



**CITY OF KINGSTON**  
**INFORMATION REPORT TO KINGSTON MUNICIPAL**  
**HERITAGE COMMITTEE**

Report No.: KMHC-10-006

**TO:** Chair, Kingston Municipal Heritage Committee  
**FROM:** Cynthia Beach, Commissioner, Sustainability and Growth Group  
**RESOURCE STAFF:** George Wallace, Director, Planning and Development Department  
**DATE OF MEETING:** 2010-05-10  
**SUBJECT:** Update to Property Standards By-law to Better Protect Heritage Properties

**EXECUTIVE SUMMARY:**

This information report outlines efforts being made by City of Kingston staff to address concerns raised about how the City of Kingston can better protect its heritage properties. "Demolition by neglect" is a serious concern when working with heritage properties. Policy within the *Ontario Heritage Act* allows municipalities to create By-laws to require specific property standards provisions for heritage properties. This section of the *Ontario Heritage Act* was developed to ensure the protection of 'character-defining elements' as identified within a Part IV Designation By-law or within a Part V Heritage Conservation District Plan are protected. Several municipalities have already integrated such requirements into their Property Standards By-laws. The draft By-law was modeled after the City of Toronto and City of Mississauga's By-laws, which are currently being used as the standard models by most heritage programs in the province. The draft By-law was prepared in consultation with both the Building and Legal Departments. A report recommending adoption of the attached draft By-law will be forwarded to the Administrative Policies Committee in May 2010.

**RECOMMENDATIONS:**

This report is for information only. No action is required.

**AUTHORIZING SIGNATURES:**

_____ Cynthia Beach, P.Eng, MCIP, RPP, Commissioner, Sustainability & Growth Group
_____ Gerard Hunt, Chief Administrative Officer

**CONSULTATION WITH THE FOLLOWING COMMISSIONERS:**

Terry Willing, <i>Community Development Services</i>	
Denis Leger, <i>Corporate Services</i>	N/R
Jim Keech, <i>President and CEO, Utilities Kingston</i>	N/R

(N/R indicates consultation not required)

## OPTIONS/DISCUSSION:

### Introduction:

This report outlines how City of Kingston staff has been working to address concerns raised about how the City of Kingston can respond to “demolition by neglect” through changes to the City’s Property Standards By-law.

Within the 2005 revisions to the *Ontario Heritage Act*, a municipality with a pre-existing Property Standards By-law can enact specific policies and By-laws relating to heritage properties. Several municipalities have already developed such policies and By-law amendments, i.e., St. Thomas, Kitchener, Toronto, and Mississauga. The specific provisions of the *Ontario Heritage Act*, which are found under Section 35.3 and 45.1, are as follows:

#### “Building standards By-law

- 35.3 (1)** If a By-law passed under section 15.1 of the *Building Code Act, 1992* setting out standards for the maintenance of property in the municipality is in effect in a municipality, the council of the municipality may, by By-law,
- (a) prescribe minimum standards for the maintenance of the heritage attributes of property in the municipality that has been designated by the municipality under section 29 or by the Minister under section 34.5; and
  - (b) require property that has been designated under section 29 or 34.5 and that does not comply with the standards to be repaired and maintained to conform with the standards. 2005, c. 6, s. 27.

#### Application

- (2) Sections 15.2, 15.3, 15.4, 15.5 and 15.8 of the *Building Code Act, 1992* apply with necessary modifications to the enforcement of a By-law made under subsection (1). 2005, c. 6, s. 27.”

#### “Building standards By-law

- 45.1 (1)** If a By-law passed under section 15.1 of the *Building Code Act, 1992* setting out standards for the maintenance of property in the municipality is in effect in a municipality, the council of the municipality may, by By-law,
- (a) prescribe minimum standards for the maintenance of the heritage attributes of property situated in a heritage conservation district designated under this Part; and
  - (b) require property that is situated in a heritage conservation district designated under this Part and that does not comply with the standards to be repaired and maintained to conform with the standards. 2005, c. 6, s. 34.

