

**Report to
Rapport au:**

**Built Heritage Sub-Committee
Sous-comité du patrimoine bâti
9 April 2015 / 9 avril 2015**

**Submitted on March 31, 2015
Soumis le 31 mars 2015**

**Submitted by
Soumis par:
Councillor / conseiller Tobi Nussbaum, Chair / Président**

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2015-CMR-BHC-0001

SUBJECT: Report of the Built Heritage Sub-Committee's Mandate Discussion

OBJET: Rapport sur la discussion relative au mandat du Sous-comité du patrimoine bâti

REPORT RECOMMENDATIONS

That the Built Heritage Sub-Committee approve the recommendations contained within this report.

RECOMMANDATIONS DU RAPPORT

Que le Sous-comité du patrimoine bâti approuve les recommandations du présent rapport.

BACKGROUND

As detailed in the Council-approved 2014-2018 Governance Review report on 3 December 2014, the mandate of the Built Heritage Sub-Committee was expanded to

include the ability to comment on Heritage Overlay matters after April 1, 2015. In that report, it was recommended that planning applications that involve a building to which the Heritage Overlay has been applied be circulated to the Sub-Committee for comment as part of the internal circulation process. The report also spoke to the need for strict comment-related processes and timelines instituted with input from BHSC and City staff, and within the statutory timelines set by the *Ontario Heritage Act* and the *Planning Act*.

The Governance report further recommended that the specific details of the timelines and processes required for this broader mandate, be determined by the BHSC with input from staff, during facilitated sessions to be held early in 2015.

On 25 March 2015, City Council approved the following Motion:

WHEREAS the 2014-2018 Council Governance Review report contained the following recommendation with respect to the Built Heritage Sub-Committee's mandate:

"That the mandate of the Built Heritage Sub-Committee be expanded to include the ability to comment on Heritage Overlay matters after April 1, 2015, the ability for staff to consult on matters related to the built heritage portfolio, and to permit other Standing Committees to refer matters to the Built Heritage Sub-Committee, as outlined in this report"

AND WHEREAS the Built Heritage Sub-Committee has deferred consideration of its Terms of Reference; and

WHEREAS the governance report also referenced the need to develop the specific details of timelines and processes required for this broader mandate, to be determined by the BSHC with input from staff during a facilitated session, which is scheduled to take place on March 6, 2015;

THEREFORE BE IT RESOLVED that the timeline for developing a process that will enable the Built Heritage Sub-Committee to comment on Heritage Overlay matters be amended from "after April 1, 2015" to "after July 1, 2015".

The requirement to hold a facilitated session also arose from direction in the governance report.

DISCUSSION

On 6 March 2015, members of the Built Heritage Sub-Committee gathered together with staff and interested members of the public to discuss that which was contained in the Governance Review report. Areas of discussion focused on:

- Planning applications for Heritage-Designated properties
- Heritage Reference List and the Heritage Register
- Heritage Overlay (Zoning By-law Section 60)
- Cultural Heritage Impact Statements (CHIS)
- Staff refusals of requests for Heritage Designations

Planning Applications

The Sub-Committee discussed how it could contribute to the review of planning applications (including requests for amendment to the Official Plan or Zoning By-Law, minor variances to the Zoning By-Law, lot severance and site plan approval) that are submitted for properties designated under Part IV and Part V of the *Ontario Heritage Act*.

There is no automatic notification to the Built Heritage Sub-Committee of applications for amendments to the Official Plan or Zoning By-Law amendments for properties designated as heritage. The desire to institute a notification process to inform the Sub-Committee was discussed.

Currently, the Sub-Committee is not notified if a property designated under the *Ontario Heritage Act* is the subject of an application to the Committee of Adjustment for a minor variance to the Zoning By-Law or an application for lot severance. Planning staff receives and provides comments on approximately 150 of these heritage-related Committee of Adjustment applications annually. While a review of these applications by the Sub-Committee might be of benefit, it was not deemed practical given the tight legislated deadlines for those applications and limited staff resources. There could also be governance concerns given that the Committee of Adjustment and the Built Heritage Sub-Committee each have mandated responsibilities from Council. Staff advised that the most effective way to deal with Committee of Adjustment applications is to continue

to ensure that comments from planners to the Committee of Adjustment include reference to the relevant aspects of the property's heritage value.

With regard to site plan applications, the Sub-Committee members agreed there was no interest in intervening in staff's delegated authority to process those applications.

