

**39CD-14501
SP15-009524
A. MacLean**

| | |
|-----------------|---|
| TO: | CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE |
| FROM: | G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL |
| SUBJECT: | NOTICE OF APPEAL TO THE ONTARIO MUNICIPAL BOARD PL150688/PL150398 161 WINDERMERE ROAD MEETING ON SEPTEMBER 21, 2015 |

RECOMMENDATION

That, on the recommendation of the Manager, Development Planning, in response to letters of appeal by Suzanne deJong and Tridon Properties Ltd. to the Ontario Municipal Board dated May 7, 2015 relating to the Vacant Land Condominium application being PL150398, and dated August 5, 2015 relating to Site Plan being PL150688, for the property located at 161 Windermere Road:

- a) The City Solicitor and Managing Director, Development and Compliance Services and Chief Building Official **BE DIRECTED** to provide legal and planning representation at the Ontario Municipal Board Hearing and to take such steps as are necessary to support the Approval Authority's position relating to the appeal to the Vacant Land Condominium application being Ontario Municipal Board File Number PL150398; and,
- b) The City Solicitor and Managing Director, Development and Compliance Services and Chief Building Official **BE DIRECTED** to provide legal and planning representation at the Ontario Municipal Board Hearing and to take such steps as are necessary to support the Approval Authority's position relating to the appeal of the Site Plan application, being Ontario Municipal Board File Number PL150688.

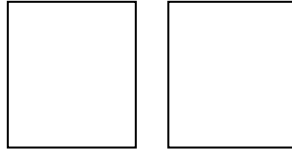
PREVIOUS REPORTS PERTINENT TO THIS MATTER

March 2, 2015 - Report to PEC relating to the appeal to the requested Zoning By-law amendment

November 18, 2014 – Original report to PEC on zoning by-law amendment and vacant land condominium applications.

