

File No: O-7883
Planner: S. Meksula

TO:	CHAIR AND MEMBERS BUILT AND NATURAL ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING DIRECTOR, LAND USE PLANNING & CITY PLANNER
SUBJECT:	APPLICATION BY: CITY OF LONDON MODIFICATIONS TO SECTION 19.7.1 APPLICATIONS FOR CONSENT PUBLIC PARTICIPATION MEETING Monday, September 12, 2011

RECOMMENDATION

That, on the recommendation of the Director of Land Use Planning and City Planner, the following actions be taken with respect to the application of City of London relating to Section 19.7.1, Applications for Consent of the Official Plan:

(a) the proposed by-law attached hereto as Appendix "A" **BE INTRODUCED** at the Municipal Council meeting on September 19, 2011 to amend the Official Plan to clarify Section 19.7.1, "Applications for Consent", such that final consent will not be granted until any required zoning by-law amendment or minor variances associated with the application for consent has been dealt with and is in full force and effect.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

None

PURPOSE AND EFFECT OF RECOMMENDED ACTION

The recommended Official Plan amendment will clarify the intent of Section 19.7.1, "Applications for Consent", to clearly state that final consent shall not be granted until any required zoning by-law amendment or minor variances associated with the application for consent have been dealt with and are in full force and effect, and that a condition of approval to that effect may be required to be met prior to final consent being given.

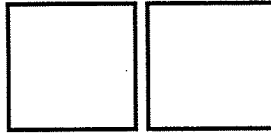
RATIONALE

1. The recommended amendment will clarify the application for consent process that final consent shall not be given until any associated zoning by-law amendment or minor variance is in full force and effect.
2. The recommended amendment will clarify that the conditions of approval for an application for consent may include confirmation that any associated zoning by-law amendment or minor variance is in full force and effect.

BACKGROUND

This Official Plan amendment has been initiated as a result of a recent decision by the Ontario Municipal Board. A summary of the issue that was before the Ontario Municipal Board is described below.

The Planning Division did not support the application for consent for a property located at 137 Huron Street, and the City of London Consent Authority refused the consent on February 4,



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2009. As well, the Planning Division did not support the proposed minor variances associated with the consent, and the Committee of Adjustment refused the minor variances on February 9, 2009.

The subject lands are designated Low Density Residential in the City of London Official Plan, and are subject to the North London/Broughdale Neighbourhood policies (Policy 3.5.9.). The property is zoned Residential R1-5 Special Provision (R1-5(3)).

The Planning Division did not support the proposed consent application, as the proposal was contrary to Official Plan policies under Section 3.5.9 regarding residential intensification and infilling. The Planning Division submitted comments to the Committee of Adjustment on February 1, 2009, which did not support the proposed minor variances. The requested minor variances were refused by the Committee of Adjustment as they did not meet the intent of the Zoning By-law and the Official Plan, were not minor in nature and were not considered desirable for the appropriate development of the lands.

The applicant appealed both the refusal of the application for consent and the minor variance. In its decision, the Board noted that on February 4, 2009 the London Consent Authority made its decision to refuse the application for consent and subsequently, on February 9, 2009 the London Committee of Adjustment refused the requested variances.

The current policy states that:

The Consent Authority, when dealing with an application for consent under the subdivision or part-lot control provisions of the *Planning Act*, shall be satisfied that a plan of subdivision is not necessary for the proper and orderly development of the land. Where the proposed lot(s) and/or the use for the proposed lot(s) do not conform to the zoning by-law, a consent decision shall not be given until after the corresponding zoning by-law amendment or minor variance application has been dealt with.

While the Board did not support the Consent Authority's decision to refuse the application, the Board also noted that in this case that process contemplated by the Official Plan policy was not followed. The Board determined that the Consent Authority made its decision with respect to the application for consent before the minor variance application was fully dealt with.

