

Committee of the Whole (Working Session) Report

DATE: Wednesday, April 6, 2022

WARD(S): ALL

TITLE: STRATA TITLE ARRANGEMENT UPDATE REPORT

FROM:

Haiqing Xu, Deputy City Manager, Planning and Growth Management

ACTION: DECISION

Purpose

To provide an update on Stratified Title Arrangements within public rights-of-way and parks.

Report Highlights

- The Vaughan Official Plan 2010 (“**VOP 2010**”) does not include policies addressing Stratified Title Arrangements (“**Strata**”).
- The Vaughan Metropolitan Centre Secondary Plan (“**VMCSP**”) contains limited and scoped policies supporting Strata for public roads and parks where a minimum 10,000 m² of office uses are present (among other qualifiers).
- In 2013, Council endorsed Guiding Principles for Strata Title Arrangements, including next steps requiring further review.
- Development applications across the City are proposing Strata.
- City staff conducted a jurisdictional review with surrounding municipalities and engaged with key internal departments to gain greater insight into the experience others have had with Strata.
- The concurrent updates to the VOP and VMCSP present opportunities to review policies associated with Strata.

Recommendations

1. THAT Council approve staff to further evaluate the use of Strata in the City and determine the financial obligations to retain an external consultant to obtain expert advice associated with Strata Title Arrangements.

Background

Strata is a determination of ownership or use of land divided both in a horizontal and vertical manner and can be above and/or below grade. The City may consider Strata for municipal rights-of-way and public parks to accommodate private sector uses including underground parking garages, underpasses, overpasses and other building related elements.

Guiding principles and next steps were previously endorsed by Council in consideration of Strata.

On April 11, 2013, staff presented a report to the VMC Sub-Committee on Strata Title Arrangements which was subsequently endorsed by Council on June 4, 2013. The purpose of that report was to provide an update on the research and findings of Strata and produce a preliminary set of guiding principles. Winco Management Group Incorporated was retained for the report and study. The report contained 17 guiding principles and 5 specific park Strata principles that were intended to be an initial basis for assessing proposals for Strata Title Arrangements in the City.

The report identified seven items requiring further review in consideration for Strata in roads and parks. They include:

1. Determine if Strata is a feasible option for development in the VMC and potentially other significant Intensification areas.
2. Weigh the possible risks and benefits of entering into such agreements.
3. Develop implementation guidelines and processes for developments proposing stratified title arrangements.
4. Determine appropriate contributions by the Landowner/Applicant to the City in instances where stratified title arrangements are considered appropriate.
5. Identify policies that would need to be amended and developed in order to permit stratified title arrangements in instances where arrangements might be supportable.
6. Determine what agreements would need to be entered into by the City and the Applicant in order to protect the City's current and future interests.
7. Explore alternative options that may accomplish the same objectives as Strata title arrangements.

The VMCSPP has limited and scoped policies in place for Strata roads and parks.

The VMCSPP currently contemplates parking structures being built under local roads or mews pursuant to policy 4.3.6. It states:

- 4.3.6 *The City may permit parking, including access to parking, under a Local Street, public Mews, or laneway provided the intended purpose, function and character of the street/mews are not materially or qualitatively compromised, and subject to a Strata Title Agreement and the following conditions.*
- a. *The development proposal related to the Strata parking request, includes an office component of greater than 10,000 m².*
 - b. *The Strata Title Arrangements shall be based on City Strata ownership of the public street/mews over the privately owned underground structure.*
 - c. *Where a new street/mews will entail the inclusion of significant sub-surface infrastructure, the Strata Title Arrangement shall be limited to under the boulevards of the new street/mews. If there is no significant infrastructure required under the new local road/mews, the Strata Title Arrangement may be permitted underneath the full road width.*
 - d. *The Strata Title Agreement shall address the mitigation strategies for risks associated with Strata Title Arrangements (roads), including but not limited to required standards and provisions for the construction and maintenance of the subsurface structure, and liability issues, to the satisfaction of the City.*