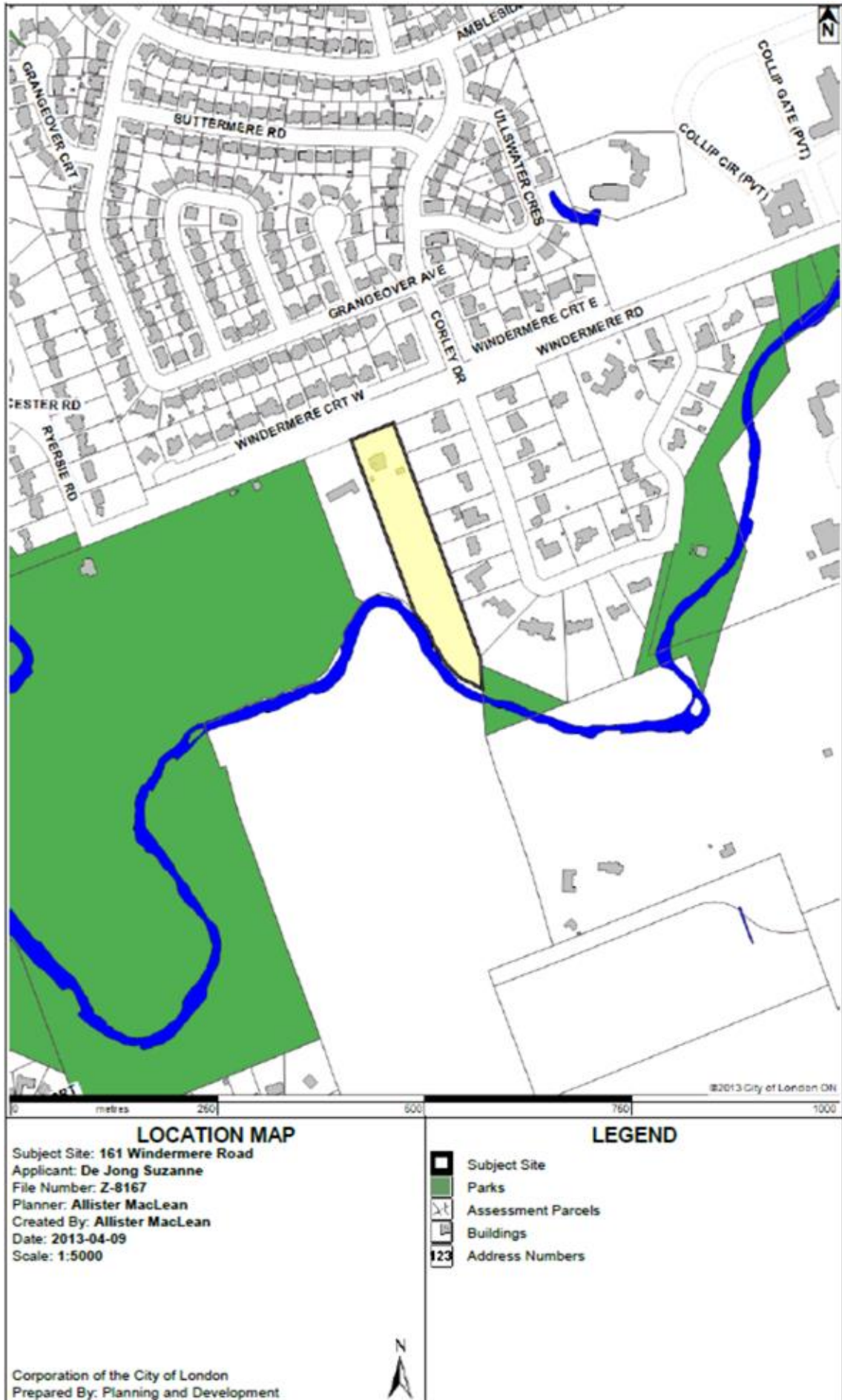
PURPOSE AND EFFECT OF RECOMMENDED ACTION

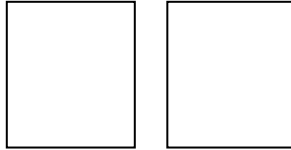
The purpose and effect of the recommended action is to direct The City Solicitor and Managing Director, Development and Compliance Services and Chief Building Official to represent the City of London Approval Authority and to take such steps as may be necessary to support the Approval Authority's position relating to appeals of the Vacant Land Condominium and Site Plan applications which are currently before the Ontario Municipal Board.



39CD-14501
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Location Map





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BACKGROUND

This application was presented at a public participation meeting on November 18, 2014 before the Planning and Environment Committee. At that time, numerous stakeholders including area residents, the Upper Thames Conservation Authority and community groups were in attendance. As a result of issues raised at the public participation meeting, the application was recommended for referral back to Staff for additional information and further report to the Planning and Environment Committee.

In December 2014, on the basis of Council's non-decision within 120 days of receipt of the complete application, the applicant appealed the proposed Zoning By-law amendment application (Z-8167) to the Ontario Municipal Board.

By way of Council Resolution dated March 10, 2015, the City Solicitor was directed to provide legal and planning or expert witness representation at the Ontario Municipal Board hearing of the zoning appeal in support of the position of Municipal Council.

The applicant, Suzanne deJong and Tridon Properties Ltd. ("Tridon") has now filed with the Ontario Municipal Board two additional appeals relating to the property located at 161 Windermere Road.

ADDITIONAL APPEALS TO THE ONTARIO MUNICIPAL BOARD

On May 7, 2015, Tridon filed with the Ontario Municipal Board an appeal of its Vacant Land Condominium application, on the basis of the Approval Authority's failure to make a decision on the application within the prescribed time frame (180 days). (attached as Appendix 1)

Following submission of this second appeal, a prehearing conference relating to the zoning and vacant land condominium appeals was originally scheduled by the Ontario Municipal Board for June 24, 2015. This prehearing conference was subsequently cancelled in order to permit Tridon time to file its site plan appeal.

On August 5, 2015, Tridon filed an appeal of site plan with the Ontario Municipal Board given that no decision had been rendered by the Approval Authority within the prescribed 30 day time frame. On its own initiative, the Ontario Municipal Board then joined all three appeals together. The three appeals have now been scheduled for a global prehearing conference on October 26, 2015. At that time, the parties and issues for appeal will be identified and a date for hearing of the appeals will be set.