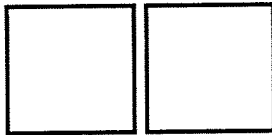
The intent of the current policy is to both ensure that a consent, rather than a plan of subdivision is appropriate for the development of the lands, and to further indicate that "a consent decision shall not be given.." until other zoning matters are addressed. In order to ensure that the process contemplated by this policy, that is, that a final consent shall not be given until any corresponding zoning by-law amendment or minor variance matter has been dealt with, it is recommended that the policy be amended to clarify that final consent shall not be given, rather than "a consent decision shall not be given", as is the current policy.

It should be noted that this proposed policy amendment would not preclude a decision to refuse an application for consent on the grounds that it was not consistent with the policies of the Official Plan. The purpose of this amendment is to clarify the steps in the consent process.

What is a Consent?

A consent to sever (consent) is a process authorized under the *Planning Act* that may be used to divide land for the purpose of sale; register a mortgage or discharge a mortgage over part of a parcel of land; register a lease over part of a parcel of land when the term of the lease is 21 years or more (inclusive or renewal options); register easements for rights-of-way; or to adjust boundaries of existing land parcels to enlarge or decrease the size of a property.

In considering an application for consent, the Official Plan identifies criteria that the Consent Authority shall consider. Among those criteria is that any lot(s) created must be in conformity with the Official Plan and Zoning By-law. Where a zoning by-law amendment or minor variance application may be required, the Application for Consent process contemplates that these matters be dealt with first. This is important because in the consideration of the appropriateness



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of the application for consent is dependent on conformity with the Zoning by-law.

In simple terms, a consent can be thought of as a small subdivision. Both the *Planning Act* and the City's Official Plan direct that matters that would be considered in the review of a plan of subdivision also be considered in the review of an application for consent. The subdivision process can also be thought of as a two-step process; a draft plan of subdivision is approved, whereby conditions are created that must be satisfied prior to final subdivision approval. In the same way, the consent process is a two-step process, whereby a decision is made on the consent ("provisional consent"), and conditions are created that must be satisfied prior to the final consent being granted. The City's Official Plan policies, while contemplating this two step process, are not presently clear in indicating that "a final consent decision" shall not be given until the corresponding zoning by-law amendment or minor variance application has been dealt with.

The purpose of this report is to amend the current Official Plan policies to clarify the application for consent process.

ANALYSIS

The City's Official Plan contains policies regarding the Consent Authority, and the process and criteria to be considered in the review and evaluation of applications for consent.

A consent shall only be granted where it will not compromise the orderly development of land or the general public interest. In many cases, an application for consent may be associated with new development, the expansion of an existing development or a change in the use of land, and will require studies and assessments to be undertaken as part of the City's review of the application. If approving, the Consent Authority may attach such reasonable conditions as it deems necessary to the approval of a consent. These conditions shall comply with the Provincial Policy Statement, comply with the Official Plan and conform to the Zoning By-law.

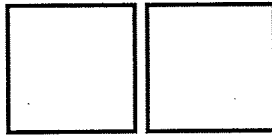
The lot and its intended use must conform to the zoning by-law. In instances where the lot(s) to be created as a result of the consent are not in conformity with the approved and effect zoning by-law or require a minor variance, the applicant should make an application concurrently with the consent application. The City's Complete Application policies provide for this. The Consent Authority would require the zoning by-law amendments or minor variances be "dealt with" as a condition of final consent through a condition of the provisional consent as authorized under Section 53 (12) of the *Planning Act*. Additional conditions may also be imposed at the discretion of the Consent Authority. The applicant may appeal to the Ontario Municipal Board if the Consent Authority fails to make a decision within 90 days of receiving a complete application.

The decision granting the provisional consent is subject to a 20-day appeal period from the date of the decision granting the provisional consent, during which time the applicant, or any interested party has the right to appeal to the Ontario Municipal Board. At the end of the appeal period, if there have been no appeals, the decision to grant the provisional consent is in effect. Because the applicant then has one year to satisfy the imposed conditions, including any requirement for a zoning by-law amendment or minor variance to be approved and be in full force and effect, the consent would not be final until such time as all the conditions are fulfilled, and the Consent Authority would be unable to issue a certificate to allow the land transfer until all conditions are satisfied. The consent is complete when the transfer of land is completed.

