

February 8, 2018

Staff Report

File No.: D10-18-02

To: City of Kenora Planning Advisory Committee

**Fr: Matt Boscariol, Manager of Community and Development Services
Melissa Shaw, Planning Assistant**

Action: To Consider Provisional Approval

Re: Application for Consent

Location: Locally known as the 'Clarifier Site'

**Applicants: Randy Seller, Hook Seller & Lundin, Agent
5901058 Manitoba Ltd., Owner**

1. Introduction

The purpose of the application is for lot creation, the effect of approval would be the creation of one (1) MH- Heavy Industrial zoned lot.



2. Existing Conditions

At present the property is vacant land. The lands were formerly used by the former Abitibi Consolidated Pulp and Paper Company as the location of the clarifiers,

settling ponds, wood storage, biomass burners, booms, and jack-ladders to move the logs from Rideout Bay to the mainland. The paper mill was first constructed in 1923, and ceased operations in 2005.

This parcel received provisional approval on February 16, 2016 as file B01/16 for the creation of two lots, Parts 1 and 2 on the map below. The notice of this decision has been included as an attachment to this planning report.

As a result of the B01/2016 provisional approval, conditions to the creation of Part 1 were not fulfilled within one year, and the consent lapsed. Part 2 as identified on the map below met the conditions, The City of Kenora stamped the consent and, the parcel has since transferred ownership.



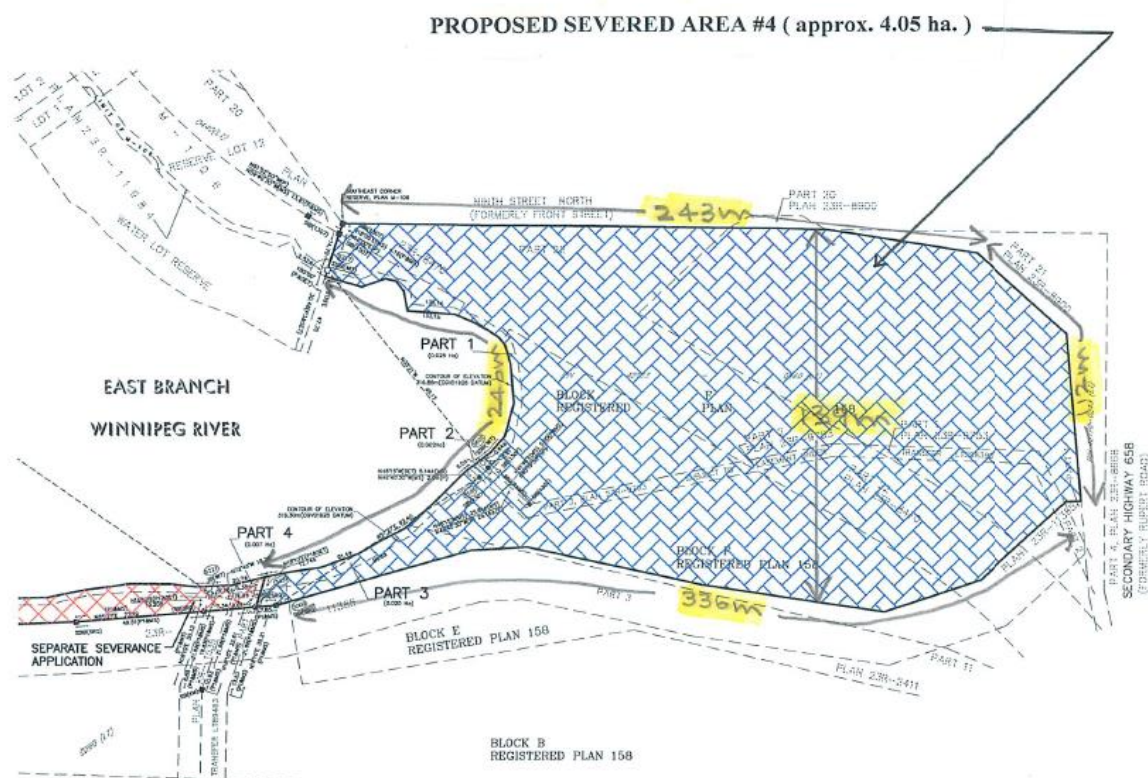
The proposed lot to be created in application D10-18-02 also received approval for an amendment to the Official Plan in 2016, by way of By-law 20-2016, changing the designation of from FD- Future Development Area to CD- Commercial Development Area. The retained land(s) remain FD-Future Development Area.

