

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee

From: George Kotsifas P. Eng.,
Managing Director, Development & Compliance Services and
Chief Building Official

Subject: Delegated Authority for Consent

Meeting on: December 2, 2019

Recommendation

That, on the recommendation of the Director, Development Services the proposed by-law attached hereto as Appendix "A" being "A by-law to provide for the Committee of Adjustment and Consent Authority and to repeal By-law CP-7, as amended" **BE INTRODUCED** at the Municipal Council meeting to be held on December 10, 2019.

Executive Summary

Purpose and the Effect of Recommended Action

To change the appointment of Municipal Council's consent-granting authority in By-law No. C.P.-7 entitled "Committee of Adjustment & London Consent Authority By-law". The purpose and effect of the recommend action is to change the appointment of Municipal Council's consent-granting authority from one appointed officer (the City Planner) to the Committee of Adjustment ("CoA") and another appointed officer (the Director, Development Services).

As per the proposed by-law, the CoA would act as the consent-granting authority for all instances except for technical matters, for which, the Director, Development Service would act as the consent-granting authority. Technical matters would include lot additions/adjustments, mortgages, leases, rights-of-way (easements), power of sales and/or validation of title that are not in conjunction with lot creation or variances to the City of London Zoning By-law No. Z.-1 (the "Zoning By-law").

Rationale of Recommended Action

The recommended change to the appointment of Municipal Council's consent-granting authority is consistent with the authority to grant consents set out in the Planning Act R.S.O. 1990, c. P. 13 (the "Planning Act"). The recommended change will improve community engagement, participation, and transparency in the decision-making process; allow decisions on related Consent and Minor Variance applications to be made concurrently by a single decision-making body in a coordinated and consistent manner; and better align the delivery of service by service areas.

Analysis

1.0 Consent-Granting Authority

1.1 What is a Consent

The Planning Act requires that consent (i.e. permission) be granted before land can be divided into smaller parts – commonly referred to as a "severance". Consent is typically required for lot creation, adjustment of property lines, registration of easements for rights-of-way, or for mortgages or charges over part of a property. The consent approval process described in Section 53 of the Planning Act is an alternative for land division proposals that are relatively less complex and where a plan of subdivision is not required.

1.2 Who grants Consent

The authority to grant consent to divide land originates in the Planning Act. Section 50(1) of the Planning Act assigns single-tier municipalities the consent-granting authority. Municipal councils may in turn delegate, by by-law, their consent-granting authority, or any part of their authority, to a committee of Council, to the CoA, or to an appointed officer in accordance with Section 54(5) of the Planning Act (See Figure 1). The “London Consent Authority” is the title of the committee or officer to which Municipal Council has delegated their authority.

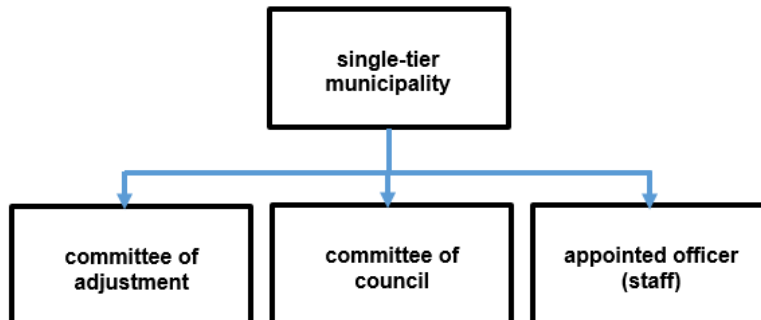


Figure 1: Alternatives for Delegation of Consent-Granting Authority for Single-tier Municipality

Since 1988, the London Consent Authority has been delegated to an appointed official; however, there have been periodic changes to which officer the consent-granting authority has been delegated. At present, the City Planner is appointed the London Consent Authority. As noted above, the alternative to the delegation of the consent-granting authority to an appointed official is to have Council delegate this authority to a committee of Council or to the CoA. In the Province of Ontario, it is not a common practice to utilize an appointed officer as the consent authority.

1.3 Overview of the Consent application process

Applications for consent are subject to prescribed notification and consultation requirements, issuance of decisions, processing of appeals to the Local Planning Appeals Tribunal (“LPAT”), clearance of conditions and issuance of certificates of consent, as set out in the Planning Act and its regulations. An overview of the consent application process is described below and illustrated in Figure 2.

