

HALIFAX

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Item No. **12.1.2**
Community Planning & Economic Development
January 21, 2016

TO: Chair and Members of Community Planning & Economic Development

SUBMITTED BY: Original Signed

Bob Bjerke, Chief Planner and Director, Planning & Development

DATE: September 20, 2015

SUBJECT: Recommended Legislative Authority to Suspend Potential Development in the Barrington South (Old South Suburb) while Establishing a Heritage Conservation District

ORIGIN

On March 24th, 2015, Regional Council passed the following motions:

MOVED by Councillor Mason, seconded by Councillor Watts that Halifax Regional Council refer to staff for a report to consider asking the Minister of Communities, Culture, and Heritage for the legislative authority to suspend any potential development in the Barrington South (Old South Suburb) district while undergoing the process of establishing Barrington South (Old South Suburb) as a Heritage Conservation District.

LEGISLATIVE AUTHORITY

Heritage Property Act, R.S.N.S., c. 199

Heritage Conservation District Regulations, NS Reg 138/92

RECOMMENDATION

It is recommended that Regional Council request that the Province amend the *Heritage Property Act* and *Heritage Conservation Districts* regulations, where appropriate, to authorize the Council to adopt a by-law that would suspend specific types of development, for a period not exceeding one (1) year, within the boundaries of an area that council has identified as part of a background study to establish a Heritage Conservation District. The by-law shall identify and restrict inappropriate development activity for the period in which it is in effect. Another by-law, under this provision, cannot be established, in an area which was previously subject to such a by-law, for a period of three years once the by-law ceases to be in effect.

BACKGROUND

Heritage Conservation Districts and Enabling Legislation

A Heritage Conservation District is a defined area of historic or architectural value that is protected by regulations governing such things as demolition, exterior alteration and new development. Incentives may apply within the District to encourage private architectural conservation and programs can be created to enhance public amenities. A conservation plan and bylaw may be adopted alongside other development control mechanisms, such as municipal planning strategy and land use bylaw amendments.

Under the *Heritage Property Act*, a Heritage Conservation District is established by adoption of a Heritage Conservation District plan and bylaw. The plan establishes the rationale for the adoption of conservation measures and articulates its policies on pertinent conservation issues and opportunities. The bylaw establishes the administrative framework for implementation of the plan including design guidelines for new construction. These planning documents are formally adopted when reviewed and approved by both municipal council and the Minister responsible for the *Heritage Property Act*.

Heritage Protection

In Nova Scotia, the *Heritage Property Act* is the legislation employed by municipalities to formally recognize and protect significant heritage resources. The *Halifax Regional Municipality Charter* does not include any heritage conservation provisions. Each jurisdiction in Canada including the federal, provincial and territorial governments maintains legislation for the conservation of significant heritage resources. These resources primarily include buildings but also include other structures, sites and areas. These jurisdictions have listed many of their formally recognized heritage resources online on the Canadian Register of Historic Places (www.historicplaces.ca). British Columbia, Manitoba, Ontario and Quebec are the only provinces with a provision in their heritage legislation that enables municipalities to suspend development within a defined area while undergoing a process to establish a Heritage Conservation District in this area.

The Barrington South Heritage Conservation District Process

On March 24th, 2015, Regional Council passed a motion to accept background studies to initiate a process to establish a Heritage Conservation District in Barrington South (Old South Suburb) in accordance with the statutory procedure for establishing a Heritage Conservation District under the *Heritage Property Act* and *Heritage Conservation District Regulations*. For Barrington South, this process will be carried out in three separate phases:

- 1) Background Study;
- 2) Community Engagement and Heritage Conservation District Plan & By Law Preparation; and
- 3) Adoption and Implementation of Heritage Conservation District Plan & By Law.

This entire process is expected to take approximately one year from the date that Regional Council accepted the background study initiating the process to the date that Regional Council will formally adopt the Heritage Conservation District Plan (HCD) Plan and Bylaw. However, policy in the Heritage Conservation District plan may involve subsequent amendments to the Downtown Halifax Municipal Planning Strategy (MPS) and Land Use By-Law (LUB), including its heights framework.

DISCUSSION

Suspension of Development in a Heritage Conservation District

There is currently no provision under the provincial enabling legislation, including both the *Nova Scotia Heritage Property Act* and the *Halifax Regional Municipality Charter*, to allow a municipal council to suspend development in an area that it has formally identified as a potential Heritage Conservation District before an HCD plan and bylaw are adopted.

