

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee

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

Subject: Appeal of Consent Authority Decision on Consent Application
B.056/18
16 Berkley Crescent

Meeting on: January 6, 2020

Recommendation

That, the City Solicitor and Managing Director, Development and Compliance Services and Chief Building Official **BE DIRECTED** to provide legal and planning representation at the Local Planning Appeal Tribunal Hearing to support the decision of the Consent Authority, in response to the letter of appeal to the Local Planning Appeal Tribunal, dated September 6, 2019, and submitted by Analee J.M. Baroudi for Bernadette Green relating to the consent application concerning 16 Berkley Crescent.

Executive Summary

Purpose and Effect of Recommended Action

The purpose and effect of the recommended action is to inform Council of an upcoming appeal and to seek instructions with respect to the representation of the Consent Authority at the upcoming hearing.

Background

On December 20, 2018, McFadyen Design & Build (2005) Inc. c/o Paul M. Hurdle, submitted an application for consent on behalf of Bernadette Green for lands located at 16 Berkley Crescent. The application would permit the severance of a parcel from an existing residential lot for the purpose of future residential uses.

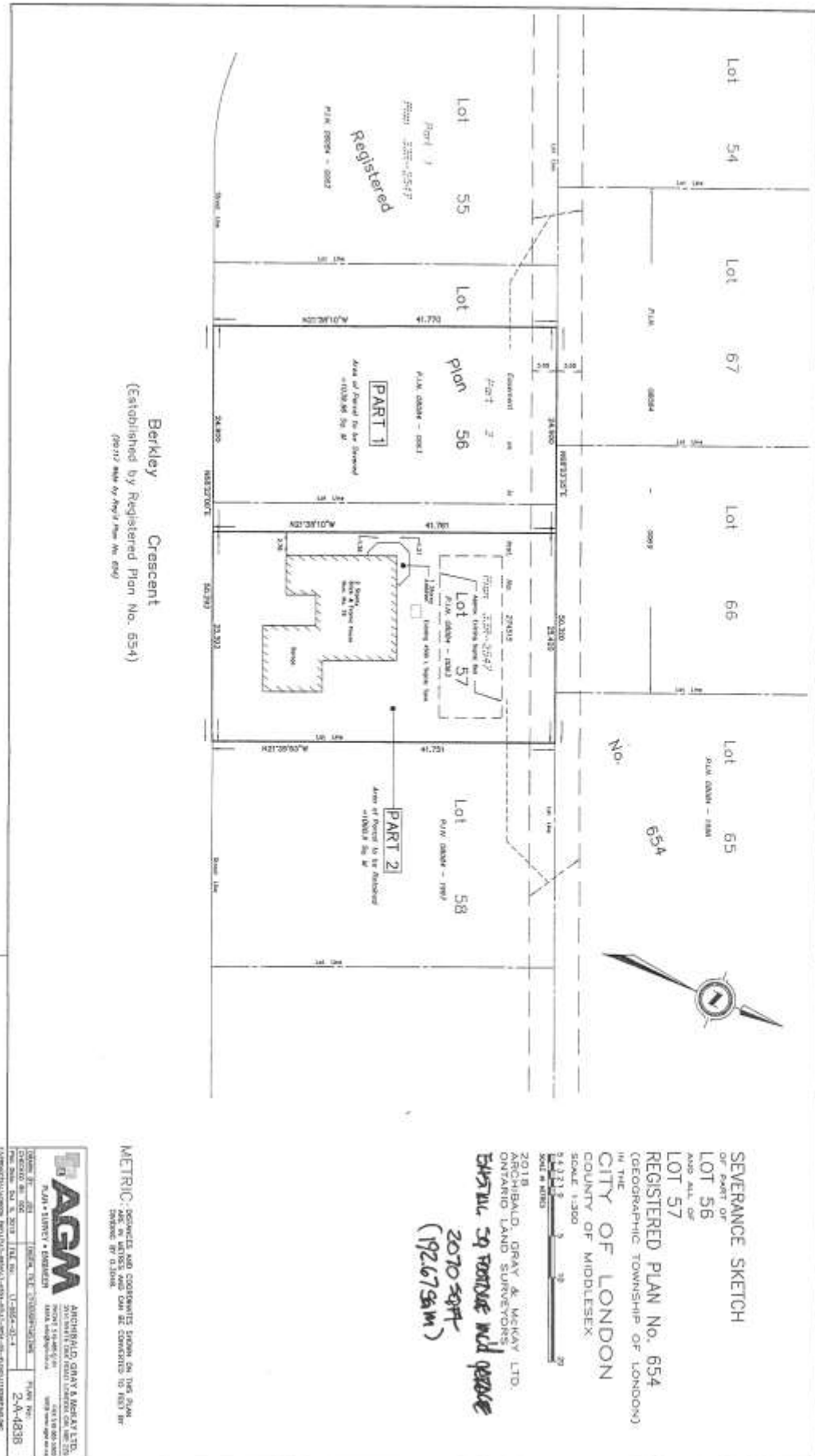
Notice of the Application was published in The Londoner on January 17, 2018 and circulated to internal and external agencies for comment. On January 16, 2018 a mail circulation to all residents within a 60m radius was sent out. On August 19, 2019, based on the recommendation by Development Services staff (see Appendix 'A') the Consent Authority refused the application for consent (see Appendix 'B') for the following reasons:

1. The proposed consent is not consistent with matters of Provincial interest as referred to in Section 2 of the *Planning Act*, including (f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management, (o) the protection of public health and safety, and the (p) the appropriate location of growth and development.
2. The lots to be established through the consent do not conform to the policies of the Official Plan as referred to in Section 51(24)(c) of the *Planning Act*.
3. The proposed consent does not conform to The London Plan.

Figure 1: Location Map



Figure 2: Severance Map



On September 6, 2019, an appeal was submitted by Baroudi Law Professional Corporation c/o Analee J.M. Baroudi, in opposition to the Notice of Provisional Consent Decision issued by the Consent Authority on August 19, 2019. The appellant lists four reasons for the appeal:

1. The Appellant applied for a consent to sever a lot from the lot municipally known as 16 Berkeley Crescent.
2. The proposed lot would be used for residential purposes. The anticipated purchaser of the proposed lot intends to build a single-family home on it. At present, the land that would comprise the proposed lot is vacant: it is used as a side yard for the existing lot.
3. The Appellant participated fully in the consultation process with City of London Staff. City Staff were generally supportive of the proposed consent throughout the consultation process. In fact, Developments Services prepared a set of draft conditions that would govern the proposed consent, which the Appellant accepted.
4. On August 19, 2019, the Consent Authority refused the Application for Consent. The Consent Authority's decision to refuse the Application is inconsistent with the Provincial Policy Statement, fails to conform with the London Plan, fails to conform with the 1989 Official Plan, and represents poor land use planning.

Analysis

The subject lands are not serviced by municipal sanitary sewage infrastructure and are not in proximity to an existing sanitary sewer where an extension would be feasible. There is currently no anticipated extension of sanitary services to the subject lands either privately or through City-initiated projects within the ten year horizon.

The Provincial Policy Statement 2014 (PPS)

The PPS permits the use of individual on-site sewage services provided site conditions are suitable for the long-term provision of such services with no negative impacts. In settlement areas, these services may only be used for infilling and minor rounding out of existing development. (1.6.6.2.). However, Policy 4.7 states that the official plan is the most important vehicle for implementing the Provincial Policy Statement, and that comprehensive, integrated and long-term planning is best achieved through official plans. While the PPS permits this form of servicing, The London Plan policies outlined below expressly prohibit the use of which within the Urban Growth Boundary.

Based on the foregoing, the proposed consent is not consistent with the Implementation and Interpretation policies of the PPS as it does not conform to the policies of The London Plan.

The London Plan

Policy 473(5)_ within the Civic Infrastructure policies of The London Plan states that "within the Urban Growth Boundary, new development will be permitted only if it can be connected to adequate municipal sanitary sewage infrastructure".

Policy 1699_ within the Our Tools section of The London Plan directs the Consent Authority to consider all of the policies of The London Plan as well as thirteen criteria when reviewing an application for consent. One of these criteria speaks to the availability of adequate municipal services. Policy 1700_ directs the Consent Authority to consider an additional set of criteria where individual on-site wastewater treatment systems are proposed, the first of which is the application's conformity to the Civic Infrastructure policies of the Plan. As the proposed consent does not comply with Policy 473(5)_, it does not meet the criteria for the approval of an individual on-site wastewater treatment system. Further analysis in this regard is provided in the report to the Consent Authority attached herein as Appendix 'A'.