Minor Variances

The City of London Committee of Adjustment is the delegated authority of Municipal Council to grant minor variances to the normal requirements of its zoning by-law. If the proposed development does not comply with the regulations contained in the zoning by-law, an application to the Committee of Adjustment for relief from the by-law is required.

The Secretary-Treasurer has 30 days from the date he receives an application for minor variances to prepare and circulate the notice and to have the hearing before the Committee of Adjustment. The Secretary prepares a minor variance package which includes the notice of



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application and a copy of the application that was submitted. This package is circulated to Planning Staff, Engineering Staff and the Committee of Adjustment members to review before the hearing date. Staff comments are submitted to the Secretary one week prior to the hearing. The comments are circulated to the applicant, the Committee of Adjustment members and are made available to public.

When dealing with an application for a minor variance, the Committee of Adjustment shall be satisfied that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained. The decision of the Committee of Adjustment is subject to a 20-day appeal period from the date of the decision, during which the applicant or any interested party has the right to appeal to the Ontario Municipal Board. At the end of the appeal period, if there have been no appeals the Committee's decision is final.

Zoning

The policies of the Official Plan regarding the development of land are implemented through the regulations in a Zoning By-law. While the Zoning By-law is more detailed, it must conform to the policies in the Official Plan. In some cases, land use designations of the Official Plan are prescriptive, in that they permit a range of uses and intensity of development that is very specific, or they describe the existing condition. In other instances, the land use designations are permissive in nature and describe the range of uses that may develop over time. The regulations of the zoning by-law would reflect these policies. For example, in areas where little or no new development is desired, such as Environmentally Significant Areas, the zoning regulations are very restrictive in the range of uses that may be permitted, and the intensity of any permitted uses would be very low. In areas where growth and change are anticipated, the zoning may permit a wide range of uses, and would contain regulations that would provide for the anticipated forms of development.

Proposed Amendment to Section 19.7.1

Currently, Section 19.7.1 reads as follows:

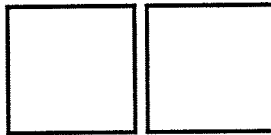
The Consent Authority, when dealing with an application for consent under the subdivision or part-lot control provisions of the *Planning Act*, shall be satisfied that a plan of subdivision is not necessary for the proper and orderly development of the land. Where the proposed lot(s) and/or the use for the proposed lot(s) do not conform to the zoning by-law, a consent decision shall not be given until after the corresponding zoning by-law amendment or minor variance application has been dealt with.

The proposed amended policy would read as follows:

The Consent Authority, when dealing with an application for consent under the subdivision or part-lot control provisions of the *Planning Act*, shall be satisfied that a plan of subdivision is not necessary for the proper and orderly development of the land. Where the proposed lot(s) and/or the use for the proposed lot(s) do not conform to the zoning by-law, a provisional consent decision may be granted subject to a condition that shall not be given until the corresponding zoning by-law amendment or minor variance application has been dealt with the applicant apply for a zoning by-law amendment or minor variance relating to the proposed consent to sever and that the decision on the zoning by-law amendment or minor variance application is in full force and effect.

In order to clarify that other matters such as any required zoning by-law amendment or minor variance associated with the application for consent may be appropriately dealt with as a condition of provisional approval for the application for consent, it is also recommended that the policies associated with Conditions of Approval (Section 19.7.1 iv)) be amended as follows:

19.7.1. iv) (f) confirmation that any corresponding zoning by-law amendment or minor variance application has been dealt with and is in full force and effect.



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Are the proposed Official Plan amendments appropriate?

The revised wording more clearly describes requirements of the consent process, and clarifies the intent of the current policies and process. This would ensure that a minor variance or zoning by-law amendment would be required to be dealt with, meaning that it is in full force and effect, prior to final consent being given. Given the defined timelines of the two processes (either a zoning by-law amendment or minor variance and a consent), this clarified policy would allow a provisional consent to be granted, subject to the approval of any required zoning by-law amendment or minor variance prior to final consent being given.