At present, the parcel is zoned MH- Heavy Industrial, this zone allows for a wide range of industrial uses which by their nature, may generate noise, fumes, odours and that may be obnoxious or hazardous. Some limited complementary commercial and service-oriented uses are also permitted, however, and future commercial uses that do not comply with the provisions of the zoning by-law shall require an application to amend the zoning by-law.

3. Description of proposal

The purpose of the application is for lot creation, the effect of approval would be the creation of one (1) MH- Heavy Industrial zoned lot. The owner is interested to sever a portion of the subject property (42163-0260) approximately 3.22 ha in size, with a retained portion 21.48 ha in size.

	Lot 1 (proposed)	Retained
Frontage (m)	Refer to Plan 23R-14566	Not determined on plan
Depth (m)	Refer to Plan 23R-14566	Not Determined on plan
Area (ha)	3.22 ha	21.48 ha
Existing Use	Vacant	Vacant
Access	Veterans Drive	Veterans Drive
Zoning Designation	MH- Heavy Industrial	MH- Heavy Industrial
Official Plan Designation	CD- Commercial Development Area	FD- Future Development Area
Sewer & Water	Municipal Sewer and Water can be accessed via Veterans Drive	N/A
Easements	KR-1535	Northern Ontario Natural Gas Co. Ltd. for Gas
	23R-2411	City of Kenora Hydro
	23R--9753	Ontario Hydro
	23R-11385	ACH Kenora Inc. for access



Multipoint access options are available along Veterans Drive; as part of the original application B01/16 a private right of way was established with easement rights on

the subject property. The Corporation of the City of Kenora entered into a Private Road Agreement with 5901058 Manitoba Ltd., PIN 42163-0260 being parts of Blocks D & E Plan 158 by way of By-law number 114-2016 on October 18, 2016.

As previously identified in the 2016 application, concern as written by Marco Vogrig, Municipal Engineer is that with increase in traffic from potential development on the subject property, the current eastern entrance/exit on the north/south section of Veterans' Drive is not suitable due to the terrain that makes this ingress/ egress point dangerous, particularly in winter months. Assuming an application for an amendment to the zoning by-law will come forward once the final use of the site is known, the request for a traffic impact study and site plan control are mechanisms to address access and the number of intersections along Rupert Road/Veterans Drive. The applicant is fully aware of this concern and the need to address access with future proposed use.

Municipal water and municipal sewer run along Veteran's Drive. Kenora Hydro has circuits in vicinity with limited capacity.

4. Site Visit

A site visit was conducted on February 8th, 2018, photos are provided below.

Photo lot 1 – Showing the subject property from Veterans Drive (heading South) and the Private Road proposed for access.



Google Inc., June 2012



Google Inc., June, 2012

Photo lot 2- View of Subject lands off Veterans Drive and Ninth Street North



Google Inc., June, 2012

Photo lot 3- View of the proposed lot, and the (frozen) shoreline along Winnipeg River System.



Site Visit, February 8, 2018



Site Visit- February 8, 2018

5. Consistency with Legislated Policy and City Directives

a) Provincial Policy Statement (2014) (PPS)

The foundation of Ontario's land use planning, the application has regard for the PPS (2014) through efficient development and land use patterns:

1.1.3- Settlement Areas

The PPS suggests that Settlement Areas shall be the focus of growth and development, and their vitality and regeneration shall be promoted. the application supports the efficient use of land and the diversity of healthy, with intensification and redevelopment opportunities, including the 'clarifier site' which has been identified as a local brownfield site.