It is noted that Policy 473 of The London Plan came into force and effect on February 20, 2017.

1989 Official Plan

The Services and Utilities policies of the 1989 Official Plan allows for individual onsite sanitary facilities provided a higher order alternative is not available and subject to a number of criteria.

This application, when considered under the current policy framework of The London Plan's in-force policies does not conform to the City's Official Plan. While the 1989 Official Plan allows for additional flexibility in this regard, The London Plan represents the long-term vision of Council and does not permit development where it cannot be connected to adequate municipal sanitary sewage infrastructure.

Conclusion

The proposed severance has been evaluated under the *Planning Act*, Provincial Policy Statement, The London Plan, 1989 Official Plan and Zoning By-law and does not represent sound planning and appropriate development. The consent application was refused on August 19, 2019 by the London Consent Authority. The purpose of this report is to request that Municipal Council provide the Consent Authority with legal and planning support for the hearing regarding the matters under appeal.

Prepared by:	Meg Sundercock, BURPL Site Development Planner, 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.	

December 16, 2019
MS/ms

CC: John Fleming, Consent Authority, City of London
Aynsley Anderson, Solicitor II, City Solicitor's Office

Appendix A:
Development Services Recommendation



London
CANADA

THE CORPORATION OF THE CITY OF LONDON

Date: August 9, 2019

To: J.M. Fleming
London Consent Authority

From: Paul Yeoman
Development Services – M. Sundercock

Subject: Development Planning - Consents

B.056/18 16 Berkley Crescent (Severance)

OFFICIAL PLAN DESIGNATION:
• LOW DENSITY RESIDENTIAL
PLACE TYPE:
• NEIGHBOURHOODS
EXISTING ZONING:
• RESIDENTIAL (R1-10)

PURPOSE AND EFFECT

	Area	Frontage	Use
Retained Lot	1,061m ²	25.4m	Residential – Single detached dwelling
Severed Lot	1,040m ²	24.9m	Vacant – Proposed single detached

The purpose and effect of this consent will permit the severance of 1,040m² from 16 Berkley Crescent for the purpose of constructing a single detached dwelling.

PROPOSED CONSENT

The applicant, McFadyen Design & Build (2005) Inc. c/o Paul M. Hurdle for Bernadette Green is requesting to sever 1,040m² from 16 Berkley Crescent for the purpose of a future residential use, and retain 1,061m² for the purpose of maintaining an existing residential use.

RECOMMENDATION

Development Services are recommending that the Consent Authority refuse the requested severance.

RATIONALE

1. The severance is not consistent with the Implementation and Interpretation policies of the 2014 Provincial Policy Statement.
2. The severance does not conform to the policies of The London Plan, including but not limited to the Civic Infrastructure policies, and the Our Tools policies as it does not meet the required criteria for the evaluation of consent applications.

INTRODUCTION

Notice of Application for Consent was mailed to area residents on January 16, 2019 and Notice of Application for Consent was published in the "The Londoner" on January 17, 2019.

One public comment was received with respect to this application and expressed support for the proposed severance.

PLANNING ACT

In considering this application, Development Services had regard for matters of Provincial Interest in accordance to Section 2 of the *Planning Act*. In considering this application,

Development Services staff had regard for the health, safety, convenience, accessibility for persons with disabilities and welfare of present and future inhabitants of the municipality, in accordance with Section 51 (24) of the *Planning Act*.

PROVINCIAL POLICY STATEMENT

The consent has been reviewed in conjunction with the 2014 Provincial Policy Statement (PPS).

Building Strong Communities: This consent application is within an existing settlement area. The PPS permits municipalities to allow the use of individual on-site sewage services provided site conditions are suitable for the long-term provision of such services with no negative impacts. In settlement areas, these services may only be used for infilling and minor rounding out of existing development. (1.6.6.2.). Policy 4.7 also states that the official plan is the most important vehicle for implementing the Provincial Policy Statement, and that comprehensive, integrated and long-term planning is best achieved through official plans.

Wise Use and Management of Resources: The subject lands are not located within an area identified as having potential archaeological significance.

Protecting Public Health and Safety: There are no known Natural Hazards or Human-Made Hazards issues associated with this consent application.

