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**TO:** GENERAL COMMITTEE

**SUBJECT:** DECLARATION STATEMENTS REQUIRED BY THE CONDOMINIUM ACT FOR VACANT LAND CONDOMINIUM DEVELOPMENTS

**WARD:** ALL

**PREPARED BY AND KEY CONTACT:** C. PACKHAM, LEGAL COUNSEL Ext. #4511

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

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

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### **RECOMMENDED MOTION**

1. That the Mayor and City Clerk be authorized to execute standard statements required under the Condominium Act, 1998 for Vacant Land Condominium Declarations that confirm sufficient securities have been posted to complete all site servicing, common elements and facilities required for the proposed Vacant Land Condominium Development, at the direction of the General Manager of Infrastructure and Growth Management, and in form satisfactory to the Director of Legal Services.

### **PURPOSE & BACKGROUND**

2. Recently the City has received a site plan application for the development of a Vacant Land Condominium. Vacant Land Condominiums are a form of condominium development that are permitted under Part XII of the *Condominium Act*, 1998 (the "Act"). These condominiums resemble plans of subdivision, as what become legal units in the condominium that are ultimately sold to individual homeowners function similarly to lots within a subdivision. The key practical difference between a Vacant Land Condominium and a plan of subdivision is that all facilities in a Vacant Land Condominium remain privately owned, and are not assumed by the Municipality following a required maintenance period.
3. Vacant Land Condominiums provide the developer with the ability to register the condominium declaration and description – the legal documents that ultimately create the condominium (the "Condominium Documents" – prior to the completion of all internal site services, common elements and facilities (the "Site Works"). Once registered, the developer can then market and sell the units essentially as lots. Much like lots in a plan of subdivision, the units can be sold prior to the completion of all Site Works.
4. In order to register a Vacant Land Condominium prior to completion of Site Works, the developer is required by Section 158(1)(b) of the Act and Section 56(8) of Ontario Regulation 58/01 (passed under the Act), to include a statement in the Condominium Documents, signed by an authorized representative of the Municipality in which the condominium is located, certifying that sufficient security has been posted to ensure that all Site Works will be completed. The statement also requires that the City will require that subsequent amendments to the Condominium Documents will be registered by the developer, once it can demonstrate, to the City's satisfaction and certified by appropriate engineers and architects, that all Site Works have been completed.

5. A sample of the statement is attached hereto as Schedule "A." The language of the statement is not subject to any amendment or change, as the language is determined by the provisions of the Act and Ontario Regulation 58/01.
6. The City is required by Section 158(3) of the Act to hold security equaling 100% of the estimated cost to complete the Site Works. This security is to be released by the City once the Site Works have been completed. If the Site Works are not completed, the security is available to the City to fund completion of the Site Works.

### **ANALYSIS**

7. The existing site plan application process ensures a careful review of the Site Works required for condominium developments, and an accurate determination of the costs required to complete Site Works and the amount of securities required. The site plan application process does not, however, provide any explicit authority to the City to sign the statements required by the Act to allow developers to register Vacant Land Condominiums prior to completion of Site Works.
8. While there is no mandatory requirement that the City sign these statements, they do form part of a cohesive approval regime under the Act to allow for the efficient development of Vacant Land Condominiums while protecting the City's interest in ensuring that required Site Works are completed in full to the City's satisfaction. This legislative framework in connection with the existing site plan approval process creates a comprehensive mechanism which ensures that this type of condominium development can proceed with minimal risk that Site Works will not be completed after the statements are signed by the City, the condominium is registered, and units are sold.
9. Permitting the execution of these statements will also afford developers the ability to take advantage of the benefits of developing a Vacant Land Condominium in accordance with the Act. It will allow them to register the necessary Condominium Documents that will create units that can be sold to potential purchasers prior to the completion of Site Works, which in turn increases the profitability and attractiveness of this form of development.
10. The risk associated with this process is that in circumstances where a developer becomes unable to complete the Vacant Land Condominium development, unanticipated or escalated costs may result in the amount of security collected at being insufficient to complete the Site Works. Although One-Hundred Percent of the estimated costs of Site Works are to be collected at the outset, it is possible that over time the costs could increase. This however is no different in practice than our collection and administration of securities under the Plan of Subdivision approval process.

### **ENVIRONMENTAL MATTERS**

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

### **ALTERNATIVES**

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

**Alternative #1** General Committee could choose not to authorize the Mayor and City Clerk to execute the statements regarding Site Works for Vacant Land Condominiums

This alternative is not recommended as it would likely discourage developers from developing vacant land condominiums, as it would prevent them from registering the condominium prior to completion of Site Works and would provide no real incentive for developers to proceed with this type of development. Additionally,

the statements are contemplated by the Act and while there is no mandatory requirement, it would be beneficial in permitting this type of development.

**FINANCIAL**

13. The recommendation to General Committee ensures that all securities to complete Site Works for Vacant Land Condominiums are posted at an early stage, and will make available adequate financial resources upon which to draw to complete the Site Works.

**LINKAGE TO 2014-2018 STRATEGIC PLAN**

14. 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

**Schedule "A"**

**CONDOMINIUM ACT, 1998  
STATEMENT OF MUNICIPALITY**

We hereby confirm that security has been posted by [INSERT NAME OF OWNER HERE] with the Corporation of the City of Barrie in respect of the proposed vacant land condominium on [INSERT LEGAL DESCRIPTION HERE] and that the said security is sufficient to ensure that:

1. the buildings and structures that the declaration and description show are included in the common elements will be completed and installed in accordance with the regulations made under the Act;
2. the facilities and services that the declaration and descriptions show are included in the common elements will be installed and provided in accordance with the regulations made under the Act;
3. the items described in clause 158 (3)(b) of the Act will be included in an amendment to the description.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017