



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Tourism and Culture Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 25, 2022
SUBJECT/REPORT NO:	Demolition Control and Heritage (PED22093) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Alissa Golden (905) 546-2424 Ext. 4654
SUBMITTED BY:	Jason Thorne General Manager Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That the Demolition Control Area By-Law attached as Appendix “A” to Report PED22093, which repeals and replaces the existing Demolition Control Area By-Law No. 09-208 and its amending By-Law No. 13-185, be **APPROVED**.

EXECUTIVE SUMMARY

This Report addresses the delegation of the Ancaster Village Heritage Community (AVHC) requesting that Council review the City-wide Demolition Control Area By-Law to address concerns about premature demolition and the loss of significant heritage buildings. Staff recommend that the City’s Demolition Control Area By-Law be repealed and replaced to improve the administration of permits to demolish residential property. Staff will continue to include public participation in heritage conservation as part of the City’s proactive Built Heritage Inventory Strategy (BHI).

Alternatives for Consideration - Not Applicable

FINANCIAL - STAFFING - LEGAL IMPLICATIONS

Financial: There are no financial implications associated with the staff recommendation.

Staffing: There are no staffing implications associated with the staff recommendation.

Legal: None.

HISTORICAL BACKGROUND

The existing Demolition Control Area By-Law No. 09-208 (Demolition Control By-Law) was enacted in 2009 to streamline the process for issuing residential demolition permits by providing the delegation of Council's authority to issue permits for certain "routine applications". The goal being to reduce the number of applications having to be considered by Planning Committee and Council and to expedite the issuance of residential demolition permits that were believed to be routine in nature.

In July 2020, the Ancaster Village Heritage Community submitted a delegation package to the Planning Committee titled "Demolition Control as a Positive Force, Protecting our Heritage...Welcoming Positive Development". The delegation asked Council to revisit the City of Hamilton's Demolition Control By-Law to address what they perceived as the negative effects of demolition on their community. The AVHC delegation was the result of a number of demolitions in the community, including the historic Brandon House, a pre-Confederation stone building that was located at 462 Wilson Street East, Ancaster, which was listed on the City's Inventory of Heritage Properties (Inventory) but did not have any formal status under the *Ontario Heritage Act* providing it protection from demolition.

In the delegation package, the AVHC expressed their concern for the perceived lack of transparency in the demolition process, the premature demolition of historic buildings not yet protected under the *Ontario Heritage Act* and associated creation of vacant lots leading to a perceived devaluing of property and other property standards issues. The Planning Committee referred the AVHC delegation to the Hamilton Municipal Heritage Committee (HMHC). The HMHC received the AVHC's delegation package at their September 16, 2020 and referred it to the General Manager of Planning and Economic Development (PED) for a report back at a future meeting of the HMHC.

Staff met with members of the AVHC on October 9, 2020 to discuss their delegation package and request of the City. An inter-division staff working group was formed to address the AVHC delegation package and advise the General Manager of PED of recommendations for improvement to City processes, including: Building Division; Planning Division; and Tourism and Culture Division. Legal Services staff were also engaged as part of these discussions, provided advice on the interpretation of Provincial legislation and reviewed the proposed changes to the Demolition Control By-Law. Staff met with AVHC again on November 30, 2020 to provide them with a summary of staff's analysis and key themes for improvement to City processes in response to their delegation. Staff reported back to the HMHC at their meeting on April 1, 2022 and presented the recommendations of this Report.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The recommendation of this Report is consistent with Provincial and Municipal policy. The *Planning Act* permits the City to enact a By-Law that designates a Demolition Control Area to regulate the demolition in whole or part of any residential property. The *Municipal Act* permits the delegation of Council's authority to issue demolition control permits to the Chief Building Official or designate.

The *Planning Act* identifies the conservation of cultural heritage resources, including built heritage resources and cultural heritage landscapes, as a matter of Provincial interest. The *Ontario Heritage Act* enables municipalities to recognize and protect cultural heritage resources through registration and designation. The City of Hamilton's *Cultural Plan* and *Urban and Rural Hamilton Official Plans* call for the wise management of cultural heritage resources through a continuing process of inventory, survey and evaluation, which is implemented through the City's Built Heritage Inventory Strategy (PED20133).

RELEVANT CONSULTATION

Internal

- Supervisor, Plan Examination Section, Building Division, Planning and Economic Development Department
- Manager, Plan Examination Section, Building Division, Planning and Economic Development Department
- Senior Project Manager, Municipal Law Enforcement Section, Building Division, Planning and Economic Development Department
- Manager, Municipal Law Enforcement Section, Building Division, Planning and Economic Development Department
- Manager, Building Inspections Section, Building Division, Planning and Economic Development Department
- Chief Building Official and Director of the Building Division, Planning and Economic Development Department
- Manager, Development Planning Section, Planning Division, Planning and Economic Development Department
- Manager, Heritage and Urban Design Section, Planning Division, Planning and