A landowner or their agent may apply for a consent and the consent-granting authority may grant a consent if satisfied that a plan of subdivision is not necessary for the proper and orderly development of land. The information requirements for consent applications are set out in the Planning Act regulations and are reflected in the Corporation of the City of London (the “City”) Consent Application form.

The requirement for giving notice of a consent application is satisfied by the City by providing notice by publication in a newspaper, *The Londoner*, and by mailing notice to landowners within 60 metres of the subject lands. There is also a prescribed list of City departments and external agencies that receive notice of consent applications. The notice includes an explanation of the purpose and effect of the consent application, a description or map of the lands subject to the application, and indicates where and when additional information about the application can be obtained, and how to provide comment. The notice also includes direction regarding requests to receive a notice of decision, and the requirements to establish rights-of-appeal.

A public hearing has not been part of the City’s consent application process since the delegation of the consent-granting authority to an appointed official. However, the recommended change to the delegation of the consent-granting authority as set out in this report would introduce public hearings for consent applications considered by the CoA.

Applications may be refused, or approved, or approved with conditions, and notice of decision is given to the applicant and any person or body that had requested to receive a notice of decision. The appeal period commences with the issuance of the notice of decision; and the decision, or any conditions attached to the decision, may be appealed to the LPAT. If no appeals are filed within the appeal period then the decision of the consent-granting authority is final.

The applicant has a period of 1-year from the notice of decision to complete any conditions, failing which the consent lapses. These conditions may include, but are not limited to, matters of land dedication (i.e. road widening dedication, parkland dedication); the provision of easements; submission of subsequent studies and/or plans; requirement for Site Plan Approval etc. In some instances, the clearance of conditions requires that a Consent Agreement be entered into between the applicant and the City.

A certificate of consent is issued to the applicant by the consent-granting authority upon the clearance of conditions. If the division of land enabled by the consent has not been registered within 2-years of the issuance of the certificate of consent, the consent also lapses.