1.3 Employment

The application promotes investment-ready, place-making and mixed-use areas to support economic development and to support liveable and resilient communities;

1.7 Long-Term Economic Prosperity

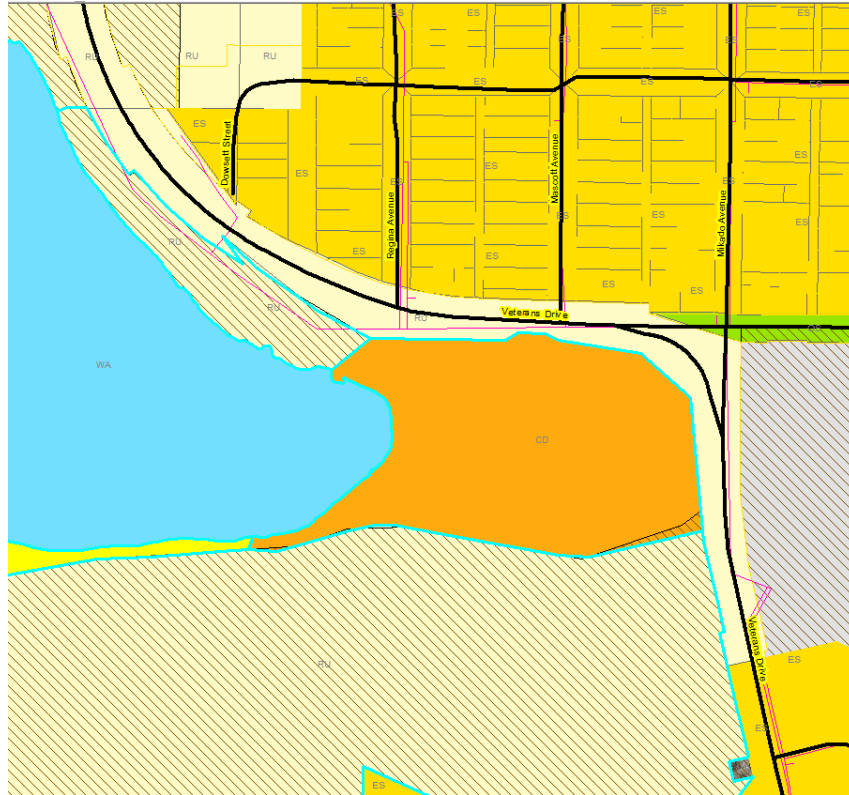
The application supports and promotes opportunities for economic development and community investment readiness; and the redevelopment of a locally identified brownfield site

3.2 Human- Made Hazards

The PPS under Subsection 3.2.2 states that sites with contaminants in land or water shall be assessed and remediated as necessary prior to any activity on the site associated with the proposed use such that there will be no *adverse effects*. A record of site condition shall be submitted in accordance with Part XV.1 of the *Environmental Protection Act* once the final use of the property is known. An amendment to the zoning by-law will be required for any new use of the property.

b) City of Kenora Official Plan (2015)

The Land Use Designation of the property is FD- Future Development Area, and the portion of the subject land which is proposed for lot creation is designated as CD- Commercial Development Area.



The Official Plan subscribes to Guiding Principles for land use. The application has regard for the following principles:

Principle 1- Sustainable Development

The application promotes development using land and infrastructure efficiently, directing residential development to land in the settlement area, with close proximity to the Harbourtown Centre and existing residential development.

Principle 4- Diversified Economy

The application supports opportunities of employment and a diversified economy providing development for new business.

The City of Kenora Official Plan provides policies for development, which shall be considered in applications for consent. Evaluation shall be made on the following:

3.8 Development on Private Roads

As part of the original application B01/16 a private right of way was established with easement rights on the subject property. The Corporation of the City of Kenora entered into a Private Road Agreement with 5901058 Manitoba Ltd., PIN 42163-0260 being parts of Blocks D & E Plan 158 by way of By-law number 114-2016 on October 18, 2016.

As previously identified in the 2016 application, concern as written by Marco Vogrig, Municipal Engineer is that with increase in traffic from potential development on the subject property, the current eastern entrance/exit on the north/south section of Veterans' Drive is not suitable due to the terrain that makes this ingress/ egress point dangerous, particularly in winter months. Assuming an application for an amendment to the zoning by-law will come forward once the final use of the site is known, the request for a traffic impact study and site plan control are mechanisms to address access and the number of intersections along Rupert Road/Veterans Drive. The applicant is fully aware of this concern and the need to address access with future proposed use.

3.13 Hazard Lands, Docks and Shoreline Development

Any Future development of docks, waterfront and marina structures abutting water shall be in accordance with the provisions set out in this section of the Official Plan, and shall be compatible with surrounding uses. When considering future applications for waterfront development, Council shall ensure that cultural heritage resources, both on shore and in the water, are not adversely affected. As part of the complete application B01/16 an Environmental Impact Statement was provided with no identified concern for land severance. Future development will require an amendment to the zoning by-law and site plan control shall be used as a mechanism to promote measures to mitigate any negative impacts on resources of cultural heritage interest or value.