It should be noted that staff reviewed the applicant's Site Plan submission and provided comments on May 5, 2015 (attached as Appendix 2). In response to these comments, the applicant has submitted revised drawings which are now currently under review by Staff.

CONCLUSION

The property owner, Tridon, has now appealed zoning, vacant land condominium and site plan to the Ontario Municipal Board. Municipal Council has previously directed that the City Solicitor and Managing Director, Development and Compliance Services and Chief Building Official provide representation at the Ontario Municipal Board with respect to the zoning appeal.

A further direction, in accordance with the recommendation contained herein, is necessary in order to permit the City Solicitor and Managing Director, Development and Compliance Services and Chief Building Official to represent the City of London Approval Authority and to take such steps as may be necessary to support the Approval Authority's position relating to appeals of the vacant land condominium and site plan applications which are currently before the Ontario

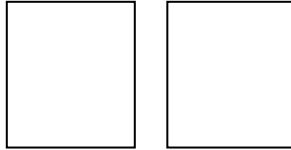
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**39CD-14501
SP15-009524
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Municipal Board.

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| RECOMMENDED BY: | |
| | |
| ALLISTER MACLEAN MANAGER - DEVELOPMENT PLANNING | |
| REVIEWED BY: | SUBMITTED BY: |
| | |
| TERRY GRAWAY MANAGER-DEVELOPMENT SERVICES AND PLANNING LIAISON | G. KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL |

AM/am
"Attach"



**39CD-14501
SP15-009524
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**Appendix 1
OMB Appeal**



Environment and Land Tribunals Ontario
Ontario Municipal Board
655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5
TEL: (416) 212-6349 or Toll Free: 1-866-448-2248
FAX: (416) 326-5370
www.elto.gov.on.ca

**APPELLANT FORM (A1)
PLANNING ACT**

**SUBMIT COMPLETED FORM
TO MUNICIPALITY/APPROVAL AUTHORITY**



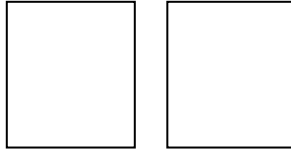
Receipt Number (OMB Office Use Only)

Part 1: Appeal Type (Please check only one box)

| SUBJECT OF APPEAL | TYPE OF APPEAL | PLANNING ACT REFERENCE (SECTION) |
|--|---|----------------------------------|
| Minor Variance | <input type="checkbox"/> Appeal a decision | 45(12) |
| Consent/Severance | <input type="checkbox"/> Appeal a decision | 53(19) |
| | <input type="checkbox"/> Appeal conditions imposed | |
| | <input type="checkbox"/> Appeal changed conditions | 53(27) |
| | <input type="checkbox"/> Failed to make a decision on the application within 90 days | 53(14) |
| Zoning By-law or Zoning By-law Amendment | <input type="checkbox"/> Appeal the passing of a Zoning By-law | 34(19) |
| | <input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days | 34(11) |
| | <input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality | |
| Interim Control By-law | <input type="checkbox"/> Appeal the passing of an Interim Control By-law | 38(4) |
| Official Plan or Official Plan Amendment | <input type="checkbox"/> Appeal a decision | 17(24) or 17(36) |
| | <input type="checkbox"/> Failed to make a decision on the plan within 180 days | 17(40) |
| | <input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days | 22(7) |
| | <input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality | |
| Plan of Subdivision | <input type="checkbox"/> Appeal a decision | 51(39) |
| | <input type="checkbox"/> Appeal conditions imposed | 51(43) or 51(48) |
| | <input checked="" type="checkbox"/> Failed to make a decision on the application within 180 days | 51(34) |

Part 2: Location Information

161 Windermere Road, London, Ontario
Address and/or Legal Description of property subject to the appeal:



39CD-14501
SP15-009524
A. MacLean

Municipality/Upper tier: **Municipality of the City of London**

Part 3: Appellant Information

First Name: _____ Last Name: _____

Tridon Properties Ltd.
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

Professional Title (if applicable): _____

E-mail Address: _____
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: _____ Alternate Telephone #: _____

Fax #: _____

Mailing Address: _____
Street Address Apt/Suite/Unit# City/Town
Province Country (if not Canada) Postal Code

Signature of Appellant: _____ Date: _____
(Signature not required if the appeal is submitted by a law office.)

