

## Report to Planning and Environment Committee

**To:** Chair and Members  
Planning & Environment Committee

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

**Subject:** Z-1 Zoning Bylaw - Holding Provision Review

**Meeting on:** March 1, 2021

## Recommendation

That, on the recommendation of the Director, Development Services, the following report **BE RECEIVED** for information with respect to a review of holding provisions within the Z-1 Zoning Bylaw.

## Executive Summary

The following information report provides an analysis of the application of Z-1 Zoning By-law Holding Provisions to identify development constraints. The report provides some historical context on how Holding Provisions have been incorporated within the Z-1 By-law, identifies issues with the use of Holding Provisions, and provides an analysis of some options to consider in order to streamline the approvals process.

The information and recommendations on holding provisions contained within this report should be considered through the ReThink Zoning process.

## Linkage to the Corporate Strategic Plan

Building a Sustainable City – London’s growth and development is well planned and sustainable over the long term.

## Analysis

### 1.0 Background Information

The jurisdiction which allows municipalities to apply holding provisions is outlined in the Planning Act:

Holding provision by-law

36 (1) The council of a local municipality may, in a by-law passed under section 34, by the use of the holding symbol “H” (or “h”) in conjunction with any use designation, specify the use to which lands, buildings or structures may be put at such time in the future as the holding symbol is removed by amendment to the by-law. R.S.O. 1990, c. P.13, s. 36 (1).

The City has had Holding Provisions in the Z-1 Zoning By-law (Z-1) since it was originally approved in 1993. This consolidation of multiple area-based versions provided a set of regulations for each Zone type (i.e., residential, commercial, industrial, etc.). This allowed for easier interpretation and use by Council, City-staff, the development community and ultimately the public. As part of this consolidation, holding provisions were included to identify development constraints that needed to be addressed prior to the issuance of a building permit as opposed to site specific zoning.

When Z-1 was passed in 1993 there were less than twenty (20) holding provisions included in the original bylaw. It was anticipated that these holding provisions could be used for multiple situations but also acknowledged that additional provisions may be necessary to address unique situations. Since 1993, the number of provisions has

crept to up to 227 with approximately half of these added in the past 10-years to address site specific constraints.

### “Just-in-Time” Development Process

In order for a landowner/developer to obtain a building permit, the holding provision must be removed through a Council approved By-law amendment. Although not as in-depth as a re-zoning, the Planning Act requires Council approval to take the holding provision off the subject site. The process includes submitting an application to the City (along with the appropriate fee) as well as justification for removal of the holding provision. The process usually takes about 1-2 months. Although it is a relatively short time frame, the applicant is responsible for ensuring the application is submitted in a timely manner and does not impact their business plans. Timing of Council meetings, site plan approval and servicing all play into the “just-in-time” nature of this stage of the development process.

On infill sites the developer and builder are often the same company and requirements of the restrictions imposed by a holding provision are typically well understood. Conversely, in new subdivisions, the developer is typically responsible for removing the “h” and not the home builder. Holding provisions are typically the last zoning item that needs to be addressed prior to building permit issuance and it is often perceived as a significant delay for home builders keen on starting construction.

## 2.0 Discussion and Considerations

### Review of Existing Holding Provisions

The following principles / questions were considered in the review of the 227 holding provisions:

1. Are there similarities between any of the existing provisions?
2. Can generic language be used?
3. Is the holding provision a duplication of the Planning Act review and approval process?
4. Are there existing administrative systems in place to communicate requirements to staff and / or the public?
5. Were they imposed by the Ontario Municipal Board (OMB) or Local Planning Appeals Tribunal (LPAT)?

### Existing Holding Provision Categories

The existing holding provisions can be grouped into the following 16 distinct categories with one miscellaneous category to address holding provisions under appeal.

Category	Number of Holding Provisions
Aggregate Resource	1
Agriculture	3
Archaeological	2
Built Heritage	4
Contamination	4
Lotting	6
Natural Heritage	9
Noise/Vibration/Dust/Odour	10
Parks Planning	1
Planning	6
<b>Servicing</b>	<b>35</b>
Public Site Plan	2
Slope Stability	2
<b>Transportation</b>	<b>24</b>
<b>Urban Design</b>	<b>25</b>
Wind	2

The top three (3) categories are Servicing, Urban Design and Transportation accounts for almost 60% of all holding provisions in use. This group is followed by Noise, Natural Heritage and Planning matters which accounts for an additional 17% of all holding provisions in use.

### **Update Link Between Mapping and Bylaw**

There are currently 227 holding provisions listed in Z-1. This total number does not reflect those that have been deleted through zoning amendments. The structure of the by-law is such that the numbers are not reused when new holding provisions are created. The new provisions are simply added in a sequential manner.

To support his review, staff have carried out a comparison of the text and maps of Z-1 and it appears that 86 holding provisions in the text are not shown on the zone maps. The mapping is updated each time a holding provision is lifted but the by-law was not changed as it was assumed that the holding provision might apply to other properties in the city. After this review, the total number of holding provisions has decreased from 227 to 141.