5.2.2 Archaeological Resources

In consideration of the City of Kenora policies around Archeological resources, Alex Clark, R.P.F. Natural Resource Consulting, completed consultation discussions with the Ochiichagwe'Babigo'Ining Ojibway Nation as a condition of approval in the B01/16 application, the site was reviewed by Boreal Heritage Consulting, Mike McLeod on March 3, 2016, and while there are many small archeological sites recorded with in the immediate area, non-have been recorded for the subject property.

7.2 Arterial Roads

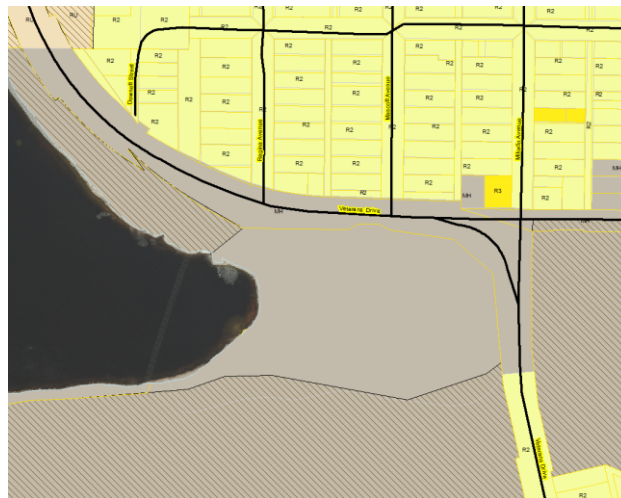
Veterans Drive is considered an Arterial Road within the City of Kenora; Future Development shall be subject to Site Plan Control, the City shall protect the carrying capacity of arterial roads and control of land use and access locations near major intersections from future development. Site Plan control may restrict the number of intersecting streets and driveways, encouraging shared driveway access, and internal access between adjacent commercial and/or residential development so as to limit the number of required road access points on Veterans Drive.

8.8 Potential Contaminated Sites

As part of the Complete Application, a Phase III Environmental Site Assessment was provided (AMEC Project No: WX1619702, 2010), the recommendation, in order to proceed with the development of this Site, the Ministry of Ontario requests that a record of site condition is submitted. Development within 30 m of Rideout Bay will require its own submission, and everything greater than 30 m from Rideout Bay must be a separate submission. As per the record of site conditions, the Ministry of Ontario will require that the impacted areas are remediated to the applicable standards. The recommendation per the 2010 report is that once the future use is determined, a detailed remedial plan is completed. this shall be done prior to the adoption of the amendment or approval of the rezoning in accordance with a site remediation plan prepared to be consistent with Ministry of Environment and Climate Change guidelines. Once the end use is determined, the application to amend the zoning by-law will require a record of site condition as part of the report. In addition, prior to any construction on the site, or the issuance of a building permit, a site plan agreement shall be completed and a record of site condition will also be required (under the Ontario Building Code).

c) Zoning By-law No. 101-2015

The subject property is zoned MH- Heavy Industrial




Zoning By-Law 101-2015

The property is currently zoned MH- Heavy Industrial, the minimum lot size in the MH- zone for lot creation is 500 m² for serviced property. The application exceeds the minimum lot size, any newly proposed development shall comply with the provisions of the City of Kenora zoning by-law 101-2015 section 4.10, the Kenora Official Plan, and Site Plan Control.

