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**Delegated Authority for Heritage Alteration Permits
K. Gonyou**

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| TO: | CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE |
| FROM: | JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER |
| SUBJECT: | DELEGATED AUTHORITY FOR HERITAGE ALTERATION PERMITS MONDAY MARCH 23, 2015 |

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| RECOMMENDATION |
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That, on the recommendation of the Managing Director, Planning and City Planner, with the advice of the Heritage Planner, the following actions **BE TAKEN** with respect to delegated authority for Heritage Alteration Permits;

- (a) The proposed "Delegated Authority for Heritage Alteration Permits By-law" attached hereto as Appendix A **BE INTRODUCED** at Municipal Council on March 31, 2015; and,
- (b) Approval authority for Heritage Alteration Permit applications, consistent with the Conditions for Referral described in the proposed by-law, **BE DELEGATED** to the City Planner.

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| PREVIOUS REPORTS PERTINENT TO THIS MATTER |
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On November 11, 2014, "Delegated Authority for Heritage Alteration Permits Information Report" was received and circulated for comment by Municipal Council. The Information Report is attached for reference as Appendix B to this report, including its Appendices A, C, and D. Appendix B of the Information Report (proposed delegated authority by-law) has been revised and attached as Appendix A of this report.

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| PURPOSE AND EFFECT OF RECOMMENDED ACTION |
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The purpose of this recommendation is to enable the City Planner, or written designate, to approve certain alterations to heritage designated properties.

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| BACKGROUND |
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A Heritage Alteration Permit is required to alter any property designated under the *Ontario Heritage Act*. Under the current approvals process, Heritage Alteration Permit applications typically take between three and seven weeks to be approved and all require consultation with the London Advisory Committee on Heritage (LACH). The LACH's recommendation is referred to the Planning & Environment Committee and Municipal Council is the approval authority. As the number of heritage designated properties increases, the volume of Heritage Alteration Permits increases as well, prompting a review of our current practices to help manage change for London's cultural heritage resources.

On June 14, 2010, Municipal Council resolved that Civic Administration draft a by-law for the delegation of authority for the approval of minor alterations to heritage designated properties.

At the November 4, 2014 meeting of the Planning & Environment Committee, staff introduced the Information Report. On November 11, 2014, Municipal Council resolved,

"That on the recommendation of the Managing Director, Planning and City Planner, with the advice of the Heritage Planner and the London Advisory Committee on Heritage's Policy and Planning Sub-Committee, the delegation of authority to consent to, or grant, Heritage Alteration Permits for heritage designated properties be circulated for comment; it being noted that a public participation meeting will be held at a future meeting of the Planning and Environment Committee."

The Information Report was circulated to the LACH and heritage community organizations in London for comment.

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The proposed delegated authority for Heritage Alteration Permits does not include the ability of the City Planner to refuse a Heritage Alteration Permit application and does not include the ability to consent to the demolition of a property listed on the *Inventory of Heritage Resources* or one designated under the *Ontario Heritage Act*. 'Conditions for Referral', as described in detail in the Information Report and delegated authority by-law (see Appendix A), are intended to distinguish between "minor alterations," where the City Planner may act as approval authority, and "major alterations" where the LACH should be consulted.

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| RESULTS OF CIRCULATION |
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To implement delegated authority for Heritage Alteration Permits, consultation with the London Advisory Committee on Heritage is required by Sections 33(15) and 42(16) of the *Ontario Heritage Act*. The Information Report was circulated to members of the LACH at its meeting on December 10, 2014 and was accompanied by a presentation by the Heritage Planner. The LACH referred this matter to its Planning & Policy Sub-Committee, who discussed it at its meeting on December 18, 2014. Comments from the Planning & Policy Sub-Committee were received by the LACH on January 14, 2015, requesting minor revisions to the delegated authority by-law be considered. These recommendations were reviewed by the Heritage Planner and incorporated into the by-law in Appendix A.

Comments received during the circulation of the Information Report included:

- Recommended re-wording of the definition of "maintenance";
- Recommended re-wording of Section 17 of the draft by-law for clarity;
- Amending reporting requirement to the LACH on a monthly basis; and,
- The inclusion of "all or part of" after the words "To permit the demolition of..." in Section 5b of the draft by-law.

The first two comments were included in revisions to the draft by-law.

Regarding the reporting protocol, a regular report is recommended in the draft by-law proposed. To mediate the balance of keeping the LACH informed of the approval activities of the City Planner while not creating additional reporting requirements, it is proposed that the Heritage Planners' maintain their regular practice of verbally updating the LACH at its regular monthly meetings. Following the implementation of the delegated authority for Heritage Alteration Permits, this will include Heritage Alteration Permit applications that were approved by the City Planner. The annual report will contain information on all Heritage Alteration Permit applications received in the past year and be submitted to the LACH, PEC, and Municipal Council.

Suggested rewording of Section 5b would render the delegation of approval authority to the City Planner void as a "partial demolition" is considered to be an alteration. This revision was not made.

In addition to the statutory consultation required by the *Ontario Heritage Act*, information regarding the delegated authority for Heritage Alteration Permits was circulated to heritage organizations via a letter sent on December 3, 2014. At the time of preparing this report, four responses were received, including one letter of support and one request for further consultation (which took place on January 7, 2014). These responses support the delegating of approval authority to the City Planner for certain Heritage Alteration Permit applications. One community organization indicated "some trepidation" although they maintained trust in the Heritage Planner's opinions and understanding of the issues. This feedback highlights the importance of ongoing engagement and dialogue with London's stakeholders in cultural heritage conservation.

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| CONCLUSION |
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Based on Municipal Council direction, staff has recommended authority for Heritage Alteration Permits be delegated to the City Planner. Revisions were made to the delegated authority draft by-law (first presented on November 4, 2014) based on the feedback received from consultation with the LACH and heritage community organizations.