In addition to the above, a review of the remaining holding provisions identified that a number are exact duplications or very similar to each other. Based on this, it is anticipated that as many as 50 additional holding provisions could be deleted or reworded to avoid duplication. As a result, the total number of holding provisions would again be substantially reduced.

#### **ACTION:**

- Update and modify existing holding provisions in the bylaw and build a process to ensure the mapping and text are updating in unison.
- Work to be completed prior to enacting ReThink Zoning bylaw.

### **Other Planning Tools to Address Development Constraints**

Based on Staff's review of the City's current development approvals processes there are other planning tools that could be used in place of holding provisions to address development constraints.

1. Further to the policies outlined in The London Plan (1580, 1581, 1582, 1583), within the various Planning Act application reviews for a Re-Zoning or Official Plan Amendment, Minor Variances, Consents, Site Plans and Subdivisions a broad range of planning, engineering and public interest matters are assessed. The outcomes derived from these reports and studies could be addressed through:
  - special provisions of the Zoning bylaw,
  - conditions of draft approval for subdivisions,
  - conditions relating to consent and minor variance applications
  - and, development / subdivision agreement clauses.
2. Further, many of the engineering matters associated with servicing have been addressed through the Development Charges Background Study and the City's Engineering Design Standards. This has been an evolutionary process, reducing the universal need for holding provisions. For example, h-104 identifies a comprehensive storm drainage plan that is required. This could be addressed as part of a site plan application submission rather than requiring a holding provision to compel the work to be undertaken. In the case of a re-zoning, site plan or subdivision application there is an extensive pre-consultation process that highlights the various issues that the applicant must address prior to receiving Council or Approval Authority endorsement.

3. Changes to sections of the Zoning By-law could be considered to address general development constraints (such as wind, servicing, etc.) which would eliminate the need for certain existing holding provisions.
4. The AMANDA database can be used more extensively by staff to identify site specific conditions prior to development.

**ACTION:**

- Review the 4 options outlined above as part of the ReThink Zoning process.

### **3.0 Financial Impact/Considerations**

There are no direct financial expenditures associated with this report.

### **4.0 Key Issues and Considerations**

The following options provide background and consideration for the ReThink Zoning team in developing a new more user-friendly bylaw for Council, staff, the development community and the public. These options will be weighed against the Terms of Reference and principles of that process.

#### **Option 1 – Use Existing Provisions and Adjust Language**

Use the existing list of holding provisions to develop a new set that appropriately addresses the necessary restrictions on the various sites.

#### **Specific Holding Provisions to be Retained**

Based on the review, 14 holding provisions could be retained as they relate to development constraints outside of other application processes or were imposed by an OMB order.

The OMB or LPAT holding provisions are important to maintain as there is an expectation from the public that these restrictions are upheld until the holding provision is removed. Once these provisions are removed, they will no longer exist, and the total number reduced to around ten (10) holding provisions.

The following list of holding provisions should be retained due to the fact that there are limited means to address the issues through other review or approval processes:

- h
  - Create generalized holding provision to apply in limited situations in the future.
  - Include servicing requirements in General Provisions of Zoning By-law.
  - Include in conditions field in AMANDA as additional flag for Zoning staff.
- h-2
  - Holding provision be expanded and generalized, in consultation with Ecological Planning staff to reduce duplication across multiple properties.
  - Components of other holding provisions (i.e. h-35, h-202, h-222, etc.) to be used as part of consolidation review.
- h-4
  - Holding provision be updated and generalized to reduce duplication across multiple properties.
- h-5
  - Holding provision to be updated to reflect one window approach to development applications and reduce repetition in the process.
- h-6
  - Carry out a review to determine if other properties should have this holding provision
- h-11
  - To remain based on Ontario Municipal Board Order.
- h-18
  - Retain h-18 Holding Provision and update if necessary in consultation with Heritage Planner.

- h-39 • Holding provision be updated and generalized to reduce duplication across multiple properties.
  - Consolidate with h-82, h-84, h-94, h-108 and h-109.
- h-59 • To remain based on agreement with First Nations and OMB order.
- h-60 • To remain based on agreement with First Nations and OMB order.
- h-100 • Holding Provision to remain to ensure water quality and second access are provided in new development.
- h-162 • To remain based on OMB order.
- h-162 • To remain based on OMB order.
- h-163 • To remain based on OMB order.

Pros and cons of this approach:

Pros	Cons
Property owners would be aware of development restrictions by carrying out a simple search through the City map and Zoning By-law	Site specific holding provisions may still be required.
Allows public and development community to self-serve by using the City's website to retrieve information.	Substantial work to try and modify existing holding provisions to make them specific but generic enough to address all existing situations.

### **Option 2 – Create Special Provision Zones and/or Generic Holding Provisions**

The Provincial Policy Statement identifies issues that municipalities must take into consideration when considering any development application. These issues include (but are not limited to) items such as Aggregate Resource impacts, Agriculture impacts, Planning, Natural Heritage, Cultural Heritage, Man Made Hazards, Urban Design, Servicing, etc. A generic set of holding provisions to address these items could be created to address these issues.

