



Committee of the Whole Report

Report Number:	ED2021-012
Meeting Date:	September 7, 2021
Title:	Heritage Applications Policy
Description:	Policy regarding the procedures and application requirements for the alteration or demolition of a heritage property, the repeal of a designation by-law and the removal of property from the Heritage Register
Author and Title:	Emily Turner, Economic Development Officer – Heritage Planning

Recommendations:

That Report ED2021-012, **Heritage Applications Policy**, be received;

That the policy entitled Heritage Applications Policy, appended to Report ED2021-012, be adopted, numbered, and inserted in the Corporate Policy Manual;

That By-law 2019-154 (Heritage Delegated Authority By-law) be amended to include the definition of demolition and associated procedures, as outlined in Appendix B of this report;

That the necessary amending by-law to By-law 2019-154 be brought forward for adoption at the next Regular Council meeting;

That the tariff of fees on heritage matters be approved;

That the necessary by-law (Tariff of Fees – Heritage Matters), as outlined in Appendix E of this report, be brought forward for adoption at the next Regular Council meeting;

(Acting) Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

That staff be directed to amend the Consolidated Fees By-law to include fees for the demolition of heritage property and the repeal of heritage designation by-laws and bring forward the amendment by the end of Q4 2021; and

That this recommendation be brought forward to Council for consideration at the next Regular Council Meeting.

Background:

In June 2019, the Ontario Government passed the More Homes, More Choice Act (2019) which made amendments to a number of pieces of planning-related legislation, including the Ontario Heritage Act. Several changes were proposed in the legislation, including minimum content requirements for applications to alter a heritage property which were to be prescribed through regulation. These changes and a new associated regulation (Ontario Regulation 385/21) came into effect on July 1, 2021. At the same time, the legislation in its current form, both before and after the 2019 amendments, requires that Council set its own submission requirements for certain types of applications, including the demolition of designated and listed properties. It also establishes that an owner of a property may apply to the municipality to repeal the designation by-law on their property, but does not specify submission requirements although stipulates that Council may request certain information as part of an application to do so. At present, Kawartha Lakes does not have any policies outlining submission requirements and processes for these types of applications.

This report addresses the legislative changes to the Ontario Heritage Act and the requirements under the Act for Council to identify its submission requirements for certain types of applications made under the Act. The report presents a new policy document which outlines the procedures associated with the four applications which a property owner can make regarding their heritage property under the Act: the alteration of a property, the demolition of a property, the repeal of a designating by-law, and the removal of a listed property from the Heritage Register. It also presents an amendment to By-law 2019-154 (Heritage Delegated Authority By-law), which delegates authority to staff to approve certain types of alterations to heritage property, to define “demolition” in accordance with amendments to the Act and clarifies the process regarding the removal of heritage attributes from a property. This by-law is usually referred to as the Heritage Delegated Authority By-law. These amendments will bring the by-law into compliance with the Act in its current form. The report also proposes a new by-law, which enables the charging of fees for certain types of applications, as well as providing for cost recovery for the peer review of heritage-related technical studies and third party appeal of applications to the Ontario Land Tribunal.

The proposed policy and amendments to By-law 2019-154 were first presented to the Municipal Heritage Committee at its meeting of March 11, 2021. Under the Ontario

Heritage Act, the Committee is not required to review proposed heritage-related policies, but it is the practice in Kawartha Lakes, as in most municipalities, for the Committee to review proposed policy, to provide input to staff, and to provide a recommendation regarding its adoption to Council. The Committee provided input to staff on the proposed policy and was presented with the final draft of the policy and amendments to the delegated authority by-law at its meeting of May 6, 2021. At that meeting, the Committee passed the following motions:

KLMHC2021-38

Moved By J. Hartman

Seconded By A. Adare

That Report KLMHC2021-17, **Heritage Applications Policy**, be received; and

That the proposed policy be endorsed and forwarded to Council for approval.

Carried

KLMHC2021-39

Moved By I. McKechnie

Seconded By J. Garbutt

That Report KLMHC2021-18, **Amendment to the Heritage Delegated Authority By-law**, be received;

That the proposed amendments to By-Law 2019-154 (Delegate Authority for the Alteration of Heritage Property) be endorsed; and

That this recommendation be forwarded to Council for approval.