This report was prepared with the assistance of the City Clerk.

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| PREPARED BY: | SUBMITTED BY: |
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| KYLE GONYOU HERITAGE PLANNER, URBAN REGENERATION | JIM YANCHULA, MCIP, RPP MANAGER, URBAN REGENERATION |
| RECOMMENDED BY: | |
| | |
| JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER | |

February 26, 2014

Attach:

- Appendix A: Delegated Authority for Heritage Alteration Permits By-law
- Appendix B: Delegated Authority for Heritage Alteration Permits Information Report (November 4, 2014), including Appendices A, C, and D

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APPENDIX A: DELEGATED AUTHORITY FOR HERITAGE ALTERATION PERMITS BY-LAW

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

By-law No. C.P.-_____

A by-law to delegate certain authority of Municipal Council to consent or grant permits for the alteration of heritage designated properties.

WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c.25, (the "*Municipal Act, 2001*") as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under that or any other Act;

AND WHEREAS section 8(1) of the *Municipal Act, 2001* provides that the powers of a municipality under any Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* permits a municipality to pass by-laws respecting the protection of persons and property and respecting structures including fences and signs;

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 Municipal Council has consulted with the London Advisory Committee on Heritage, its established municipal heritage committee, respecting the delegation contained within this by-law;

AND WHEREAS Municipal Council has determined that it is necessary and desirable for the public and in the public interest that it delegate to the City Planner of the City of London some or all of the power to consent to alteration of designated heritage properties and to grant permits for the alteration of a property situated in a Heritage Conservation District;

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

PART I – DEFINITIONS

1. For the purposes of this By-law, words shall have the meaning set out in the Act and, additionally:

“Act” shall mean the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended;

“Alter” shall mean to change in any manner and includes to restore, renovate, repair, erect or disturb and “alteration” and “altering” have corresponding meanings;

“City of London” shall mean The Corporation of the City of London;

“City Planner” shall mean the person who holds the position of City Planner for The Corporation of the City of London, or written designate.

“Heritage Alteration Permit” shall mean the application to obtain consent or permission for an alteration to a heritage designated property.

“Heritage Attribute” shall mean, in relation to real property, and to the buildings and structures on real property, the attributes of the property, building and structures that contribute to their cultural heritage value or interest.

“Heritage Designated Property” shall mean properties protected under Part IV and/or Part V of the Act, or other policy that achieve the protection of a cultural heritage resource.

“Heritage Planner” shall mean a person who holds the position of Heritage Planner for The Corporation of the City of London.

“Heritage Conservation District” means a Heritage Conservation District designated under Part V of the Act;

“Heritage Conservation District Plan” shall mean a plan adopted by Municipal Council under Part V of the Act to provide direction in the conservation of the heritage attributes and cultural heritage value or interest of a Heritage Conservation District.

“Information” shall mean any information requested by the City Planner and includes plans, reports or any other documentation requested.

“London Advisory Committee on Heritage” (LACH) shall mean the City’s municipal heritage committee established as pursuant to the Act;

“Maintenance” shall mean the routine, cyclical, non-destructive actions necessary to ensure the long-term conservation of a heritage designated property and its heritage attributes. Actions undertaken within the scope of maintenance should use the same type of materials to maintain the cultural heritage value and visual integrity of a heritage designated property, in keeping with the design, texture, and any other distinctive feature that is to be maintained. Typical maintenance actions may include but are not limited to: periodic inspections, general property cleanup of rubbish and refuse, general gardening, repair, replacement of broken glass in windows with same, replacement of asphalt shingles with same, painting in a same or similar colour, and/or any work defined as maintenance within an *Ontario Heritage Act* designation by-law or easement agreement.

“Municipal Council” shall mean the Municipal Council of the Corporation of the City of London;

“Property owner” shall mean the property owner of a heritage designated property, or authorized agent.

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“PEC” shall mean the Planning and Environment Committee, or equivalent.

PART II – NO HERITAGE ALTERATION PERMIT REQUIRED

2. An owner of a heritage designated property is not required to obtain a Heritage Alteration Permit in the following instances:
 - a. All interior work, except where specifically designated by designation by-law or easement passed under the Act;
 - b. Minor alterations as may be described in an applicable Heritage Conservation District Plan as required by Section 41.1(5) of the Act as not requiring a Heritage Alteration Permit; or,
 - c. Maintenance as defined by this By-law.

PART III – DELEGATION OF AUTHORITY TO CONSENT TO OR GRANT PERMITS FOR ALTERATIONS TO HERITAGE DESIGNATED PROPERTIES

3. Municipal Council delegates to the City Planner all of the powers that Municipal Council has regarding the consent or granting of a Heritage Alteration Permit or approvals which were assigned to Municipal Council under subsections 33 and 42 of the Act.
4. The delegated authority in Section 3 includes the power to include terms and conditions to the consent or grant of a Heritage Alteration Permit.
5. The delegated authority in Section 3 does not include the power:
 - a. To refuse a Heritage Alteration Permit application;
 - b. To permit the demolition of a structure or building located on a heritage designated property or property listed pursuant to Section 27 of the Act on the *City's Inventory of Heritage Resources*; or,
 - c. To consent to the de-designation of a heritage designated property.
6. In the situations noted in Section 5 (a-c), Municipal Council retains the authority prescribed in the Act and shall follow the process described in the Act.
7. In reviewing a Heritage Alteration Permit application, the City Planner may:
 - a. Consent to or grant a Heritage Alteration Permit;
 - b. Consent to or grant a Heritage Alteration Permit with terms and conditions; or,
 - c. Refer the Heritage Alteration Permit application to the LACH.
8. The City Planner shall consult with the LACH in situations where a Heritage Alteration Permit application satisfies one or more of the Conditions for Referral, or at the discretion of the City Planner.
9. Conditions for Referral, as noted in Section 8, include:
 - a. A complex application;
 - b. Considerable sensitivity or contention regarding an application;
 - c. An application which fails to achieve acceptable heritage planning process or practice;
 - d. An application which fails to achieve policies or guidelines of a Heritage Conservation District Plan and Guidelines (if applicable);
 - e. Where refusal of a Heritage Alteration Permit is recommended by the City Planner; and/or,
 - f. Where a property owner requests consideration of Heritage Alteration Permit application by the LACH or has appealed the terms and conditions attached to a Heritage Alteration Permit approved by the City Planner.
10. The LACH, upon receiving a Heritage Alteration Permit application from the City Planner, may make a recommendation regarding the consent or grant of a Heritage Alteration Permit to the City Planner. This may:
 - a. Recommend consent to or grant of a Heritage Alteration Permit;
 - b. Recommend consent to or grant of a Heritage Alteration Permit with terms and conditions; or,
 - c. Make a recommendation regarding a Heritage Alteration Permit application to Municipal Council, via PEC. In this circumstance, Municipal Council shall retain