Based on the foregoing, the proposed consent is not consistent with the Implementation and Interpretation policies of the PPS as it does not conform to the policies of The London Plan.

THE LONDON PLAN

The subject lands are located within the 'Neighbourhoods' Place Type and are located on a Neighbourhood Street. The use on the severed and retained lands, for single detached residential purposes, is permitted.

The proposed use of a single detached dwelling on the severed lot would require an individual on-site sanitary sewage system. Policy 1700_ directs the Consent Authority to consider all of the following criteria where individual on-site wastewater treatment systems are proposed:

1. The Civic Infrastructure policies of this Plan.

The Civic Infrastructure policies state that "within the Urban Growth Boundary, new development will be permitted only if it can be connected to adequate municipal sanitary sewage infrastructure" (473_5).

The plan of subdivision for this area was approved in 1949 with the intent that the lots were of a sufficient size to accommodate individual septic systems. The majority of the dwellings in the area were constructed in the 1970s and 80s which coincided with the construction of the water service in 1978. The subject lands were the subject of a previous severance in 1977 which conveyed a portion of the property (part of Lot 56 on Plan 654) to the neighbouring property to the west. As such, the subject lands are not comprised of two whole lots on a registered plan of subdivision and are not permitted a severance as of right.

There is currently no anticipated extension of sanitary services to the subject lands either privately or through City-initiated projects within the ten year horizon.

Despite the original intention of the subdivision, this application, when considered under the current policy framework of The London Plan's in-force policies does not conform to the City's Official Plan. While the 1989 Official Plan allows for additional flexibility in this regard, The London Plan represents the long-term vision of Council and does not permit development where it cannot be connected to adequate municipal sanitary sewage infrastructure.

2. The proposed development is consistent with the surrounding area in terms of pattern and size.

As noted above, the proposed severed parcel is smaller in size than existing lots, but is generally consistent with the surrounding area in terms of pattern and size.

3. The proposed development does not represent an extension to an area for existing development on individual services.

The proposed consent would not have the effect of extending a developed area, but rather further intensifying the neighbourhood and the use of individual services.

4. The proposed development would not create a precedent for future similar applications on adjacent or nearby lots

A precedent has been established on an adjacent lot for the development of a single detached dwelling with a private septic system. 73 and 115 Sunningdale Road East, and 27 Redford Road are also two whole lots on the plan of subdivision which would be granted the ability to re-establish the lot lines as of right through the Land Registry Office. The property at 95 Sunningdale Road East has also been established in this manner and is currently undeveloped. On this basis, the proposed consent may create or unduly encourage the creation of additional lots contrary to the policies of The London Plan.

Additional policies are present in The London Plan which provide guidance for the consideration of consent applications, which are now in force and effect.

When reviewing an application for consent to create a lot(s), the Consent Authority will consider all the policies of The London Plan and the following criteria:

1699_1. That any lot(s) to be created would conform to the policies of this Plan, the Zoning By-law, and any applicable area study or guideline document.

As noted above, the proposed lots and uses do not conform to the Civic Infrastructure provisions of The London Plan.

1699_2. That the matters which, according to the Planning Act, are to be regarded in the review of a draft plan of subdivision have been taken into account.

The proposal has been reviewed in conjunction with Section 51(24) of the Planning Act and is not considered compliant with these criteria.

1699_3. That the size and shape of any lot(s) to be created would be appropriate for the intended use, and would generally conform with the intent of the policies of this Plan and the Zoning By-law as they pertain to the subject area.

As noted above, the proposed lots and uses do not conform to the provisions of The London Plan.

1699_4. That the size and shape of any lot(s) to be created is compatible with adjacent development and conforms to any development agreements registered against the title of the subject land.

The size and shape of the proposed lots is compatible with adjacent development. Neighbouring properties at 18, 20, and 24 Berkley Crescent are generally 1,130m² in lot area with a frontage of approximately 27 metres. This severance will result in lots which are smaller than those in the area but comply with the minimum requirements of the Zoning By-law.

1699_5. That the creation of any lot(s) would have the effect of infilling an existing developed area where the pattern of land use has been established, and would not have the effect of extending a developed area.

The proposed development will have the effect of creating infill development in an area which is not served by municipal sanitary services. While this application would not represent the extension of a developed area, the intensification of this area is inappropriate given the need for an on-site sewage facility within the Urban Growth Boundary.

