



STAFF REPORT

THE CORPORATION OF THE TOWN OF COBOURG

Public Works, Planning, and Development Standing Committee

Report to: Mayor, Deputy Mayor, and Councillors
From: Marina Smirnova, Planner II (Heritage)
Standing Committee Date: June 5, 2024
Report Number: DS-2024-015
Council Meeting Date: June 26, 2024
Subject: **Proposed Update of Heritage Permit and Delegated Authority By-law**

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1. Recommendation:

THAT Council receive this report for information; and

FURTHER THAT Council receive the By-law included as **Attachment 1** "Being A By-Law to Regulate the Alteration of Heritage Property or "Heritage Permit By-law"), and Delegate Authority for the Provision of Powers under the Ontario Heritage Act to the Director of Planning and Development for information purposes; and

FURTHER THAT Council direct staff to engage with the public through the summer on the proposed Heritage Permit By-law and provide the engagement summary to the Heritage Advisory Committee for final review and endorsement of the proposed by-law; and

FURTHER THAT Staff bring back the feedback to Council for final review and decision at the September 25, 2024 Regular Council Meeting.

2. Executive Summary:

The purpose of this report is to present an updated Heritage Permit By-law to Council. Both the *Ontario Heritage Act, 2005* and the *Municipal Act, 2001* authorizes municipalities, by by-law, to delegate certain powers to employees or officials of the municipality. The update to this by-law has been recognized as a key priority in 2021 and identified in the Planning & Development operational plan for 2024. The objective of the update of the current Heritage Permit By-law (By-law Number 097-2009) is to eliminate contradictions and inconsistencies, to streamline the approval process through the creation of a three-stream heritage approvals process for applications under the *Ontario Heritage Act*, and to formalize processes related to the administration of the heritage permits. This By-law is meant to complement the Corporation-wide Delegation of Authority By-law, which is forthcoming.

3. Background

The current Heritage Permit By-law (097-2009) was passed in November 2009 (see **Attachment 2**). This By-law was intended to regulate the alteration of heritage designated properties in the Town of Cobourg. The purpose of the 2009 By-law is twofold: to set out the processes associated with the issuance of heritage permits, and to allow for the delegation of authority to the Director of Planning and Development Services for certain classes of alterations. The legislative backing for this by-law lays within the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 (Subsections 33(15), 33(16), 42(16), and 42(17)), and the *Municipal Act, 2001*, S.O. 2001 (Subsections 11(3)).

There need to update the current By-law was initially identified in 2021. Letters submitted by former members of the Town of Cobourg's Heritage Advisory Committee (CHAC) between June and October 2021 identified several issues with By-law Number 097-2009. These letters were generated by a sense of confusion regarding the respective roles and responsibilities of the Planning Department and the CHAC and sought to identify the perceived errors and points of confusion in the By-law. In 2024, Planning staff identified the update of By-law 097-2009 as a key priority in the Planning & Development operational plan for the year.

One of the necessary improvements identified by staff was the need to streamline the approval process for applicants, CHAC members, and staff, while also appropriately bringing decisions to Council as required by subject matter, complexity, or legislation. The overarching objectives of this update, as identified by staff, were as follows:

- Providing improved customer service by reducing wait times for applicants while maintaining CHAC participation and consultation.

- Reducing the amount of time spent by staff, CHAC, and Council in the preparation, processing, and review of reports, thereby allowing staff to focus on other heritage activities (e.g. proactive designations, policy development).
- Improving the public perception of heritage planning and its approval processes and achieving “buy-in” from the community into the approval process.
- Consolidation of types of alterations delegated to staff for review and approval for individually designated properties (Part IV) and properties in a Heritage Conservation District (Part V), thereby reducing confusion.

Furthermore, the updated By-law seeks to provide clarification regarding the following matters:

- Which classes of alterations *cannot* be delegated to staff under any circumstances.
- The fact that staff do not have the authority to deny a Heritage Permit application; if staff cannot support an application, the application is referred to the Heritage Advisory Committee.
- The fact that even where non-minor alterations are delegated to staff for review, consultation with the Heritage Advisory Committee is still required.
- The fact that the Director may exercise their authority and refer any application to the CHAC at the Director’s discretion.
- Which administrative functions staff have the authority to perform (e.g. receiving information as part of applications under the *Ontario Heritage Act*; extending timelines under the *Act*, deeming applications under the *Act* complete).

