

## Report to Planning and Environment Committee

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

**From:** Scott Mathers, MPA, P. Eng.,  
Deputy City Manager, Planning and Economic Development

**Subject:** Update to Delegated Authority for Heritage Easement  
Agreements

**Date:** Wednesday, May 22, 2024

## Recommendation

That, on the recommendation of the Director, Planning and Development, the revised “Delegated Authority for Heritage Alteration Permits By-law,” attached hereto as Appendix A, **BE INTRODUCED** at the Municipal Council meeting to be held on June 4, 2024 to amend By-law C.P.-1502-129 as amended, being “A by-law to delegate certain authority of Municipal Council to consent to or grant permits for alterations to heritage designated properties”, to include written approvals for properties subject to Heritage Easement Agreements.

## Executive Summary

Since the implementation of delegated authority for Heritage Alteration Permits in 2015, the speed at which property owners are able to obtain the necessary approvals for alterations to their heritage designated properties has greatly improved. Currently, the delegated authority by-law does not include written approvals pursuant to Heritage Easement Agreements within the scope of approvals delegated to the Civic Administration. This report recommends including Heritage Easement Agreements within the delegated authority to formally implement written approvals processes for alterations to properties subject to a Heritage Easement Agreement.

## Linkage to the Corporate Strategic Plan

This recommendation supports the following 2023-2027 Strategic Plan area of focus:

- Well-Run City: The City of London is trusted, open, and accountable in service of the community.
  - Londoners have trust and confidence in their municipal government.
    - Increase transparency and accountability in decision making, financial expenditures, and the delivery of municipal programs and services.

## Analysis

### 1.0 Background Information

#### 1.1 Previous Reports Related to this Matter

November 4, 2014. Report to Planning and Environment Committee. Delegated Authority for Heritage Alteration Permits – Information Report: <https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=16154>

March 23, 2015. Report to the Planning and Environment Committee. Delegated Authority for Heritage Alteration Permits: <https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=17934>

April 7, 2015. Report to the Planning and Environment Committee. Delegated Authority for Heritage Alteration Permits – Public Participation Meeting: <https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=18432>

November 18, 2019. Report to Planning and Environment Committee. Review of Delegated Authority for Heritage Alteration Permits: <https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=68778>

## **2.0 Discussion and Considerations**

### **2.1 Legislative and Policy Framework**

Cultural heritage resources are to be conserved and impacts assessed as per the fundamental policies of the *Provincial Policy Statement (2020)*, the *Ontario Heritage Act*, and *The London Plan*.

#### **2.1.1 Provincial Policy Statement**

Heritage Conservation is a matter of provincial interest (Section 2.d, *Planning Act*). The *Provincial Policy Statement (2020)* promotes the wise use and management of cultural heritage resources and directs that “significant built heritage resources and significant cultural heritage landscapes shall be conserved” (Policy 2.6.1, *Provincial Policy Statement 2020*).

“Significant” is defined in the *Provincial Policy Statement (2020)* as, “resources that have been determined to have cultural heritage value or interest.” Further, “processes and criteria for determining cultural heritage value or interest are established by the Province under the authority of the *Ontario Heritage Act*.”

Additionally, “conserved” means, “the identification, protection, management and use of built heritage resources, cultural heritage landscapes and archaeological resources in a manner that ensures their cultural heritage value or interest is retained.”

#### **2.1.2 Ontario Heritage Act**

The *Ontario Heritage Act* enables municipalities to protect properties of cultural heritage value or interest. Properties of cultural heritage value can be protected individually, pursuant to Section 29 of the *Ontario Heritage Act*, or where groups of properties have cultural heritage value together, pursuant to Section 41 of the *Ontario Heritage Act* as a Heritage Conservation District (HCD). Designations pursuant to the *Ontario Heritage Act* are based on real property, not just buildings.

Pursuant to Section 33(1) of the *Ontario Heritage Act*, Municipal Council may make decisions in respect to the consent of alterations of property designated under Section 29 of the *Ontario Heritage Act*.

