



City of Kingston

Ontario

By-Law Number 2013-141

A Procedural By-Law For Heritage

A By-Law To Establish Procedures For Processing Permit Applications Under The Ontario Heritage Act, And To Delegate The Power To Consent/Grant Permits For The Alteration Of Designated Heritage Properties To The Director Of Planning, Building & Licensing Services

Passed: August 13, 2013

As Amended By By-Law Number:

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2016-68	March 1, 2016		

(Office consolidation)

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Whereas clause 23.2(1)(c) of the Municipal Act, 2001, S. O. 2001, c. 25, as amended permits a municipality to delegate certain legislation and quasi-judicial powers to an individual who is an officer, employee or agent of the municipality; and

Whereas pursuant to subsection 33(15) and 33(16) of the Ontario Heritage Act, R.S.O. 1990, c. 0.18, as amended, the council of a municipality may by by-law delegate the power to consent to alterations to property designated under Part IV to an employee or official of the municipality after having consulted with its municipal heritage committee; and

Whereas pursuant to subsection 42(16) and 42(17) of the Ontario Heritage Act, the council of a municipality may by by-law delegate the power to grant permits for the alteration of property situated in a heritage conservation district designated under Part V to an employee or official of the municipality after having consulted with its municipal heritage committee; and

Whereas the Council of the Corporation of the City of Kingston has consulted with its municipal heritage committee;

Now Therefore the Council of the Corporation of the City of Kingston enacts as follows:

Part I – Short Title

1. This By-law is the ‘Procedural By-law for Heritage’

Part II - Definitions

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

“Act” means the Ontario Heritage Act, R.S.O. 1990, C.O.18, as amended from time to time; and all definitions included therein;

“Alter” means to change in any manner and includes to restore, renovate, repair or disturb and “alteration” has a corresponding meaning;

“Building” means a permanent or temporary enclosed structure with exterior walls and a roof, and including all attached equipment and fixtures that cannot be removed without cutting into roof or ceiling, floors, or walls.;

(By-Law No.2013-14; 2016-68)

Part II – Definitions cont'd:

“Built Heritage Specialist” means a person with heritage experience and who is a member of the Canadian Association of Heritage Professionals and/or a member of the Royal Architectural Institute of Canada;

“City” means the Corporation for the City of Kingston;

“Council” means the municipal Council of the City of Kingston;

“Committee” means Heritage Kingston;

“Demolish” means to do anything in the removal of a building or structure or any material part thereof and “demolition” has a corresponding meaning;

“Designated Heritage Property” means property designated under Part IV or Part V under the Ontario Heritage Act, R.S.O. 1990, c.0.18 as amended;

“Designation By-Law” means a By-law enacted by City Council pursuant to Section 29 or Section 41 of the Ontario Heritage Act, R.S.O. 1990, c.0.18, as amended, that identifies property and/or a defined area or areas to be of cultural heritage value or interest;

“Director” means the Director of Planning, Building & Licensing Services or the successor department to which the work is administratively assigned or his/her designate;

“Heritage Attributes” shall have the meaning set out in the Ontario Heritage Act, R.S.O. 1990, c.0.18, as amended and Ontario Regulation 9/06 and for greater certainty means:

- a) in relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest and that are defined, described or that can be reasonably inferred:
 - i) in a By-law designating a property passed under Section 29 of the Ontario Heritage Act, R.S.O. 1990, c.0.18, as amended and identified as heritage attributes, values, reasons for designation or otherwise;
 - ii) in a Minister’s order made under Section 34.5 of the Ontario Heritage Act, R.S.O. 1990, c.0.18, as amended and identified as heritage attributes, values, reasons for designation or otherwise;
 - iii) in a By-law designating a Heritage Conservation District passed under Section 41 of the Ontario Heritage Act, R.S.O. 1990, c.0.18, as amended and identified as heritage attributes, values, reasons for designation or otherwise; or

(By-law 2013-141; 2016-68)

Part II – Definitions cont'd:

- iv) in the supporting documentation required for a By-law designating a Heritage Conservation District, including but not limited to a Heritage Conservation District Plan, assessment or inventory, and as identified as heritage attributes, values, reasons for designation or otherwise;
- b) the elements, features, or building components that support or protect the heritage attributes, without which the heritage attributes may not be conserved, including but not limited to roofs, walls, floors, retaining walls, foundations and structural systems;

“Heritage Conservation District” means a geographic district established under Part V of the Ontario Heritage Act, R.S. O. 1990, c.0. 18, as amended;

“Heritage Conservation District Plan” means a plan adopted by Council under Part V of the Ontario Heritage Act, R.S.O. 1990, c.0.18 as amended to provide direction in the preservation of the heritage attributes of a Heritage Conservation District;

“Information” means any information requested by the Director, and includes plans, reports or any other documentation requested by the Director;

“Listed Property” means property that City Council has determined to be of cultural heritage value or interest;

“Maintenance” means routine, cyclical, non-destructive actions, necessary to slow the deterioration of Designated Heritage Property, including the following: periodical inspection, property cleanup; gardening and repair of landscape features; replacement of broken glass in windows, minor exterior repairs, including replacement of individual asphalt shingles where there is little or no change in colour or design; repainting where there is little or no change in colour; re-pointing areas of wall space under 1.5 square metres; caulking and weatherproofing; and any other work defined as maintenance in an individual Designation By-law, a Minister’s Order made pursuant to Section 34.5 of the Ontario Heritage Act, R.S.O. 1990, c.0.18, as amended, or in a Heritage Conservation District Plan;

“Permit” means a permit issued under the Ontario Heritage Act which includes the Scope of Work;

“Property” means real property and includes all buildings and structures thereon;

“Scope of Work” means a form that summarizes the parameters of the heritage permit;

Part II – Definitions cont'd:

“Structure” means a permanent or temporary framework of identifiable elements (components, entities, framing, parts, steps, etc.) which gives form and stability, and resists stresses and strains, and includes but is not limited to: fences, walls, and gates, and freestanding structures, such as a windmill or a trellis.

(By-Law Number 2013-14; 2016-68)

Part III – No Application Required

3. An owner of a designated heritage property does not require a permit for the following:

- 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 individual heritage conservation district plans as required by Section 41.1 (5) of the Act;
- c. Landscaping which does not require heavy machinery and which will not significantly change the appearance of the property; and
- d. Maintenance as defined in this by-law.
- e. The forgoing works shall comply with the provisions of Section 7 of the City of Kingston Property Standards By-law Number 200-100, as amended.

(By-Law Number 2013-14; 2016-68)

Part IV – Authority For Delegation And Related Process

4. Council delegates all of the power that Council has respecting the granting of permits to the Director to approve minor alterations to designated heritage properties. Said minor alterations shall comply with the provisions of Section 7 of the City of Kingston Property Standards By-law 2005-100, as amended. This delegation of authority includes the power to grant approval to an application for an alteration with terms and conditions and is granted in relation to the following topics:

- a. removal of, or alterations to, signage within the sign's current configuration and building coverage;
- b. replacement of eaves troughs and downspouts;
- c. replacement of exterior lights with a similar style and brightness;
- d. repair and replacement of windows undertaken in conformity with the City's 'Policy on Window Renovations in Heritage Buildings';
- e. installation or replacement of removable storm windows and doors with historically correct materials;
- f. replacement of roofing where there is little or no change in colour, materials or design;

(By-Law Number 2013-14; 2016-68)

Part IV – Authority For Delegation And Related Process cont'd:

- g. repair of existing features, including wall cladding or siding, dormers, cresting, cupolas, cornices, brackets, columns, balustrades, soffit and fascia, porches and steps, entrances, foundations, and decorative wood, metal, stone or brick, provided that the same or historically accurate types of materials are used with details replicating the original, and the repairs relate to small amounts of decay or damage, for example less than 10% of the surface area of the element being repaired;
- h. re-pointing of masonry undertaken in conformity with the City's 'Policy on Masonry Restoration in Heritage Buildings' and limited to 10% of the surface area being repaired;
- i. repainting part of, or the whole building or structure, in the same colour or a historically-accurate colour;
- j. installation of mechanical and electrical equipment, and vent stacks and exhaust pipes which penetrate the building envelope, are not visible from the street and are carried out in a manner that does not alter the building's attributes;
- k. repair of sidewalks and driveways;
- l. the erection of stand-alone accessory buildings and structures if they are no larger than 10 square metres (108 square feet) and are located in the rear yard;
- m. repair of fences;
- n. revisions or amendments to previously approved permits only if proposed alterations involve work for items included in the delegated authority;
- o. final issuance of grants following completion of work which has been carried out in accordance with provisional approval for an application for alteration;
- p. when the interior designation of the City Hall are affected, including only the permission of temporary exhibitions and for interpretive material, way-finding signage, civic collection management and for minor reversible renovations that are not significant in nature; and,
- q. situations requiring emergency repair which are considered to be a health, safety or security issue by the Director, the Chief Building Official or the Fire Chief, in accordance with the provisions of Section 11 of this By-law
- r. extensions to the three year time limit to complete the scope of work in accordance with the provisions of Section 23. j. of this By-law; and
- s. conduct investigations respecting contraventions of the provisions of this By-law in accordance with Part XI of this By-law

(By-Law No.2013-141; 2016-68)

Part IV – Authority For Delegation And Related Process cont'd:

5. Council delegates to the Director all of the authority under the Act, to request, receive, review and accept or reject plans, information, reports and any other documentation required to make a decision, when an application is made under the Act:
 - a. to alter, erect, demolish or remove any building or structure on a designated heritage property; and,
 - b. to repeal a by-law, or portion thereof, on a designated heritage property.

(By-Law No.2013-141; 2016-68)
6. Notwithstanding Section 5, Council retains the authority to request additional plans, information, reports and any other document that it considers necessary that was not requested by the Director.
7. Council delegates to the Director all of the powers that Council has to process permits in accordance with the terms of this by-law and to establish any policies, guidelines, practices or procedures necessary to enact the permits in accordance with the terms of this by-law and any decision made by Council pursuant to this by-law.
8. When the Director is absent through illness, vacation or other reason, the Director's delegate shall act in the place of the Director. While so acting, the Director's delegate has all the rights, powers and authority of the Director as delegated by this by-law.
9. The Director shall prescribe all forms necessary to implement the by-law, and may amend such forms from time to time as the Director deems necessary without amendment to this by-law.
10. The Director is authorized to undertake all acts incidental to, and necessary to carry out the authority delegated to and vested in the Director under this by-law, including affixing his or her signature to documents.

Part V – Processing Of Permits For Designated Heritage Properties

11. Emergency Proposals – proposed alterations required for an emergency repair or to address health and safety issues may be authorized by the Director. All emergency approvals shall be reported to the next Heritage Kingston meeting.
12. An Owner wishing to alter a designated heritage property shall submit an application for a permit in writing to the Director on a form prescribed by the Director and shall supply the information prescribed in Schedule 'A' of this by-law that is requested by the Director in order to assess the application.

(By-Law No.2013-141; 2016-68)

Part V – Processing Of Permits For Designated Heritage Properties cont'd

13. An Owner wishing to demolish or remove a building or structure on a designated heritage property shall submit an application for a permit in writing to the Director on a form prescribed by the Director and shall supply the information prescribed in Schedule 'B' of this by-law that is requested by the Director in order to assess the application.
14. Any Owner wishing to repeal all, or a portion of, a designation by-law for a designated heritage property, shall submit an application for a permit in writing to the Director on a form prescribed by the Director, and shall supply the information prescribed in Schedule 'B' of this by-law that is required by the Director in order to assess the application.
15. For Sections 12, 13, and 14 above, an application shall be deemed complete upon receipt of all information as requested by the Director, and a letter to this effect is provided to the landowner.
16. In evaluating an application for a Permit to alter a designated heritage property, staff of the Planning, Building & Licensing Services Department may obtain advice from heritage experts with respect to the application, and at the discretion of the Director may include a pre-consultation with Heritage Kingston on complex development proposals.
17. For all other applications for alterations to designated heritage properties other than those listed in Section 4 and where the proposed alteration is likely to affect the property's heritage attributes as set out in the Designation By-law, staff will undertake site visits accompanied, where appropriate, by Heritage Kingston members or heritage experts as per Section 16. Staff will carry out an internal technical circulation to other City departments, as appropriate, and will prepare a report by staff summarizing comments, background information, and recommendations for consideration by Heritage Kingston. In these situations, Heritage Kingston shall review the merits of the applications, and provide a recommendation to Council. Council shall retain all decision-making power in relation to that application.
18. Approval by the Director, with associated terms and conditions, is required for an application for a permit to alter a building or structure on a designated heritage property.
19. For other than those applications listed in Section 4, final approval authority by Council is retained for the following applications for a permit:
 - a. When consent to approve an application for alteration is not recommended by the Director;
 - b. To demolish or remove a building or structure or material part thereof on a designated heritage property; and
 - c. To repeal all, or a portion of a designating by-law under the Act for a designated heritage property.