Additionally, the VMCSPP contemplates Strata in the public parks context pursuant to policy 6.2.10. It states:

- 6.2.10 *The appropriateness of any proposed Strata park will be considered through the development application process, supported by a justification report submitted by the applicant. Should the park be approved such arrangements shall be reflected in an agreement(s) satisfactory to the City. Generally, the following principles will guide the consideration of proposals for Strata Park Arrangements with the outcome reflected in the implementing agreement(s):*
- a. *Strata arrangements for parks shall only be considered where the parkland is provided at grade, is publicly accessible, and meets all other requirements of its respective park classification as per section 7.3.2 of the VOP 2010.*
 - b. *The park, together with the air rights above it, shall be in public ownership as dedicated parkland.*
 - c. *The City will retain sole and unencumbered control of the surface lands above the Strata title, and operate the park as part of the City's public parkland network system.*
 - d. *All surface Strata to be conveyed to the City for use as public parkland should be free of all surface easements, structures and systems that would have a negative impact on the design, construction and use of the proposed public park facilities.*

- e. *The parkland credits for a Strata park will be based on a partial parkland credit formula which takes into account the potential additional costs of the development and maintenance of a Strata park block, liabilities and the limited uses that are inherent with this type of land development.*
- f. *The Strata park will be designed in a manner commensurate with the planned function of the park and be structurally designed to accommodate the required facilities and landscaping. Such matters will be addressed through the site plan review process.*
- g. *The City shall develop implementation guidelines to further detail the required legal agreements and protocol for entering into Strata Park Arrangements; and may develop guidelines for any other matters related to Strata parks as deemed appropriate.*

Staff presented the Parkland Dedication Guideline Study to Council in February of 2022.

In regard to parkland dedication, staff presented the Parkland Dedication Guideline Study to Council on February 9, 2022. Parkland dedication opportunities for consideration in Strategic Growth Areas, subject to further review and criteria, include Strata parks where parkland dedication is provided to the city in a stratified ownership arrangement with appropriate considerations for the stratified land value, development/operational constraints and lifecycle cost implications.

Previous Reports/Authority

[Stratified Title Arrangements Report – File 15.117, VMC Sub-Committee which was approved on June 4, 2013](#)

Analysis and Options

There is an increase in requests for staff to consider Strata arrangements in reviewing development applications with specific triggers being proposed; the majority of the requests do not align with the City’s existing policies or exist outside of the VMC.

Development proposals in the VMC, and across the City, have increasingly proposed Strata. Staff understand that Strata is proposed as a way to maximize land use, and in response to the significant rise in land prices and spatial limitations. Over the past decade, the trend in development has been to seek significantly higher density permissions than what is permitted, which was contributed to the need to maximize land use.

Another factor cited by the development community in seeking Strata is the desire to minimize construction costs which increase as parking garages are built deeper below a structure. As an example, the water table in parts of the VMC area is known to be problematic, increasing the costs of such construction. Constructing a shallower parking garage below a broader area is more economically efficient for developers. Accordingly, Strata is seen as a benefit. Should the costs related to constructing underground parking garages become prohibitive, it could impede the development potential of the VMC for those seeking additional density permissions.

Through the recommendations of this report and with the concurrent updates to the VOP and VMCSPP, opportunities are presented to further review the City's limited policies associated with Strata. It is in the City's best interest to evaluate if, when and how underground parking structures from condo, commercial, and public ownership perspectives should be introduced beneath public streets or parks. Strata are complex arrangements, involving various risks that need to be considered while ensuring the proper mechanisms are in place to protect the City's interests.

City staff conducted a jurisdictional review with surrounding local municipalities and found that there are no specific or general policies in support of strata arrangements; where strata exists, it is on a limited basis.

City of Vaughan staff conducted a jurisdictional review by meeting with surrounding municipalities to obtain insights in their experiences with Strata. It was found that more urbanized municipalities, such as City of Toronto and City of Mississauga, do not have specific policies to support Strata and have very few examples of private ownership arrangements under public roads and public parks.