6. Results of Interdepartmental and Agency Circulation

Departments and Agencies Circulated	Comments Received
Municipal Engineer	<p>No comments submitted</p> <p>B01/16 Comments from previous application:</p> <div data-bbox="435 443 1403 632"> <p>With increase in traffic from both the commercial and residential components of the development, the east entrance/exit on to the north south section of Veterans' Drive is not suitable due to the hill to the south that makes this access egress point dangerous in winter months and motorists having difficulty in making the hill in winter conditions south bound up the hill back into the City Centre.</p> </div> <div data-bbox="435 663 1403 758"> <p>The proposed development is much different than the couple of vehicles that currently use this access location to the Power House. This becomes even more of a concern if the proposed Part 2 residential becomes more</p> </div> <div data-bbox="435 810 1386 842"> <p>than just summer seasonal.</p> </div> <div data-bbox="435 873 1386 1020"> <p>The City should have no interest in assuming a proposed public road within the development in addition to the safety concern of connecting this proposed road at the bottom of the hill on the north south section of Veterans' Drive, I offer the following comment in regards to the Private Road agreement as suggested by Randy Seller, Agent:</p> </div> <div data-bbox="435 1052 1386 1304"> <p>I have to assume the Private Road agreement is a tool for the development proceed from a planning perspective to address the requirement that developments must front and or access a Municipal road. I am in concurrence with this methodology so long as the Private road agreement is used as a mechanism to purely comply with the Official Plan and does not constitute the basis of an agreement for any transfer of the proposed private road to the municipality either now or at some point in the future related to either pre or post development of the lands.</p> </div> <div data-bbox="435 1335 1386 1430"> <p>However, this Private Road agreement still does not address the concern of the potential of a roadway being connected to the north south section of Veterans' Drive.</p> </div>

	<p>At this time, it would only be reasonable to have the proposed north entrance/exit onto the east west section be the only one allowed for the development which would also have to accommodate access to the Power Dam and Part 2 residential uses.</p> <p>The roads and sewer and water for this development would remain private as there is no benefit to the City to assume this infrastructure as there is no expansion potential of this infrastructure type beyond the proposed development.</p> <p>The City needs to obtain lands from the owner that contain River Road (the old roadway along the shoreline that goes to the sewage treatment plant, lands which Sultana pumping station is situated upon and possibly the boat launch just off of River Road if the City wishes to formally obtain control of this boat launch)</p> <p>There seems to be an inconsistency in the area for the residential Part 2 development in comparing page 9 of the report at 4.86 ha versus the Mobile Home Site Layout drawing at 7.19 ha.</p> <p>There is no mention of the existing storm that crosses through the center east west section of the proposed Part 1 commercial development in regards to if this pipe needs to be relocated to accommodate the development which if any work on this system should be at the expense of the developer.</p> <p>A secondary issue related to the storm drainage for the neighbourhood is will this existing storm sewer be used and tied into if and when development takes place on the vacant mill lands on the east side of Veterans' Drive and south of Ninth St North? This will have implications on storm water required to cross the Part 1 commercial lands and storm water management plans for lands to the east that are to be developed some time in the future. In this</p>
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	<p>case the possibility of upgrading the capacity, and location of the storm main through the proposed commercial development lands, may need to be investigated should land drainage from the east side of Veterans' Drive be contributing surface water when those easterly lands are developed at some time in the future.</p> <p>The application does not list the easement for storm sewer in favour of the City identified in the GIS as "SEWER/WATER PT1 2&3 23R-9753-258390" which is identified as the orange coloured corridor on the clip from the GIS below and as mentioned in the above paragraph:</p> 
Heritage Kenora	<p>January 30, 2018</p> <p>No concerns from Heritage Kenora.</p>
Building Department	<p>January 30, 2018</p> <p>The building department acknowledges that this is a Consent Application and the commercial and residential developments are conceptual, hence there are no concerns at this time. The department does however offer the following observations regarding the planning report and future rezoning;</p> <ul style="list-style-type: none"> - The report references both the Provincial Policy Statement (Human Made Hazards) and Official Plan (Potential Contaminated Sites) and acknowledges the need for a Record of Site Condition and possible site remediation in accordance with the Ministry of Environment. - The report states - Part 2 is notionally described as a residential development, primarily comprised of "three season" living. Is a 3 season Mobile Home Park an appropriate use in a future Urban residential Area/Zone? Note; Seasonal Dwellings are not permitted in R1, R2 and R3 Zones nor are Mobile Homes.

