make such stylistic and minor changes to Appendix 1 as may be necessary to give effect to the recommendations contained herein.

#### **Financial Impact**

As the development charge by-law is currently worded, there is the potential that, in certain cases where there is a phased development, developers may be able to pay

development charges ("DCs") in advance and avoid scheduled increases arising from the phase-in and indexing of the development charge rates. The proposed amendment will clarify that a developer will be required to pay the development charge rates in effect at the time the building permit is issued for each phase of a development.

## **DECISION HISTORY**

Council, at its meeting on October 8, 9, 10 and 11, 2013, adopted Development Charge By-law No. 1347-2013 ("the 2013 DC By-law") which imposed a uniform city-wide development charge on land development projects for residential and non-residential uses.

A link to Council's decision is as follows (see Item EX34.1):

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EX34.1>. Contained within that document are links to the background staff reports, the Development Charge Background Study, as amended.

## **ISSUE BACKGROUND**

As discussed in the staff reports and Council deliberations leading up to the adoption of the 2013 DC By-law, the development charge is to be calculated, payable and collected on the date that a building permit is issued in respect of a proposed building or structure.

A recent court decision has confirmed an OMB decision that in a phased development where an apartment building was constructed on top of a common podium, the City's DC by-law did not preclude an earlier payment constituting full payment of DCs, and so no further payment reflecting current rates was required when the permit for the subsequent tower was issued. As a result, additional development charges due to phasing in and indexing of the charge could not be collected by the City.

## **Background Facts**

On December 16, 2010, Sherway Gate Development Corp. ("Sherway") submitted a building permit application to permit the construction of a 29 storey apartment building at 215 Sherway Gardens Road, as the fourth tower of a phased residential development consisting of 4 apartment towers. On January 31, 2011, Sherway made a payment of \$3,494,281 in respect of development charges for both towers at 205 Sherway Gardens Road (Tower D) and for 215 Sherway Gardens Road (Tower C). A conditional building permit was issued for 205 Sherway Gardens Road on January 30, 2011.

On February 1, 2011, the development charge rates increased due to indexing and the scheduled phase-in of development charge increases. In the fall of 2011 the applicant was advised that a further payment of development charges in the amount of \$397,941 would be required prior to issuance of the building permit for 215 Sherway Gardens Road. The applicant paid this additional amount under protest, and the building permit for 215 Sherway Gardens Road was issued on January 20, 2012.

On June 29, 2012, Sherway filed a notice of appeal to the Ontario Municipal Board disputing the requirement to pay additional development charges. The OMB heard the appeal, and on June 20, 2013, issued its decision. The Board found that Sherway's appeal was valid and agreed that it was reasonable to conclude that the amount requested and paid for the two towers on January 25, 2011 was the full amount outstanding, and that an additional payment of \$397,941 was not required. The OMB ordered that the disputed amount paid to the City be refunded to Sherway. The City applied for leave to appeal to Divisional Court.

The Ontario Divisional Court dismissed the City's motion for leave to appeal the OMB decision. In doing so, the court ruled that it was satisfied that the OMB had reached a conclusion that was reasonable in determining that the developer was led to believe that the amount of \$3,494,281 was the full amount of development charges to permit the construction of Towers C and D, which formed part of one plan involving a common foundation, common underground parking and common above-grade podium to support both towers. The court further noted that the City has the opportunity to amend and clarify its DC By-law or its practices, including not accepting the payment of charges until the time that the building permit is to be issued.

## **COMMENTS**

This report presents a proposed technical amendment to the 2013 DC By-law (the “Amending By-law”) for consideration at a public meeting. The proposed Amending By-law is attached as Appendix 1 to this report.

The sole purpose of the Amending By-law is to clarify the timing of payment and calculation of development charges for phased developments. The 2013 DC By-law states that the development charge is to be calculated, payable and collected on the date that a building permit is issued in respect of a proposed building or structure. In certain circumstances, it is possible to avoid the indexing and phase-in of development charges by paying the charges at an earlier stage for a related but different building. The development charge is intended to apply to the building which is the subject matter of the building permit and be calculated based on the rates in effect on the date of building permit issuance, regardless of whether a developer has obtained a previous permit for a related building in the development.

In order to rectify this situation, Toronto Building has modified its forms and procedures to clarify the City's policies and to avoid accepting payment of development charges in advance of above ground building permit issuance. In addition, the City Solicitor recommends the proposed amendment to the 2013 DC By-law.

### **Proposed by-law amendment**

The proposed amendment implements the original intent underlying the by-law, namely that the development charge should be calculated at the point in time that a building

permit is issued that specifically authorizes the construction of the building containing floor area that is required to pay development charges.

