



# MEMO

**To:** Chair & Members, London Advisory Committee on Heritage

**From:** John Fleming, Managing Director, Planning Services & City Planner  
George Kotsifas, Managing Director, Development & Compliance Services & Chief Building Official

**Date:** April 11, 2018

**Re: Conditions on the Demolition of Heritage Designated Properties**

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At its meeting on September 12, 2012, the London Advisory Committee on Heritage made the following recommendation,

*The Civic Administration BE ASKED to provide written interpretation on Section 34(2) of the Ontario Heritage Act, with respect to the types of conditions that can be imposed when Municipal Council consents to a demolition application, including future site plan approval.*

And, at its meeting on November 8, 2017, the London Advisory Committee on Heritage (LACH) made the following recommendation,

*The Managing Director, Planning and City Planner, and the Managing Director, Development and Compliance Services and the Chief Building Official BE REQUESTED to provide a response with respect to the feasibility of requiring an approved Building Permit as a pre-condition for the approval of a request demolition of a heritage designated property, it being noted that the London Advisory Committee on Heritage received a communication dated October 12, 2017 from S. Adamsson with respect to this matter.*

## Applicable Law

There are two pieces of legislation at play when considering a demolition request for a property designated under Part IV and/or Part V of the *Ontario Heritage Act*: the *Ontario Heritage Act* and the *Building Code Act*.

In 2005, the *Ontario Heritage Act* was amended to give greater powers to municipalities to prevent the demolition of properties designated under the *Ontario Heritage Act*. Section 34 of the *Ontario Heritage Act* articulates the process requirements for a demolition request for a building or structure located on an individual property designated under Part IV of the *Ontario Heritage Act*, Section 42 of the *Ontario Heritage*

*Act* articulates the process requirements for a demolition request of a building or structure located on a property within a Heritage Conservation District designated under Part V of the *Ontario Heritage Act*. Ultimately, Municipal Council may:

- Approve the demolition request
- Approve the demolition request with terms and conditions
- Refuse the demolition request

The approval of the demolition request with terms and conditions and the refusal of the demolition request may be appealed to the Ontario Municipal Board (OMB)/Local Planning Appeal Tribunal (LPAT).

In Part 8(2) of the *Building Code Act*, it states, “the chief building official shall issue a permit referred to in subsection (1) unless, (a) the proposed building, construction or dwelling will contravene this Act, the building code or any other applicable law” [emphasis added].

Specified sections of the *Ontario Heritage Act* are applicable law to the *Building Code Act*. Our existing process in the City of London requires that the *Ontario Heritage Act* process be satisfied before any *Building Code Act* processes can be completed. For example, a Heritage Alteration Permit must be obtained before a Building Permit can be issued. Therefore, requiring a Building Permit be issued as a condition on a demolition request for a heritage designated property is not feasible.

## **Terms and Conditions for the approval of a Demolition Request of a Heritage Designated Property**

Section 34(2) of the *Ontario Heritage Act* enables a municipality to attach terms and conditions to the consent of a demolition request for an individually designated property. Section 42(4) of the *Ontario Heritage Act* enables a municipality to attach terms and conditions to the permit for a demolition request for a property located within a Heritage Conservation District.

A variety of terms and conditions have been attached to the demolition of heritage designated properties in the past. Typical conditions include:

- Photographic documentation
- Measured, scale drawings
- Salvage of general or specific elements
- Approved Heritage Alteration Permit for a replacement building

Successful terms and conditions rely on process within the *Ontario Heritage Act*. For example, the demolition request for 136-138 Wortley Road, located within the Wortley Village-Old South Heritage Conservation District, was approved on the terms and conditions of obtaining a Heritage Alteration Permit. Its resolution read, that the permit to demolish “be granted with the condition that, prior to the initiation of the demolition, the applicant obtain a Heritage Alteration Permit for an approved replacement structure that promotes the goals and objectives of the Wortley Village-Old South Heritage

Conservation District Plan and is in keeping with appropriate City policies.” Said Heritage Alteration Permit application moved forward concurrently with the demolition request to satisfy the terms and conditions for the approval of the demolition request.

Another example would be the demolition request for 345-359 Ridout Street North, located within the Downtown Heritage Conservation District, which was approved with the terms and conditions of providing measured drawings and photographic documentation of the buildings to be removed, as well as a conservation plan to ensure the protection and structural viability of adjacent buildings that may be affected by the demolition activities (secured through a bond/certificate of insurance). These matters were satisfied before the *Building Code Act* demolition permit was issued.

