

M&C No.	2019-223
Report Date	September 04, 2019
Meeting Date	September 09, 2019
Service Area	Growth and Community Development Services

His Worship Mayor Don Darling and Members of Common Council

***SUBJECT: Saint John Heritage Conservation Areas By-Law – Phase One  
Revisions***

***OPEN OR CLOSED SESSION***

This matter is to be discussed in open session of Common Council.

***AUTHORIZATION***

Primary Author	Commissioner/Dept. Head	City Manager
<b><i>Emma Sampson</i></b>	<b><i>Jacqueline Hamilton / Amy Poffenroth</i></b>	<b><i>John Collin</i></b>

***RECOMMENDATION***

Your City Manager recommends that Common Council approve the 1<sup>st</sup> and 2<sup>nd</sup> readings to repeal [HC-1] Saint John Heritage Conservation Areas By-Law and to adopt [HC-1] Saint John Heritage Conservation Areas By-Law.

***EXECUTIVE SUMMARY***

This report will provide a full briefing on the first suite of proposed revisions to the Heritage Conservations Areas By-Law that is being considered at a public hearing on September 9, 2019, as well as on the three external requests for by-law amendments that are included in these revisions. This is the first formal step in implementing an identified priority of Common Council, enabling process improvements and barrier reductions for heritage property owners.

While the proposed changes to the current By-Law are minimal in their wording and much of the content is unchanged, for clarity of process, a repeal of the existing By-Law is being put forward, along with the adoption of the proposed By-Law. These changes will result in increased clarity, efficiency and flexibility for heritage property owners. Streamlined processes, work no longer requiring Heritage Permits and the ability to use non-traditional materials in certain areas of buildings will encourage and promote maintenance, rehabilitation and development of the hundreds of heritage properties within the city.

***PREVIOUS RESOLUTION***

N/A

### **STRATEGIC ALIGNMENT**

The proposed changes to the *Saint John Heritage Conservation Areas By-Law* align with Common Council's 2016-2020 priorities to support a Vibrant, Safe City through the modernization of Heritage Conservation processes, as well as a Valued Service Delivery through customer-focused services and a culture of continuous improvement.

### **REPORT**

Common Council has recognized the need for improvements to the *Saint John Heritage Conservation Areas By-Law* (Heritage By-Law), and has formalized that need by including the modernization of the Heritage By-Law in the 2016-2020 Common Council Priorities. In removing barriers to development through this modernization, the City will move forward its goals of creating density and growing the residential tax base, further solidifying its Heritage Conservation Areas as desirable, attractive places to live, work and play.

Updating the Heritage By-law began with formal stakeholder engagements organized in the second half of 2017, in conjunction with the development of the Central Peninsula Plan to identify areas of improvement for the By-Law. These engagements were followed by a series of focus groups, workshops with the Heritage Development Board, and a comprehensive review of the Heritage By-Law by Taylor Hazell Architects. Collectively, these engagements highlighted the need for **clarity**, **efficiency** and most importantly, **flexibility** in the Heritage By-Law and its administration, while still protecting the valuable integrity of the City's built heritage.

After the majority of revisions were drafted, a number of presentations were given in the spring and early summer of 2019 to introduce at a very high level the proposed changes and to ensure that, from feedback, the above needs were being addressed. Common Council received a presentation on July 29<sup>th</sup> formally introducing the proposed changes and to hear initial comments from members of Common Council. Finally, a Public Information Session was held just recently on August 27<sup>th</sup>, 2019 to again increase public awareness and ensure that residents of Saint John and affected property owners would be informed and engaged coming into the September 9<sup>th</sup> Public Hearing.

The positive trend leading to these proposed revisions started with amendments to the Heritage By-Law in 2017 which gave authorization to the Heritage Officer to approve a wide range of heritage permit applications, without going to the Heritage Development Board. The continually increasing scope of Heritage Officer permit approvals has resulted in faster turnaround times that have

demonstrated a marked increase in customer satisfaction with service delivery. In 2019, over 55% of Heritage Permit applications have been processed by the Heritage Officer, instead of being reviewed by the Heritage Development Board. This sees permits issued typically within a week, rather than waiting for up to one month for the next Board meeting.