1699_6. That the proposed lot(s) would front on, or have access to, an existing public street and would not involve the opening or extension of a public street.

The proposed severed and retained lands have frontage along an existing public street, being Berkley Crescent.

1699_7. That the proposed lot(s) would not unduly reduce the accessibility of abutting lands suitable for development.

While the proposal does not necessarily preclude the ability of adjacent lands to develop, new development is required to connect to adequate municipal services. An additional septic system

in this area on an undersized lot – relative to what presently exists in the area – may increase the risk for failure and potential public health concerns.

1699_8. That access to the proposed lot(s) would not create traffic problems or hazards and that policies of this Plan regarding street access would be complied with.

The proposed conveyance will not result in any traffic problems.

1699_9. That adequate municipal services and utilities would be available.

The proposed severance has access to municipal storm and water services. There are no sanitary services available to the subject lands.

1699_10. That any health and safety matters relating to the Building Code are adequately addressed.

The Building Division has no comments with respect to this application.

1699_11. For a consent application pertaining to lands within the Farmland or Future Growth Place Types, that the lot to be created would conform to the Farmland policies of this Plan.

The subject lands are not located within a Farmland or Future Growth Place Type. It is noted that the Place Type policies of The London Plan are presently under appeal.

1699_12. For a consent application pertaining to natural features located on lands within a Green Space or Environmental Review Place Type the potential impacts resulting from fragmentation of natural features corridors and linkages will be taken into consideration.

The subject lands are not located within a Green Space or Environmental Review Place Type. It is noted that the Place Type policies of The London Plan are presently under appeal.

1699_13. That potential impacts on components of the Natural Heritage System will be addressed in conformity with the policies of this Plan.

The subject lands are located within proximity of a Natural Heritage System, though the UTRCA has no objections to the consent as proposed.

1989 OFFICIAL PLAN

The subject lands are designated Low Density Residential (LDR) in the 1989 Official Plan, which permits low density forms of residential development. The Services and Utilities policies of the 1989 Official Plan allows for individual onsite sanitary facilities provided a higher order alternative is not available and subject to a number of criteria.

Subject to policy 17.2.2 (iii) (b), for the development of a residential dwelling provided that:

1. Municipal servicing is not available within approximately 150 metres of the property;

Municipal sanitary services are not available within 150 metres of the property.

2. There are no other viable options for a connection to a municipal sanitary sewer and municipal services for the area will not be available within a reasonable time frame;

The property at 58 Sunningdale Road West (at the southwest corner of Sunningdale Road and Richmond Street) is the subject of a draft approved subdivision application which proposes an extension of sanitary services from the existing stubs at Callingham Drive and Pelkey Road through to Richmond Street and establishing a potential connection at Uplands Drive. However, this extension of services is dependent on private forces and is not immediately available.

3. The proposed wastewater treatment system can meet all applicable requirements for approval; and

Individual septic systems are regulated under the *Ontario Building Code*. The proposed development is dependent on such facilities, and as it requires approvals under the *Planning Act*, does not meet all applicable requirements as noted above.

4. *The owner agrees to connect to a municipal sanitary sewer, if available, at no cost to the municipality, when replacement of the system becomes necessary*

Sanitary services may not be available at such time as an individual sanitary system requires replacement, extending the use of a septic system on the lands.

ZONING

The subject lands are within a Residential R1 (R1-10) Zone which permits single detached dwellings. The proposed severed and retained lots conform to the regulations of the R1-10 Zone and the regulations of the Z.-1 Zoning By-law.

CONCLUSION

This consent application does not conform to the policies or intent therein of The London Plan. Based on the foregoing, Development Services are recommending that the Consent Authority refuse the requested severance.