Pursuant to Section 42(4) of the *Ontario Heritage Act*, Municipal Council may grant permits for the alteration of property located in a Heritage Conservation District designated under Section 41 of the *Ontario Heritage Act*.

Further, pursuant to Sections 33(15) and 33(16) and Sections 42(16) and 42(17), Municipal Council may, by by-law, delegated its power to consent to or grant alterations (“Heritage Alteration Permit) to an employee or official of the municipality, following consultation with its municipal heritage committee.

The *Ontario Heritage Act* also enables other tools to protect and conserve cultural heritage resources, including Heritage Easement Agreements. A Heritage Easement Agreement, registered between a property owner and the City, can be created pursuant to Section 37 of the *Ontario Heritage Act*.

Section 37 of the *Ontario Heritage Act* states,

*37(1) Despite subsection 36(1), after consultation with its municipal heritage committee, if one is established, the council of a municipality may pass by-laws providing for the entering into of easements or covenants with owners of real property or interests in real property, for the conservation of property of cultural heritage value or interest. 2002, c. 18, Sched. F, s. 2 (19).*

*(2) Any easement or covenant entered into by a council of a municipality may be registered, against the real property affected, in the proper land registry office. R. S. O. 1990, c. O. 18, s. 37 (2).*

*(3) Where an easement or covenant is registered against real property under subsection (2), ease easement or covenant shall run with the real property and the council of the municipality may enforce such easement or covenant, whether positive or negative in nature, against the owner or any subsequent owners of the real property, and the council of the municipality may enforce such easement or covenant even where it owns no other land which would be accommodated or benefitted by such easement or covenant. R. S.O. 1990, c. O. 18, s. 37 (3).*

*(4) Any assignment or covenant entered into by the council of the municipality under subsection (2) may be assigned to any person and such easement or covenant shall continue to run with the real property and the assignee may enforce the easement or covenant as if it were the council of the municipality and it owned no other land which would be accommodated or benefitted by such easement or covenant. R. S.O. 1990, c. O. 18, s. 37 (4).*

*(5) Where there is conflict between an easement or covenant entered into by a council of a municipality under subsection (1) and section 33 or 34, the easement or covenant shall prevail. R. S.O. 1990, c. O. 18, s. 37 (5).*

### **2.1.3 The London Plan**

The Cultural Heritage chapter of *The London Plan* recognizes that our cultural heritage resources define our City's unique identity and contribute to its continuing prosperity. It notes, "The quality and diversity of these resources are important in distinguishing London from other cities and make London a place that is more attractive for people to visit, live or invest in."

*554\_2 In all of the planning and development we do, and the initiatives we take as a municipality we will: conserve London's cultural heritage resources so they can be passed on to our future generations.*

*570\_5 For the purposes of cultural heritage protection and conservation, City Council may adopt a number of specific strategies and programs including: Heritage easements.*

*583\_ To ensure a greater degree of protection to designated properties of cultural heritage value or interest, City Council may enter into agreements with property owners or may attempt to secure conservation easements in order to protect those features deemed to have heritage value. Council may also consider the application of zoning that includes regulations to further protect the property.*

*587\_ Where a property of cultural heritage value or interest is designated under Part IV of the Ontario Heritage Act, no alteration, removal or demolition shall be undertaken that would adversely affect the reasons for designation except in accordance with the Ontario Heritage Act.*

*589\_ - A property owner may apply to alter the cultural heritage attributes of a property designated under the Ontario Heritage Act. The City may, pursuant to the Act, issue a permit to alter the structure. In consultation with the Community Advisory Committee on Planning, the municipality may delegate approvals for such permits to an authority.*

There are five properties in London which are protected through a municipal heritage easement agreement:

- Chestnut Hill, 55 Centre Street;
- 229-231 Dundas Street, London Mechanics' Institute;
- Elsie Perrin Williams Memorial London Public Library and Art Gallery and Museum, 305 Queens Avenue;

- Thornwood, 329 St. George Street and 335 St. George Street;
- Carfrae Cottage, 39 Carfrae Street.