Roads Department	No comments submitted
Water & Wastewater Department	<p>January 30, 2018</p> <p>Water and sewer services are available. Though there has never been a complaint of sewer smell the property in question is very close (@100-120 m) to City's biggest sewage pumping station Sultana.</p>
Kenora Hydro	<p>No Comments submitted</p> <p>B01/16- Comments from previous application</p> <p>Any hydro extensions required for servicing the property will require registered easements in favour of KH at the owner or developer's expense. Existing circuits over the application property should have new registered easements assigned to KH assets, at KH expense.</p> <p>The previous Power Corporation Act allowed for unregistered easements for our assets however that was changed in 1998 with the new Electricity Act now requiring the easements to be registered.</p> <p>The Planning Rationale notes that "ample" power is available to the site in question. This suggests that it is readily available which may or may not be true. KH currently has circuits in vicinity with some limited capacity however there is no indication from the documents suggesting the required electrical capacity that would be required. If capacity required is beyond the existing circuit and station ability, upgrades or system enhancements would be required.</p> <p>Depending upon the requirements it could take 2-5 years for this work to be completed if, for example, if the requested capacity requires an additional substation to be built. There is currently a nearby de-energized 115 KV circuit that has considerable capacity however it would require a new substation to convert the high voltage to a distribution voltage for delivery. Design, approval, and construction of stations can take considerable time. In addition there may be a capital contribution required from the owner/developer of the property for servicing.</p>
Kenora Fire & Emergency Services	<p>February 2, 2018</p> <p>I have reviewed the attached files and Kenora Fire and Emergency Services has no objection for the severance of Part 1 from the adjoining property.</p>
MNRF	<p>February 13, 2018</p> <p>We have no immediate concerns with the severance and re-zoning but would ask that we be included in the review should future site development include in-water work.</p>

OPG	<p data-bbox="427 237 686 268">February 2, 2018</p> <p data-bbox="456 315 1349 386">On January 29, 2018, Ontario Power Generation ("OPG") received notice from the City of Kenora that it has received a draft application for consent, D10-18-02 for the creation of one lot on subject lands locally known as the 'Clarifier Site'.</p> <p data-bbox="456 411 1360 506">OPG has leasehold interest in the form of Water Power Lease Agreement No. 51 to flood and operate a generating station known as Whitedog Falls GS. The lands in the draft application for consent are on the waters that are subject to the lease. OPG has no concerns with the creation of the lot subject to the following conditions of approval:</p> <ul data-bbox="496 531 1360 646" style="list-style-type: none"> <li data-bbox="496 531 1360 579">• The applicant arrange for the preparation of a survey of the lands affected to establish the location of the 1045 ft contour (Geodetic Survey of Canada Datum 1923 adjustment) <li data-bbox="496 604 1360 646">• The applicant grant a flooding easement to OPG over and across the lands up to the 1045 ft contour

7. Public Comments

Circulation of the Notice of Complete Application and Hearing was completed on February 5, 2018 in accordance with Sections 53 of the Planning Act; whereby it was circulated to property owners within 60 metres of the subject property, and provided to the persons and public bodies prescribed.

A public hearing is scheduled to be held on February 20th, 2018, to hear public comments. If new information or comments are provided at the meeting, additional information may affect the outcome of the recommendation presented.

As of the date of this report (February 12th, 2018) no comments have been received.

8. Evaluation

The proposal meets the intent of the Kenora Official Plan and Zoning By-law 101-2015, and will enable development in compliance with the City's policies and regulations. Assuming an application for an amendment to the zoning by-law will come forward once the final use of the site is known, the request for a traffic impact study and site plan control are mechanisms to address access and the number of intersections along Rupert Road/Veterans Drive. As per the Phase III Environmental Site Assessment (AMEC Project No: WX1619702, 2010), future development of this Site, the Ministry of Ontario requests that a record of site condition is submitted. Development within 30 m of Rideout Bay will require its own submission, and everything greater than 30 m from Rideout Bay must be a separate submission. As per the record of site conditions, the Ministry of Ontario will require that site remediation plan prepared to be consistent with Ministry of Environment and Climate Change guidelines. As per Section 1.10 of the Kenora Zoning By-law 101-2015, Applications for building permits are required for any future development as a result of approval, per the *Ontario Building Code Act* and *Ontario Building Code*, site plan approval and a record of site condition will also be required as per applicable law (under the Ontario Building Code).