Prepared by:	Meg Sundercock, BURPL Site Development Planner, Development Services
Recommended by:	Paul Yeoman, RPP, PLE Director, Development Services
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	

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Appendix B:
Notice of Provisional Consent Decision

Applicant: Bernadette Green c/o
McFadyen Design & Build (2005) Inc.
File No: B.056/18
Municipality: City of London
Subject Lands: 16 Berkley Crescent

Date of Decision: August 19, 2019
Date of Notice: August 19, 2019
Last Date of Appeal: September 8, 2019



NOTICE OF PROVISIONAL CONSENT DECISION

Section 53 of the Planning Act

TAKE NOTICE that the City of London Consent Authority, **REFUSED** applicant Bernadette Green c/o McFadyen Design & Build (2005) Inc. consent to sever approximately 1040.7m² for the purpose of future residential uses, and to retain approximately 1061.5m² for the purpose of existing residential uses, file No. B.056/18 on the **19th day of August, 2019**, under Section 53 of the *Planning Act*, R.S.O., 1990, c.P.13, as amended, for the following reasons:

1. The proposed consent does not conform to The London Plan.
2. The proposed consent is not consistent with matters of Provincial interest as referred to in Section 2 of the *Planning Act*, including (f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management, (o) the protection of public health and safety, and the (p) the appropriate location of growth and development.
3. The lots to be established through the consent do not conform to the policies of the Official Plan as referred to in Section 51(24)(c) of the *Planning Act*.

In the opinion of the City of London Consent Authority, the application is not in conformity with The London Plan for the following reasons:

1. The proposed consent would create new development within the Urban Growth Boundary which cannot be connected to adequate sanitary sewage infrastructure, further to Policy 473_(5) of The London Plan.
1. The proposed consent does not meet the criteria of the Our Tools policies which the Consent Authority must consider where individual on-site wastewater treatment systems are proposed, further to Policy 1700_ of The London Plan.
2. The proposed consent does not meet the criteria of the Our Tools policies which the Consent Authority must consider when evaluating consent applications, in addition to all the policies of The London Plan, further to Policy 1699_ of The London Plan.

AND TAKE NOTICE that any person or public body may appeal this decision or any of the conditions imposed by the Consent Authority to the Local Planning Appeal Tribunal by filing a notice of appeal with the City of London Consent Approval Authority, Development Services, 300 Dufferin Avenue, London, ON N6A 4L9, **NOT LATER THAN THE 8th day of September, 2019**. The notice of appeal must set out the reasons for the appeal and must be accompanied by the \$300.00 fee prescribed by the Local Planning Appeal Tribunal Act, in the form of a **certified cheque or money** order made payable to the Minister of Finance and must be accompanied by an **Appellant Form (A1)** found on the LPAT website: <http://elto.gov.on.ca/tribunals/lpat/> or from the office of the London Consent Authority. If you have any questions regarding the appeal process, please contact the ELTO Citizen Liaison Office toll free at 1-866-448-2248, by email at elto.clo@ontario.ca or in person at 655 Bay Street, Suite 1500, Toronto, ON.

One response from the public was received with respect to this application which voiced support for the proposed consent.

The land to which this application applies is the subject of a minor variance application (A.046/19) under the *Planning Act*.

Only individuals, corporations or public bodies may appeal decisions in respect of applications for consent to the Local Planning Appeal Tribunal. A notice of appeal may not be filed by an unincorporated association or group. However, a notice of appeal may be filed in the name of an individual who is a member of the association or group on its behalf.

You will be entitled to receive notice of any changes to the conditions of the Provisional Consent if you have either made a written request to be notified of the decision of the London Consent Authority or you made a written request to the London Consent Authority to be notified of changes to the conditions for the provisional consent.

Additional information on this consent decision is available from Development Services, 6th floor, City

**Applicant: Bernadette Green c/o
McFadyen Design & Build (2005) Inc.
File No: B.056/18
Municipality: City of London
Subject Lands: 16 Berkley Crescent**

**Date of Decision: August 19, 2019
Date of Notice: August 19, 2019
Last Date of Appeal: September 8, 2019**

Hall or by telephoning 519-930-3500 during business hours/weekdays from 8:30 a.m. to 4:30 p.m.

Dated at the City of London this 19th day of August, 2019



J.M. Fleming
City Planner
City of London Consent Authority
300 Dufferin Avenue, London, ON N6A 4L9

Applicant: Bernadette Green c/o
McFadyen Design & Build (2005) Inc.
File No: B.056/18
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APPEALS TO THE LOCAL PLANNING APPEAL TRIBUNAL CONSENTS
SECTION 53. PLANNING ACT, R.S.O.1990, c.P.13 (as amended)

The following extracts from Section 53 of the Planning Act outline the appeal process for appealing consents:

Appeal

53 (19) (19) Any person or public body may, not later than 20 days after the giving of notice under subsection (17) is completed, appeal the decision or any condition imposed by the council or the Minister or appeal both the decision and any condition to the Tribunal by filing with the clerk of the municipality or the Minister a notice of appeal setting out the reasons for the appeal, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (6); 2017, c. 23, Sched. 5, ss. 80, 81.