#### Application

- (2) Sections 15.2, 15.3, 15.4, 15.5 and 15.8 of the *Building Code Act, 1992* apply with necessary modifications to the enforcement of a By-law made under subsection (1). 2005, c. 6, s. 34.”

Such a By-law is meant to provide added protection to ‘character defining elements’. ‘Character defining elements’ are those heritage attributes (principal features, characteristics, context and appearance) that contribute to the cultural heritage significance of a protected heritage property and which are identified in a Designation By-law and/or within a Heritage Conservation District Plan and Guidelines. They are important elements that contribute to a broader understanding of the property, and illustrate the physical/design values, historical/associative values, and/or contextual values that made a property worthy of protection and recognition.

'Character defining elements' are also used as the basis for enforcement. Such provisions can only be used when a 'character defining element' is clearly identified by a municipality to be of cultural heritage value or interest. The first Property Standards By-law respecting heritage properties in Ontario was created by St. Thomas and was overturned by a Superior Court Ruling. In this instance, the municipality attempted to define within the By-law the 'character defining elements' that fell under the authority of the By-law. The judge in this instance ruled that the 'character defining elements' must be described within the Designation By-law (and by-extension within the district plan). As a result, subsequent By-laws and By-law amendments have made explicit references to the Designation By-law and/or Heritage Conservation District Plan. There is an inherent challenge in cases where the 'Reasons for Designation' are not written in sufficient detail or fail to clearly identify 'character defining elements.' While the City of Kingston currently has a number of designation by-laws that are in need of updating and/or of varying quality, the City is not unique in this circumstance. The other communities which have a form of this by-law in place have also run into this issue as the standards for designation by-laws have changes significantly over the last 35 years; indeed, a single line was once considered sufficient to describe a property while today's by-law are often several pages in length. In the absence of sufficient detail, the general property standards by-law provisions will apply. In the long term, there will be a concerted effort to address gaps within the City's designation by-laws, a process which is already underway. Through the proposed designation of the Sydenham HCD area, new statements of significance has been developed for all properties within the district, including the 200 previously designated properties. There will also have to be an evolution of the application of these enforcement procedures which is responsive to this reality. The development of revised Statements of Significance may result in an increase of enforcement processes over time as more and more bylaws are brought into line with the required level of specification.

The draft By-law was modeled after the City of Toronto and City of Mississauga's By-laws, which are currently being used as the standard models by most heritage programs in the province. It will be presented to the Administrative Policies Committee in May 2010. The By-law has been designed to recognize that a character defining element may require a higher level of care or workmanship. The attached By-law amendment does differ on one point from those developed by other municipalities: the By-law presented allows the use of motion sensors rather than requiring the constant use of lighting prescribed by both other municipalities. This was done to minimize complaints from adjacent property owners and to support energy conservation.

It must be noted that the By-law does not address properties covered by an easement entered into under the *Ontario Heritage Act*. In the event of a conflict between an easement and a Designation By-law, the easement rules to the extent of the conflict. However, while this may seem to be a gap, most easements have clear policies concerning the protection of cultural heritage resources that equal or exceed the requirements of a Property Standards By-law. Further, those elements of a structure that are not character defining would still fall under the existing Property Standards By-law, and thus are afforded protection.

With these considerations, a draft By-law amendment for the City's Property Standards By-law has been developed with the assistance of the Building and Licensing Department and Legal Services. This By-law has been developed as an amendment to the existing Property Standards By-law in order to tie it more closely with the already existing investigation and enforcement processes. A new section has also been added into the Building Section Policy Manual which outlines how Building Official will address Heritage Properties. A copy of this new section has been attached as Exhibit 'A.'

The purpose of this By-law is to address a variety of issues relating to the maintenance of not only 'character defining elements' of a heritage property, but also the elements of a property that support a character defining element and how to address vacant heritage properties.