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

Part 4: Representative Information (if applicable)

I hereby authorize the named company and/or individual(s) to represent me:

First Name: Fred Last Name: Tranquilli

Company Name: Lernalers LLP

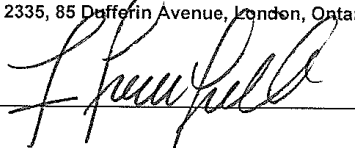
Professional Title: Lawyer

E-mail Address: ftranquilli@lernalers.ca
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 519 640 6353 Alternate Telephone #: 519 672 4510

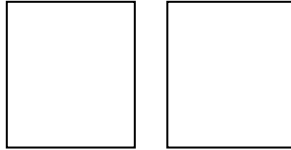
Fax #: 519 932 3353

Mailing Address: P.O. Box 2335, 85 Dufferin Avenue, London, Ontario N6A 4G4

Signature of Appellant:  Date: May 7/15

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.



39CD-14501
SP15-009524
A. MacLean

Part 5: Language and Accessibility

Please choose preferred language: English French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

Part 6: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print)
Failure of the City of London to issue a decision in accordance with the *Planning Act* with respect to the plan for Vacant Land Condominium filed by Tridon Properties Ltd. (City of London File # 39CD-14501).
The Appellant has requested that matters related to the Site Plan be referred to the Board filed by Tridon Properties Ltd. (City of London site plan file # SP15-009524). The site plan cannot be granted until the zoning conforms to the proposed use. The zoning bylaw amendment appeal has been submitted to the Ontario Municipal Board (OMB File # PL141425)

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). **If more space is required, please continue in Part 9 or attach a separate page.

(Please print)
On behalf of the owner, Suzanne de Jong, Tridon Properties Ltd. ("TPL"), incorrectly identified in the City of London documents as Tridon Group Ltd.) filed an Application to amend the Zoning Bylaw with respect to the property known municipally as 161 Windermere Road, London, Ontario ("the property"). An appeal of the Municipal Council's failure to make a decision with respect to the Zoning Bylaw Application has already been filed and referenced as OMB Case #: PL141425.
TPL's Site Plan for the property was accepted as complete on March 11, 2014 and revised February 19, 2015. On the basis that the municipality has failed to approve the Site Plan, a request that the matter of the Site Plan for the property be referred to the Board has been sent to the secretary of the Board and to the City Clerk in accordance with s.41(12) of the *Planning Act*.
TPL's proposed Vacant Land Condominium for the property was submitted January 27, 2014, and accepted as a complete application on February 7, 2014.
It has been more than 120 days since TPL's Application for Vacant Land Condominium was accepted as complete and the Municipal Council has failed to render a decision with respect to the Application for Vacant Land Condominium as required under s. 51(34) of the *Planning Act*.

THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE PLANNING ACT.

a) DATE APPLICATION SUBMITTED TO MUNICIPALITY:

(If application submitted before January 1, 2007 please use the O1 'pre-Bill 51' form.)

b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:

**If more space is required, please continue in Part 9 or attach a separate page.

[Empty rectangular box for explanatory note]

Two empty rectangular boxes for agenda item and page number.

39CD-14501
SP15-009524
A. MacLean

Part 7: Related Matters (if known)

Are there other appeals not yet filed with the Municipality? YES NO
Are there other planning matters related to this appeal? YES NO
(For example: A consent application connected to a variance application)

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

(Please print)
Appeal of the Municipal Council's failure to make a decision with respect to the Application for Re-Zoning - OMB Case #: PL141425

Part 8: Scheduling Information

How many days do you estimate are needed for hearing this appeal? half day 1 day 2 days 3 days
 4 days 1 week More than 1 week – please specify number of days: _____

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?
Seven

Describe expert witness(es)' area of expertise *(For example: land use planner, architect, engineer, etc.):*
Land Use Planner, Hydrogeologic, Civil and Geotechnical Engineers, Arborist, Ecologist/Biologist, Heritage Planner

Do you believe this matter would benefit from mediation? YES NO
(Mediation is generally scheduled only when all parties agree to participate)

Do you believe this matter would benefit from a prehearing conference? YES NO
(Prehearing conferences are generally not scheduled for variances or consents)

If yes, why? To insure an orderly schedule for the hearing, timetable for the exchange of reports/witness lists.