Economic Development Department

- Director of Planning and Chief Planner of the Planning Division, Planning and Economic Development Department
- Manager, Legislative Approvals/Staging of Development, Infrastructure Planning Section, Growth Management Division, Planning and Economic Development Department
- Manager, Engineering Approvals, Engineering Design and Construction Section, Growth Management Division, Planning and Economic Development Department
- Solicitors, Legal Services, Legal and Risk Management Services Division, Corporate Services Department
- Manager, Finance and Administration Section, Financial Planning, Administration and Policy Division, Corporate Services Department

External

- Ancaster Village Heritage Community (October 9, 2020; November 30, 2020, February 22, 2022)
- Development Industry Liaison Group (January 11, 2021, March 14, 2022)

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Staff conducted a review of internal procedures and policy frameworks related to demolition control. The key takeaways are as follows:

- Demolition control, as enabled by Section 33 of the *Planning Act*, prevents demolition without applying to Council and receiving approval;
- Demolition control only relates to “residential property”, as defined in the *Planning Act*, which refers to a building that contains one or more “dwelling units” that are used, or designed for use, as such;
- The inferred intent of demolition control is the retention of housing stock or dwelling units;
- Council has 30 days to make a decision on a demolition control application;

- Demolition control is not a public process and only the owner can appeal a decision of Council;
- Council can only delegate its authority to issue demolition control permits to staff, not to refuse them; and
- Undelegated or not, a demolition control application cannot be denied when a building permit for a new replacement building has been approved and where all requirements have been met.

Staff also conducted a review of best practices related to demolition control and heritage conservation from comparable municipalities across Ontario, including Brantford, Kitchener, London, Ottawa and Waterloo. Based on this analysis, staff conclude that:

- The *Ontario Heritage Act* is the primary tool for managing and conserving heritage resources, by listing properties of heritage interest on the Municipal Heritage Register (Register) and protecting significant heritage properties through designation;
- Demolition control is not a heritage conservation tool and is not regulated by the *Ontario Heritage Act*. However, the *Ontario Heritage Act* is applicable law for building permits to demolish buildings listed on the Register or designated under the *Ontario Heritage Act* and the demolition control process should align with other City policy and process;
- Public participation in heritage conservation is most appropriately accomplished through the Built Heritage Inventory Strategy, not demolition control;
- Demolition control can have related benefits of maintaining the integrity of residential neighbourhoods, preventing the premature loss of dwelling units and the creation of vacant land, retaining existing dwelling units until new uses have been considered, and preventing the premature loss of municipal assessment;
- Transparency in the demolition process can be improved by redefining the scope of demolition control applications that can be approved through delegated authority;
- Premature demolition of residential property (heritage or not) can be prevented by ensuring that new uses are considered through *Planning Act* applications before a demolition control permit is issued;
- The review of *Planning Act* applications also allows for the assessment of the

potential heritage value or interest of a property, and impact to the identified value, as part of that process; and

- Consultation with HMHC on the demolition of properties listed on the Municipal Heritage Register should be accomplished through a standardized Register demolition process, not through demolition control.

To address the concerns raised by the AVHC and to improve the City's demolition control and heritage conservation processes, staff recommend four key actions:

1. Continue the Proactive Identification of Heritage Properties

The City of Hamilton's Built Heritage Inventory Strategy is an initiative to proactively list properties of heritage interest on the Municipal Heritage Register and to designate significant heritage properties under the *Ontario Heritage Act*. Designated properties are subject to Heritage Permits, which is applicable law for all building permits to demolish. Council decision is required on all applications to demolish designated properties. Properties listed on the Register have interim 60-day protection from demolition, intended to allow staff and Council time to discuss alternatives to demolition with an owner and, where warranted, issue a notice of intention to designate a significant heritage property to void all active permits and prevent its demolition.

Staff recently updated the Hamilton Municipal Heritage Committee on the BHI Strategy, including short, medium and longer-term priorities for future inventory work (PED20133). In addition to City-led BHI work, the BHI Strategy also encourages collaboration with, and the empowerment of, community groups to conduct their own proactive inventory work and identification of heritage buildings. In 2020, members of the AVHC coordinated with the Hamilton Branch of the Architectural Conservancy of Ontario to conduct an inventory of pre-Confederation buildings in Ancaster.

2. Update the Demolition Control Area By-Law

Staff recommend that the Demolition Control By-Law be updated in a manner that would both retain the efficiencies of delegated authority and provide appropriate consideration for "residential property" prior to demolition. The updated Demolition Control Area By-Law attached as Appendix "A" to Report PED22093 would:

(a) Clarify that the intent of the By-Law is to not only retain dwelling units, but to also:

- Maintain the integrity of residential neighbourhoods;
- Prevent the premature loss of dwelling units and the creation of vacant land;

- Retain existing dwelling units until new uses have been considered; and
 - Prevent the premature loss of municipal assessment.
- (b) Redefine the scope of demolition control applications that the Chief Building Official can issue approval for under the delegated authority of Council. Delegated approvals will be limited to situations where:
- Redevelopment of the residential property is imminent, including where:
 - The erection of a new building is proposed on the site of the residential property to be demolished and where the standard rebuild conditions of the By-Law apply;
 - Final Site Plan Control approval has been granted;
 - Draft Plan of Subdivision approval has been granted, the associated Subdivision Agreement has been registered and the preliminary grading and servicing conditions have been satisfied;
 - Demolition is required as a condition of approval of an application for Consent to Sever;
 - A residential property has been severely damaged by fire or natural disaster and a professional engineer has recommended demolition.