#### **EXISTING POLICY/BY LAW:**

*Municipal Act*, 2001, R.S.O. 2001, c. 25 (Ontario)

*Provincial Policy Statement*, 2005 (Ontario)

*Ontario Heritage Act*, R.S.O. 1990, c. O.18. (Ontario)

*Planning Act*, R.S.O. 1990, C. P.13 (Ontario)

Official Plan for the former City of Kingston (Former City of Kingston)

Official Plan for the former Township of Pittsburgh (Former Township of Pittsburgh)  
Official Plan for the former Township of Kingston (Former Township of Kingston)

**NOTICE PROVISIONS:**

N/A

**ACCESSIBILITY CONSIDERATIONS:**

Alternative formats of this report and Exhibit 'A' are available on request.

**FINANCIAL CONSIDERATIONS:**

Budget allocation for the position of a Heritage Inspector has already been included in the 2009 budget. The development of revised Statements of Significance may result in an increase of enforcement processes over time as more and more bylaws are brought into line with the required level of specification.

**CONTACTS:**

George Wallace, Director, Planning and Development Department	613-546-4291, ext. 3252
Marnie Venditti, Manager, Planning and Development Department	613-546-4291, ext. 3256
Marcus Létourneau, Heritage Planner, Planning and Development Department	613-546-4291, ext. 1386

**OTHER CITY OF KINGSTON STAFF CONSULTED:**

Terry Willing, Commissioner, Community Development Services  
Steve Murphy, Manager, Building & Licensing Department, Community Development Services Group  
Del Stowe, Permit Supervisor, Building & Licensing Department, Community Development Services Group  
Alan McLeod, Senior Legal Counsel, Legal Services, Corporate Administrative Team  
Mark McLaughlin, Associate Legal Counsel, Legal Services, Corporate Administrative Team

**EXHIBITS ATTACHED:**

Exhibit 'A': Policy # PS-8 of the Building Section Policy Manual

Exhibit 'B': By-law 2010-XXX "A By-law to Amend By-law 2005-100, "By-Law for Prescribing Standards for the Maintenance and Occupancy of Property Within the City of Kingston"

## Policy # PS-8 of the Building Section Policy Manual

<b>SECTION:</b> Property Standards	<b>Policy #:</b> PS-8
<b>SUBJECT:</b> Heritage Properties	<b>Effective Date:</b> March 18, 2010
<b>REVISED:</b>	<b>Page:</b> 1 of 2

## 5.0 Heritage Buildings and Properties

The City of Kingston Property Standards Officers are dedicated to assuring that properties are maintained in accordance with the minimum standards set out in the Property Standards By-law while recognizing the importance of special care needed when dealing with Heritage Properties. This would include additional time frames needed for remedial work as a result of the need to obtain additional approvals, requirements for specialized trades and the extended time frames needed for suppliers to deliver special or custom materials. In these cases, normal work practices and Policies will not apply and this Policy has been created to assist the owners of these properties as well as the Officers dealing with the Heritage Properties.

### 5.1 Definitions

“**Character defining element**” means the heritage attributes (principal features, characteristics, context and appearance) that contribute to the cultural heritage significance of a protected heritage property and which are identified in a Designation By-law and/or within a Heritage Conservation District Plan and Guidelines.

“**Designated Heritage Property**” means a property designated under Part IV or Part V under the *Ontario Heritage Act*.

“**Maintenance**” for a designated heritage property is considered routine, cyclical, non-destructive actions necessary to slow the deterioration of a historic place. It entails the following actions: periodic inspection; general property cleanup; general gardening and repair of landscape features; replacement of glass in broken windows; minor exterior repairs (including replacement of asphalt shingles where there is no structural change, or change in colour or design and re-pointing of areas under 1.5 square metres); painting in a same or similar colour; and/or any work defined as maintenance within a Designating By-law.

### 5.2 Introduction and Policy

Under amendments to the Property Standards By-law under Sections 4.50-4.56 there are a number of issues to be dealt with when dealing with Orders and maintenance issues for a Designated Heritage Property. These are to include:

- 5.2.1** All complaints and documentation is to be dealt with as per applicable Departmental Policy.
- 5.2.2** Any Orders written against a *Designated Heritage Property* or any other property on the City’s Heritage Properties Register are to be forwarded to Heritage Staff in the Planning and Development Department to be sure they are aware of the particulars of the Order and to determine if any *Character Defining Element* or structural element will be affected by the requested remedial work. If the property is protected by an Ontario Heritage Trust Easement, it must also be forwarded to the Ontario Heritage Trust.
- 5.2.3** Any Orders written against a *Designated Heritage Property* or any other property on the City’s Heritage Properties Register are to be forwarded to the Building Official, Heritage (or Building Official for that area in his/her absence) for their review to determine if any permits are necessary.