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the decision-making authority regarding the Heritage Alteration Permit application.

Thereafter, the City Planner will make a decision with consideration of the recommendation of the LACH.

11. Municipal Council delegates to the City Planner all of the powers that Municipal Council has to process Heritage Alteration Permits in accordance with the terms of this By-law and to establish any policies, guidelines, practices or procedures necessary to enact the Heritage Alteration Permit system in accordance with the terms and intent of this By-law and any decision made by Municipal Council pursuant to this By-law.
12. The City Planner shall prescribe all forms necessary to implement this By-law and may amend such forms from time to time as the City Planner deems necessary without amendments to this By-law.
13. Municipal Council delegates to the City Planner the power that Municipal Council has to request such information as Municipal Council may require from the owner relating to a Heritage Alteration Permit.
14. Notwithstanding Section 13, Municipal Council retains the authority to request additional information that it considers necessary that was not requested by the City Planner.
15. The City Planner is authorized to undertake all acts necessary to carry out the authority vested in the City Planner pursuant to this By-law, including affixing their signature as required to all documents.
16. The City Planner will prepare a regular report which outlines the Heritage Alteration Permits that were consented to or granted, as well as the terms and conditions attached (as applicable). The report will be submitted to the LACH, PEC, and Municipal Council.

PART IV – DESIGNATE

17. Should the City Planner, and his/her written designate, be absent through illness or vacation or the position is vacant, then the Heritage Planner shall act in their place and stead. Should the City Planner, written designate, and Heritage Planner be absent through illness or vacation or position vacancy, the direct Manager of the Heritage Planner shall act in their place and stead. While so acting, the designate may exercise all of the rights, powers and authority of the City Planner as delegated by this By-law.

PART V – HERITAGE ALTERATION PERMITS

18. A property owner desiring to alter their heritage designated property shall submit an application (“Heritage Alteration Permit” application) to the City Planner which outlines the proposed work. Information outlined in the Heritage Alteration Permit application shall be provided in order to assess the proposed work. Supplementary information may be requested by the City Planner.
 - a. Any information contained within the application, plans, specification, and/or documents, shall form the basis upon which a Heritage Alteration Permit is consented to or granted.
 - b. Any material changes to the application, plans, specification, and/or documentation or other information as it relates to the proposed work requires formal amendment of the Heritage Alteration Permit with notification provided to the City Planner.
19. Upon receipt of the Heritage Alteration Permit application and all information requested by the City Planner a Heritage Alteration Permit application shall be deemed complete and a letter or notification to this effect shall be provided to the property owner.
20. In the assessment of a Heritage Alteration Permit application, the City Planner may obtain advice or input from the LACH and/or heritage experts with respect to the Heritage Alteration Permit application.
21. The City Planner may undertake a site visit to assess the subject heritage designated property in consideration of the Heritage Alteration Permit application.

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22. The City Planner shall issue documentation outlining the parameters of the Heritage Alteration Permit to a property owner of the heritage designated property that has made an application under this By-law in the following instances:
 - a. Where the City Planner consents to or grants a Heritage Alteration Permit for the alteration of a heritage designated property;
 - b. Where the City Planner consents to or grants a Heritage Alteration Permit for the alteration of a heritage designated property with terms and conditions;
 - c. Where Municipal Council consents to or grants a Heritage Alteration Permit for the alteration of a heritage designated property;
 - d. Where Municipal Council consents to or grants a Heritage Alteration Permit for the alteration of a heritage designated property with terms and conditions;
 - e. Where Municipal Council refuses a Heritage Alteration Permit application;
 - f. Where the Conservation Review Board or Ontario Municipal Board orders or directs that the City consent to or grant a Heritage Alteration Permit for the alteration of a heritage designated property; or,
 - g. Where the Conservation Review Board or Ontario Municipal Board orders or directs that the City consent to or grant a Heritage Alteration Permit for the alteration of a heritage designated property with terms and conditions.
23. No work with the potential to impact a heritage attribute of a heritage designated property shall commence prior to the issuance of a Heritage Alteration Permit, which consents to or grants permission for the proposed work.
24. All applications, plans, specifications, documents form part of the approved Heritage Alteration Permit and all work must be carried out in accordance with this documentation and any other information that forms the basis upon which the consent or Heritage Alteration Permit grant is provided.
25. Any work which deviates from the work proposed, as outlined in Section 18, is in violation of the Heritage Alteration Permit and is subject to prosecution under the Act.
26. A Heritage Alteration Permit shall be displayed by the property owner on the heritage designated property for which the application was made in a location visible to the general public.
27. The holder of a Heritage Alteration Permit shall advise the City Planner upon completion of the work.
28. The holder of a Heritage Alteration Permit shall allow the City Planner to inspect the work completed under the Heritage Alteration Permit.
29. All work must be completed within three (3) years of approval of a Heritage Alteration Permit, unless otherwise noted. Any work not completed in this allotted time frame requires the submission of a new Heritage Alteration Permit application under the Act.