(By-Law No.2013-141; 2016-68)

Part VI – Processing And Issuance Of Permits, And Amendments Thereto

20. The following process shall apply to applications brought under this Bylaw:

- a. Permit applications are completed and are submitted to staff. An application may include plans, photographs, and written information as required under Appendix A, including a possible Heritage Impact Statement. Pre-consultation is undertaken with staff, and for major applications, (for example, those which require an Official Plan Amendment or a Zoning By-law Amendment) pre-consultation may be undertaken with Heritage Kingston at the discretion of the Director;
- b. When the application is deemed complete pursuant to section 14, a letter shall be issued to the applicant containing the notice of receipt as provided for under the Act;
- c. A technical circulation to those internal departments which have an interest in the matter(s) affected is undertaken for all applications, and a site visit is carried out;
- d. Decisions on delegated matters are presented to Council on a bi-annual basis for information; and
- e. The Director shall issue a permit which includes a scope of work outlining the parameters of the permit.

21. The Director shall issue documentation outlining the parameters of the permit to an owner of the designated heritage property that has made an application under this by-law in the following instances:

- a. Where the Director's approval has been provided for an alteration of a property.
- b. Where Council approval has been provided for the alteration of property, demolition, or removal of a building or structure on a property.
- c. Where Council or the Director is deemed to consent to an application made for a designated heritage property.
- d. Where the Ontario Municipal Board orders that the City consent to a demolition or removal of a building or structure on a property designated under Parts IV or V of the Act.
- e. Where the Ontario Municipal Board directs that a permit is issued for a designated heritage property.

(By-Law No.2013-141)

**Part VI – Processing And Issuance Of Permits, And Amendments Thereto
cont'd:**

22. The following process shall apply to applications for which approval is not delegated to staff:
- a. Staff shall conduct a technical circulation, undertake a site visit and prepare a report with recommendations which are added to the agenda for Heritage Kingston.
 - b. Heritage Kingston's members will review the application for a permit, and associated plans, drawings etc.
 - c. The City's Code of Conduct for Council and Heritage Kingston's Members applies to members of Heritage Kingston. Notwithstanding what is set out in Paragraph 6.5 of the City's Code of Conduct, members of the public who are appointed to Heritage Kingston must declare any pecuniary interest in a matter being discussed and must physically leave the room during the deliberation of the matter. They may appear as applicant or agent of the applicant during the presentation of the application and to answer Heritage Kingston questions. They must physically leave the room during Heritage Kingston's deliberation and voting on the matter. During the Committee's deliberation of the application if Heritage Kingston has further questions of the member, the member will be invited to return to the meeting to answer questions, following which they shall again leave the room. They must not otherwise communicate with Heritage Kingston members about the matter before, during or after the meeting.
 - d. A recommendation of Heritage Kingston will be forwarded to Council for consideration for approval.
 - e. Following a resolution of Council for approval, the Director shall issue a scope of work outlining the parameters of the permit, and this shall be posted on-site in a location which is visible to the public.

