

TO:	CHAIR AND MEMBERS CIVIC WORKS COMMITTEE MEETING ON APRIL 2nd, 2012
FROM:	JOHN BRAAM, P.ENG. ACTING EXECUTIVE DIRECTOR, PLANNING, ENVIRONMENTAL & ENGINEERING SERVICES & CITY ENGINEER
SUBJECT	ROAD WIDENING POLICY

RECOMMENDATION

That, on the recommendation of the Acting Executive Director, Planning, Environmental & Engineering Services & City Engineer, the attached proposed by-law **BE INTRODUCED** at the Municipal Council meeting on April 10th, 2012 for the purpose of amending Council Policy 25(2) entitled "Land Dedication" in order to reflect the amendments to the Official Plan in OPA 438.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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None.

BACKGROUND

Purpose:

To update the City's road widening policies pertaining to approval of new developments.

Context:

Recent revisions to the City's Official Plan by way of OPA 438 removed the "deferred" road widening option when taking road widenings as a condition of approval of new developments. This change necessitates updating the City's road widening policies.

Background:

The *Planning Act, R.S.O. 1990 chapter P.13, as amended*, allows municipalities having Planning Authority to establish conditions for development approvals for subdivisions, site plans and land severances.

The *Planning Act*, Section 41 (Site Plan approvals) provides that:

Conditions to approval of plans

41(1) ...

- (7) As a condition to the approval of the plans and drawings referred to in subsection (4), a municipality may require the owner of the land to,
 - (a) provide to the satisfaction of and at no expense to the municipality any or all of the following:
 - 1. Subject to the provisions of subsections (8) and (9), widenings of highways that abut on the land.

....

Widening must be described in official plan

- (9) An owner may not be required to provide a highway widening under paragraph 1 of clause (7) (a) ... unless the highway to be widened is shown on or described in an official plan as a highway to be widened and the extent of the proposed widening is likewise shown or described. R.S.O. 1990, c. P.13, s. 41 (9).

Section 51 (Subdivision Approvals) provides that...

Conditions

51(25) The approval authority may impose such conditions to the approval of a plan of subdivision as in the opinion of the approval authority are reasonable, having regard to the nature of the development proposed for the subdivision, including a requirement,

- ...
- (c) when the proposed subdivision abuts on an existing highway, that sufficient land, other than land occupied by buildings or structures, be dedicated to provide for the widening of the highway to such width as the approval authority considers necessary;

Planning Authorities across Ontario including the City of London have long relied on this authority to impose road widening conditions for subdivisions, site plans and land severances (Consents). The importance of this power cannot be understated as it enables municipalities to protect land for future transportation needs by obtaining road widenings through approvals of developments that would otherwise be very costly to purchase. This long standing principle reflects the importance of balancing development interests against the needs of the greater public.

It is noted that S.41(9) requires that roads to be widened be identified by the Official Plan. Accordingly, Schedule C of the City's Official Plan identifies all arterial, collector and future roads along with their range of widths listed in Table 18.1. These roads are identified in the City's Z-1 Zoning By-law along with their ultimate widths.

Discussion:

A Change in Road Widening Policy

In regards to transportation planning and road widenings, one of the changes that OPA 438 brought about was the elimination of deferred road widenings which had been used by the City since the early 1980's.

Deferred road widenings were originally seen as an easy way to delay having to deal with complications arising from such takings and deal with them in the future when the widening lands were actually needed. The effect of the deferred road widening policy, however, was to push these problems onto a future property owner rather than being dealt with by the proponent at the time of the development. This led to problems for both the City and subsequent property owners who were left to manage the consequences (e.g. land loss, site impact and cost) that they had not expected and may not have anticipated when they acquired the property even though the deferred widening agreements are registered on title. When road widenings were identified as being needed by the City, the reluctance of most property owners to comply with the terms of the deferred widening agreement in an expedient manner has resulted in the majority of cases being referred to the City Solicitor's Office for appropriate action. The net result of the deferred widening policy was that the deferred widening agreements ended up costing both the City and the property owners far more than had the widening transfer and the resulting consequences been dealt with at the time of the development.

Consequently, the use of deferred widening agreements ended when OPA 438 was approved. OP 18.2.5. (Road Widening Policies) now provides that:

"Council shall provide for the widening of existing road allowances to the road allowance requirements established under policy 18.2.4. Privately owned land needed for road allowance widening may be acquired by the City through dedication as a condition of subdivision, land severance or site plan approval...."

The intent of this section was that development driven road widenings be conveyed immediately as a condition of development approval which necessitates the City's road widening policies be updated accordingly.

Policy Recommendation:

- In order to comply with the City's Official Plan and improve the overall development process through the elimination of inequities created by the City's deferred road widening policy, all development driven widenings shall be conveyed immediately to the City as a condition of development approval and Consent.

Mitigation

It is acknowledged that issues relating to the loss of use of the widening lands are an inescapable result of the road widening process but some mitigation is possible. Section 4.14 of the zoning by-law Z-1 assists in the application of the zoning by-law where lots are reduced in size as the result of public acquisition of land by providing credit for certain regulations in the by-law including lot area, front yard and depth to assist those land owners that are impacted by road widening requirements.

In cases where the land may not be immediately required for transportation improvement purposes, the Official Plan provides that:

OP 18.2.5. (viii) Road Widening Policies...Implementation

"The implementation of the road widening policies will also take into consideration matters such as the following:

- (a) where a parcel of land has been acquired by the City but the widening of the road is not imminent, Council may allow for the private interim use of the parcel;

Policy Recommendation:

- Where the conveyance of a road widening creates a parking or other encroachment on the widened road allowance, the City may consider entering into an agreement with the owner allowing for the continued use of the widening lands until such time as the widening is needed for Municipal purposes. Any such agreement will be made in accordance with City's bylaws, policies and practices at the time of the application or subsequent renewal.