PART VI – NOTWITHSTANDING

30. The policies and provisions of this By-law are applicable to properties designated under Part V of the *Ontario Heritage Act* notwithstanding the policies or recommendations of the applicable Heritage Conservation District Plan.

PART VII – PRE-CONSULTATION

31. Pre-consultation in advance of the submission of a Heritage Alteration Permit application is encouraged, particularly in cases of complex, sensitive or potentially contentious proposals.
32. Pre-consultation shall include, as a minimum, the property owner and/or agent authorized on the property owner's behalf, and City Planner and may include other parties as deemed necessary or desired.

PART VIII – APPEAL PROCESS

33. A property owner may request the LACH's consideration of a Heritage Alteration Permit application delegated pursuant to this by-law to the City Planner, or to appeal the

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decision of the City Planner regarding the terms and conditions attached to a Heritage Alteration Permit;

34. In the situation that the LACH has already been consulted regarding a Heritage Alteration Permit, a property owner may appeal the decision of the City Planner regarding the terms and conditions attached to a Heritage Alteration Permit to Municipal Council, via PEC.
35. A property owner may appeal the terms and conditions attached to a Heritage Alteration Permit or the refusal of a Heritage Alteration Permit application by Municipal Council to the Conservation Review Board or the Ontario Municipal Board, as applicable, as provided for in the Act.

PART IX – RECOGNITION OF DELEGATED AUTHORITY

36. Irrespective of any authority delegated to the City Planner under this By-law, Municipal Council may, after notifying the City Planner, exercise any authority that is delegated to the City Planner.
37. Despite any other provisions of this By-law, the City Planner may refer any Heritage Alteration Permit application to Municipal Council at any time.
38. Despite any other provision of this By-law, the City Planner may consult with the LACH regarding any Heritage Alteration Permit application at any time.

PART X – VALIDITY

39. It is hereby affirmed that each and every of the proceeding sections of this By-law is severable and that, if any requirements of this By-law should for any reason be declared invalid by Court or competent jurisdiction, it is the intention and desire of Municipal Council that each and every of the then remaining requirements hereof shall remain in full force and effect.
40. This By-law shall come into force and effect on the date that it is passed.

PASSED in Open Council on March 31, 2015.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – March 31, 2015
Second Reading – March 31, 2015
Third Reading – March 31, 2015

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**APPENDIX B: DELEGATED AUTHORITY FOR HERITAGE ALTERATION PERMITS
INFORMATION REPORT**

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| TO: | CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE |
| FROM: | JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER |
| SUBJECT: | DELEGATED AUTHORITY FOR HERITAGE ALTERATION PERMITS INFORMATION REPORT TUESDAY NOVEMBER 4, 2014 |

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| RECOMMENDATION |
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That, on the recommendation of Managing Director, Planning and City Planner, and with the advice of the Heritage Planner and the London Advisory Committee on Heritage (Planning and Policy Sub-Committee), the following information report with respect to the delegation of authority to consent to or grant Heritage Alteration Permits for heritage designated properties **BE RECEIVED** for information purposes and **BE CIRCULATED** for comment; it being noted that a future public participation meeting will be held at the Planning and Environment Committee.

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| PREVIOUS REPORTS PERTINENT TO THIS MATTER |
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None.

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| PURPOSE AND EFFECT OF RECOMMENDED ACTION |
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The purpose of this recommendation is to initiate a process to consider the delegation of authority to the City Planner, or designate, to consent to grant Heritage Alteration Permits for heritage designated properties. It is recommended that information contained within this report be widely circulated for comment.

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| BACKGROUND |
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At its meeting held on June 14, 2010, Municipal Council resolved,
 “That, on the recommendation of the London Advisory Committee on Heritage and its Planning and Policy Sub-Committee, the Civic Administration be requested to draft a by-law for the delegation of authority for the approval of minor alterations to heritage designated properties and/or properties located within a Heritage Conservation District to the Heritage Planner, pursuant to Sections 33(15) and 42(16) of the *Ontario Heritage Act*, with such draft by-law to include a provision requiring the reporting of approvals to the LACH and to the Municipal Council, and to include a provision for notification to Ratepayers Associations or other Community Associations within Heritage Conservation Districts as a courtesy; it being noted that the current application process, as well as the associated timeline for applications to be heard by the LACH, the Planning Committee and the Municipal Council is cumbersome and time-consuming for minor alterations.”

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| ANALYSIS |
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HERITAGE ALTERATION PERMIT PROCESS IN LONDON

London has taken the important step of protecting many of its significant cultural heritage resources through designation under the *Ontario Heritage Act*. Following designation under Part IV or V of the *Ontario Heritage Act*, the written consent or permission of Municipal Council is required to alter a heritage designated property. The review and approval of a Heritage Alteration Permit application is prescribed in the *Ontario Heritage Act*, which includes consultation with LACH. The final decision rests with Municipal Council to consent to or grant a

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Heritage Alteration Permit, include terms and conditions with an approval, or refuse a Heritage Alteration Permit application.

Each heritage designated property, including individually designated heritage properties and properties located within a Heritage Conservation District (HCD), is required to obtain a Heritage Alteration Permit prior to commencing alterations. A Heritage Alteration Permit does not relieve the applicant of the requirement to obtain other necessary approvals, such as a Building Permit or other approvals; a Heritage Alteration Permit may be required when a Building Permit is not.

Following the receipt of a Heritage Alteration Permit, the approval process typically takes between 3 and 7 weeks subject to the timing of LACH, PEC, and Municipal Council meetings. The decision of Municipal Council regarding a Heritage Alteration Permit application is required within 90 days of receipt of an application, after which the application is deemed to have consent. Staff time is required for the preparation of an accompanying report to LACH, with a recommendation for its consideration. Heritage Alteration Permits that are recommended for approval appear as consent items on the PEC agenda and have generally caused little or no discussion either by PEC members or the public.