Carried

Similarly, a proposed new by-law enabling new fees to be charged for heritage matters was presented to the Committee at its meeting of June 3, 2021 and the Committee passed the following motion:

KLMHC2021-54

Moved By W. Bateman

Seconded By A. Adare

That Report KLMHC2021-24, **Heritage Fees By-law**, be received;

That the proposed Heritage Fees By-law be endorsed; and

That this recommendation be forwarded to Council for approval.

Carried

An internal technical team consisting of Development Services staff has also provided feedback and reviewed the policy as it was developed, along with input from both the City Solicitor and Development Engineering Supervisor and from other impacted departments. The policy has also been reviewed by the Development Review Team and the Senior Management Team.

Rationale:

The proposed policy is broadly intended to respond to three specific matters:

- Legislative direction from the Ontario Heritage Act, its associated regulations, and the amendments made by the More Homes, More Choice Act;
- The provision of clarity for property owners regarding submission requirements and municipal procedures for four key processes under the Ontario Heritage Act
- The provision of direction for staff, the Municipal Heritage Committee; and Council through a Council adopted policy to ensure transparency and consistency of approach to applications regarding heritage property.

In order to respond to these issues, the policy covers a wide range of processes and documents, which relate to the four types of applications that owners of heritage properties can make under the Ontario Heritage Act. Staff have undertaken a review of provincial legislation and policy and the processes and policies currently in place in other Ontario municipalities and drafted the proposed policy attached as Appendix A. The policy direction and application requirements are substantially the same as in other municipalities across Ontario with robust heritage programs and provide a consistent approach to processing heritage related applications. Staff are also proposing an amendment to the City's heritage delegated authority by-law to clarify its definitions and processes, in line with both current legislation and the proposed policy. An amended version of the by-law is attached as Appendix B with the proposed changes highlighted.

The proposed policy covers a wide range of topics pertinent to applications made to the City regarding heritage properties. The key topics are outlined and summarized below.

Alteration of Property

The new regulations under the Ontario Heritage Act, O. Reg. 385/21, resulting from the More Homes, More Choice Act (2019) provide minimum submission requirements for an application to alter a property designated individually under Part IV of the Act. There are no submission requirements prescribed in regulation for properties designated under Part V of the Act as part of a heritage conservation district, but Section 42 of the Act allows Council to request the submission of certain information as part of an application.

The submission requirements proposed by staff are substantially the same as those outlined by the province and what the City already requires the owner of a heritage property to submit when applying to alter their property. This section of the proposed policy provides additional clarification on the potential for staff to request additional studies if required and the relationship of heritage permit applications to the City's Building and Planning processes. These requirements will apply to both properties designated under Parts IV and V of the Act to ensure consistency across all designated properties in the City.

Applications to alter a property are the most common type of application made under the Ontario Heritage Act and are regularly received by the City from the owners of properties designated under Parts IV and V of the Act. This section of the policy does not apply to listed properties as owners of listed properties are not required to apply to the municipality for consent to alter their property outside of the usual building and planning processes. It is not anticipated that the new requirements will change current customer service standards or the processing time for these types of applications.

Demolition of Property

The process for approving the full or partial demolition of a heritage property is outlined in Sections 27, 34 and 42 of the Act. Ontario Regulation 385/21 sets the minimum submission requirements for applications made regarding properties designated under Part IV of the Act, but Council may require additional information from the applicant and may also set standards for listed properties and those designated under Part V of the Act. Staff are proposing consistency across all three types of heritage properties as well as the requirement for several additional pieces of information in addition to those identified in O. Reg. 385/21. This additional information will ensure that Council has a full picture of the heritage value of the property before making a decision on a

demolition. This includes the submission of a Heritage Impact Assessment to gauge the impact of the demolition on the heritage value of the property.