<b>SECTION:</b> Property Standards	<b>Policy #:</b> PS-8
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- 5.2.4** Even when the work is considered “*Maintenance*” in the Property Standards By-law orders are to be forwarded to the Heritage Staff in the Planning and Development Department for review and consideration of any approvals necessary.
- 5.2.5** Regardless of the above, any Order issued is to include the following standard wording “Note: Please ensure that any required permits are obtained through the Building Section, prior to any work being carried out. Approval under the *Ontario Heritage Act* is required for *Designated Heritage Properties*.”
- 5.2.6** For those properties which are Designated Heritage Properties an additional note on the Order is to be included: “This is an *Ontario Heritage Act* Designated Property and you are to contact Heritage Staff in the Planning and Development Department to determine what approvals are required under the *Ontario Heritage Act*. No work will be allowed to proceed until *Ontario Heritage Act* approval is granted.”
- 5.2.7** Vacant and Damaged Properties described in Section 4.55 of the Property Standards By-law are to be inspected by the Building Official, Heritage to determine if there is any risk to the Building or Character Defining Element and if an Order needs to be issued to meet Section 4.55 a) and/or b).
- 5.2.8** To assure that Heritage Designated Properties and Properties on the City’s Heritage Properties Register are maintained, proactive inspections will be considered by the Building Section staff.
- 5.2.9** Annual Streetscape Inspections when carried out are to include areas where Heritage Designated Properties and Properties on the City’s Heritage Properties Register are present to assure these buildings and properties are properly maintained.
- 5.2.10** Any Order issued against a Heritage Designated Property must have a compliance date which considers an extended time frame which takes into consideration time for heritage approvals, specialized trades and availability of materials as outlined in the introduction of this policy.
- 5.2.11** The Building Official, Heritage (or designate) and when necessary, Heritage Staff should review the type of work Ordered to determine reasonable time frames expected to complete the work.
- 5.2.12** Voluntary Compliance dates may be considered (extensions) after a reasonable amount of time has passed and the owner or their agent has given evidence that they are working on the remedial work and can show the reasons necessary for any extension.
- 5.2.13** Extensions are to consider the timeframe restrictions provided by the owner/agent, however, no extensions is to exceed one year from the original compliance date without review by the Chief Building Official, Manager or Supervisor.

**By-law 2010-XXX**

**A By-law to Amend By-law 2005-100**

**“BY-LAW FOR PRESCRIBING STANDARDS FOR THE MAINTENANCE AND OCCUPANCY OF PROPERTY  
WITHIN THE CITY OF KINGSTON”**

**WHEREAS** it is a provincial offence to illegally impact cultural heritage resources under a number of Provincial Acts such as the Ontario Heritage Act, the Planning Act, and the Environmental Assessment Act ; and

**WHEREAS** the City of Kingston has a number of policies concerning the need to protect cultural heritage resources such as the City’s Strategic Plan and the City’s Official Plan; and

**WHEREAS** the *Municipal Act, 2001* allows a municipality to enact By-laws to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues including heritage; and

**WHEREAS** sections 35.3 (1) and 45.1 (1) of the *Ontario Heritage Act* allow a municipality to pass a By-law setting out standards for the maintenance of property in the municipality,

**THEREFORE**, the Council of The Corporation of the City of Kingston hereby enacts as follows:

- 1) That the following definitions be added under Section 1:

“Character defining element” means the heritage attributes (principal features, characteristics, context and appearance) that contribute to the cultural heritage significance of a protected heritage property which are identified in a Designation By-law and/or within a Heritage Conservation District Plan and Guidelines.

