

**Presentation to the Audit Committee
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Agenda Item AU10.5**

Toronto Building Division: Conditional Permits

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Fraud Hotline Complaint

▶ Complaint that:

1. There was a financial incentive to obtain above-grade conditional permits (CP) before a development charge (DC) increase
2. Some above-grade CPs were not issued in full compliance with the *Building Code Act (BCA)*

AG's objective – to strengthen process for issuing and monitoring CPs going forward

Key Message - Why this report is important:

- ▶ City's interest:
 - ▶ Growth pays for growth - DC's pay for growth-related infrastructure
 - ▶ When DC revenue is insufficient, the shortfall needs to be collected from other sources
 - ▶ Ensure all developers are treated consistently
 - ▶ Keep development from being slowed down
 - ▶ Appropriate fees are paid

Why Conditional Permits are Issued

- A tool to expedite construction where unreasonable delays in construction would occur if a conditional permit is not issued
- In 2002, City Council delegated authority to the Chief Building Official to enter into CP agreements to:
 - *“assist in expediting the building permit process while still ensuring the City’s interest are protected”*

Requirements for Issuing CP

- ▶ The *BCA* gives the Chief Building Official discretion to issue CPs if three conditions are met
 - The project meets zoning and other specified requirements in the *BCA*
 - The Chief Building Official is of the opinion that unreasonable delays in the construction would occur if a permit was not issued
 - The applicant enters into a CP agreement with the City
- ▶ In 2002, City Council delegated the Chief Building Official authority to enter into CP agreements
- ▶ There is an existing policy and in 2016, Toronto Building developed objective criteria for issuing CPs. The criteria are currently in draft form.

Types of Conditional Building Permits

For larger building projects, Toronto Building typically issues CPs for the relevant stage of construction

Four primary permit types by stage of construction:

- ▶ Below grade
 - ▶ Excavation and Shoring
 - ▶ Foundation

- ▶ Above grade
 - ▶ Structural
 - ▶ Building



Key Milestone - This is when DCs are calculated and payable

- ▶ Staged permits are frequently issued for construction below-grade before the first above-grade permit is issued

Scope of Our Review

- ▶ We reviewed CPs issued for 15 construction sites
 - ▶ 5 sites were identified by the complainant
 - ▶ 10 sites were selected judgmentally
 - ▶ Sites cover all 4 districts and 5 managers, with 10 of the items being selected from the South District which had the most construction activity
- ▶ In the absence of objective criteria in the existing Conditional Permit Policy we used draft criteria

Findings – Three Issue Categories

1. Conditional permits are encouraged and expedited
2. Lack of objective criteria to guide permit issuance - appears permits were issued prematurely
 - ▶ \$8 million reduction in DCs
3. Monitoring and enforcement of permit conditions needs improvement

Issues appear systemic:

- ▶ Frequency of occurrence
- ▶ Number of staff exhibiting actions
- ▶ Actions were identified as performance accomplishment

Issue Category 1

CPs – Encouraged and Expedited

- ▶ Division staff use judgement to prepare a list of sites that may be eligible for a CP – issue of administrative fairness and consistency
- ▶ Those on the list are contacted, advised of the pending DC increase, and invited to apply for a CP
- ▶ Staff performance appraisals cite saving developers DCs as an accomplishment

CPs – Encouraged and Expedited

Recommendations

- ▶ Ensure fairness and consistency in communications with potential applicants
- ▶ Ensure staff performance objectives align with Divisional and City objectives balancing customer service with City's objectives

Issue Category 2

Lack of Objective Criteria, Premature Issuance

- ▶ Permits were issued in accordance with policies in existence at the time
- ▶ We applied Division's draft CP issuance guidelines as they have objective criteria
 - ▶ 2 files did not have proper zoning in place
 - ▶ 11 of 15 CPs reviewed appear to have been issued prematurely
- ▶ In some cases, more than 2 years before draft criteria were met
- ▶ Reduction in City's DC revenues of \$8 million on 15 sites
- ▶ Given small sample size, potential losses much greater

Illustrative Example - Objective

- Item B in Table 1
 - Picture 16 months after CP issued, 4 levels of underground parking to be completed



Illustrative Example - Objective

- Item K in Table 1
 - Picture from two years after CP issued. CP was subsequently revoked