### 3.0 Financial Impact/Considerations

None

### 4.0 Key Issues and Considerations

#### 4.1. Delegated Authority By-law

The Delegated Authority By-law, By-law No. C.P.-1502-129 as amended, currently delegates Municipal Council's decision-making abilities to the Manager, Community Planning, Urban Design and Heritage for the approval, or approval with terms and conditions, for Heritage Alteration Permits.

#### 4.2 Limits on Delegated Authority

The Delegated Authority By-law does not include the ability of Civic Administration to refuse a Heritage Alteration Permit application. The intent of the Delegated Authority By-law continues to distinguish between "minor alterations" (not meeting the "Conditions for Referral") where Civic Administration may act as approval authority, and "major alterations" (meeting the "Conditions for Referral") where consultation with the Community Advisory Committee on Planning (CACP) and a decision by Municipal Council is required.

The Delegated Authority By-law currently includes the ability of Civic Administration to consent to, approve or approve with terms and conditions Heritage Alteration Permits for individually designated heritage properties or properties included within a Heritage Conservation District. The Delegated Authority By-law does not currently include approvals processes for alterations to properties subject to a Heritage Easement Agreement, entered into pursuant to Section 37(1) of the *Ontario Heritage Act*.

Heritage Easement Agreements identify the City as a decision-making body for alterations and repairs pursuant to the individual agreements. A Heritage Easement Agreement provides the opportunity identify a specific process for contemplating changes or alterations to the property or its heritage attributes. Much like a heritage designating by-law, the intention of a Heritage Easement Agreement is to protect and conserve the cultural heritage value of a property but also to manage change to a property over time.

Though the HAP process is not directly used for change management processes for Heritage Easement Agreements, a similar process is used for alterations sought pursuant to a Heritage Easement Agreement. Presently, best practice principles and standards for heritage conservation are used for contemplating and reviewing approvals sought under the Heritage Easement Agreement. This may include, but not be limited to, review of best practice documents such as Parks Canada's *Standards and Guidelines for the Conservation of Historic Places in Canada*, and the Province of Ontario's *Eight Guiding Principles in the Conservation of Built Heritage Properties*, and the *Ontario Heritage Toolkit*. These documents can provide a framework for heritage conservation and change management. Heritage Easement Agreements can indicate the written approval of the City as a requirement for alterations pursuant to the agreement.

Where approval has not been recommended by staff, a similar process to the HAP process has been followed in bringing the request to the Community Advisory Committee on Planning (CACP), Planning and Environment Committee (PEC), and to Municipal Council for decision.

To formally implement written approvals process for alterations for properties subject to a Heritage Easement Agreement, it is recommended that the Delegated Authority By-law be updated to include delegated authority to approve alteration requests pursuant to

Heritage Easement Agreements entered into under Section 37 of the *Ontario Heritage Act*.

It is also recommended that the Delegated Authority By-law be updated to change the Civic Administration title to reflect the current organizational structure by deleting all references to “Manager, Community Planning, Urban Design and Heritage” and replacing them with the title “Director, Planning and Development”.

## **Conclusion**

The Delegated Authority By-law, By-law No. C.P.-1502-129 as amended, delegates Municipal Council’s decision-making abilities to a designated position in Civic Administration for the approval or approval with terms and conditions for Heritage Alteration Permits.

Currently the Delegated Authority By-law does not explicitly include approvals processes for alterations to properties subject to a Heritage Easement Agreement. To implement the written approvals process for alterations for properties subject to a Heritage Easement Agreement, it is recommended that the Delegated Authority By-law be updated to include delegated authority to approve, or approve with terms and conditions, alteration requests pursuant to Heritage Easement Agreements entered into under Section 37 of the *Ontario Heritage Act*.