“Designated Heritage Property” means a property designated under Part IV or Part V under the *Ontario Heritage Act*.

“Hoarding” means a fence or similar structure used to enclose a property or part thereof which is or intended to be under development, site alteration, or maintenance.

“Maintenance” means routine, cyclical, non-destructive actions necessary to slow the deterioration of a historic place including but not limited to: periodic inspection; general property cleanup; general gardening and repair of landscape features; replacement of glass in broken windows; replacement of asphalt shingles in a same or similar colour; re-pointing of areas under 1.5 square metres; and/or any work defined as maintenance within a Designating By-law.

- 2) That the following section be added under Section 4:

**4.50 Properties Protected under the Part IV and Part V of the *Ontario Heritage Act***

In addition to the minimum standards for the maintenance and occupancy of a property in the City as set out in this By-law, the owner or occupant of a protected heritage property shall:

- a) Maintain, conserve, and protect the character defining elements as identified within the property’s Designation By-law and/or as identified within a Heritage Conservation District Plan to maintain the heritage character, visual, and structural integrity of any and all buildings, structures, or constructions located on the real property.
- b) Maintain the property in a manner that will ensure the protection and conservation of the character defining elements.

#### **4.51 Altering Designated Heritage Properties**

Despite any other provision of this By-law or the Building Code Act, 1992, no protected heritage property shall be altered except as maintenance pursuant to this by-law or pursuant to approval requirements under the *Ontario Heritage Act*.

#### **4.52 Repair of Character Defining Elements**

Despite any other provision in this By-law, where a character defining elements of a designated heritage property can be repaired, the character defining element shall not be replaced and shall be repaired as follows:

- a) In a manner that minimizes damage to the character defining element based upon recognized national and international best practices.
- b) In a manner that maintains the design, colour, texture, grain, or other distinctive feature of the character defining element.
- c) Using the same material as the original and in keeping with the design, colour, texture, grain, and any other distinctive features of the original; and
- d) Where the same types of material as the original are no longer available, using alternative materials that replicate the design, colour, texture, grain, or other distinctive feature, and appearance of the original material.

#### **4.53 Replacement of Character Defining Elements**

Despite any other provision in this By-law, where a character defining element of a designated heritage property cannot be repaired as determined by a built heritage specialist who is a member of the Canadian Association of Heritage Professionals and/or a member of the Royal Architectural Institute of Canada with heritage experience, the character defining element shall be replaced as follows:

- a) Using the same types of material as the original;
- b) Where the same types of material as the original are no longer available, using alternative materials that replicate the design, colour, texture, grain, or other distinctive feature, and appearance of the original material;
- c) In such a manner as to replicate the design, colour, texture, grain, and other distinctive feature and appearance of the character defining element; and
- d) The removal of the original material shall be documented by photographs, to-scale drawings, and/or any means identified by heritage staff.

#### **4.54 Vacant and Damaged Designated Heritage Properties**

- a) Despite any other provision of this By-law or the *Building Code Act*, 1992, where a designated heritage property is vacant, the owner shall ensure that appropriate utilities serving the property are connected, as required, in order to provide, maintain, and to monitor proper heat and ventilation to prevent damage to the character defining elements caused by environmental conditions.
- b) The owner shall protect the property against risk of fire, storm, inclement weather, neglect, intentional damage, or damage by other causes by effectively preventing entrance to it of all animals and unauthorized persons, and by closing and securing openings to any structures with boarding. The boarding shall be installed in such a way that minimizes damage to any character defining elements, is reversible, and minimizes visual impact.
- c) No opening shall be secured by brick or masonry held in place by mortar unless approved by Council.

- d) If not already in place, an exterior lighting fixture shall be installed and/or maintained in the front porch, veranda, or area adjacent to the front entrance of the building or structure, and must be activated by motion sensors, and shall maintain an average level of illumination of at least 50 lux at ground level.

**4.55 Enhanced Standards**

In the event the policies relating to a designated heritage property, and any other provision of this By-law, create enhanced standards not in contradiction with the *Building Code Act, 1992*, the provision that establishes the highest standard for the protection of the character defining elements shall prevail.