As with applications for the alteration of property, the submission requirements can be scoped or waived at staff's discretion. This allows staff to make exceptions regarding submission requirements where it is appropriate, particularly in cases where there are mitigating circumstances for the owner's request to demolish, such as catastrophic loss or structural failure in a building. This reflects legislative direction from the Building Code Act. It also allows staff to waive document submission for the demolition of structures on the property, which are not identified as heritage attributes of the property, such as modern outbuildings.

Repeal of a Designating By-law

The process for the repeal of a designating by-law at the request of an owner is informed by Section 32 of the Act. This section allows for the owner of a designated property to apply to Council for the by-law of their property to be repealed and establishes the process that a municipality must follow should it receive a request of this type. It does not specify what documents must be submitted as part of this type of application. At present, there is also no municipal process or associated submission requirements for an owner to make this request in Kawartha Lakes. This section of the policy is intended to establish and provide direction for those types of applications. Staff are suggesting that applicants submit a Cultural Heritage Impact Evaluation along with their application so that Council may have a full picture of the cultural heritage value of the property when making its decision. This is particularly important for older designations which did not undergo a rigorous heritage evaluation when they were designated and may have poorly written by-laws.

This section of the proposed policy only applies to properties designated under Part IV of the Act for which there is a designating by-law to repeal. Properties located in a heritage conservation district cannot opt out of a heritage conservation district plan. The repeal of a heritage conservation district designation by-law would be a public process requiring extensive community consultation and is not included in this policy which only addresses applications for individual properties. It also does not apply to the repeal of a heritage designation by-law at Council's initiative which has an associated public process under Section 31 of the Act and does not require the submission of documents.

Removal of a Listed Property from the Heritage Register

Outside of the new appeals process introduced in Section 27 of the Ontario Heritage Act by the More Homes, More Choice Act, there is no detailed process for removing a property from a municipality's Heritage Register outlined in the Act, such as that for repealing a designation by-law. The Act only stipulates that an owner must supply any information that a Council may require along with an application to demolish, but does not identify what that information must consist of. Council must also consult its Municipal Heritage Committee prior to removing a property from the Register. At present, there is no established process in Kawartha Lakes for an owner to apply for their property to be removed from the Register.

Staff have identified two instances where an owner might want their property removed from the Register, namely an application to demolish the property or a request to remove the property because the owner does not believe it has sufficient heritage value to warrant inclusion on the Register. Applications for demolition for a listed property will follow the same requirements for demolition as for other heritage properties to ensure consistency across the City's processes. An application to remove a property from the Heritage Register without demolition will require the owner to demonstrate why they do not believe their property should be included through a Cultural Heritage Evaluation Report.

Terms of Reference

The proposed policy refers to two different types of technical study and their respective terms of reference: The Cultural Heritage Evaluation Report (CHER) and the Heritage Impact Assessment (HIA). These two studies, which serve different purposes, are both widely used by municipalities as part of the planning process to understand the heritage value of a site and help to identify and mitigate the impacts of a proposed development on a cultural heritage resource. A CHER is used to determine what, if any, heritage value a property has, based on Ontario Regulation 9/06. An HIA is used to determine the impact of a proposed development on an identified heritage resource and provide mitigation and conservation strategies. The requirement to submit these types of studies has been included in the proposed policy in order to assist with evidence and data driven decision making.

These two types of reports are already requested as part of certain applications to assist staff with determining heritage value and the potential impact of proposed

developments and are enabled by the City's Official Plan and the Provincial Policy Statement (2020). The proposed policy is intended to clarify their use and the requirement to submit them for different types of heritage-related applications. The terms of reference for HIAs and CHERs are attached as Appendix C and Appendix D, respectively, for Council's information.

Removal of Heritage Attributes

Amendments to the Ontario Heritage Act proclaimed on July 1, 2021 made changes to the definition of a demolition or removal under Section 34 of the Act, which applies to properties designated individually under Part IV of the Act. The definition now includes the full or partial demolition of a structure or building on a property, its removal to another location, or the removal of any of the heritage attributes of the property as identified in the property's individual designation by-law. This addition of the removal of heritage attributes as constituting a demolition is new.

Any change to a property which is defined as demolition must be approved by Council as demolitions cannot be delegated to staff. This would require every application involving the removal of a heritage attribute of a designated property to be reviewed and approved by Council, placing a significant burden on property owners who may be undertaking work which is beneficial to the long term preservation of the property. What constitutes a removal is not specified by the Act or its new regulations.