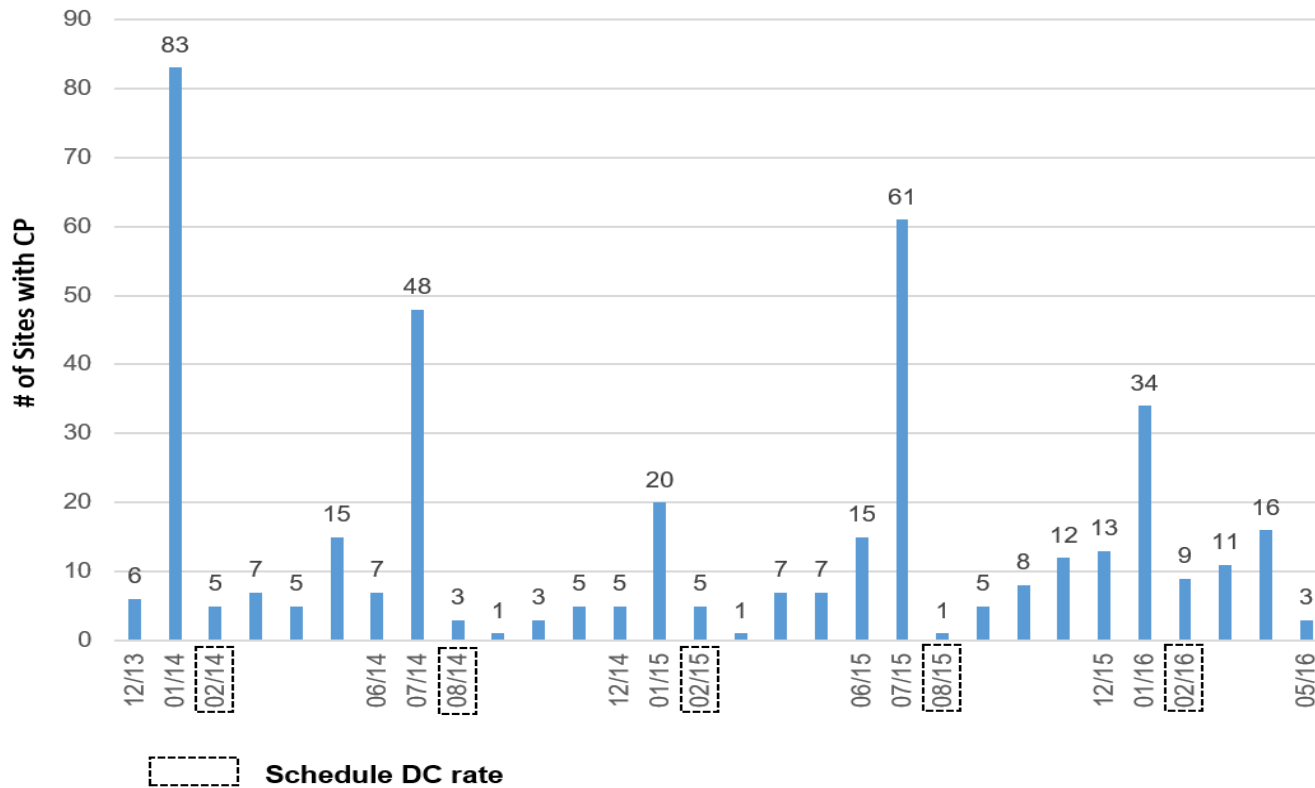


Table 1

	Days Before DC Increase	Status of Above-Grade Construction	DC Revenue Reduction
A	3 days	Only excavation was completed 13 months later	\$3,000,000
B	2 days	Shoring in progress 16 months later	\$1,600,000
C	1 day	Only shoring and excavation was completed 31 months later	\$900,000
D	1 day	6 months later, worked on P1 level	\$500,000
E	5 days	19 months later, worked on P1 level	\$500,000
F	2 days	8 months later, worked on P1 level	\$400,000
G	1 day & 2 days	As of July 2017, no above-grade work has started	\$400,000
H	1 day	Excavation was complete 14 months later	\$300,000
I	3 days	CPs were issued before the collection of DC	\$200,000
J	2 days	Worked on P 2 level 6 months later	\$200,000
K	1 day	No construction for two years & CP was revoked after two years	\$0
Total Estimated Loss in DC Revenue			<u>\$8,000,000</u>

Workload pressures

- ▶ A large number of CP applications are received immediately before a DC rate increase:



Lack of Objective Criteria, Premature Issuance

Recommendations

- ▶ Finalize and implement draft criteria
- ▶ Strengthen controls over CP issuance
- ▶ Enhance documentation in support of decisions

Monitoring and Enforcement of CP Conditions

Due diligence in issuing CPs is important given limited enforcement mechanisms

- ▶ CP conditions not being met
- ▶ Inconsistent inspections to determine if conditions met
- ▶ Parkland Levies and Educational Development Charges not always collected when due

Monitoring and Enforcement of CP Conditions

Recommendations

- ▶ Review and update permit monitoring and enforcement practices
- ▶ Implement measures to apply enforcement practices consistently
- ▶ Propose any changes to Municipal Code to facilitate compliance

Recap & Conclusion

Issues

- ▶ Encouraging and expediting CPs
- ▶ Lack of objective criteria
- ▶ Monitoring and enforcement

Way Forward

- ▶ Balancing customer service and consistency
- ▶ Shift from subjective to more objective criteria
- ▶ Addressing subjective criteria should ease pressure on monitoring and enforcement

Recap & Conclusion

- ▶ Management has agreed to all 17 recommendations
- ▶ We have suggested many of the recommendations should be considered in the End to End Review of the Development Review Process being led by the Chief Transformation Officer

Questions?