The redefined scope of delegated authority includes the removal of four types of formerly “routine” applications to demolish a residential building, including: in a zone that does not permit a residential use; when another non-residential use is permitted; to facilitate land assembly for future development; and in a rural area when abutting lands would not be impacted. The intended impact of these changes is to prevent premature demolition of residential property by ensuring that replacement buildings have been approved or that applicants obtain the appropriate development approvals in cases where new uses are being considered. Demolition control applications where no redevelopment is proposed in the short-term, or where the applicant is not in agreement with the standard approval conditions, would be considered at Council and provide a greater degree of transparency to the process.

The Building Division administers the demolition control process. The Chief Building Official does not have the delegated authority to refuse a demolition control application. Redefining the scope of delegated authority may increase the number of applications that require a staff report to Council for undelegated approval by 22 per year, or an average of one to two reports per month. The estimated number is based on 2019 to

2020 Building Permit statistics for the types of applications to be removed from delegated authority of the Chief Building Official, as identified above. The potential impact of these changes will be evaluated after the first year of the new By-Law coming into effect, at which time staff may propose adjusting the demolition control application fee to offset any added processing costs, as appropriate.

As a note, buildings that are deemed to be unsafe and are subject to an order to demolish under the *Building Code Act* are not subject to the Demolition Control Area By-Law. The updated By-Law also includes an exemption for the demolition of residential property where an order to demolish has been issued under the Property Standards By-Law. This exemption addresses the recent continuous improvement amendments to the Property Standards By-Law approved as part of Staff Report PED20032, which allows Property Standards orders to be issued to demolish all or parts of incomplete buildings or structures, or those that are unrepairable due to damage by accident, storm, fire, neglect or otherwise, and not necessarily deemed unsafe.

For ease of use, and to avoid any confusion, staff recommended that the current Demolition Control Area By-Law No. 09-208, and its amending By-Law No. 13-185, be repealed and replaced by the new Demolition Control Area By-Law attached as Appendix “A” to Report PED22093.

3. Standardize the Register Demolition Process

The *Ontario Heritage Act* requires that the owners of non-designated properties listed on the Municipal Heritage Register under Section 27 of the Act provide 60-days notice to Council of their intention to demolish or remove any building or structure on the property. The City of Hamilton does not currently have a standard process for receiving these notices. However, staff will be developing a standard process for receiving an owner's notice of intention to demolish as part of the Heritage Process Review underway by the Planning Division including, but not limited to, the following:

- Creating a form for submitting notice of intention to demolish;
- Delegating Council's authority for staff to receive an owner's notice;
- Prescribing minimum requirements for the plans and information required to be submitted with an owner's notice; and
- Defining the process by which HMHC and Council are made aware of notices of intention to demolish listed properties.

The final recommendations of the Heritage Process Review are forthcoming.

4. Improve Internal Processes

The coordination and communication between Building Division and Planning Division staff can be improved to address legislative timelines in an efficient and effective manner. Cultural Heritage Planning staff in the Planning Division should be notified by Building Division staff upon receipt of any demolition application to confirm legislated requirements under the *Ontario Heritage Act* and any applicable law for the application, such as providing 60-days notice of an owner's intention to demolish a listed property and Heritage Permit requirements for designated properties. Similarly, Cultural Heritage Planning staff should be contacted by Municipal Law Enforcement staff to confirm the heritage status and/or interest in a property prior to issuance of any Property Standards order, including orders to demolish. This process improvement will be formalized as part of the next round of housekeeping revisions to Municipal Law Enforcement's internal policies and procedures.

Early notification will also ensure that Cultural Heritage Planning staff have as much time as possible to provide recommendations with respect to the demolition of a significant heritage property. Planned changes to the City's AMANDA system, tentatively scheduled to begin in 2023, include the introduction of heritage property information and heritage planning processes, which would allow these notifications to happen automatically when a new Building Permit application is submitted or when a Property Standards complaint is filed by the Building Division.

Staff note that, for demolition control applications processed under delegated authority, the onus will continue to be on the applicant to submit documentation confirming that they meet the requirements under the By-Law, including where Final Site Plan Control approval has been granted, Draft Plan of Subdivision approval has been granted and conditions satisfied, or where demolition is required as a condition of approval of an application for Consent to Sever. No internal process improvements are required in this regard and Building Division staff will continue to circulate to the appropriate Growth Management or Planning Division staff for verification, when necessary.

ALTERNATIVES FOR CONSIDERATION

N/A

ALIGNMENT TO THE 2016 - 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED22093 - Demolition Control Area By-Law

AG:ac