Staff have consulted with the Ministry of Heritage, Sport, Tourism and Culture Industries and are recommending in the proposed policy that removal means the permanent removal of a heritage attribute as opposed to the non-permanent removal or the removal and replacement in-kind of an attribute. This would allow for property owners who were undertaking restoration projects or replacing elements which are beyond repair to be processed as part of the alterations stream and avoid an unnecessarily long approvals process but would ensure that the removal of heritage attributes impacting a property's heritage value are reviewed by Council in alignment with the intent of Act.

Planning Act Applications

The proposed policy provides new guidance on Planning Act applications which involve a heritage property. Specifically, the policy allows for the collection of securities for certain kinds of applications to ensure the preservation of historic properties and for the

City to enter into heritage easement agreements with the owners of heritage properties subject to a Planning Act application. The policy outlines the scenarios where this might be appropriate to provide clarity to staff and applicants making application under the Planning Act. The proposed instances where an easement is recommended are in alignment with common practice in other municipalities across Ontario. In practice, these requirements would only apply to large-scale redevelopment projects or those which involve the demolition or relocation of a heritage property.

Process

The proposed policy provides a high level overview of the process of applying for and receiving consent for any of the relevant heritage applications. In general, the process aligns with the requirements under the Ontario Heritage Act, but provides additional clarification specific to the City's operations. Specifically, the process identifies the requirement for a pre-submission meeting with the applicant and staff to ensure that there is clarity on the submission requirements.

There are no substantial changes to the process for applying for and receiving a heritage permit from the City. A more in-depth Standard Operating Procedure (SOP) was developed for heritage permitting by Economic Development and Building staff in 2019 and is amended from time to time to reflect current, specific internal procedures. The SOP and the related Heritage Permit Application form will be amended to ensure all of the relevant changes as a result of the proposed policy are reflected.

Fees

Staff are proposing the introduction of new fees for the applications to demolish a heritage property and to repeal a heritage designation by-law. These new fees are intended to cover the costs to the municipality associated with processing these types of applications, namely the registration of by-laws and the provision of public notice, which are currently paid for through the City's budget. There are no new fees proposed for applications to alter a heritage property or to remove a listed property from the Heritage Register.

The fees for 2022 would be \$750 for both types of applications and would be indexed in subsequent years to reflect the changing cost of processing these applications. The fee calculation does not include the staff time from the various divisions directly involved in

processing these types of applications (Economic Development, Communications, Advertising and Marketing, and the Clerk's Office).

In order to implement the new fees proposed in the policy, a new by-law regulating the tariff of fees for heritage matters is required. This by-law would enable the charging of fees for heritage related applications through the Consolidated Fees By-law. A proposed by-law is attached as Appendix E. The fee amounts and applications types are not specified in this by-law, which would allow Council to make future modifications to them through an amendment to the Consolidated Fees By-law only.

Staff are also proposing that this proposed by-law enable the charging of fees for third party appeals to the Ontario Land Tribunal and for peer review of heritage related studies. These studies include Heritage Impact Assessments, Cultural Heritage Evaluation Reports, and Archaeological Assessments. At present, an equivalent by-law, By-law 2013-006 (Tariff of Fees – Planning Matters) regulates these fees for applications made under the Planning Act, which do not have an associated heritage application. The new by-law would bring the City's fee policy for applications made under the Ontario Heritage Act into alignment with that for those made under the Planning Act.

Delegated Authority By-law

Authority to approve certain types of alterations to heritage properties is delegated to staff by By-law 2019-154. The delegation of approvals to staff allows for applications to be processed more efficiently and for the City to provide better customer service to heritage property owners. To respond to the new definitions of demolition under Section 34 of the Act, staff are proposing that the by-law be amended to include the new definition for demolition and to include clarification regarding the removal of heritage attributes, as discussed above and in the proposed policy. Applications for demolition cannot be delegated to staff and the proposed amendments provide additional clarification as to which types of applications are delegated to staff and which require Council consent.