9. Legislative Framework for Consent approval

The Committee shall evaluate a consent application based on the Provincial Policy Statement (2014), The City of Kenora Official Plan (2015), Zoning By-law No. 101-2015 as amended and the provisions of section 51(24) of the Planning Act:

In determining whether a provisional consent is to be given, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to:

- (a) the effect of development of the proposed subdivision on matters of provincial interest;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act

10. Recommendation

That application for consent D10-18-02 property legally described as PIN 42163-0266, locally known as the 'Clarifier Site', Kenora, ON to enable the

creation of one (1) MH- heavy Industrial zoned lot, be approved and provisional consent be granted, subject to the following conditions:

- 1) The original executed Transfer/Deed of Land form, a duplicate original and one photocopy for City records be provided
- 2) A Schedule to the Transfer/Deed of land form on which is set out the entire legal description of the parcel(s) in question and containing the names of the parties indicated on page 1 of the Transfer/Deed of Land form be provided.
- 3) Three original copies (not photocopies) of the reference plan of survey, bearing the Land Registry Office registration number and signatures as evidence of deposit therein, and illustrating the parcel(s) to which the consent approval relates an which must show in general the same area and dimensions as the sketch forming part of the application be provided.
- 4) That such easement(s) or undertaking(s) to provide such easements as approved by the Operations Manager and President of Kenora Hydro, as may be required for utilities; hydro, sewer and water, drainage, access and egress including the roadway to Kenora sewage treatment plant be granted to the City of Kenora and Kenora Hydro at the developer's cost, unless otherwise agreed upon by the City of Kenora and/or Kenora Hydro.
- 5) That the preparation of a survey of the lands affected to establish the 1042 ft contour (Geodetic Survey of Canada Datum 1923 adjustment), and that a flooding easement is registered in favour of Ontario Power Generation (OPG) over and across the lands up to the 1045 ft. contour.
- 6) That the payment of any outstanding taxes, including penalties and interest (and any local improvement charges if applicable) shall be paid to the City of Kenora.
- 7) That prior to endorsement of the deeds, the Secretary-Treasurer shall receive a letter, from the owner or owner's Agent/Solicitor, confirming that conditions #1 through #6 have been fulfilled. Clearance letters from the City of Kenora and external agencies are to be included.
- 8) That all costs associated with extension of services, driveway installation, surveys, legal fees and matters related to the application are the responsibility of the developer/applicant.

NOTES:

- I. That prior development (new use or construction_ on the subject lands, a record of site condition as approved my MOECC shall provided to the City of Kenora, and site remediation plan prepared to be consistent with Ministry standards.
- II. That the City of Kenora may require a Traffic Impact Study, and acquire lands for rights-of-way or the widening of rights-of-way, if deemed necessary. Any road widening, as required by the City of Kenora, will be specified in the Site Plan Agreement between the City and the Developer
- III. That prior to any grading or construction on the site, and prior to final approval of the final development, the Developer will provide a final Drainage Plan with information on how the drainage basin runoff flow is calculated,

information regarding the capacity of the existing natural swales and/or proposed ditches and demonstrate that the drainage for all roads and lots be as close to the property lines as possible.

The following section(s) of the Planning Act apply:

Prior to any grading or any construction on the site, the Developer may be requested to provide a Drainage Plan, to identify the capacity of the existing natural swales and/or proposed ditches, and demonstrate that the drainage for all roads and lots be as close to the property lines as possible. References would be made to an overall drainage basin runoff flow calculation

The following section(s) of the Planning Act apply:

Conditions not fulfilled

53(41) If conditions have been imposed and the applicant has not, within a period of one year after notice was given under subsection (17) or (24), whichever is later, fulfilled the conditions, the application for consent shall be deemed to be refused but, if there is an appeal under subsection (14), (19) or (27), the application for consent shall not be deemed to be refused for failure to fulfill the conditions until the expiry of one year from the date of the order of the Municipal Board issued in respect of the appeal or from the date of a notice issued by the Board under subsection (29) or (33). 1994, c. 23, s. 32.

Lapse of consent

53 (43) A consent given under this section lapses at the expiration of two years from the date of the certificate given under subsection (42) if the transaction in respect of which the consent was given is not carried out within the two-year period, but the council or the Minister in giving the consent may provide for an earlier lapsing of the consent. 1994, c. 23, s. 32.



Matt Boscariol,
Manager of Community and Development Services

Attachments

- Complete Application for Consent to Sever
- Planning Rationale
- Notice of Application and Public Meeting
- B01/ 2016 Planning Report
- Letter received from Ontario Power Generation, February 2, 2018
- Cultural Heritage Study
- Phase III Environmental Site Assessment, 2010
- Ochiichagwe'Babigo'Ining Ojibway Nation Consultation

- Private Road Agreement