A recent Ontario Municipal Board decision expressed concerns regarding the current policy framework. The proposed Official Plan amendment has been prepared to provide the procedural clarification sought by the Board. The proposed changes will provide clearer direction for evaluating an application for consent and clarify the process.

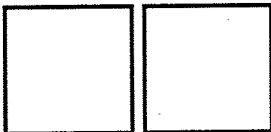
CONCLUSION

The recommended amendment to Policy 19.7.1 of the Official Plan is intended to clarify the process for the consideration of an application for consent, and to address an inconsistency identified by the Ontario Municipal Board in the City's current policies.

PREPARED BY:	SUBMITTED BY:
	
SEAN MEKSULA PLANNER II	GREGG BARRETT, AICP MANAGER - CITY PLANNING AND RESEARCH
RECOMMENDED BY:	
	
JOHN M. FLEMING, MCIP, RPP DIRECTOR, LAND USE PLANNING & CITY PLANNER	

September 2, 2011 SM/sm

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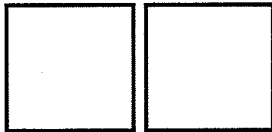
Bibliography of Information and Material –O-7883

Reference Documents

Ontario. Ministry of Municipal Affairs and Housing. *Planning Act R.S.O. 1990*, as amended

Ontario. Ministry of Municipal Affairs and Housing. *Provincial Policy Statement*, March 1, 2005

City of London. *Official Plan*, June 19, 1989, as amended



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APPENDIX "A"

Bill No. (number to be inserted by Clerk's Office)
2011

By-law No. C.P.-1284-_____

A by-law to amend the Official Plan for the
City of London Planning Area - 1989.

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

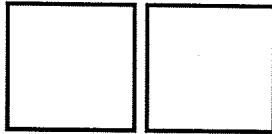
1. Amendment No. (to be inserted by City Clerks Office) to the Official Plan for the City of London Planning Area – 1989, as contained in the text attached hereto and forming part of this by-law is adopted.
2. This by-law shall come into effect in accordance with subsection 17(38) of the *Planning Act, RSO. 1990, c.P.13*

PASSED in Open Council on September 19, 2011.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading – September 19, 2011
Second Reading – September 19, 2011
Third Reading – September 19, 2011



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AMENDMENT NO.
to the
OFFICIAL PLAN FOR THE CITY OF LONDON

A. PURPOSE OF THIS AMENDMENT

The purpose of this amendment is to clarify the intent of Policy 19.7.1, "Applications for Consent", to clearly state that final consent shall not be granted until any required zoning by-law amendment or minor variances associated with the application for consent have been dealt with and are in full force and effect, and that a condition of approval to that effect may be required to be met prior to final consent being given.

B. LOCATION OF THIS AMENDMENT

This Amendment applies to all lands located in the City of London.

C. BASIS OF THE AMENDMENT

The proposed policy changes to the Official Plan are consistent with the authority provided under the *Planning Act*. The proposed amendment clarifies the process for the evaluation of applications for consent, and establishes reasonable conditions of approval for granting a consent.

D. THE AMENDMENT

1. The Official Plan for the City of London is hereby amended by deleting Section 19.7.1. and replacing it with a new Section 19.7.1 as follows:

**19.7.1
Applications for
Consent**

The Consent Authority, when dealing with an application for consent under the subdivision or part-lot control provisions of the *Planning Act*, shall be satisfied that a plan of subdivision is not necessary for the proper and orderly development of the land. Where the proposed lot(s) and/or the use for the proposed lot(s) do not conform to the zoning by-law, a provisional consent decision may be given subject to a condition that the applicant apply for a zoning by-law amendment or minor variance relating to the proposed consent to sever and that the decision on the zoning by-law amendment or minor variance application is in full force and effect.

2. The Official Plan for the City of London is hereby amended by adding to Section 19.7.1. iv) as follows:

- (f) confirmation that any corresponding zoning by-law amendment or minor variance application has been dealt with and is in full force and effect.