**GIVEN FIRST AND SECOND READINGS**

**GIVEN THIRD READING AND FINALLY PASSED**

CITY CLERK

MAYOR

## Policy # PS-8 of the Building Section Policy Manual

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**WHEREAS** the City of Kingston has a number of policies concerning the need to protect cultural heritage resources such as the City’s Strategic Plan and the City’s Official Plan; and

**WHEREAS** the *Municipal Act, 2001* allows a municipality to enact By-laws to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues including heritage; and

**WHEREAS** sections 35.3 (1) and 45.1 (1) of the *Ontario Heritage Act* allow a municipality to pass a By-law setting out standards for the maintenance of property in the municipality,

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“Maintenance” means routine, cyclical, non-destructive actions necessary to slow the deterioration of a historic place including but not limited to: periodic inspection; general property cleanup; general gardening and repair of landscape features; replacement of glass in broken windows; replacement of asphalt shingles in a same or similar colour; re-pointing of areas under 1.5 square metres; and/or any work defined as maintenance within a Designating By-law.

- 2) That the following section be added under Section 4:

**4.50 Properties Protected under the Part IV and Part V of the *Ontario Heritage Act***

In addition to the minimum standards for the maintenance and occupancy of a property in the City as set out in this By-law, the owner or occupant of a protected heritage property shall:

- a) Maintain, conserve, and protect the character defining elements as identified within the property’s Designation By-law and/or as identified within a Heritage Conservation District Plan to maintain the heritage character, visual, and structural integrity of any and all buildings, structures, or constructions located on the real property.
- b) Maintain the property in a manner that will ensure the protection and conservation of the character defining elements.

#### **4.51 Altering Designated Heritage Properties**

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#### **4.52 Repair of Character Defining Elements**

Despite any other provision in this By-law, where a character defining elements of a designated heritage property can be repaired, the character defining element shall not be replaced and shall be repaired as follows:

- a) In a manner that minimizes damage to the character defining element based upon recognized national and international best practices.
- b) In a manner that maintains the design, colour, texture, grain, or other distinctive feature of the character defining element.
- c) Using the same material as the original and in keeping with the design, colour, texture, grain, and any other distinctive features of the original; and
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- a) Using the same types of material as the original;
- b) Where the same types of material as the original are no longer available, using alternative materials that replicate the design, colour, texture, grain, or other distinctive feature, and appearance of the original material;
- c) In such a manner as to replicate the design, colour, texture, grain, and other distinctive feature and appearance of the character defining element; and
- d) The removal of the original material shall be documented by photographs, to-scale drawings, and/or any means identified by heritage staff.

#### **4.54 Vacant and Damaged Designated Heritage Properties**

- a) Despite any other provision of this By-law or the *Building Code Act*, 1992, where a designated heritage property is vacant, the owner shall ensure that appropriate utilities serving the property are connected, as required, in order to provide, maintain, and to monitor proper heat and ventilation to prevent damage to the character defining elements caused by environmental conditions.
- b) The owner shall protect the property against risk of fire, storm, inclement weather, neglect, intentional damage, or damage by other causes by effectively preventing entrance to it of all animals and unauthorized persons, and by closing and securing openings to any structures with boarding. The boarding shall be installed in such a way that minimizes damage to any character defining elements, is reversible, and minimizes visual impact.
- c) No opening shall be secured by brick or masonry held in place by mortar unless approved by Council.

- d) If not already in place, an exterior lighting fixture shall be installed and/or maintained in the front porch, veranda, or area adjacent to the front entrance of the building or structure, and must be activated by motion sensors, and shall maintain an average level of illumination of at least 50 lux at ground level.

**4.55 Enhanced Standards**

In the event the policies relating to a designated heritage property, and any other provision of this By-law, create enhanced standards not in contradiction with the *Building Code Act, 1992*, the provision that establishes the highest standard for the protection of the character defining elements shall prevail.

**GIVEN FIRST AND SECOND READINGS**

**GIVEN THIRD READING AND FINALLY PASSED**

CITY CLERK

MAYOR