Recommendations:

- 1. That staff report back to the Sub-Committee with options for a process by which the Sub-Committee can be notified of applications to amend the Official Plan and/or Zoning By-Law for properties designated under Part IV and Part V of the Ontario Heritage Act.***
- 2. That the Built Heritage Sub-Committee receive the information related to the practice of considering heritage attributes as part of comments to the Committee of Adjustment, as described in this report.***

Heritage Register/Heritage Reference List

There is a desire amongst members of the Sub-Committee and staff to ensure the Heritage Register and Heritage Reference Lists serve as credible reference tools.

Built Heritage Sub-Committee members and members of the public supported staff's desire to update the Register and review the Reference List. Staff advised that the preliminary approach would be to assess each property individually and move it onto the appropriate list or propose its designation at the appropriate time.

The Sub-Committee also discussed the fact that it has no ability to comment on applications to alter properties on the Heritage Register. There was a desire to strengthen the tools available to the Built Heritage Sub-Committee with regard to buildings on the Register.

Recommendations:

- 1. That staff continues to examine the properties listed on the Heritage Reference List for possible inclusion on the Heritage Register or for designation under the Ontario Heritage Act, where warranted.***
- 2. That staff report back to the Sub-Committee on options for applications to alter properties on the Heritage Register to be considered by the Built Heritage Sub-Committee.***

Heritage Overlay (Section 60 of the Zoning By-Law)

Section 60 of the Zoning By-Law, known as the Heritage Overlay, can be applied to properties designated under the *Ontario Heritage Act* or undesignated properties. It is intended to encourage retention of the existing building by limiting the size and location of additions and by limiting the massing of new construction to the built envelope of the previous building.

While Section 60 is not a tool that falls under the jurisdiction of the *Ontario Heritage Act*, the 2014-18 Council Governance Review recommended that the Sub-Committee's Terms of Reference be amended to permit the Sub-Committee to be consulted for any matter for which the Sub-Committee's expertise might be of value, such as in matters related to the Heritage Overlay.

Staff advised that the Heritage Overlay was introduced in the 1970s to augment what was then seen as a deficiency in the *Ontario Heritage Act*. For properties to which the Heritage Overlay is applied, buildings can only be rebuilt to the extent of the massing of the structure that it is replacing. Despite the name "Heritage" Overlay, the overlay is actually a zoning tool and is not under the *Ontario Heritage Act*, which can cause confusion. The Built Heritage Sub-Committee members discussed the limitations in commenting on Heritage Overlay matters given that applications that meet the Section 60 Zoning By-Law requirements do not require any kind of zoning approval and application for minor variances for properties covered by a Heritage Overlay that are not otherwise designated are considered by the Committee of Adjustment.

Sub-Committee members therefore expressed an interest in exploring options for how the Heritage Overlay concept could be modernized in parallel with the other issues raised at the facilitated retreat. In the meantime, legal staff will need to be consulted to determine how to respond to the amended terms of reference of the Sub-Committee in light of the fact that it is not self-evident how the Sub-Committee is to act on the requirement "to comment on overlay matters" in the case of properties not designated under Parts IV or V of the *Ontario Heritage Act*.

Recommendation

- 1. That staff examine options for modernizing Section 60 of the Zoning By-Law (Heritage Overlay) particularly in relation to properties that are not designated under Parts IV and V of the Ontario Heritage Act. Those options should include consideration of the interplay between the Heritage Overlay, the Heritage Register, the requirements for a Cultural Heritage Impact***

Statement and any proposed new Official Plan or Zoning By-Law amendments relating to heritage.

Cultural Heritage Impact Statements

The Sub-Committee agreed it would like to receive information when a planning application triggers a Cultural Heritage Impact Statement, such as when a proposed development is adjacent to a heritage designated property.

Recommendation:

- 1. That staff finalize an implementation procedure for ensuring planning applications that trigger a CHIS are included as information items on Sub-Committee agendas.***

Requests for Heritage Designations

Members discussed the value of the Built Heritage Sub-Committee potentially receiving reports when staff does not proceed with a request for heritage designation when a building does not meet the criteria for designation under the *Ontario Heritage Act*. Currently, only applications recommended for approval are considered by the Sub-Committee. Members agreed that there would be a potential benefit related to transparency and public education if Sub-Committee members and the public understood the decisions being made. The intent of the discussion is to provide information, not to create a new approval process or create a new reporting procedure.

Recommendation:

- 1. That staff develops a procedure to provide information to the Sub-Committee when requests for Part IV designations under the Ontario Heritage Act do not meet the criteria in Ontario Heritage Act Regulation 9/06.***

RURAL IMPLICATIONS

There are no specific rural implications associated with this report.