Note: The fee for an appeal is \$300.00 and \$25.00 for a related appeal and should be in the form of a **certified cheque or money order** made payable to the Minister of Finance of Ontario.

Appeal

53 (27) (27) Any person or public body may, not later than 20 days after the giving of notice under subsection (24) is completed, appeal any of the changed conditions imposed by the council or the Minister by filing with the clerk of the municipality or the Minister a notice of appeal setting out the reasons for the appeal, accompanied by the fee charged under the *Local Planning Appeal Tribunal Act, 2017*. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (10); 2017, c. 23, Sched. 5, s. 81.

Record

53

(28) If the clerk or the Minister, as the case may be, receives a notice of appeal under subsection (19) or (27), the clerk or the Minister shall ensure that,

- (a) a record is compiled which includes the information and material prescribed; and
- (b) the record, the notice of appeal and the fee are forwarded to the Tribunal within 15 days after the last day for filing a notice of appeal under subsection (19) or (27). 1994, c. 23, s. 32; 2017, c. 23, Sched. 5, s. 100 (4).

Hearing

53 (30) On an appeal, the Tribunal shall hold a hearing, of which notice shall be given to such persons or public bodies and in such manner as the Tribunal may determine. 2017, c. 23, Sched. 5, s. 100 (6).

Dismissal without hearing

53

(31) Despite the *Statutory Powers Procedure Act* and subsection (30), the Tribunal may dismiss an appeal without holding a hearing, on its own initiative or on the motion of any party, if,

- (a) it is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Tribunal could give or refuse to give the provisional consent or could determine the question as to the condition appealed to it,
 - (ii) the appeal is not made in good faith or is frivolous or vexatious,
 - (iii) the appeal is made only for the purpose of delay, or
 - (iv) the appellant has persistently and without reasonable grounds commenced before the Tribunal proceedings that constitute an abuse of process;
 - (b) the appellant did not make oral submissions at a public meeting or did not make written submissions to the council or the Minister before a provisional consent was given or refused and, in the opinion of the Tribunal, the appellant does not provide a reasonable explanation for having failed to make a submission;

**Applicant: Bernadette Green c/o
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- (c) the appellant has not provided written reasons for the appeal;
- (d) the appellant has not paid the fee charged under the *Local Planning Appeal Tribunal Act, 2017*; or
- (e) the appellant has not responded to a request by the Tribunal for further information within the time specified by the Tribunal. 2017, c. 23, Sched. 5, s. 100 (6).

Representation

(32) Before dismissing an appeal, the Tribunal shall notify the appellant and give the appellant the opportunity to make representation on the proposed dismissal but this subsection does not apply if the appellant has not complied with a request made under clause (31) (e). 2000, c. 26, Sched. K, s. 5 (7); 2017, c. 23, Sched. 5, s. 80.

Dismissal

(32.1) The Tribunal may dismiss an appeal after holding a hearing or without holding a hearing on the motion under subsection (31), as it considers appropriate. 2017, c. 23, Sched. 5, s. 100 (6).

Decision final

(33) If all appeals under subsection (19) or (27) are dismissed or withdrawn, the Tribunal shall notify the council or the Minister and, subject to subsection (23), the decision of the council or the Minister to give or refuse to give a provisional consent is final. 1994, c. 23, s. 32; 2017, c. 23, Sched. 5, s. 80.

Powers

(34) On an appeal under subsection (14) or (19), the Tribunal may make any decision that the council or the Minister, as the case may be, could have made on the original application and on an appeal of the conditions under subsection (27), the Tribunal shall determine the question as to the condition or conditions appealed to it. 2017, c. 23, Sched. 5, s. 100 (6).

Amended application

(35) On an appeal, the Tribunal may make a decision on an application which has been amended from the original application if, at any time before issuing its order, written notice is given to the persons and public bodies prescribed under subsection (10) and to any person or public body conferred with under subsection (11) on the original application. 2017, c. 23, Sched. 5, s. 100 (6).



