

Report to London Advisory Committee on Heritage

To: Chair and Members
London Advisory Committee on Heritage
From: John M. Fleming
Managing Director, Planning and City Planner
Subject: Review of Delegated Authority for Heritage Alteration Permits
Meeting on: November 13, 2019

Recommendation

That, on the recommendation of the Managing Director, City Planning and City Planner, with the advice of the Heritage Planner, 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 November 26, 2019 to amend By-law C.P.-1502-129 being “A by-law to delegate certain authority of Municipal Council to consent to or grant permits for alterations to heritage designated properties”, to clarify the process for Heritage Alternation Permits.

Executive Summary

The implementation of delegated authority for Heritage Alteration Permits has improved the speed at which property owners are able to obtain the necessary approvals for alterations to their heritage designated properties. In the four years since the passage of By-law C.P.-1502-129, Delegated Authority By-law, minor process improvements have been identified to bring the by-law into conformity with successful processes.

Background

1.0 Introduction

A Heritage Alteration Permit is required to alter any property designated under the *Ontario Heritage Act*. In London, the term “Heritage Alteration Permit” is colloquially understood to refer to the Consent of Municipal Council to alter a property designated under Part IV of the *Ontario Heritage Act*, as well as the Permit of Municipal Council required to alter a property designated under Part V of the *Ontario Heritage Act*. There are nearly 4,000 heritage designated properties in London requiring such approvals. The Heritage Alteration Permit application process helps to ensure that what makes London’s cultural heritage resources significant is protected over time by requiring approvals to make changes to heritage designated properties.

With the growth of heritage designated properties, particularly properties in London’s seven Heritage Conservation Districts, the number of Heritage Alteration Permit applications has grown. In 2015, Municipal Council delegated approval authority for Heritage Alteration Permits to the City Planner. The delegation of Municipal Council’s authority on Heritage Alteration Permits does not include the ability to refuse a Heritage Alteration Permit and also ensures that the London Advisory Committee on Heritage (LACH) is consulted on Heritage Alteration Permit applications that meet a ‘Condition for Referral’ and require Municipal Council’s decision.

Delegated Authority for Heritage Alteration Permits has reduced the review time for Heritage Alteration Permits from approximately seven weeks, when a decision by Municipal Council was required for all Heritage Alteration Permit applications, to around two weeks for a typical Heritage Alteration Permit.

As Delegated Authority for Heritage Alteration Permits has been enacted for four years, it is prudent to review the by-law and provide recommendations to ensure its continued functionality.

1.1 Previous Reports Pertinent to this Matter

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

November 4, 2014. Report to Planning and Environment Committee. Delegated Authority for Heritage Alteration Permits – Information Report.

March 23, 2015. Report to the Planning and Environment Committee. Delegated Authority for Heritage Alteration Permits.

April 7, 2015. Report to the Planning and Environment Committee. Delegated Authority for Heritage Alteration Permits – Public Participation Meeting.

2.0 Ontario Heritage Act

The *Ontario Heritage Act* enables municipalities to protect properties of significant cultural heritage value and ensure their protection by requiring approvals to make changes to those properties. In London, the Heritage Alteration Permit process serves to fulfill the requirements of Section 33 and Section 42 of the *Ontario Heritage Act*.

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 Part IV 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 Part V 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.

3.0 Delegated Authority By-law

The Delegated Authority By-law, By-law No. C.P.-1502-129, delegates Municipal Council’s decision making abilities to the City Planner for the approval or approval with terms and conditions for Heritage Alteration Permits.

3.1 Limits on Delegated Authority

The Delegated Authority By-law does not include the ability of the City Planner 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 the City Planner may act as approval authority, and “major alterations” (meeting the “Conditions for Referral”) where consultation with the London Advisory Committee on Heritage (LACH) and a decision by Municipal Council is required (see Section 5.1).

3.2 Reporting Protocol

As required by the Delegated Authority By-law, regular reporting of the Heritage Alteration Permit applications reviewed under the scope of the Delegated Authority By-law is reported to the London Advisory Committee on Heritage (LACH) on a monthly basis as part of the Heritage Planners’ Report. The Heritage Planners’ Report is included on the report of the LACH that is presented to the Planning and Environment Committee monthly. The Heritage Planning annual report also records the Heritage Alteration Permits processed under the Delegated Authority By-law.

4.0 Heritage Alteration Permits

As the number of heritage designated properties in London grows, so does the number of Heritage Alteration Permits processed annually.

Table 1: Heritage Alteration Permit applications by Year

Year	Number of Heritage Alteration Permit applications requiring a decision by Municipal Council	Number of Heritage Alteration Permit applications processed under the Delegated Authority By-law
2007	7	N/A
2008	11	N/A
2009	22	N/A
2010	29	N/A
2011	30	N/A
2012	32	N/A
2013	32	N/A
2014	35	N/A
2015	23	20
2016	18	42
2017	8	73
2018	13	70
2019*	12	84

* Year to date

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.

Analysis

5.0 Review of Delegated Authority By-law

5.1 Review of “Conditions for Referral”

The LACH plays an important role in protecting London’s cultural heritage resources. As a volunteer advisory committee to Municipal Council, the volume of Heritage Alteration Permit applications (if not subject to delegated authority) could quickly overwhelm the LACH’s work. Within the Delegated Authority By-law, “Conditions for Referral” were developed to ensure that only Heritage Alteration Permit applications that require consultation with the LACH are sent to the LACH.