Part 9: Other Applicable Information **Attach a separate page if more space is required.

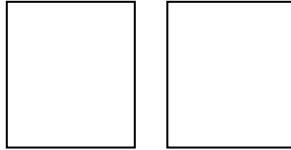
Three empty horizontal lines for additional information.

Part 10: Required Fee

Total Fee Submitted: \$ 125.00

Payment Method: Certified cheque Money Order Solicitor's general or trust account cheque

- The payment must be in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- PLEASE ATTACH THE CERTIFIED CHEQUE/MONEY ORDER TO THE FRONT OF THIS FORM.



**39CD-14501
SP15-009524
A. MacLean**

**Appendix 2
Staffs Comments on the Site Plan Submission**



300 Dufferin Avenue
P.O. Box 5035
London, ON
N6A 4L9

London
CANADA

May 5, 2015

Tridon Group
609 William Street, Suite 200
London, ON N6B 3G1
Attn: Paul Hinde, Manager – Land Development

Dear Mr. Hinde:

**RE: Proposed Vacant Land Condominium
161 Windermere Road - Site Plan Application SP15-009524**

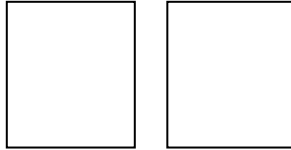
We have undertaken a review of your site plan application based on the regulations of the Holding Residential Special Provision (h*h-5*h-35*h41*R6-1()) Zone endorsed by the Municipal Council at its meeting held on April 14, 2015. At this time our preliminary comments on the site plan, based on the Zoning endorsed by Council, are as follows:

Zoning

- Holding provisions requiring: a public meeting, enter into a development agreement, and pursue designation under the Ontario Heritage Act.
- Special provision recommended limiting the development to five units.
- Holding provision removal requires a separate application.

General Site Planning Comments

- Revise the width and location of the access to preserve the hedge row along the east side of 151 Windermere in accordance with the tree preservation study. Note: the current report recommends relocating plant materials at 1515 Windermere and that is not permitted, you can revise your driveway location. Provide 9 m curb radii to accommodate and reduce the proposed width to 6.0 m.
- Provide a reference plan for the 0.692m that would be required to achieve 10.75m from centerline of construction and add a dimension of the road widening on the site plan
- Add fire route sign locations to the site plan and include a detail from the Site Plan Control Area By-law.
- Add privacy fencing along north and south property lines abutting the existing residential development in combination with plant materials to buffer abutting residences. Update the tree preservation report to include an assessment of the impacts for the proposed privacy fencing and modify the fence line to preserve as many trees as possible. Show the location of all tree protection fencing on the site plan and site grading plan.



**39CD-14501
SP15-009524
A. MacLean**

- Relocate the proposed driveway east to preserve the existing vegetation at 151 Windermere. Add trees along the north east side of the internal road.
- Enter into a continued boulevard use agreement for the existing landscape wall on the road widening dedication along Windermere (see Council resolution September 3, 2014).
- Traffic Management Plan required for any work in the road allowance.
- Provide a report that integrates stormwater management, hydrogeology, and ecology as it relates to the seeps to demonstrate to the satisfaction of the UTRCA that the seeps will be protected – see enclosed letter dated April 7, 2015 from Christine Creighton.
- That the proponent obtain written approval from the Conservation Authority prior to undertaking any site alteration or development within this area including filling, grading, construction, alteration to a watercourse and/or interference with a wetland.
- Parkland dedication has not been collected for the subject site. Dedication of the ESA lands, as noted on the submitted site plan, with an appropriate access easement, will satisfy the parkland requirement for this development. Dedication of these lands to the city will be included as a condition of site plan approval.
- The recommendations of the approved Environmental Impact Study (AECOM January 24, 2014) and associated addendum (August 7, 2014) shall be implemented as part of this site plan. Provide a written response from the author of the EIS assessing the current site, grading and servicing plans and advising how each recommendation has been incorporated.