## PROPOSED REVISIONS

The revisions that are proposed to be brought forward for Public Hearing on September 9, 2019 come in four main parts. The revisions that have resulted from the by-law review form the largest part, with three external amendment requests included in this suite for reasons of both timing and policy review.

1. Heritage By-Law Phase One Revisions
2. External Amendment Requests
  - a. Request for Removal from Designation: King Street West Heritage Conservation Area
  - b. Request for Designation: 152 Watson Street
  - c. Request for Site-Specific Amendment: The Telegraph

The Phase Two amendments will replace the current infill standards with new infill guidelines. This will follow the adoption timeline of the Central Peninsula Plan which is currently proposed to begin in October 2019, and does not form part of this report.

### 1. HERITAGE BY-LAW PHASE ONE REVISIONS

Revisions to the Heritage By-Law are proposed in three main categories: housekeeping, non-visible façades, and demolition.

#### Housekeeping

Definitions have been revised to align the Heritage By-Law with other related municipal and provincial legislation, primarily the *Local Governance Act* and the *Heritage Conservation Act*. There has also been the addition and removal of definitions where required based on changes to other sections of the Heritage By-Law itself.

#### Non-Visible Façades

To aid in achieving the goals of **efficiency** and **flexibility** in the Heritage By-Law, a key facet of the proposed revisions is an increase in the number of exemptions from Heritage permitting. The most important exemptions are in non-visible areas of buildings, being the rears of buildings and portions of sidewalls. In these areas, the following items will no longer require a heritage permit:

- Window and door replacements, with no change in the size of the opening;
- Decks, stairs, and fire escapes;
- Fences;
- Cladding, except masonry.

This group of exemptions was determined based on two reasons: they are some of the most common applications made, and they are easily reversible, posing minimal impact on the integrity of a heritage property. With these items proposed to be outside of the scope of the Heritage By-Law, property owners will be able to begin improvements on their own schedules and with their choice of modern or traditional materials. This ensures the conservation of the City's public-facing heritage while enabling contemporary options in backyard and private spaces should property owners so choose. Major alterations in these areas, such as additions, partial demolitions or change in openings, will continue to follow the current permitting process for the time being.

### Demolition

Improving the **clarity** of the Heritage By-Law, the process for obtaining a demolition permit has been streamlined and strengthened with set expectations for the two available application paths: 'no public benefit' and listing the property for sale.

The application path for 'no public benefit' (formerly 'incompatibility') has been reworked with clearer standards for making that determination. The application path requiring the listing of a property for sale has been made more contemporary with current real estate practices and is designed to help increase the likelihood of a "second chance" for a building:

- Easier determination of list price, in place of appraisers;
- Requiring a 12-month listing period, and,
- Establishing more visible advertisement for listed properties, both on the building itself and on the City website.

It is also proposed that the Board be given the ability, in accordance with the *Heritage Conservation Act* and in alignment with the Building By-Law, to require if it deems necessary the detailed reconstruction of any designated building demolished illegally. While the Heritage By-Law will still cede to any requirements of the 'Dangerous & Vacant Building Program,' this will act as a deterrent to those who would consider not complying with process and procedure.

## 2. EXTERNAL AMENDMENT REQUESTS

Three external requests for amendments to the Heritage By-Law have been submitted. These requests have been worked into the proposed amendments primarily due to timing and the link to by-law policy matters.

- a. The first requested amendment is to remove the designation for all properties in the King Street West Heritage Conservation Area. The area, originally 12 properties, was designated in 2007 through resident initiative to “maintain and encourage” efforts in the protection of their community investment, to secure the economic viability of tourism for the area, and to be the first of other designated areas in the Lower West Side. Two key properties in the area had their designations removed by Common Council in recent years: the rectory for St. George’s Church in 2014 and St. George’s Church itself in 2016, both against the Heritage Development Board’s recommendation to retain the designations. With the removal of these keystone properties, and due to negligible participation in both the Heritage Permit process and the Heritage Grant Program since the establishment of the area in 2007, the loss of the heritage designation for the area as a whole has been considered a strong possibility.