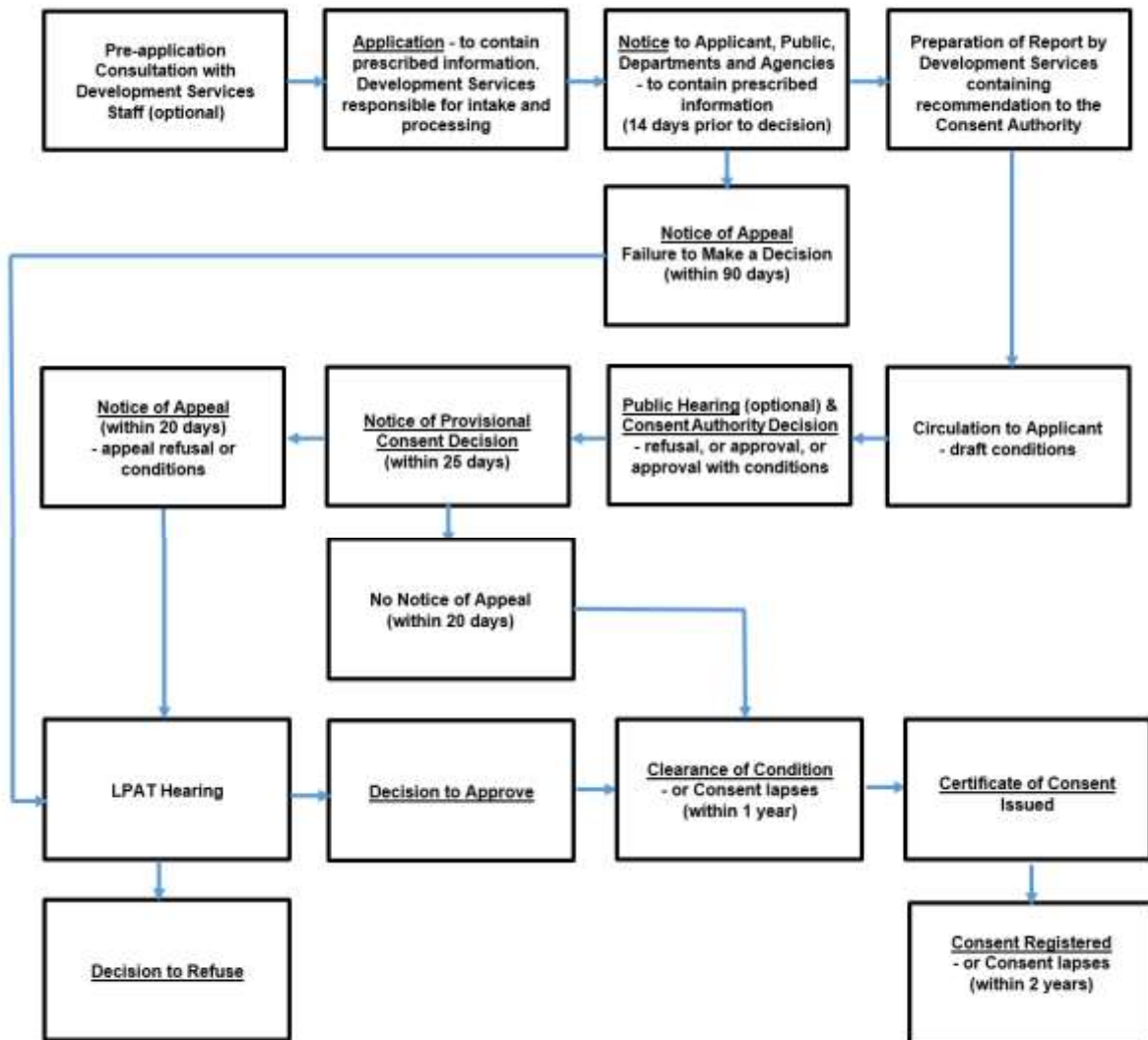


Figure 2: Overview of Consent application Process

1.4 Considerations for Consent

The review of consent applications is subject to the criteria and requirements of the Planning Act, the Provincial Policy Statements, and the Official Plan; and these criteria and requirements are similar to the matters which are to be regarded when considering a plan of subdivision, such as whether:

- the application is in the public interest or is premature;
- the application impacts Provincial interests;
- the applications conforms to the Official Plan and any adjacent plans of subdivision;

- the lands suit the proposal;
- the size and shape of the lots and the overall plan are suitable;
- the layout addresses energy conservation of natural resources and flood control;
- utilities, road systems, municipal services and schools are adequate; and
- the area of land being dedicated for public purposes is suitable.

To assist with the decision-making process, Development Services is responsible for the intake, processing and review all consent applications and prepares a recommendation report to the London Consent Authority.

2.0 Committee of Adjustment

2.1 Current role and responsibilities of members of the CoA

At present, five Council-appointed members of the public comprise the CoA and have been delegated the decision-making authority for Minor Variance applications. These same appointed members of the public also comprise the Property Standards Appeal Committee and hear appeals against orders to comply with the Property Standards By-law. Due to the increasing number of appeals against orders to comply made in connection with Residential Rental Licencing, it is increasingly less sustainable that the same five appointed-members of the public comprise both the CoA and the Property Standards Appeal Committee.

Over a 4-year reporting period (2016-2019), the number of property standards appeals have increased exponentially in connection with Residential Rental Unit Licensing, and most likely as a result of the change from self-reporting compliance as part of the Residential Rental Unit Licensing process, to inspections by the City. In 2016, there were 5 property standards appeals, that number increased to 21 property standards appeals in 2017. In 2018 there were 78 property standards appeals and as of the date of this report there were 95 property standards appeals in 2019.

With the number of property standards appeals now warranting separate hearings officers, Development Services has identified an opportunity, and several advantages (see Section 2.2) to changing the delegation of the consent-granting authority to the CoA. With regards to workload capacity and the ability of the CoA to deal with Consent applications once property standards appeals are moved to separate hearings officers, it should be noted that in comparison to the number of property standards appeals over the same 4-year reporting period noted above, the number of Consent applications each year has been consistently around 50 applications (See Figure 3).

Year	Number of Property Standards Appeals	Number of Consent Applications
2016	5	49
2017	21	54
2018	78	56
2019*	95	53

*year to date

Figure 3: 4-year reporting period (2016-2019)

2.2 Considerations for Changing the Delegated Authority for Consent

Development Services has identified several advantages to changing the delegation of the consent-granting authority from the City Planner to the CoA and the Director, Development Services. They are as follows:

1. Streamlined decision-making for related Consent and Minor Variance applications

Consent applications for lot creation frequently result in the need for a related Minor Variance application where the resulting lot(s) do not fully comply with the regulations of

the Zoning By-law that regulate the use and development of land. A Minor Variance is a small change or relief from the regulations of the Zoning By-law. In 2018, nearly a quarter (23%) of the Consent applications resulted in a corresponding Minor Variance application; and as the date of this report in 2019, 17% of the Consent applications resulted in a corresponding Minor Variance application. At present, it is the practice of the City that Consent applications be considered first and consent decisions granted by the London Consent Authority prior to the submission and consideration of Minor Variance applications by the CoA. This practice is potentially problematic in that two different approval bodies are involved and that they may come to different decisions on related matters. By delegating the consent-granting authority to the CoA for all but the technical consents described below, Consent applications and related Minor Variance applications can be considered concurrently by the CoA in a coordinated and consistent manner.