It provides that where an owner makes a building permit application for a building or structure that is built above, on top of or attached to another building or structure, including a podium or parking structure, development charges are due and payable upon issuance of the building permit for such building or structure, and not at the time of issuance of an earlier building permit for an underlying or supporting building.

### **What is the process for amending the by-law?**

Before amending a development charge by-law, the DC Act requires that Council:

- (a) hold at least one public meeting;
- (b) give at least 20-days notice of the meeting in accordance with the regulations; and
- (c) ensure that the proposed by-law and the background study are made available to the public at least two weeks prior to the meeting.

In accordance with the above requirements, the requisite notice of the public meeting was published in the Toronto Sun on June 11, 2014, and the proposed by-law amendment and background study were made available to the public, through the City Clerk's office, on June 16, 2014.

The Amending By-law may be appealed to the OMB. On appeal, the OMB may exercise its powers only in relation to the amendment.

### **CONTACT**

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### **SIGNATURE**

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Deputy City Manager and  
Chief Financial Officer

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Anna Kinastowski, City Solicitor

### **ATTACHMENTS**

Appendix 1: Proposed Amendment to Development Charge By-law No. 1347-2013

**Appendix 1**  
**Proposed Amendment to Development Charge By-law 1347-2013**

Authority: Executive Committee Item \_\_\_\_, as adopted by City of Toronto Council on \_\_\_\_\_, 2014

**CITY OF TORONTO**

**Bill No.**

**BY-LAW No. -2014**

**To amend City of Toronto Municipal Code Chapter 415, Development of Land, respecting development charges.**

Whereas the *Development Charges Act, 1997*, S.O. 1997, c.27 (the “Act”), authorizes Council to pass by-laws for the imposition of development charges against land;

Whereas Council desires to ensure that the capital cost of meeting development related demands for, or the burden on, City services does not place an undue financial burden on the City or its existing taxpayers while, at the same time, ensuring new development contributes no more than the net capital cost attributable to providing the historic level of services and meeting the requirements of subsection 5(1) of the Act

Whereas Council on October 8, 9, 10 and 11, 2013, enacted City of Toronto By-law No. 1347-2014 to impose development charges against land;

Whereas Section 19 of the Act provides for amendments to a development charge by-law;

Whereas it has been determined that a technical amendment is required to amend the provisions of By-law No. 1347-2014 relating to the payment and calculation of development charges;

Whereas the Executive Committee at its meeting on July 2, 2013 , had before it a Development Charge Background Study dated June 18, 2013, prepared by the Deputy City Manager and Chief Financial Officer (“the Study”)

Whereas Executive Committee at its meeting on September 24, 2013 further considered an Addendum Report to the Study prepared by Hemson Consulting Limited, dated September 12, 2013;

Whereas the Study, Addendum Report and the proposed development charge by-law amendment were made available to the public at least two weeks prior to the public meeting and Council gave more than twenty days notice to the public and a meeting pursuant to section 12 of the Act was held on \_\_\_\_\_, 2014, before the Executive Committee, prior to and at which the Study and the proposed development charge by-law were made available to the public and Committee heard comments and representations from all persons who applied to be heard;

Whereas Council at its meeting held on \_\_\_\_\_, 2014, considered the Study and a report dated - \_\_\_\_\_, 2014, and a further report dated \_\_\_\_\_, 2014, both from the Deputy City Manager and Chief Financial Officer;

The Council of the City of Toronto enacts:

1. Chapter 415, Development of Land, of The City of Toronto Municipal Code is amended as follows:

(a) By deleting the definition of "building permit" in 415-1 and replacing it with the following definition of "building permit":

"BUILDING PERMIT - A permit issued pursuant to the *Building Code Act* that permits the construction, alteration or change in use of a building or structure above grade which is described in its respective building permit application."

(b) By deleting Section 415-8A and replacing it with the following Section 415-8A:

"Development charges applicable to development shall be calculated, payable and collected as of the date a building permit is issued in respect of the building or structure for which the owner has made a building permit application, unless the development charge is to be paid or has been paid at a different time under Subsection C or under an agreement entered into between the City and the owner under subsection 27(1) of the Act."

(c) By adding the following paragraph 415-8K to Section 415-8:

"Where an owner makes a building permit application for a building or structure that is built, in whole or in part, above, on top of or attached to another building or structure, including a podium or parking structure whether above or below grade, development charges are due and payable upon issuance of the building permit for such building or structure, and not at the time of issuance of the building permit for the underlying or supporting building or structure."

Enacted and passed on (**clerk to insert the date**), 2014.

Frances Nunziata,  
Speaker

Ulli S. Watkiss,  
City Clerk

(Seal of the City)