This was realized with the submission to Staff of a petition for the dissolution of the Area by a property owner from the King Street West Heritage Conservation Area in September 2018. This petition was comprised in majority of signatures from residents in the area, being a mix of property owners and tenants, and while lengthy at approximately 300 signatures, was not considered to be reflective of the opinions of the owners of the designated properties. To gauge said opinions, staff contacted individually the designated property owners with regards to the petition, the Heritage Conservation Area and their designation. Six of seven property owners responded, with only one property owner expressing an interest in retaining a designation.

While there is no denial of the heritage value of King Street West, or of the Lower West Side in general, the intended outcomes of the designation as stated in the initial request to create the area have not been realized, as evidenced through minimal conservation efforts and the removal of key properties from the area by Common Council. Following the staff recommendation, the Heritage Development Board is regretfully recommending to Common Council to approve the removal of the designation for those nine properties within the King Street West Heritage Conservation Area.

- b. The second requested amendment is for the designation of 152 Watson Street, a single residential building two blocks south of King Street West. Per the applicant’s letter on the heritage value of the property, the ‘Peters House’ is an early Gothic Revival design from c. 1840, noted for its

high level of exterior ornamentation, including drip moulding and some stained glass windows. It is believed to be the location of the first surgery performed in Canada with anesthetic, in 1847. In initial discussions with the applicants, their primary focus was on protecting their conservation and restoration efforts from being undone on the property should they not own the building in the future. To that end, differing levels of designation and legal protections were discussed, with staff explaining that a municipal designation through the *Heritage Conservation Areas By-Law* would provide no permanent guarantee, and excludes interior alterations. Municipal designation does, however, provide access to the Heritage Grant Program, in which the applicants expressed interest to aid in the repair and rehabilitation of their building. While the incentives are advantageous, there is no guarantee of the program's longevity. Further, should Council take a ready and open approach to spot designations, property owners may be prompted to seek designation solely to access these funds, against an already limited budget. It should also be noted, as exemplified through the above discussions on the King Street West Heritage Conservation Area, that designation of a property does not necessarily ensure the conservation of a property. Conversely, in this instance, there is no requirement to have a designation in order to properly conserve and maintain one's property.

While Staff has encouraged the applicant to pursue a Provincial designation for stronger building protections, it has been a planned change in policy as part of the Heritage By-Law revisions to be clear that the program's intent is to focus on collections of significant properties instead of individual designations. The overwhelming success of the Heritage Conservation program has been exemplified in larger, denser areas such as the Trinity Royal Heritage Conservation Area, with limited spot designation typically best suited to public buildings of community importance. Area designation best ensures the protection of individual properties within a neighbourhood or streetscape through the support of other designated properties to help create a cultural landscape; the "strength in numbers" approach to conservation which is seen and reinforced not only by the residents of Saint John, but by visitors as well. The proposed revisions to the Heritage By-Law have confirmed the intent to focus on designation of areas, not single sites.

In keeping with the staff recommendation, the Heritage Development Board is recommending to Common Council to deny designating 152 Watson Street as a Heritage Conservation Area.

- c. The third requested amendment is a site-specific amendment for The Telegraph, a proposed six-storey wood-framed development on the current Saint John Parking Commission lot at the corner of Canterbury Street and Grannan Street. As part of the Request for Proposals for a six-

storey wood-framed development on this site, an analysis was carried out by Murdock Boyd Architects on behalf of the City to determine, through their interpretation of the height standard in the *Heritage Conservation Areas By-Law*, the maximum possible height and required setbacks for a new development on that lot. While their analysis was used as the benchmark for this application, the small overage of height, as well as the possibility of other interpretations of the height standard led the applicant to request a site-specific amendment only for the height and setback standard on this development.