(By-Law No.2013-141; 2016-68)

Part VII – Conditions Of Heritage Approvals

23. All permits issued under this by-law shall be subject to the following conditions and shall be in accordance with the provisions of Section 7 of the City of Kingston Property Standards By-law Number 2005-100, as amended:
- a. Applicants must permit a site inspection as part of the review being undertaken prior to the issuance of a permit;
 - b. No work affecting a heritage attribute of the building is to commence until a scope of work has been issued;
 - c. All applications, plans, specifications, documents, and delegated authority approval or resolution of Council form part of the approved permit, and all work must be carried out in accordance with this documentation and any other information that forms the basis upon which the permit is granted;

Part VII – Conditions Of Heritage Approvals cont'd:

- d. Any work that deviates from the approved permit is in violation of the permit and is subject to prosecution under the Act and the provisions of this By-law;
- e. Any material change to the plans, specifications, documents, reports or other information that forms the basis upon which a permit is issued requires a further permit application;
- f. The permit holder allows City staff to inspect the work done under the permit;
- g. Such other terms and conditions as the Director deems necessary to maintain the heritage attributes of the property;
- h. Such other terms and conditions as may be required in granting consent to the permit application and issuance of the scope of work; and
- i. All work must be completed within three (3) years of approval of a permit, unless otherwise permitted under e) or f) above. Any work not completed in this allotted time frame may require the submission of a new application for alteration under the heritage legislation.
- j. Notwithstanding the provisions of i. above, where the approved work has been steadily progressing in accordance with the issued scope of work or for any other reasonable cause deemed appropriate by the Director, the permit holder may request a time extension to complete the approved works. Such request must be submitted to the Director at least 90 days prior to the expiration of the three (3) years and must include a timeline for completion of the approved works. In no case will the time extension exceed one (1) year

(By-Law Number 2013-141; 2016-68)

Part VIII – Providing Input on Land Use Planning Applications and Proposals

- 24. Where land development proposals are submitted to the City of Kingston which include property subject to the Ontario Heritage Act, they shall be reviewed by Heritage Kingston in a timely manner concurrently to the greatest extent possible with other municipal departments and committees subject to the following:
 - a. Development applications submitted to the City of Kingston including, but not limited to, amendments to the official plan and zoning by-laws, plans of subdivision, minor variance applications, consent applications filed concurrently with a minor variance application, and site plan control review, which involve a designated heritage property, a property within a Heritage Conservation District or a listed property will be circulated to Heritage Kingston by the Planning, Building & Licensing Services Department for comment;
 - b. Heritage Kingston shall respond to any request for comments received from the Planning, Building & Licensing Services Department for consideration in the report to Planning Committee or the Committee of Adjustment; and

**Part VIII – Providing Input on Land Use Planning Applications and Proposals
cont'd**

- c. Where Site Plan Control requires a separate heritage permit application, final decision on the Site Plan Control Application will not be made until the heritage permit application receives consent from Council.

(By-Law No.2013-141; 2016-68)

Part IX – Council Retains Ultimate Authority Under Legislation

25. Notwithstanding any provision of this By-law to the contrary, Council may, after notifying the Director, exercise any authority that is delegated to the Director.

(By-Law No.2013-141)

Part X – Appeals Under The Heritage Legislation

26. In the event of an appeal under the Ontario Heritage Act, the Notice of Objection shall be placed on the Council agenda as correspondence.

(By-Law No.2013-141)

Part XI – Offense And Restoration Provisions

27. Every person who knowingly furnishes false information in an application made pursuant to this By-law, or who fails to comply with any order, direction or requirement made pursuant to this By-law, or who contravenes any provision of this By-law or the Act, is guilty of an offence and on conviction is liable to a fine or to imprisonment as provided by Section 69 of the Ontario Heritage Act, R.S.O. 1990, c.0.18, as amended.
28. If this By-law is contravened and a conviction entered, the Court in which the conviction was entered or any Court of competent jurisdiction may, in addition to any other remedy, and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.
29. Where a designated heritage property or a property located in a Heritage Conservation District is altered in contravention of this By-law, in addition to any other penalty imposed pursuant to the provisions of Section 69 of the Ontario Heritage Act, R.S.O. 1990, c.0.18, as amended or pursuant to the Property Standards By-law No. 2005-100, as amended, the City, or the Minister, as the case may be, may restore the property as nearly as possible to its previous condition, if it is practicable to do so, and may recover the cost of the restoration from the owner of the property pursuant to the provisions of the Act.
30. Where an order to restore the property is issued, Council may authorize any person in writing to enter on the property to carry out the restorations.