Implementation

Staff are suggesting that the implementation of the policy take place in Q4 2021 and Q1 2022. The majority of the policy, including the application requirements, will come into effect once the policy is approved and adopted by Council. Many of these requirements

are already in place due to provincial legislation and current municipal practice. It is important that policy come into effect within the 2021 calendar year to ensure alignment with the changes to the Ontario Heritage Act which were proclaimed in July 1, 2021.

Certain aspects of the policy will not come into effect until Q1 2022. This includes the new fees which will require an enabling heritage fees by-law to be adopted as well as an amendment to the Consolidated Fees By-law. The new requirements for Planning Act applications will also require additional time to fully implement. Specifically, the Subdivision Agreement Template will require amendment to include heritage specific provisions. Staff are intending on bringing forward an amended template in Q4 2021. Staff are also in the process of developing heritage specific wording for the site plan agreement template and a heritage easement agreement template. Should any Planning Act applications come forward, which would be subject to the requirements under the new policy before the end of 2021, staff would address them on a case by case basis.

Relationship to Existing Policy and Legislation

The proposed policy is informed by a number of pieces of existing provincial and municipal policy and legislation. A summary of the relationship of the proposed policy to the primary documents guiding the development of the policy is outlined below.

Ontario Heritage Act

The Ontario Heritage Act is the guiding legislation regarding the preservation of cultural heritage resources in Ontario. The Act and its associated regulations establish the processes that the City must follow when receiving an application related to a heritage property located within the municipality. This includes applications for the alteration or demolition of property, the repeal of a designation by-law, and the removal of a listed property from the Heritage Register.

The proposed policy respond to legislative direction to establish submission requirements for heritage applications received by the municipality and to the processes required under the Act.

The Act also enables municipalities to enter into easement agreements for the protection of heritage resources. The proposed policy provides direction as to when an

easement agreement may be contemplated as an extra layer of protection for a heritage resource.

Building Code Act

The Ontario Heritage Act is applicable law under the Building Code Act. As such, the requirements under the Ontario Heritage Act regarding the alteration and demolition of heritage properties must be fulfilled prior to the issuance of a building or demolition permit.

The proposed policy provides guidance and consistency for the application process for alterations and demolitions so that the requirements under the Ontario Heritage Act can be fulfilled. The proposed policy is also consistent with the requirements under the Building Code Act.

Provincial Policy Statement (2020)

Section 2.6 (Cultural Heritage and Archaeology) of the Provincial Policy Statement (2020) directs municipalities to conserve significant cultural heritage resources and cultural heritage landscapes. This includes the provision for the requirement of studies and assessments when development and site alteration is proposed by directing municipalities to ensure that any development has been appropriately evaluated for its impact on a heritage property.

The proposed policy supports the conservation of heritage resources as directed by the PPS through the provision of strategies for managing applications related to heritage properties in the municipality as well as the management of these resources as part of the broader land use planning process.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019)

Section 4.2.7 (Cultural Heritage Resources) of the Growth Plan for the Greater Golden Horseshoe directs municipalities to conserve cultural heritage resources in order to foster a sense of place and as a means of community benefit, particularly in strategic growth areas. At a high level, conservation of cultural heritage resources is identified as one of the Growth Plan's Guiding Principles, as specified in Section 1.2.

The proposed policy supports the conservation of heritage resources as directed through the Growth Plan through the provision of strategies for managing applications

related to heritage properties in the municipality as well as the management of these resources as part of the land use planning process.

City of Kawartha Lakes Official Plan (2012)

The cultural heritage policies in the City of Kawartha Lakes Official Plan are contained in Section 10: Culture and Heritage and were significantly amended in 2017 by Official Plan Amendment 26. OPA 26 was adopted primarily to facilitate the designation of heritage conservation districts within the municipality but it also strengthened the protections afforded to cultural heritage resources within the City. These policies direct the City to conserve its heritage resources as part of its overall strategy for land use planning and growth management and provides specific direction on the maintenance of resources, the potential for the demolition or alteration of resources, and the review of development applications. The proposed policy supports the direction of the OP policies by providing guidance on the processing of heritage applications to ensure that there is appropriate information for evaluation and decision making.