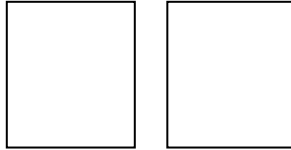
Technical Comments for the Applicant

Transportation

- Provide Traffic Management Plan(s) (TMP) for any work occurring within the Windermere Road and Windermere Court right-of-ways.
- The proposed access is to have 6.0 m curb radii as well as an access width of 6.0 m maximum (to better accommodate existing trees along the westerly property line).
- The existing brick wall within the City's right-of-way must either be removed from the City's land and the boulevard be restored to City standards in this location, or the owner may enter into an agreement with the City to have the wall remain. Please coordinate this with Development Services and ensure adequate information is provided on the engineering drawings.
- The Windermere Court pavement structure is composed of interlocking brick and must be properly restored using the same materials for consistency; provide sufficient notes on the engineering drawings to ensure that the road will be properly restored.

Servicing

- Based on the proposed stormwater management system with a direct outlet to the Medway Valley Heritage Forest Environmentally Significant Area (ESA), it is anticipated that a direct submission Environmental Compliance Approval (ECA) will be required. (The applicant may wish to confirm this requirement with the MOECC.)
- An oil-grit separator is required to provide stormwater quality in accordance with MOECC Level 1 treatment requirements.
- Provide and/or identify a storm inspection maintenance hole (it is noted that the existing STMH may be adequate for this purpose).
- Provide more detail for the underground stormwater storage tank (dimensions, inverts, catchbasin connection, structural support, separation from water service, etc.).



**39CD-14501
SP15-009524
A. MacLean**

- Due to the long length of the sanitary PDC, please consider providing a cleanout or maintenance hole at the property line (for future PDC maintenance).
- Provide more detail for the individual private sanitary pumps (e.g. specific model(s), typical detail, etc.) as well as the forcemain connection to the gravity system (specific manhole detail). (It is noted that the private sanitary pump system will be subject to the Ontario Building Code requirements and will require approval from the City's Building Division.)
- The "Water Distribution System Analysis" and "Servicing Study" reports must be properly sealed by a professional engineer; please revise and resubmit.

As you are aware, the Zoning By-law amendment application (File Z-8167) has been appealed to the Ontario Municipal Board based on Council's non-decision within 120 days of receipt of the complete application.

Section 9(a) of the Site Plan Control Area By-law prohibits the approval of plans and drawings that do not comply with applicable zoning and a decision on the site plan application cannot be issued at this time because the proposed development does not comply with the current Residential R1(R1-9) zoning.

If the zoning that permits the proposed development is approved and applicable holding provision requirements have been satisfied, we will be in a position to finalize our review of the site plan. A final decision on the application will be issued by the Approval Authority after the public meeting has been held (if required).

While we are not in a position to issue a final decision on the site plan application at this time, we can continue to provide comments within the context of proposed zoning and the City's Site Plan Control Area By-law.

Please don't hesitate to contact our office if you should have any questions.

Yours truly,

Terry Grawey
Manager of Development Services & Planning Liaison
Site Plan Approval Authority

- Enclosed:
- Red-line site engineering plans
 - Green-line site plan
 - Environmental Impact Study Recommendations (from August 7, 2014 AECOM report)
 - Memo from London Hydro
 - April 7, 2015 letter from the Upper Thames River Conservation Authority
 - September 3, 2014 Council resolution regarding use of dedicated boulevard lands

- Cc (via email):
- Nicole Halt, Solicitor II
 - George Kotsifas, Managing Director, Development & Compliances Services & CBO
 - Jennie Ramsay, Manager, Development Servicing & Engineering Liaison
 - Allister MacLean, Manager, Development Planning
 - Eric Conway, Landscape Planner