The “Conditions for Referral,” as defined in the Delegated Authority By-law are:

- a) A complex application for a Heritage Alteration Permit;
- b) Considerable sensitivity or contention regarding an application for a Heritage Alteration Permit;
- c) An application for a Heritage Alteration Permit which fails to achieve policies or guidelines of a Heritage Conservation District Plan and Guidelines (if applicable);
- d) An application for a Heritage Alteration Permit which fails to achieve policies or guidelines of a Heritage Conservation District Plan and Guidelines (if applicable);
- e) Where refusal of an application for a Heritage Alteration Permit is recommended by the City Planner; and/or,
- f) Where an owner requests consideration of an application for a Heritage Alteration Permit by the LACH.

Over past four years, the “Conditions for Referral” have required consultation with the LACH for seventy-four (74) of three hundred and sixty-three (363) Heritage Alteration Permit applications, representing approximately 20% of the total number of Heritage Alteration Permit applications. Most Heritage Alteration Permit application that comply with the policies and guidelines of the applicable Heritage Conservation District Plan are

able to be approved (or approved with terms and conditions) by the City Planner, reducing the approval timeline from approximately 7 weeks to about 2 weeks.

In most instances, LACH consultation is required where a property owner has initiated alterations to a heritage designated property without obtaining Heritage Alteration Permit approval first. LACH consultation is also required for sensitive or contentious applications, such as the construction of a new building within a Heritage Conservation District.

The “Conditions for Referral” appear to be working as intended, ensuring that the LACH is consulted on Heritage Alteration Permit applications where it matters most.

5.2 Looping Recommendation to City Planner from the LACH

Section 9 of the Delegated Authority By-law states,

The LACH, upon receiving an application for a Consent or a Heritage Alteration Permit from the City Planner, may make a recommendation regarding the grant of a Consent or a Heritage Alteration Permit to the City Planner. This may:

- a) Recommend the grant of a Consent or a Heritage Alteration Permit;*
- b) Recommend the grant of a Heritage Alteration Permit with terms and conditions;*
- c) Make a recommendation regarding an application for a Consent or a Heritage Alteration Permit to Municipal Council, via PEC. In this circumstance, Municipal Council shall retain the decision-making authority regarding the application for a Consent or a Heritage Alteration Permit.*

Thereafter, the City Planner will make a decision with consideration of the recommendation of the LACH, unless LACH makes a recommendation as in (c) above.

Administratively, this process has proved cumbersome and overly complicated. As the LACH is an advisory committee to Municipal Council, it has no decision making authority with regards to Heritage Alteration Permits, but makes recommendations to Municipal Council to approve, approve with terms and conditions, or refuse Heritage Alteration Permit applications. Any recommendations of the LACH require the decision of Municipal Council to be implemented.

6.0 Recommended Revisions to the Delegated Authority By-law

When a Heritage Alteration Permit application has met any of the “Conditions for Referral” defined within the Delegated Authority By-law, consultation with the LACH is required. When LACH consultation is required, a decision of Municipal Council is required on a Heritage Alteration Permit application as the LACH is only able to make a recommendation. It is not possible for the LACH, as an advisory committee, to make a recommendation to the City Planner. The Delegated Authority By-law should be amended to eliminate the “loop-back” to the City Planner following consultation with the LACH that was included in the original Delegated Authority By-law (By-law No. C.P.-1502-129) as, administratively, this process does not function as initially intended (Appendix A).

7.0 Conclusion

In the four years since the adoption of the Delegated Authority By-law, only 20% of Heritage Alteration Permit applications have required consultation with the LACH; 80% of Heritage Alteration Permits have been approved using delegated authority. This has achieved greater efficiencies and reduced the review timeframes for most Heritage Alteration Permit applications, alleviated pressures on staff and committee time and

resources, and improved customer service while relying on the professional capacity of the Heritage Planners.

Minor adjustments are recommended to ensure that the Delegated Authority By-law reflects the learned-experience of the Civic Administration and provides clear process for Heritage Alteration Permits.

Prepared by:	Kyle Gonyou, CAHP Urban Regeneration
Submitted by:	Gregg Barrett, AICP Manager, Long Range Planning and Sustainability
Recommended by:	John M. Fleming, MCIP, RPP Managing Director, City Planning and City Planner
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from City Planning.	

November 4, 2019
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Appendix A Delegated Authority By-law

Appendix A – Delegated Authority By-law

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

Bill No. _____
2019

By-law No. C.P.- ____

A by-law to amend By-law C.P.-1502-129 being “A by-law to delegate certain authority of Municipal Council to consent to or grant permits for alterations to heritage designated properties”, to clarify the process for Heritage Alteration Permits .

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

AND WHEREAS Municipal Council deems it appropriate to amend By-law No. C.P.-1502-123 to clarify the process for Heritage Alteration Permits:

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

1. That By-law C.P.-1502-129 is hereby amended by deleting section 9 of Part II – Delegation of Authority to Consent to or Grant Permits for Alterations to Heritage Designated Properties in its entirety and by replacing it with the following new section 9:

“Part II – DELEGATION OF AUTHORITY TO CONSENT TO OR GRANT PERMITS FOR ALTERATIONS TO HERITAGE DESIGNATED PROPERTIES

9. The LACH, upon receiving an application for a Consent to or grant a Heritage Alteration Permit from the City Planner, may make a recommendation to Municipal Council. In this circumstance, Municipal Council shall retain the decision-making authority regarding the application for a Consent to or a grant a Heritage Alteration Permit.

2. This by-law shall come into force and effect on the date that it is passed.

PASSED in Open Council on November 26, 2019.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – November 26, 2019
Second Reading – November 26, 2019
Third Reading – November 26, 2019