2. Improved community engagement & transparency in decision-making

At present, notices for Consent applications are published in the *Londoner* and mailed to property owners within 60 metres of the subject properties. The notices request that comments be made in writing to the London Consent Authority, but there is no public hearing, and there can be concerns about transparency in the wholly administrative-environment in which decisions are made. The recommended change to the delegation of the consent-granting authority would provide for a more open, transparent and participatory decision-making process for most Consent applications, whereby a public hearing would be held before the CoA and decisions would be made in an environment where the public could witness the decision of the consent-granting authority as opposed to the predominately closed and administrative process that exists today.

3. Appointed officer for technical matters

It is recommended that an appointed official, or their designate, continue as the delegated consent-granting authority for the purposes of lot additions/adjustments, mortgages, leases, rights-of-way (easements), power of sales and/or validation of title that are not in conjunction with lot creation or variances to the Zoning By-law. These are all technical matters that typically result in minimal public engagement and would not benefit from a public hearing before the CoA, nor would they be in conjunction with a variance requiring a coordinated or consistent decision-making process with the CoA. Delegation of the consent-granting authority to the Director, Development Service, or designate, is recommended to decrease the timelines associated with the approval process for technical matters (by not requiring a public hearing) and thereby provide for more expeditious and efficient delivery of service.

It is also recommended that an appointed officer continue to execute consent agreements to secure any conditions imposed through the decision-making process and execute certificates of consent regardless of whether the consent-granting authority is an appointed officer or the CoA. The execution or signing of consent agreements is an administrative function, not a decision-making function, and to bring matters back to CoA for this purpose would not be a wise or efficient use of the CoA's time.

Changing the delegation of the consent-granting authority from the City Planner to the Director, Development Services, or their designate, specifically for all technical matters that are not in conjunction with lot creation or variances to the Zoning By-law, and for the purpose of executing consent agreements and certificates of consent, would better align the delivery of service with the service area that intakes and processes Consent applications. It is important to note that the Director, Development Services is already securing consent conditions and executing agreements under the Execution of Certain Documents By-law (A-1).

3.0 Next Steps

As noted above, the proposed change to the delegation of the consent-granting authority cannot occur until such time as separate hearings officers are appointed for the purposes of the Property Standards Appeal Committee and the appointed members that currently act as the CoA and the Property Standards Appeal Committee are provided the capacity to act as both the decision-making authority for Minor Variance and Consent applications in their role as the CoA.

In the interim, a series of next steps have been identified for the first quarter of 2020. The next steps include training for the members of the CoA that would provide an overview of the Consent application process in the Province of Ontario and the legislative requirements and criteria for rendering decisions on consent applications (i.e. the planning considerations). Training would be facilitated by Development Services staff. Development Services would also engage key stakeholders to advise them of the proposed change to the delegation of the consent-granting authority and the change in process that would include a public hearing for those consent applications to be considered by the CoA. The City's Application for Consent would also require revisions to the described steps in the process to include the potential for a public hearing.

It is anticipated that the proposed by-law to change the delegation of the consent-granting authority would be brought back before Council for enactment by the end of the first quarter of 2020, and following enactment of the proposed by-law, the CoA and Director, Development Services would begin to act as the London Consent Authority

4.0 Conclusion

The recommended change to the appointment of Municipal Council's consent-granting authority from one appointed officer (the City Planner) to the CoA and another appointed officer (the Director, Development Services) will improve community engagement, participation, and transparency in the decision-making process; allow decisions on related Consent and Minor Variance applications to be made concurrently by a single decision-making body; and better align delivery of service by service areas. However, workload constraints placed on members of the CoA that also act as the Property Standards Appeals Committee do not allow for the recommended change to take place until such time as separate hearings officers are appointed for the Property Standards Appeal Committee. It is anticipated that the proposed by-law to change the delegation of the consent-granting authority will be brought back before Council for enactment at the end of the first quarter of 2020.