Cost contribution

In the early 1980's Municipal Council adopted a policy of offering a cost contribution to a property owner/developer when conveying a road widening pursuant to a development agreement, either immediately as a condition of development approval or later as part of a deferred widening agreement. Notwithstanding that the Planning Act stipulates widenings are to be conveyed at no cost to the City, when the Registry Office mandated the use of reference plans for severing parcels of land in 1981, the additional cost of the survey plan was considered onerous for the property owner which resulted in the contribution policy being adopted. The contribution amount was intended to cover up to one-half of the cost of the survey plan payable under specific conditions. The contribution was originally established at \$450 but has increased along with survey costs to where it is currently capped at \$1250.00 per claim.

Wording that was used in the deferred widening agreements implied compensation would be provided for not only a portion of the survey cost but also the legal fees related to the transfer, and since the contribution amount was never included in the agreements this has had the unfortunate consequence of raising compensation expectations beyond those originally intended.

For a number of practical reasons cost contribution claims have rarely been submitted from commercial developers, which have numbered less than one per year over the past decade. This may partly be due to the restriction that no claim can be submitted where a reference plan was not otherwise required for the development since survey plans are often required for other purposes. Also, professional development firms likely consider the contribution amount insignificant relative to the overall cost of the development and simply don't pursue the matter.

However, claims for cost contribution tend to be more prevalent when dealing with deferred widenings registered against residential properties or properties owned by non-profit organizations.

Policy Recommendation:

- Due to lack of use and to reflect the intent of the Planning Act, road widening transfer cost contributions will no longer be offered on a go-forward basis.
- In the case of outstanding deferred widening agreements currently registered on title, since the City is responsible for determining the technical requirements of the widening and ultimately approving the widening plan, the City will undertake to provide, at its expense, the reference plan where required. In addition, limited contributions for legal fees to a maximum of \$500 will be offered to residential owners and registered non-profit organizations only, but commercial property owners will continue to be responsible for paying the legal fees required to convey the widening.

In most cases the City has already prepared the necessary reference plans in support of capital widening projects so there is little additional cost for this initiative even including the limited contribution of legal fees, but we anticipate savings in terms of staff time and resources due to expected improvement in responsiveness from the owners of properties subject to deferred widening agreements.

Conclusion:

In order to update and align the City's road widening policies for new developments with the City's Official Plan, it is recommended the Council policies outlined in this report and the attached bylaw in Appendix 'A' be approved.

Acknowledgement:

This report was prepared by Gary Irwin in consultation with Planning and Development, Development Services (formerly the Development Approvals Business Unit), Transportation Planning and Design and the City Solicitors Office, and was reviewed by John Braam.

SUBMITTED BY:	RECOMMENDED BY:
A. GARY IRWIN, O.L.S., O.L.I.P. CHIEF SURVEYOR & DIVISION MANAGER, GEOMATICS	JOHN BRAAM, P.ENG. ACTING EXECUTIVE DIRECTOR, PLANNING, ENVIRONMENTAL & ENGINEERING SERVICES & CITY ENGINEER

February 24, 2012
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Bill No.

2012

By-Law No.

A by-law to amend Council Policy 25(2) entitled "Land Dedication"

WHEREAS section 5(3) of the *Municipal Act, 2001* as amended, provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. Council Policy 25(2) entitled "Land Dedication" and its supporting Appendix 25(2A) entitled "Appendix to Street Widening Policy" is amended by deleting the policy in its entirety and by replacing it with the following new policy which reflects the intent of Section 41 of the *Planning Act*, R.S.O. 1990, Chapter P.13 and OPA 438:

Land Dedication

The following policy be established and implemented in conjunction with development approvals and Consents

Development Requiring Road Widening

- a) All development as defined "development" in Section 41 of the *Planning Act*, R.S.O. 1990, and By-law C.P.-1213-340 which implements it, or a Consent as defined in Section 53 (1) of the *Planning Act*, R.S.O. 1990, where the subject property is impacted by a road widening identified by the Official Plan and as implemented by Z-1 Zoning Bylaw, the widening will be conveyed immediately as a condition of development approval or Consent, as the case may be, other than land occupied by buildings or structures that will not otherwise be removed as part of the development, with the intent that the widening lands be conveyed unencumbered and at no cost to the City.

Use of Dedicated Land by Donor

- b) Where the conveyance of a road widening creates a parking or other encroachment, the City may consider entering into an agreement with the owner allowing for the continued use of the widening lands until such time as the widening is needed for Municipal purposes. Any such agreement will be made in accordance with City's bylaws, policies and practices at the time of the application or subsequent renewal.
- c) Upon receipt and acceptance of the road widening, a dedication bylaw will be passed as soon as practically possible. During the interim, the owner may continue to use the widening lands for ingress and egress to their property provided the access existed prior to the transfer.

Outstanding Deferred Road Widening Agreements

- d) In regards to outstanding deferred widening agreements currently registered on title, the City will be responsible for all technical requirements and have ultimate approval of the required widening and will provide the reference plan, if required, to convey the widening; In the case of residential properties or properties owned by registered non-profit organizations, the City will offer limited cost contribution not to exceed \$500 for the legal costs upon acceptance of the road widening and proof of legal expenses being paid; In all other cases the property owner shall be responsible for all costs of the conveyance of the widening in accordance with the terms of the agreement.

2. This By-Law shall come into force on [DATE]

PASSED in Open Council on [DATE]

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading –
Second Reading –
Third Reading –