Staff have now prepared a final draft of the updated Heritage Permit By-law for Council’s approval that will repeal and replace By-law Number 097-2009 (“A By-Law To Regulate The Alteration Of Designated Property And Property Located Within Heritage Conservation Districts Within The Town Of Cobourg”).

4. Discussion:

Increasing the use of delegation has several benefits for municipalities, including but not limited to:

- Freeing up Council time to focus on strategic priorities;
- Freeing up municipal staff time preparing detailed Council reports on routine approvals;

- Avoiding unnecessary delays on planning applications that implement council-approved policies and regulations;
- Allowing Council to defer to judgement of professional staff for matters which are straightforward and technical in nature; and,
- Maintaining accountability through delegation and reporting criteria outlined in delegation by-law.

To assist with service delivery, staff are proposing to create a three-stream heritage approvals process for applications under the *Ontario Heritage Act* (in addition to identifying the types of alterations that require no approval). The three streams, are as follows:

1. Alterations Delegated to Staff – No CHAC Input Required

Alterations in this stream are those considered minor, which is defined as being of low impact because of their type, location, size, or scope. Council approval is not required, and consultation with the CHAC is not required unless it is deemed appropriate and desirable by the Director. Approving emergency repairs is also included in this stream, stemming from the recognition that emergency repairs may be time-sensitive. Emergency repairs must be reported on at the next available CHAC meeting, while minor alterations must be reported on to the CHAC on a quarterly basis.

Section 7 of the current Heritage Permit By-law already delegated to the Director Council's authority to consider application for permit for alterations that are considered minor. Many of the alterations are the same between the current and proposed By-law, with the most notable change proposed being the consolidation of alterations for individually designated properties (Part IV under the *Ontario Heritage Act*) and for properties that are designated by virtue of being included in a Heritage Conservation District (Part V under the *Ontario Heritage Act*). This delegation of authority includes the power to grant approval for the following alterations that are minor in nature, which include but are not limited to:

- a. Changes that are determined by the Director to have no significant impact on the property's heritage attributes;
- b. Repainting part of, or the entire exterior of a building, in the same or a historically appropriate colour;
- c. Installation of exterior signage;
- d. Installation or replacement of eavestroughs or downspouts;
- e. Installation or replacement of removable storm windows and doors with same or historically appropriate materials;
- f. Replacement of exterior lights with a similar style and brightness;

- g. Replacement of roofing where there is little or no change in colour, materials, or design;
- h. Repair of existing features, including wall cladding or siding, dormers, cresting, cupolas, cornices, chimneys, brackets, columns, balustrades, soffits and fascia, porches, entrances, foundations, and decorative wood, metal, stone or brick, provided that the same or historically appropriate types of materials are used with details replicating the originals;
- i. Repair, restoration, or replication of period doors and windows and their surrounds, with historically appropriate materials;
- j. Masonry repairs and repointing areas of wall space over 1.5 square meters (or 16 square feet);
- k. The erection of standalone accessory buildings and structures, if the entire footprint of the accessory building or structure, including all open porches and spaces are no larger than 10 square metres (or 108 square feet), and is located in the rear yard;
- l. The erection and repair of fences;
- m. Repair and replacement of steps, sidewalks, and driveways;
- n. Installation of mechanical and electrical equipment, and vent stacks and exhaust pipes which penetrate the building envelope, as long as they are not visible from the street and are carried out in a manner that does not alter the property's heritage attributes; and,
- o. Revisions or amendments to previously approved permits, only if proposed alterations involve work for items included in the delegated authority.
- p. When the interior designation of the Town Hall is 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.

Another notable change between the current and proposed By-law is the removal of 'any alteration to the building that is not visible from the street upon which the property is located' from the list above, stemming from the recognition that a building or structure may be visible from more than one vantage point, and that heritage attributes can be found on more than simply the front elevation. Removing this alteration from the first stream of approvals grants the CHAC with more decision-making power regarding alterations that may not be visible from the street upon which a property is located, but that may have significant potential impact regardless.

2. Alterations Delegated to Staff with CHAC Input Required

In addition to the delegated authority granted under Sections 4 and 5 of the draft Heritage Permit By-law in relation to minor alterations and emergency repairs, staff recommend the delegation of Council's power respecting the granting of permits for applications for non-minor alterations. This delegation of authority includes the power to grant approval for any alteration that the Director does not consider to be minor in nature, but which both the Director and the Committee have determined to be compliant. Compliant alterations, as defined by the draft By-law, are those that conform to the Town's heritage policies, guidelines, and agreements, including any applicable Heritage Conservation District Plans, conservation easement agreements, designation by-laws, and Urban Design Guidelines, as well as accepted conservation standards and practices, including, but not limited to, Parks Canada's *Standards and Guidelines for the Conservation of Historic Places in Canada*, the Ontario Ministry of Heritage, Sport, Tourism, and Culture Industries' Eight Guiding Principles in the Conservation of Built Heritage Properties, and the Ontario Heritage Toolkit.