The number of Heritage Alteration Permit applications increases with the adoption of each new HCD. At present, London has five HCDs designated under Part V of the *Ontario Heritage Act* totaling 2,180 properties. Two additional HCDs (Blackfriars-Petersville HCD and Wortley Village-Old South HCD) are in the final stages of the approval process; when finalized, this will add an additional 1,605 heritage designated properties. If approved, upcoming HCD studies of Grosvenor-St. James and SoHo could further add an additional 1,500 properties, and would bring the total number of properties located within London’s HCDs to over 5,300 properties. London has approximately 300 individual properties designated under Part IV of the *Ontario Heritage Act* that are required to obtain Heritage Alteration Permit approvals prior to commencing work.

The number of reports to LACH, and subsequently to Municipal Council via PEC, has increased in accordance with the number of heritage designated properties, particularly within HCDs. Table 1 articulates the growth of the number of Heritage Alteration Permit reports annually. Figure 1 illustrates the growth of Heritage Alteration Permit applications in accordance with the growth of heritage designated properties in London.

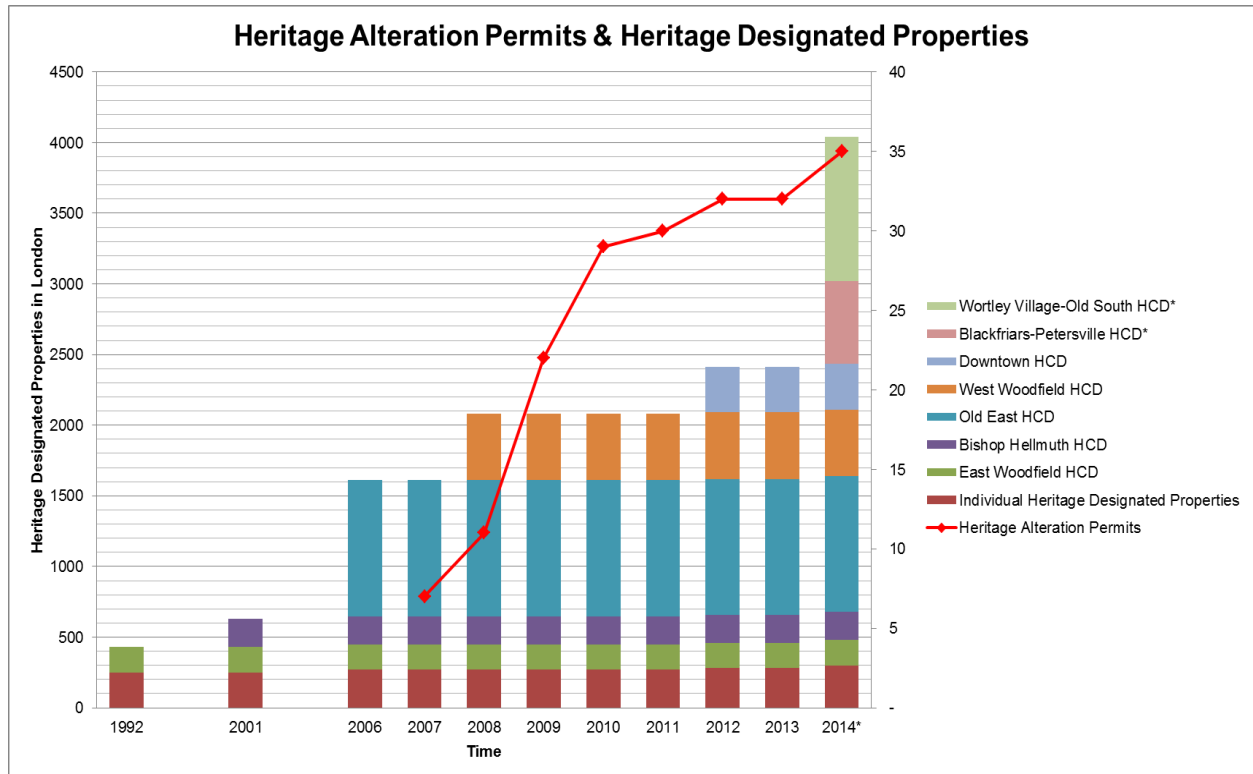
Table 1: Heritage Alteration Permits per Annum

| Year | Number of Heritage Alteration Permit Reports Processed |
|------|--|
| 2007 | 7 |
| 2008 | 11 |
| 2009 | 22 |
| 2010 | 29 |
| 2011 | 30 |
| 2012 | 32 |
| 2013 | 32 |
| 2014 | 35 (estimate) |

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Figure 1: Growth of Heritage Alteration Permits and Heritage Designated Properties in London



These numbers represent only actual Heritage Alteration Permit applications. They do not include situations where property owners contact the Heritage Planner to inquire *if* a Heritage Alteration Permit application is required. If the proposed work is deemed to be a repair or maintenance of heritage attributes using similar materials, advice has been given that no Heritage Alteration Permit application is needed.

Applications to permit the demolition of a building or structure located on a heritage designated property or properties listed on the City's *Inventory of Heritage Resources* are not included in the above table. Sections 27(3), 34(1) and 42(1) of the *Ontario Heritage Act* require Municipal Council's approval to permit the demolition of a building or structure located on a listed or heritage designated property. The significant implications of the demolition of a building or structure located on a heritage designated or listed property require the consent of Municipal Council and are not recommended for inclusion in the delegated authority by-law.

ENABLING LEGISLATION

Delegated authority is enabled by the policies of the *Municipal Act* and the *Ontario Heritage Act*.