31. Notwithstanding Clause 29 above, and in accordance with the provisions of Section 69 of the Act, the City or the Minister shall not restore the property if, in the opinion of the City or the Minister, the property is in an unsafe condition or incapable of repair or the alteration was carried out for reasons of public health or safety or for the preservation of the property.
32. Where the provisions of this By-law have been contravened, the process to address the contravention shall be as follows:
 - a. The Director shall conduct an investigation to determine the circumstances and nature of the contravention;
 - b. Based on the results of the investigation pursuant to a. above and a determination that there has been a breach of the law, the Director shall review with the Prosecutor who may determine whether formal processes are warranted as follows:
 - i. The Prosecutor may initiate a prosecution in accordance with the provisions of the Act and this By-law;
 - ii. A Property Standards Order may be issued pursuant to the provisions of the Property Standards By-law No. 2005-100, as amended, and the Building Code Act;
 - iii. Where warranted and it is practicable to do so, recommend that the property be restored as nearly as possible to its previous condition. Any such recommendation for restoration shall be referred by the Director to Council for approval;
 - iv. Where the investigation reveals that the property owner unknowingly contravened the By-law, the Director may exercise discretion in consultation with Legal Services to resolve the contravention by alternative means. The Director may meet with the owner to discuss the contravention, the penalties that could be imposed and to ensure that the owner is aware of the requirement to obtain a heritage permit for any future alterations. Where deemed appropriate, the Director may recommend that the property owner enter into a Heritage Conservation Easement Agreement with the City, to be registered on title, to ensure that the current and future owners are aware of the requirements to obtain necessary approvals for alterations to a designated heritage property. Any Heritage Conservation Easement Agreement shall be referred by the Director to Heritage Kingston for review and recommendation to Council.

(By-Law No.2013-141; 2016-68)

Part XII – Validity

33. If a Court of competent jurisdiction declares any provision, or any part of a provision, of this By-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this By-law that each and every provision of this By-law authorized by law be applied and enforced in accordance with its terms to the extent possible according to law.
34. Where a provision of this By-law conflicts with the provision of another By-law in force in the City, the provisions that establish the higher standards to protect the City's cultural heritage resources prevails.

(By-Law No.2013-141; 2016-68)

Part XIII – Administration

35. This By-law shall be administered by the Director

Part XIII – Commencement

Schedule 'A'**Requirements for a Permit Application**

- 1) The name, address, telephone number, and e-mail address of the Owner or the Owner's authorized representative or agent, if applicable;
- 2) A site plan or sketch showing the location of the proposed work on the property;
- 3) A statement of the proposed work including an indication if the proposed alteration is likely to affect the property's heritage attributes as described in the Designation By-law;
- 4) Drawings of the proposed work showing materials, colours, dimensions, massing and extent of the work;
- 5) Written specifications for the proposed work;
- 6) Photographs showing the existing building or landscape condition;
- 7) Documents pertaining to the proposal, including if relevant, archival photographs, pictures or plans of similarly styled buildings in the community;
- 8) A signed statement by the owner authorizing the application, if submitted by an agent;
- 9) As may be required, a Heritage Impact Statement prepared by a Built Heritage Specialist; and
- 10) Any other information related to the application as required by the Director.

(By-Law No.2013-141; 2016-68)

Schedule 'B'

**Requirements for a Permit to Demolish a Protected Heritage Building or
Remove a Designation By-law**

- 1) The name, address, telephone number, and e-mail address of the owner or the owner's authorized representative or agent;
- 2) A site plan or sketch showing the location of the proposed demolition or removal;
- 3) Photographs showing the existing building or landscape condition including all elevations;
- 4) A building condition assessment prepared by a qualified Engineer of the building or structure or material part thereof which is proposed to be demolished or removed;
- 5) A signed statement by the owner authorizing the application, if submitted by an agent;
- 6) As may be required, a Heritage Impact Statement prepared by a Built Heritage Specialist; and
- 7) Any other information related to the application as required by the Director.

(By-Law No.2013-141; 2016-68)