In all cases below, information on the property would be populated in AMANDA as a flag to assist staff with implementation during the review of future applications. In addition to the more generic provisions below any OMB or LPAT ordered zones would be maintained until they have been formally removed.

Category	Recommended Alternatives for Addressing Development Constraints
Aggregate Resource	Recommend deletion of holding provision from the By-law and include regulations in the EX Zone.
Agriculture	Create a special provision zone or apply another more generic holding provision to address the issues.
Archaeological	Keep the holding provision and modify to use in all instances.
Built Heritage	Utilize special provision zoning and existing holding provisions to address issues.
Contamination	Create special provision zoning or include additional regs in General Provisions Section of Z-1 to address the issue in future.
Lotting	Create new holding provision to address all potential issues.
Natural Heritage	Apply modified h-2.
Noise/Vibration/Dust/Odour	Create special provision zone or add regs to General Provision Section of Z-1.
Parks Planning	Apply OS zone to the property
Planning	Create special provision zone or apply another more generic holding provision to address the issues.
Servicing	Create special provision zones and/or reword the h and h-100 to be more generic.
Public Site Plan	Keep holding provision and modify to use in all instances.

Category	Recommended Alternatives for Addressing Development Constraints
Slope Stability	Update h-4.
Transportation	Create special provision zone and/or apply another more generic holding provision to address the issues.
Urban Design	Create special provision zones and/or apply another more generic holding provision to address the issues.
Wind	Add regulations to General Provision Section of Z-1.

The pros and cons of this option is as follows:

Pros	Cons
This would limit the number of holding provisions and no further holding provisions would be required.	Additional research would be required from property owners to try to determine what would be required to lift the holding provision.
Property owners would be aware of development restrictions by searching through the City map and Zoning By-law.	Additional staff inquiries from potential property owners trying to obtain the specifics of the holding provision.

### **Option 3 - Create Single Generalized Holding Provision to address all issues**

As opposed to having a series holding zones split by category, an option to create one holding provision could be used. The language below is provided as an example and would be refined through discussion with Legal Services and City Planning prior to incorporating into the new ReThink Zoning Bylaw:

*Purpose: To ensure the orderly development of lands and the adequate provision of municipal services, any necessary studies or additional formation identified by Council during the rezoning process, at the time this holding provision was applied, shall be carried out by a qualified professional and submitted to the City for review and acceptance. Any recommendation from the accepted study(s) shall be undertaken to the satisfaction of the City of London, prior to the removal of the "h" symbol.*

*Permitted Interim Uses: As identified Council.*

For this to work, the information required for the clearance of the holding provision would be noted in the staff report and as a clause in the Council resolution. With this approach, the imprecise nature of the holding provision may limit a potential purchase's ability to make an informed decision regarding a property.

By using a single general holding provision, London's bylaw would be more in-line with other south western Ontario municipalities. The main difference between the current practice and this approach would be how the information would be disseminated to the public i.e. through the Council Resolution.

The pros and cons of this option is as follows:

Pros	Cons
No confusion or interpretation on the language of a holding provision.	Potential purchaser cannot obtain enough info from the zoning by-law to make an informed decision on a property.
	Additional research would be required from property owners to try to determine what would be required to lift the holding provision.
	Council resolution is not applicable law.

## **Analysis of Options – Recommendation to ReThink Zoning**

Based on the above analysis, Option 3 is not considered a viable option.

A combination of Option 1 and Option 2 in addition to administrative tools discussed in Section 2.0 of this report can be used to identify and address development constraints. By using facets of both of these options, a reduction in the number of holding provisions can be achieved along with building in a more efficient development approvals process. Further, the team can consider other potential categories to reflect The London Plan policies where the Site Plan Control By-Law, Engineering Design Manual or other standards and policies do not have a well documented approach.

In practice, holding provisions should be used sparingly and instead rely on the development approvals process to achieve the necessary review and approval.

## **Conclusion**

Based on the review of holding provisions, the total number of holding provisions does not account for those that have been deleted through zoning amendments. Many of the holding provisions can be combined to create a more generic holding provision to be applied in multiple situations. There are other tools that can be utilized through the development application process to achieve the same intent as the site-specific provisions.

These changes could substantially reduce the number of holding provisions and could eliminate holding provisions currently applied to certain properties. This would eliminate the need for to process applications to remove holding provisions, which would streamline the approval process.

It should be noted that the proposed changes to how the City deals with holding provisions should be considered on a go forward basis only and that the existing holding provisions should remain in place until the development constraints have been addressed. It is anticipated that once the existing holding provisions have been removed from the by-law many of them will no longer be applied as other tools will be utilized to address development constraints. The ReThink Zoning process can address this matter prior to enacting the new bylaw.

This report has been prepared with the assistance of Allister MacLean.

**Prepared by:** **Matt Feldberg**  
**Manager, Development Services (Subdivisions)**

**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.

CC: Justin Adema  
Gregg Barrett  
Michael Tomazincic

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