CONSULTATION

As part of the 2014-18 Council Governance Report, the City Clerk and Solicitor and the Deputy City Clerk consulted with stakeholders, including elected representatives, citizen

members of Committees of Council and senior staff. The requirement to hold a facilitated session for the Built Heritage Sub-Committee arose from that report. Public notice of the March 6, 2015 facilitated session was circulated in advance of the event and members of the public were invited to attend and participate in the discussion.

Staff was consulted in the preparation of this report.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a City-wide report.

LEGAL IMPLICATIONS

There are no legal impediments to approving the recommendation contained in this report.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

There are no direct financial implications.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

TERM OF COUNCIL PRIORITIES

This report supports the Term of Council Priority related to Governance, Planning and Decision Making (GP1: Improve the public's confidence in and satisfaction with the way Council works).

SUPPORTING DOCUMENTATION

Document 1 – Section 60 of the Zoning By-Law (Heritage Overlay)

Document 2 – Definitions of the Heritage Register and Heritage Reference List

DISPOSITION

Upon approval of the report by the Built Heritage Sub-Committee, staff will bring forward the necessary reports for the consideration of the Sub-Committee.

Document 1

Heritage Overlay (Sec. 60)

60. Despite the provisions of the underlying zone, the following provisions apply to land uses within an area affected by an heritage overlay, in order to encourage the retention of existing heritage buildings by offering zoning incentives to reuse the buildings, and to limit the size and location of additions to preserve the heritage character of the original building:

General Provisions

- (1) Where a building in an area to which an heritage overlay applies is removed or destroyed it must be rebuilt to the same building envelope and in the same location as existed prior to its removal or destruction. (By-law 2014-289)
- (2) In Areas A or B on Schedule 1, Subsection (1) does not apply to the use of a lot that was vacant prior to April 19, 1978 and, instead, the provisions of the underlying zone apply to the use of that vacant lot.

Additions

- (3) Despite the provisions of the underlying zone, an addition to a building in an area to which an heritage overlay applies is permitted only if:
 - (a) the height of the walls and the height and slope of the roof of the addition do not exceed those of the building;
 - (b) In Areas A, B and C on Schedule 1,
 - (i) the side yard setback of the addition is at least 60 cm. greater than that of the wall of the building located closest to the side lot line,
 - (ii) it is located entirely within the rear yard, or in the interior yard abutting the rear yard and complies with the rear yard setback of the underlying zone, except where the building has a non-complying rear yard setback the addition may be built to that rear yard setback, but in no case may be less than 3.0 metres; and
 - (c) it is not located within a front yard. (By-law 2014-289)
- (4) Despite Section 65, projections are not permitted into the front, corner side yard or side yard in an area to which an heritage overlay applies, except in the case of:
 - (a) a ramp used for handicap access as long as that ramp does not exceed the minimal dimensions mentioned in the *Building Code* for a ramp in a barrier-free path of travel; or
 - (b) the use of a lot in Areas A (Central Area) or B (Inner City) on Schedule 1 that was vacant prior to April 19, 1978.

Parking

- (5) (a) Despite the provisions of Section 101 (*Minimum Parking Space Rates*), parking is not required for any use within a building:
 - (i) that is designated under Part IV of the Ontario Heritage Act, R.S.O.1990; or
 - (ii) that is classified as Category 1 or 2 in the City of Ottawa Heritage Reference

List, in an area to which an heritage overlay applies.

(b) Subsection (5)(a) does not apply to a use created in an addition to a Category 1 or 2 building, and parking for any use located within such an addition must be provided in accordance with the provisions of Section 101.

(c) Nothing in this subsection applies so as to permit the elimination of a parking space required on the day prior to the enactment of this by-law except for the exemption provided in subsections 100(7) and 100(10). (By-law 2009-302)

- (6) A **parking lot** is prohibited in a front yard or corner side yard abutting a street in an area to which an heritage overlay applies.
- (7) A **parking garage** in an area to which an heritage overlay applies must be setback from a front or corner side lot line a minimum of:
- (a) the same distance as the building to which it is an addition; or
 - (b) the equivalent of the setback required for the underlying zone, whichever is greater.

Document 2

DEFINITIONS

Heritage Register

The Heritage Register is a list of all property that has been designated by the municipality under Parts IV or V of the *Ontario Heritage Act* and may include property that has not been designated that council believes to have cultural heritage value or interest.

Heritage Reference List

A city-wide inventory of heritage resources, which may have architectural, historical, archaeological, contextual, cultural, and/or natural interest and which may warrant designation under the *Ontario Heritage Act*.