In this stream, approval is delegated to the Director but consultation with the CHAC is required. In instances where an application for a permit is supported by the Director and a majority vote of the Committee, the Director will grant the permit. The CHAC may recommend to the Director that amendments be made to a report's recommendations, and permit approvals issued in this manner will be reported on at the next meeting of the Committee.

3. Alterations Never Delegated to Staff – Council Approval Required

Certain classes of alterations, including those that may have a potentially greater impact on the heritage value of a designated property or the heritage attributes as identified either in a Heritage Conservation District Plan or in a Designation By-law for a specific property, require Council approval and may not be delegated to the Director of Planning and Development Services. These alterations, as outlined in the draft Heritage Permit By-law, are:

- When consent to approve an application for alteration is not recommended by the Director;
- To remove heritage attributes included in the designation by-law or Heritage Conservation District Plan, or those identified by Heritage Planning staff as being of cultural heritage value;
- To remove a structure or portion of a structure if the entire footprint of the structure or portion thereof, including all open porches and spaces, is over 10 square metres (or 108 square feet);
- Alterations to a property that would have a significant impact on the cultural heritage value of the property or relevant Heritage Conservation District, if applicable.

- To repeal all, or a portion of a designating by-law under the *Heritage Act* for a designated heritage property.

It is important to note that for all of the above proposed delegated services, Planning staff would bring forward any applications which are proposed to be denied to the CHAC and Council. Additionally, staff will regularly report on applications to keep the CHAC, Council, and the public informed. The By-law stipulates that minor alterations (delegated authority, no CHAC input) shall be reported to the CHAC on a quarterly basis. Emergency repairs (delegated authority, no CHAC input) shall be reported on at the next CHAC meeting. All alterations approved through delegated authority (both CHAC input and no CHAC input required) shall be reported on to Council annually.

The first draft of the Heritage Permit By-law was circulated internally, to the Town's legal counsel, and to the members of the CHAC for comments. The draft was also presented to the CHAC on April 22. Comments received were incorporated into the draft and an updated version was presented to the CHAC again on May 22. Staff also met with two members of the CHAC to discuss specific comments and concerns, all of which have since been resolved.

5. Financial Impact and Budget

Staff do not anticipate any financial impact as a result of the passage of the By-law. There are currently no fees associated with any aspect of the heritage approvals process. By delegating more services to staff, it would provide efficiency in the heritage approvals process and in the Planning Department overall. Finally, formalizing the approvals process will lead to standardization, transparency, and further efficiencies.

6. Relationship to Council's Strategic Plan Priorities 2023 to 2027 and beyond:

☐ Thriving Community

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☒ Service Excellence

Staff delegation is also an example of "Service Excellence" whereby minor technical heritage matters, as well as non-minor, but compliant heritage matters, are completed at the staff level (with or without consultation with the Cobourg Heritage Advisory Committee), thereby removing lengthy reporting and approval processes and streamlining the approvals process. The delegation of these items will build capacity to deliver Planning functions more efficiently.

☒ Sustainability

Updating the Heritage Permit By-law will strengthen the framework in place for the purposes of preserving and promoting Cobourg's built heritage, ultimately helping the Town sustain itself as a vibrant and appealing destination.

7. Public Engagement:

This staff report was published on the Public Works, Planning, and Development Standing Committee agenda the required minimum 7 days before the meeting date and available to the public for viewing.

8. Attachments:

Attachment 1 – Proposed Heritage Permit By-law Draft

Attachment 2 – Current Heritage Permit By-law (By-law Number 097-2009)

Report Approval Details

Document Title:	Heritage Permit and Delegated Authority By-law Update Report.docx
Attachments:	- ATTACHMENT 1 - Draft Heritage Permit By-law XXX-2024.docx - ATTACHMENT 2 - Heritage Alterations and Permit By-Law (097-2009).pdf
Final Approval Date:	May 31, 2024

This report and all of its attachments were approved and signed as outlined below:

Tracey Vaughan, Chief Administrative Officer - May 31, 2024 - 9:14 AM