Façade	Maximum Height (m)	Proposed Height	Difference	Proposed Height (incl. pilaster)	Difference
Canterbury	18.47	20.91	+ 2.44	21.68	+ 3.21
Grannan	24.29	23.75	- 0.54	24.52	+ 0.23

As shown in the table above, the proposed heights on both street-facing façades come in 3.21 metres and 0.23 metres taller than the maximums as determined by the Murdock Boyd Architects analysis, as measured from the absolute highest point of the development. As well, on the Grannan Street façade, the proposed development does not step back at the upper storeys, as it does on the Canterbury Street façade, and as proscribed through the *Heritage Conservation Areas By-Law*. While the final design details have yet to be reviewed by the Heritage Development Board, the height as proposed, while tall against its immediate context, is by no means an outlier against the height of other historic buildings in the vicinity, such as 115 Prince William Street (23.5 m), 126 Prince William (22.3 m) and 22 King Street (20.4 m). The last structure on the site in question, the original Telegraph building, was itself taller than its neighbours, though at five storeys, rather than six as proposed here. The upper-storey setback for this development will occur at a point lower than the overall height of the original Telegraph building. The proposal will not only continue the streetwall and make the pedestrian experience along Canterbury Street full and complete, but is also consistent with the proposed height framework that will come later this year as part of the Central Peninsula Plan

This item was reviewed by the Heritage Development Board at its August 7, 2019 meeting, with a recommendation to Common Council to approve a maximum height on the Canterbury Street façade of 22.50 metres from the center of the façade, and a maximum height on the Grannan Street façade of 25.00 metres from the center of the façade with no upper-storey setback. This will complete the first phase of approvals for this proposed development, with additional approvals by the Heritage Development Board relating to the building design to follow in the near future.

## CONCLUSION

The *Saint John Heritage Conservation Areas By-Law* has and will continue to provide for appropriate development and the conservation of historic buildings within the City. Making regular improvements to the Heritage By-Law, particularly when these improvements aid in valued service delivery, will ensure the long-term success of the Heritage Conservation program and, more importantly, the Heritage Conservation Areas themselves. By coordinating this modernization with the larger vision of the Central Peninsula Plan, the City will be setting the stage for transformative change now and for years to come. By reducing barriers to development through flexibility and creating clarity and efficiency through streamlined processes, Common Council has set and met one of its key priorities. Through this progressive by-law, the City of Saint John is sending a clear message that it will be a historic, modern city: respecting its past, while moving into the future.

### ***SERVICE AND FINANCIAL OUTCOMES***

The proposed increase in exemptions from heritage permitting requirements will remove barriers and improve timelines for heritage property owners by reducing the number of permits required.

### ***INPUT FROM OTHER SERVICE AREAS AND STAKEHOLDERS***

The Legal Department has provided legal support to the process and has reviewed the proposed changes.

The Heritage Development Board has provided through motions the following recommendations:

1. A motion to approve the proposed changes to the *Saint John Heritage Conservation Areas By-Law* [August 7<sup>th</sup>, 2019];
2. Regretfully, a motion to approve an amendment removing the Heritage Conservation Area designation for those properties within the King Street West Heritage Conservation Area [June 5<sup>th</sup>, 2019];
3. A motion to deny an amendment designating 152 Watson Street as a Heritage Conservation Area [June 5<sup>th</sup>, 2019]; and,
4. A motion to approve the following amendment to the *Saint John Heritage Conservation Areas By-Law*:

8.2(1) Notwithstanding subsection 8 (1) (d), the maximum allowable height for any development upon one (1) or more of the parcels of land identified by Parcel Identification (PID) Nos. 00011130, 55102438, 55102446, 00018598, and 55102453 shall



not be greater than 22.50 metres for any façade fronting onto Canterbury Street, and notwithstanding subsections 8 (1) (d) (i) and (ii), additional height beyond 120% shall be recessed no less than 2.29 metres from any property line abutting along Canterbury Street.

8.2(2) Notwithstanding subsection 8 (1) (d), the maximum allowable height for any development upon one (1) or more of the parcels of land identified by Parcel Identification (PID) Nos. 00011130, 55102438, 55102446, 00018598, and 55102453 shall not be greater than 25.00 metres for any façade fronting onto Grannan Street, and subsections 8 (1) (d) (i) and (ii) shall be deemed not applicable to any façade fronting onto Grannan Street. [August 7<sup>th</sup>, 2019].

#### ***ATTACHMENTS***

1. [HC-1] Saint John Heritage Conservation Areas By-Law
2. Common Council Presentation – Saint John Heritage Conservation Areas By-Law – Phase One Revisions
3. Letter from Heritage Development Board to Common Council