The policies in the Official Plan also allow for the requirement to submit technical studies as part of an application related to a heritage property and for the City to enter into a heritage easement with a property owner. This direction is reflected and expanded upon in the proposed policy to provide clarity as to how that requirement relates to the processing of applications.

The policy is also in alignment with the policies and high level goals of the Secondary Plans for the five settlement areas, which are not yet in effect.

Heritage Master Plan (2012)

The Heritage Master Plan (HMP) was developed in 2012 to assist the City with its management of cultural heritage resources. The Plan identified the strengths and weaknesses within the City's heritage programming and recommended actions to strengthen protection and processes.

The HMP identifies a major deficiency in the City's heritage conservation strategy as a lack of policy guiding the protection of heritage properties and identifies the formulation of protection policy as a critical priority. The action item states that the City should "finalize protection policy for heritage structures including official plan wording."

Official Plan wording has been developed and implemented and the proposed policy continues the direction from the HMP to create a holistic policy framework for protecting heritage assets. The new policy provides clarity and direction on the City's management strategy for heritage properties as related to the processing of applications.

Other Guiding Legislation

Planning Act, 1990

The Planning Act implements the Provincial Policy Statement which guides the proposed policy and also enables the charging of fees for certain types of applications.

Funeral, Burial and Cremation Services Act, 2002

The Funeral, Burial and Cremation Services Act provides direction to municipalities with regard to designated properties which include burial grounds or cemeteries, including removals. It supersedes the Ontario Heritage Act in certain instances.

Municipal Act, 2001

The Municipal Act provides additional information on when a heritage easement may be required and enables the charging of fees for service.

Other Alternatives Considered:

Council could choose not to adopt the proposed policy and use only the requirements outlined by Ontario Heritage Act with regard to applications to alter an individually designated heritage property. However, this option is not recommended by staff as it does not provide sufficient clarity and transparency for the associated processes (demolition, by-law repeal, and removal of a listed property from the Register) and does not respond to the direction in the Act that Council set the submission requirements for these types of applications. It also does not provide clear guidance for properties located in heritage conservation districts. Reliance on the provincial guidelines also does not provide clarity or transparency on the process which these applications follow once they are submitted.

Alignment to Strategic Priorities

The proposed policy aligns with the strategic priority of An Exceptional Quality of Life by supporting and promoting arts, culture and heritage within the City. Policies about

heritage support and promote conservation and good management of heritage resources in Kawartha Lakes.

The proposed policy also aligns with the strategic priority of Good Government by promoting service improvements and streamlining policies, by-laws and processes. The proposed policy creates a transparent framework for the processing of different types of heritage related applications that the City might receive and aims to improve customer service by articulating clear expectations and processes for applicants, Council and staff.

Financial/Operation Impacts:

There will be financial impacts as a result of the recommendations of this report in the form of cost recoveries from applications to demolish a heritage property or repeal a designating by-law. The new fees proposed as part of this policy are intended to recover the legal costs associated with processing these types of applications. The City receives very few of these applications and it is unlikely that the new fees will have a significant impact on the City's overall budget.

Consultations:

Ministry of Heritage, Sport, Tourism, and Culture Industries
Municipal Heritage Committee
Senior Management Team
Development Review Team
Acting Director, Development Services
City Solicitor
Manager, Planning
Manager, Economic Development
Chief Building Official
Policy Planning Supervisor
Development Planning Supervisor
Supervisor, Development Engineering
Clerk's Office
Manager, Revenue and Taxation
Communications, Advertising and Marketing

Attachments:

Appendix A – Heritage Applications Policy



Heritage Applications
Policy.docx

Appendix B – Delegated Authority By-law Proposed Amendments



Delegated Authority
Heritage 2021 Amend

Appendix C - Heritage Impact Assessment Terms of Reference



HIA Terms of
Reference 2021.pdf

Appendix D - Cultural Heritage Evaluation Report Terms of Reference



CHER Terms of
Reference.pdf

Appendix E – Proposed By-Law: Tariff of Fees – Heritage Matters



DRAFT Bylaw Tariff of
Fees Heritage Matters

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