A third example would be the demolition request for 150 Dundas Street, located within the Downtown Heritage Conservation District, which was approved with terms and conditions including the requirement to obtain Site Plan Approval for the property and to submit full Building Permit drawings. This requires the property owner to undertake a substantial investment in the redevelopment of the property prior to being able to obtain a demolition permit, which aims to avoid gaps in the streetscape.

In these examples, the terms and conditions for the approval of the demolition under the *Ontario Heritage Act* must be satisfied first before a demolition permit under the *Building Code Act* may be issued. Therefore terms and conditions under the *Ontario Heritage Act* cannot rely on processes under the *Building Code Act*.

## **Ensuring that Demolition Permits for Heritage Listed and Designated Properties are not issued?**

Since the repeal of the demolition control by-law, Civic Administration, through the Building By-law, has implemented the Required Clearances for Demolition Permit form. This requires the Heritage Planner to sign off on every demolition request within the City of London. This ensures that all properties listed on the Register (*Inventory of Heritage Resources*) and designated under the *Ontario Heritage Act* are flagged and the applicable processes are followed.

In 2017, the Heritage Planner reviewed 96 Required Clearances for Demolition Permit forms.

## **Limitations**

### **Heritage Listed Properties**

The provisions which enables Municipal Council to attach terms and conditions to the approval of a demolition request for a property designated under Parts IV and/or V of the *Ontario Heritage Act* are not afforded to properties listed on the Register (*Inventory of Heritage Resources*). Pursuant to Section 27(3) of the *Ontario Heritage Act*, the only cultural heritage protection for heritage listed properties is a 60-day delay in the issuance of a demolition permit. During this time, Municipal Council may issue its Notice

of Intent to Designate, which would render all permits void per Section 30(1) of the *Ontario Heritage Act*, or allow the demolition to proceed and remove the property from the Register (*Inventory of Heritage Resources*). It is not possible to attach terms and conditions to a demolition request for a heritage listed property.

Occasionally, requests of a property owner may be made during the demolition process for a heritage listed property. For example, if a property is found to not demonstrate sufficient cultural heritage value or interest (per O. Reg. 9/06) to merit designation under the *Ontario Heritage Act*, but there is a building element of some interest (e.g. a stained glass window), Municipal Council could request that a property owner salvage that stained glass window.

### How to Compel Construction?

The issuance of a building permit does not guarantee that a building will be constructed. A permit holder may request, in writing, to have their permit revoked (without the need to state a reason) per Section 8(10)(e) of the *Building Code Act*.

Similarly, an approved Heritage Alteration Permit does not guarantee that a building will be constructed. It may be several years before a Heritage Alteration Permit is implemented, and it is possible to amend a Heritage Alteration Permit.

### Buildings located on a Farm

A demolition permit is not required to demolish a building located on a farm under the *Ontario Building Code* (including a farm house); however, this does not change the obligations of property owners regarding Section 27(3) of the *Ontario Heritage Act* for heritage listed properties. Section 27(3) of the *Ontario Heritage Act* requires the owner of a heritage listed property to give Municipal Council at least 60-days notice in writing of their intention to demolish or remove the structure or building. During this time, Municipal Council may issue its Notice of Intent to Designate, which would render all permits void per Section 30(1) of the *Ontario Heritage Act*.

Civic Administration is investigating means to ensure that any buildings located on farms that are listed on the Register (*Inventory of Heritage Resources*) receive this interim protection. Demolition of a barn on a heritage designated property could result in fines up to \$1,000,000 or up to one year imprisonment.

### “Demolition By Neglect”

An approved demolition with terms and conditions that the building not be demolished until a Heritage Alteration Permit has been approved does not incent a property owner to maintain the building. Terms and conditions cannot address problems of building deterioration or “demolition by neglect,” which are better addressed through the enforcement of the minimum standards for heritage designated properties within the *Property Standards By-law*.

## **Conclusion**

Attaching terms and conditions to the approval of a demolition request is only possible for properties designated under Parts IV and/or V of the *Ontario Heritage Act*. These terms and conditions can help ensure that an archival record of a past building is created, among other objectives.

There is no certainty that any proposed replacement building will be constructed. Care and consideration must be given to ensure that significant cultural heritage resources are conserve. Staff will continue to explore means and measures to ensure the conservation of our significant cultural heritage resources.