These municipalities noted a desire to have complete control above and below the public roads to ensure no limitations when replacing services and infrastructure. Instead, they encouraged transit use and active transportation through reducing parking requirements in development proposals.

Furthermore, to help facilitate connectivity, these urban municipalities permitted the use of pedestrian tunnels underneath public roads connecting to transit or walkways using License Agreements or Encroachment Agreements. Another major urban centre, the City of Ottawa (which also does not have specific or general policies in support of strata), has tasked staff with tracking and monitoring Strata proposals. However, they found that the Land Registry Office may refuse to register Strata Agreements on title and that this should be verified with the registry office prior to considering Strata.

Other local area municipalities are in the process of conducting their own reviews with respect to implementing policies in support of strata arrangements.

In other local area municipalities, such as City of Richmond Hill, City of Markham, and Town of Newmarket, it is understood that they are exploring Strata and are in the early stages of determining feasibility. As they are similarly receiving new development applications for Strata, they are evaluating applications on a case-by-case basis including categorizing the application as full or partial Strata, public access easement, privately owned public space (POPs), and private encroachments.

City staff engaged with key internal departments to ensure a collaborative and unified approach across the corporation and have identified various opportunities and challenges.

Staff continue to receive new applications in the VMC and other areas across the City proposing Strata which impact the decisions from many departments. To understand the opportunities and challenges faced by the varying departments, VMC staff arranged working sessions with several internal stakeholders. Collaboration is critical as the City moves forward and make decisions on these type of proposals.

Some of the common opportunities and challenges that Staff identified with respect to strata are as set out below:

Opportunities	Challenges
Flexibility for land use to provide a better design and additional parking	Risks and liabilities associated with private/public shared ownerships
City road ownership and maintaining public assets	Private underground garage membranes are susceptible to leaks causing water damage and costly repairs
Ability to protect for public parking spaces in private underground garages	Hinders City’s abilities for upgrading or maintenance of underground servicing
Potential to accommodate underground walking connections and/or retail	Requires complex Legal Agreements and Strata
Provides possible solutions for providing underground parking where a site is limited by high groundwater restricting the number of parking levels	Green Infrastructure may not be possible where Strata exist (loading tolerance on underground structure, and ensuring sufficient soil volume above the structure to support the planting of trees)

Establishes clear roles and responsibilities between the developers, condos, and City based on lifecycle maintenance and replacement needs	Multiple condo ownerships and registering Agreements on title
Develop engineering standards to ensure high quality construction	Assessing the financial and legal impacts
Provides parks in time for occupancy through a developer build agreement	Limited flexibility in Strata parks due to structural constraints, vertical servicing requirements, private access easements, higher level of service, replacement costs, and warranty issues

Accordingly, staff are recommending that Council provide approval to further evaluate the use of Strata in the City and determine the financial obligations in retaining an external consultant to obtain expert advice associated with Strata Title Arrangements. The options resulting from the findings of the consultant’s work may inform the policy framework in the ongoing VOP and VMCSPP updates.

Engineering standards and legal obligations shall be reviewed and roles and responsibilities between the City, developer, and condo corporations shall be established through this process. In situations where capital costs impacts are unaccounted for in the City’s current level of service, this may trigger requirements for additional developer contributions to compensate for the additional costs. Where Strata is feasible and supported by policy, the goal is to ensure that the City has the framework to execute Strata Title Arrangements while protecting the City’s interests.

Financial Impact

Financial impacts of implementing Strata Title Arrangements are yet to be determined. Any financial impact will be reported on a future date following Council endorsement.

Broader Regional Impacts/Considerations

Not applicable.

Conclusion

The City has limited policies in place for Strata Title Arrangements. These narrow policies need to be further reviewed to support the objectives of the City where Strata policies are supportable. Staff recommend seeking expert advice to inform the review of such policies through the VOP and VMCSPP reviews. While the City continues to receive development applications that propose Stratified Title Arrangements, we need

to ensure that the City has the proper policies and tools in place to protect the City's interest.

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Attachments

Not applicable.

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