Subject to certain limitations, section 32.1 (1) of the *Municipal Act* states that a municipality may delegate its power and duties under the *Municipal Act* or any other Act to a person or body. Those limitations include:

Scope of power

1. A delegation may be revoked at any time without notice unless the delegation by-law specifically limits the municipality's power to revoke the delegation.
2. A delegation shall not limit the right to revoke the delegation beyond the term of the council which made the delegation.
3. A delegation may provide that only the delegate can exercise the delegated power or that both the municipality and the delegate can exercise the power.
4. A delegation or deemed delegation under paragraph 6 of a duty results in the duty being joint duty of the municipality and the delegate.
5. A delegation may be made subject to such conditions and limits as the council of a municipality considers appropriate.
6. Where a power is delegated, the power is deemed to be delegated subject to any limits on the power and to any procedural requirements, including conditions, approvals and appeals which apply to the power and duties related to the power and deemed to be delegated with the power. 2006, c.32, Sched. A, s.15.

Sections 33(15), 35(16), 42(16) and 42(17) of the *Ontario Heritage Act* outline the requirements to implement delegated authority to consent to or permit the alteration of an individual heritage designated property and properties located within an HCD. Authority may be granted to a municipal employee or official with respect to classes of alterations described within a by-law

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enabling the delegated authority. The *Ontario Heritage Act* requires that the municipal heritage committee, London’s LACH, be consulted with respect to the draft delegated authority to consent to or permit the alteration of heritage designated properties by-law.

Part IV, Section 33 of the *Ontario Heritage Act*

Delegation of council’s consent

(15) The power to consent to alteration to property under this section may be delegated by 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. 2005, c.6, s.21(3).

Scope of delegation

(16) A By-law that delegates the Council’s power to consent to alterations to a municipal employee or official may delegate the power with respect to all alterations or with respect to such classes of alterations as are described in the By-law. 2006, c.6, s.21(3).

Part V, Section 42 of the *Ontario Heritage Act*

(16) The Council of a municipality may delegate by By-law its power to grant permits for the alteration of property situated in a heritage conservation district designated under this Part to an employee or official of the municipality if Council has established a municipal heritage committee and consulted with it before the delegation. 2005, c.6, s.32(6).

(17) A By-law under Subsection (16) may specify the alterations or classes of alterations in respect of which power to grant permits is delegated to the employee or official of the municipality. 2005, c.6, s.32(6).

LONDON’S HERITAGE CONSERVATION DISTRICTS

Delegated authority has been consistently recommended, in some form, by London’s HCDs since delegated authority was enabled by revisions to the *Ontario Heritage Act* in 2005. These revisions enable Municipal Council to delegate its powers to consent to or grant Heritage Alteration Permits to an employee or official of the municipality. References to the delegation of authority in London’s HCDs are identified in Appendix A.

DELEGATED AUTHORITY IN OTHER ONTARIO MUNICIPALITIES

Delegated authority to consent to or permit the alteration of heritage designated properties has been implemented by numerous municipalities in Ontario as a means of streamlining the approval process, improving customer service, and making more efficient use of staff and committee resources. Communities including Aurora, Burlington, Centre Wellington, Clarington, Cobourg, Collingwood, Hamilton, Kingston, Kitchener, Markham, Niagara-on-the-Lake, Oakville, Peterborough, and Toronto have successfully implemented delegated authority by-laws for their heritage approvals process.

SCOPE OF THE RECOMMENDED DELEGATION AUTHORITY

The scope of delegated authority recommended in this report aims to:

- Achieve greater efficiency in response and approval time;
- Alleviation of pressure on staff and committee time resulting better allocation resources; and,
- Improving customer service while relying on the increased professional capacity of the Heritage Planners.

For these reasons, it is recommended that the City Planner, or designate, be delegated the authority to consent to or grant Heritage Alteration Permit. The Heritage Planner will serve as the designate for the City Planner for the matters regarding Heritage Alteration Permits.

Following the receipt of a complete Heritage Alteration Permit application, the City Planner, or designate, may:

- Consent to or grant a Heritage Alteration Permit;
- Consent to or grant a Heritage Alteration Permit with terms and conditions; or,
- Refer the Heritage Alteration Permit application to LACH and subsequently Municipal Council.

A number of Conditions of Referral have been developed to direct when a Heritage Alteration Permit application should be referred to LACH. This provision ensures that LACH maintains their important advisory role regarding cultural heritage conservation. Conditions of Referral include:

- Complex applications;
- An application with considerable sensitivity or contention;

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- An application which fails to achieve acceptable heritage planning process or practice;
- An application which fails to achieve policies or guidelines of a Heritage Conservation District Plan and Guidelines (if applicable);
- Where refusal of a Heritage Alteration Permit is recommended by the City Planner, or designate; and/or,
- Where a property owner requests consideration of the Heritage Alteration Permit application by Council, via LACH and PEC.

The City Planner, or designate, may refer any Heritage Alteration Permit application to LACH. Should the City Planner, or designate, and LACH agree regarding the consent or grant of a Heritage Alteration Permit, the City Planner, or designate, may then issue a Heritage Alteration Permit with or without terms and conditions. Should LACH recommend refusal of the Heritage Alteration Permit application, the matter would proceed with that recommendation to PEC for Municipal Council’s final decision.

It is noted that delegated authority is not appropriate for all applications and that the decision-making authority must remain with Municipal Council. It is recommended that Municipal Council retain authority outlined in the *Ontario Heritage Act* for the following circumstances:

- The ability to refuse a Heritage Alteration Permit application;
- To consent to or permit the demolition of a structure or building located on a heritage designated property or property listed on the City’s *Inventory of Heritage Resources*; and,
- To consent to the de-designation of a heritage designated property.