Prepared by:	Melissa Campbell, MCIP, RPP Manager, Development Planning, Development Services
Recommended by:	Paul Yeoman, RPP, PLE Director, Development Services
Submitted by:	George Kotsifas, P.ENG Managing Director, Development and Compliance Services and Chief building Official
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Development Services.	

November 25, 2019

cc: Michael Tomazincic, MCIP, RPP, Manager, Current Planning

Appendix A

Bill No.
2019

By-law No. CP-

A by-law to provide for the Committee of Adjustment and Consent Authority and to repeal By-law CP-7, as amended.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 44 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, provides for a municipality to constitute and appoint a committee of adjustment;

AND WHEREAS section 45 of the *Planning Act*, as amended, sets out the powers of a committee of adjustment with respect to minor variance applications;

AND WHEREAS section 5 of the *Planning Act*, as amended, permits municipal council by by-law to delegate the authority of the Council under section 53 of the *Planning Act* to a committee of council or to an appointed officer identified in the by-law by name or position occupied;

AND WHEREAS subsection 54(5) of the *Planning Act*, as amended, provides that Municipal Council may by by-law delegate the authority of the council under section 53 of the Act or any part of that authority to an appointed officer identified in the by-law by name or position occupied or to the committee of adjustment;

AND WHEREAS it is deemed expedient to pass this by-law;

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

Part 1 - Committee of Adjustment

1.1 Established

The Committee of Adjustment for The Corporation of the City of London is established and constituted pursuant to section 44 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended.

1.2 Composition

The Committee of Adjustment for The Corporation of the City of London shall be composed of 5 individual appointed by Municipal Council.

1.3 Powers – authority – set out – Planning Act

The Committee of Adjustment for The Corporation of the City of London is empowered pursuant to section 45 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, and the regulations thereunder to grant minor variances and to change, to extend and/or to enlarge non-conforming uses with respect to the provisions of any zoning by-law of the municipality that implements the Official Plan for the City of London Planning Area.

Part 2 – Consent Authority

2.1 Established – Committee of Adjustment

The Committee of Adjustment for The Corporation of the City of London, established under section 1.1 of this by-law is hereby delegated the authority with respect to the granting of consents provided for under section 53 of the *Planning Act*, as amended, and the Committee of Adjustment shall act as the “London Consent Authority”.

2.2 Exception, London Consent Authority

Notwithstanding the delegation described in 2.1 of this by-law, The Corporation of the City of London hereby delegates the following specific consent powers, when not in conjunction with lot creation or variances to zoning regulations, to the Director, Development Services, acting as the “London Consent Authority”:

- (a) Lot additions/adjustments
- (b) Mortgages (over a part of a property)
- (c) Leases (over a part of a property when the term totals 21 years or more)
- (d) Rights-of-ways (easements)
- (e) Power of Sale
- (f) Validation of Title

2.3 Director, Development Services – Further Delegation

For the purpose of granting consents in accordance with section 2.2 of this by-law or entering into agreements in accordance with section 2.5, in the absence or vacancy of Director, Development Services, The Corporation of the City of London hereby delegates the authority under section 2.2 to the Manager, Current Planning.

2.4 Authority to Execute Certificates

The Secretary-Treasurer of the Committee of Adjustment shall be delegated the authority to give a certificate to the applicant stating that the consent has been given pursuant to sections 53(42) and 53(44) of the *Planning Act*, as amended.

2.5 Authority to Execute Agreements

The Director, Development Services, shall be delegated the authority to execute any agreements prepared in accordance with a condition imposed by the London Consent Authority.

Part 3 – Repeal – Enactment

3.1 By-law – previous

By-law CP-7 and all of its amendments are hereby repealed.

3.2 Effective date

This by-law comes into force and effect on May 1, 2020.

PASSED in Open Council on _____.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First reading –
Second reading –
Third reading –

Additional Reports

November 4, 2019, Report to the Planning and Environment Committee; *“Minor Variance Applications Considered by the Committee of Adjustment 2018 – Information Report”*.

March 22, 2010, Report to Planning Committee; *“Delegation of Consent Authority”*.

May 29, 2006, Report to Planning Committee; *“Changes in the London Consent Authority and Administrative Changes in the Consent Approval Process”*.