**Prepared by:** Michael Greguol, CAHP  
Heritage Planner

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Manager, Community Planning

**Recommended by:** Heather McNeely, RPP, MCIP  
Director, Planning and Development

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Deputy City Manager, Planning and Economic  
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## **Appendices**

Appendix A            Delegated Authority By-law

## Appendix A – Delegated Authority By-law

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

Bill No. \_\_\_\_\_  
20

By-law No. C.P.-\_\_\_\_

A by-law to amend By-law C.P.-1502-129, as amended, being “A by-law to delegate certain authority of Municipal Council to consent to or grant permits for alterations to heritage designated properties”, to change Civic Administration titles to reflect the current organizational structure, and to include written approvals for properties subject to Heritage Easement Agreements.

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

AND WHEREAS section 23.1 of the *Municipal Act*, 2001 provides that section 9 and 11 of the *Municipal Act*, 2001 authorizes a council to delegate its powers or duties to a person or body, subject to certain limitations;

AND WHEREAS subsection 33(1) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended (“the *Ontario Heritage Act*”), the Municipal Council may make decisions in respect to the consent of alterations of property designated under Part IV of the *Ontario Heritage Act*;

AND WHEREAS under subsections 33(15) and 33(16) of the *Ontario Heritage Act*, Municipal Council may, by by-law, delegate its power to consent to all alterations or with respect to such classes of alterations as are described in the by-law by the council of a municipality, to an employee or official of the municipality if the council has established a municipal heritage committee and has consulted with the committee prior to delegating the power;

AND WHEREAS pursuant to subsection 42(4) of the *Ontario Heritage Act*, Municipal Council may grant permits for the alteration of property located in a Heritage Conservation District designated under Part V of the *Ontario Heritage Act*;

AND WHEREAS under subsections 42(16) and 42(17) of the *Ontario Heritage Act*, Municipal Council may, by-law, delegate its power to grant a permit for specific alterations or classes of alterations for a property situated in a Heritage Conservation District if the council has established a municipal heritage committee and consulted with it before the delegation;

AND WHEREAS under subsection 37(1) of the *Ontario Heritage Act*, Municipal Council may, by by-law, enter into an easement or covenant with owners of real property or interest in real property, for the conservation of property of cultural heritage value or interest;

AND WHEREAS Municipal Council enacted By-law No. C.P.-1502-129, as amended, being “A by-law to delegate certain authority of Municipal Council to consent to or grant permits for alteration to heritage designated properties” on April 14, 2015;

AND WHEREAS the Council deems it appropriate to amend By-Law C.P.-1502-129, as amended, being “A by-law to delegate certain authority of Municipal Council

to consent to or grant permits for alterations to heritage designated properties” to include written approvals for properties subject to Heritage Easement Agreements.

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

1. That By-law C.P.-1502-129, as amended, is hereby further amended by deleting all references to the title “Manager, Community Planning, Urban Design and Heritage” and by replacing them with the title “Director, Planning and Development”.
2. That By-law C.P.-1502-129, as amended, is hereby further amended by adding the following new section:  
  
“Part IX: - HERITAGE EASEMENT AGREEMENTS  
  
23. Municipal Council delegates to the Director, Planning and Development powers that Municipal Council has regarding granting written approvals under Section 37 of the Act.  
  
24. The delegated authority in Section 23 does not include the power to refuse a written request to make alterations under Section 37 of the Act.  
  
25. The Director, Planning and Development shall consult with the CACP in situations where a written request is not recommended for approval.
3. That By-law C.P.-1502-129, as amended, is hereby further amended by deleting all references to the title “London Advisory Committee on Heritage” and replacing them with the title “Community Advisory Committee on Planning”.
4. This by-law shall come into force and effect on the date it is passed subject to the provisions of PART VI.1 of the *Municipal Act*, 2001.

PASSED in Open Council on June 4, 2024 subject to the provisions of PART VI.1 of the *Municipal Act*, 2001.

Josh Morgan  
Mayor

Michael Schulthess  
City Clerk

First Reading – June 4, 2024  
Second Reading – June 4, 2024  
Third Reading – June 4, 2024