To ensure consistency, accountability, and to achieve necessary ethical and professional standards, two measures are proposed. Firstly, a regular report will be prepared by the City Planner, or designate, which outlines the Heritage Alteration Permits which were processed. This report would be submitted to LACH and follow the regular process via PEC to Municipal Council. Secondly, an appeal process is proposed. A property owner may request LACH to consider their Heritage Alteration Permit application or appeal the terms and conditions attached to a Heritage Alteration Permit by the City Planner, or designate. Furthermore, a property owner may appeal the decision of Municipal Council regarding the refusal of, or the terms and conditions attached to the approval of a Heritage Alteration Permit for property designated under Part IV of the *Ontario Heritage Act* to the Conservation Review Board, as per Section 33(7) of the *Ontario Heritage Act*; for a property designated in a HCD under Part V of the *Ontario Heritage Act*, a property owner may appeal the refusal or terms and conditions attached to a Heritage Alteration Permit to the Ontario Municipal Board as per Section 42(6) of the *Ontario Heritage Act*.

A proposed Delegated Authority By-law is included as Appendix B. A proposed Heritage Alteration Permit Review Form is included as Appendix C. A proposed Heritage Alteration Permit letter is included as Appendix D.

PUBLIC CIRCULATION

The delegation of authority to the City Planner, or designate, to consent to or grant Heritage Alteration Permits may be of interest to the following groups or parties:

- LACH (statutory requirement of the *Ontario Heritage Act* to consult with LACH);
- Property owners of individual heritage properties and properties located within London’s HCDs; and,
- Community groups and organizations, such as ratepayers associations and local heritage organizations.

It is recommended that the proposed delegation authority by-law be circulated by means of general communication (e.g. posted on the City’s website and public notice in the newspaper). The comment period should be open for at least 60 days to sufficiently accommodate the meeting schedules of interested community groups and organizations.

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| CONCLUSION |
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The delegation of authority to the City Planner, or designate, is a necessary step in the development of the City of London’s Heritage Planning Program. With the growing number and interest in heritage designated properties, particularly Heritage Conservation Districts, seeking an efficient process is essential. Numerous municipalities have successfully implemented delegated authority programs, which have served as a model to the development of London’s proposed Delegated Authority By-law. Delegating to the City Planner, or designate, the ability to consent to or grant Heritage Alteration Permits would decrease timelines associated with the

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approvals process, enable the better allocation of staff and committee resources, and improve customer service while ensuring the conservation of London’s cultural heritage resources.

It is recommended that the Municipal Council consider the implementation of a delegated authority by-law and circulate these recommendations to LACH and community organizations in London’s Heritage Conservation Districts to provide comment.

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| PREPARED BY: | SUBMITTED BY: |
| | |
| KYLE GONYOU HERITAGE PLANNER, URBAN REGENERATION | JIM YANCHULA, MCIP, RPP MANAGER, URBAN REGENERATION |
| RECOMMENDED BY: | |
| | |
| JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER | |

October 22, 2014

KG/

Attach:

- Appendix A: Delegated Authority in London’s Heritage Conservation Districts
- ~~Appendix B: Proposed Delegated Authority By-law~~
- Appendix C: Proposed Heritage Alteration Permit Review Form
- Appendix D: Proposed Heritage Alteration Permit Letter

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Appendix A: DELEGATED AUTHORITY IN LONDON’S HERITAGE CONSERVATION DISTRICTS

Most of London’s Heritage Conservation Districts make reference to the delegation of authority for Heritage Alteration Permits. They state:

East Woodfield Heritage Conservation District

In London’s first Heritage Conservation District there is no mention of delegated authority within the *East Woodfield Heritage Conservation District Plan* (1992). Delegated authority was not possible under the pre-2005 *Ontario Heritage Act*.

Bishop Hellmuth Heritage Conservation District

The *Bishop Hellmuth Heritage Conservation District Plan* (2001) states the role of LACH and the Heritage Planner is to “administer the Heritage Alteration Permit application for City Council as required by the *Ontario Heritage Act*” (Section 7.1, *Bishop Hellmuth Heritage Conservation District Plan*). Critically, the *Bishop Hellmuth Heritage Conservation District Plan* identifies the administrative role of the Heritage Planner in the Heritage Alteration Permit system, acting on the behalf of Municipal Council.

Old East Heritage Conservation District

The *Old East Heritage Conservation District Plan* (2006) states,
 “Once that approval authority has been delegated, approval from LACH would not be required for those project as long as they are in conformity with the *Old East Heritage Conservation District Plan and Guidelines*. However, it is also recommended that Heritage Planning staff retain the ability to consult the LACH and request their input and/or approval if they consider it desirable or necessary due to specific circumstances” (Section 7.2, *Old East Heritage Conservation District Plan*).

Increased delegation for approval of Heritage Alteration Permits to Heritage Planning staff is recommended in Section 7.4 “Streamlining the Process.”

West Woodfield Heritage Conservation District

The *West Woodfield Heritage Conservation District Plan* (2008) states,
 “Once that approval authority has been delegated, approval from LACH would not be required for those project as long as they are in conformity with the *West Woodfield Heritage Conservation District Plan and Guidelines*. However, it is also recommended that Heritage Planning staff retain the ability to consult the LACH and request their input and/or approval if they consider it desirable or necessary due to specific circumstances” (Section 6.2, *West Woodfield Heritage Conservation District Plan*).

Increased delegation for approval of Heritage Alteration Permits to Heritage Planning staff is recommended in Section 7.4 “Streamlining the Process.” The *West Woodfield Heritage Conservation District Plan* describes a process which has two Heritage Alteration Permit application approval options: heritage staff or Municipal Council.

Downtown Heritage Conservation District

The *Downtown Heritage Conservation District Plan* (2012) recommends Heritage Planning staff be “delegated authority to make decisions on some applications” (Section 5.2.1, *Downtown Heritage Conservation District Plan*). Similar to the approval process described in the *West Woodfield Heritage Conservation District Plan*, the *Downtown Heritage Conservation District Plan* describes a process which has two Heritage Alteration Permit application approval options: heritage staff or Municipal Council.

Blackfriars-Petersville Heritage Conservation District (under appeal)

The *Blackfriars-Petersville Heritage Conservation District Plan* (2014) outlines a Heritage Alteration Permit process which authorizes the Manager – Planning Policy & Programs, or designate, to approve, approve with conditions, or deny all Heritage Alteration Permits within the Blackfriars-Petersville Heritage Conservation District, save-and-except: applications for demolition, applications in which the applicant does not agree with the decision of the Manager, and applications referred to Municipal Council by the Manager (Section 8.1.1, *Blackfriars-Petersville Heritage Conservation District Plan*). Similar to the approval process described in the *West Woodfield Heritage Conservation District Plan* and the *Downtown Heritage Conservation District Plan*, the *Blackfriars-Petersville Heritage Conservation District Plan* describes a process which has two Heritage Alteration Permit application approval options: heritage staff or Municipal Council.

Wortley Village-Old South Heritage Conservation District (in approvals process)

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The *Wortley Village-Old South Heritage Conservation District Plan* (2014) states, "...with the increased number of HCDs in London, the review, processing and report preparation of Heritage Alteration Permits could potentially become an overwhelming and time consuming undertaking for staff as well as the LACH, Planning Committee and Council if numerous applications are received within a short time frame, or when there are gaps in LACH, Planning Committee and Council meeting schedules. As the recently amended *Ontario Heritage Act* allows for greater authority and decision making to be delegated to the Heritage Planner, it is recommended that a more streamlined process be considered for the approvals process in Wortley Village-Old South Heritage Conservation District in some situations" (Section 7.3.1, *Wortley Village-Old South Heritage Conservation District*).

Section 7.4 "Streamlining the Process," of the *Wortley Village-Old South Heritage Conservation District Plan* recommends increased delegation for approval of Heritage Alteration Permits to city staff.

Similar to the approval process described in the *West Woodfield Heritage Conservation District Plan*, the *Downtown Heritage Conservation District Plan*, and the *Blackfriars-Petersville Heritage Conservation District Plan*, the *Wortley Village-Old South Heritage Conservation District Plan* describes a process which has two Heritage Alteration Permit application approval options: heritage staff or Municipal Council.

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Appendix C: PROPOSED HERITAGE ALTERATION PERMIT REVIEW FORM

| PROPERTY INFORMATION | | | |
|----------------------------------|----------------------------------|--------------------------------|-------------|
| Municipal Address | Civic Number | Street Name | Unit Number |
| | City of London | Ontario | Postal Code |
| Property/Commercial Name | | | |
| Ontario Heritage Act Designation | <input type="checkbox"/> Part IV | Designation By-law | |
| | <input type="checkbox"/> Part V | Heritage Conservation District | |

| HERITAGE ALTERATION PERMIT | |
|--|--|
| Pre-Consultation Date | |
| Date of Receipt of Complete Heritage Alteration Permit application | |

| CHECKLIST | | |
|---|--------------------------|--------------------------|
| | Yes | No |
| Do the proposed alterations impact the heritage attributes or cultural heritage value or interest of the property? | <input type="checkbox"/> | <input type="checkbox"/> |
| Do the proposed alterations impact the heritage attributes or the cultural heritage value or interest of the Heritage Conservation District (HCD) (if applicable)? | <input type="checkbox"/> | <input type="checkbox"/> |
| Do the proposed alterations comply with the HCD Plan & Guidelines (if applicable)? | <input type="checkbox"/> | <input type="checkbox"/> |
| Does the Heritage Alteration Permit application meet any of the Conditions of Referral to the LACH? | <input type="checkbox"/> | <input type="checkbox"/> |
| If yes, refer the Heritage Alteration Permit application to the LACH. | | |
| Are there any concurrent applications for this property? <input type="checkbox"/> Official Plan Amendment <input type="checkbox"/> Zoning By-law Amendment <input type="checkbox"/> Site Plan <input type="checkbox"/> Building Permit <input type="checkbox"/> Minor Variance | <input type="checkbox"/> | <input type="checkbox"/> |
| Have the appropriate City Departments and/or agencies been consulted? Details: _____ | <input type="checkbox"/> | <input type="checkbox"/> |

| REVIEW | |
|--|--|
| Heritage Alteration Permit Application Reviewed by | |
| Date | |
| Decision | <input type="checkbox"/> Consent to or grant Heritage Alteration Permit |
| | <input type="checkbox"/> Consent to or grant Heritage Alteration Permit with terms and conditions: _____ |
| | <input type="checkbox"/> Refer Heritage Alteration Permit application to the LACH |

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Appendix D: PROPOSED HERITAGE ALTERATION PERMIT LETTER

September 29, 2014

Property Owner
123 Any Street
London, Ontario

Re: Heritage Alteration Permit application: 123 Any Street (September 28, 2014)

Dear P. Owner:

Thank you for submitting a Heritage Alteration Permit application for 123 Any Street, located in London's Any Street Heritage Conservation District (designated under Part V of the *Ontario Heritage Act*). I acknowledge receipt of your complete Heritage Alteration Permit application dated September 28, 2014.

I note within your application the following alterations proposed for 123 Any Street:

- Repointing of brick masonry units on the south and west elevations;
- Repointing of the brick masonry chimney; and,
- Recladding of the dormer on the south elevation with scalloped wood shingles, as described, to replace existing vinyl siding.

These proposed alterations comply with the *Any Street Heritage Conservation District Plan & Guidelines* and contribute to the long-term conservation of the heritage attributes your property. Enabled by the Delegated Authority By-law (By-law XXXX), I hereby grant this Heritage Alteration Permit to undertake the above noted work.

As part of the grant of this Heritage Alteration Permit, you are required to display this letter in a location (e.g. window) at 123 Any Street visible from the public right of way. I would appreciate if you could please inform me upon completion of the work as outlined.

Yours truly,

City Planner, or designate