As it stands, a council cannot make interventions on development that is in line with current policy while it is in the process of preparing an HCD plan and bylaw in consultation with the community. Therefore, the municipality may place heritage resources at risk, unintentionally, by identifying these resources as part of a potential Heritage Conservation District because property owners may choose to demolish or alter their buildings before the municipality has completed the community consultation process or a draft plan and bylaw.

Review of Other Provinces & Nova Scotia Legislation

Enabling Legislation for Planning

Several provincial governments across the country have legislation to authorize municipalities to suspend development for an interim period in areas that are undergoing a planning study. For example, Ontario's *Planning Act* and Saskatchewan's *Planning and Development Act* authorize municipalities to pass a bylaw to control development for an area where the municipal council has directed that a review or study be undertaken in respect of land use planning policies.

The *Halifax Regional Municipality Charter* does not allow the municipality to suspend development in an interim planning area. However, Section 214 of the Charter does allow the Provincial Minister to suspend development within an interim planning area where development that is inconsistent with a statement of provincial interest might occur. However, there is no statement of provincial interest relating to heritage conservation. Therefore, this provision of the Charter would not apply to the establishment of a Heritage Conservation District.

Enabling Legislation for Heritage

Similar to the *Nova Scotia Heritage Property Act*, the *Ontario Heritage Act* gives municipalities powers to preserve their communities' heritage through the designation of municipal heritage properties and heritage conservation districts and provides a measure of protection to designated municipal heritage properties. On the other hand, British Columbia's *Heritage Conservation Act* is not the enabling legislation for municipalities to designate and protect their heritage resources. British Columbia's *Local Government Act* and *Vancouver Charter* provide local government the ability to establish a community heritage register that identifies real property that is considered by the local government to be heritage property. This enabling legislation in BC also allows local government by bylaw to designate property as protected under certain conditions that are enabled in the legislation and prescribed in the bylaw.

Under Manitoba's *Heritage Resources Act*, a municipality may by by-law designate a municipal heritage site which is defined as an area or a place, a parcel of land, a building or structure, or an exterior or interior portion or segment of a building or structure. This by-law will also provide for the protection of the site including conditions on municipal heritage permits and requirements for the maintenance of the site. Under Quebec's *Loi sur les biens culturels*, the Province designates all historic districts at the request of a municipality. The legislation itself is very clear on what activity is not permitted within a designated historic district, without the authorization of the Minister, such as subdivision, transition of use, new construction, demolition or the exterior alteration of a building.

Provision to Suspend Development while Establishing Old South Suburb HCD

Table 1: Provinces without a legislated provision to suspend development while establishing a "Heritage Conservation District" in their enabling heritage legislation

Prov	Legislation	Designation
AB	<i>Historical Resources Act</i>	Municipal Historic Area has special provisions identified in the <i>Historical Resources Act</i> but the designation is part of a land use bylaw established under the <i>Municipal Government Act</i>
SK	<i>Heritage Property Act</i>	Municipal Heritage Conservation District
NB	<i>Heritage Conservation Act</i>	Municipal Heritage Conservation Area
NS	<i>Heritage Property Act</i>	Heritage Conservation District
PE	<i>Heritage Places Protection Act</i>	Registered heritage district
NL	<i>Historic Resources Act</i>	Registered heritage district

Table 1, above, identifies the six provinces, including Nova Scotia, that do not have a legislated provision to suspend development while establishing an area of significance. Table 2, below, identifies the four provinces which do include such a legislated provision in their legislation.

Table 2: Provinces with a legislated provision to suspend development while establishing a "Heritage Conservation District" in their enabling heritage legislation

Prov	Legislation	Designation	Provision			
			Process	Time Limit	Subject of Control	Limitations
BC	<i>Local Government Act and Vancouver Charter</i>	Heritage Conservation Area designated with special provisions in an Official Development Plan	Council has option to adopt a by-law.	1 year max.	Council identifies and restricts inappropriate development activity in by-law.	A heritage control period may be declared once only during any 10 year period for an area or portion of an area.
MB	<i>Heritage Resources Act</i>	Site of heritage significance including an area	Council has option to adopt a by-law.	None Id'd	Council identifies and restricts inappropriate development activity in by-law.	None identified.
ON	<i>Ontario Heritage Act</i>	Heritage Conservation District	Council has option to adopt a by-law.	1 year max.	Council identifies and restricts inappropriate development activity in by-law. By-law is subject to appeal.	The municipality cannot pass another bylaw to designate another study area which includes a previously designated study area for a three-year period, once it ceases to be in effect.
QC	<i>Loi sur les biens culturels</i>	Arrondissement historique	Council has option to adopt a by-law.	12 month max.	Demolition only.	If a property owner contravenes such a by-law, they are subject to a fine not exceeding \$25,000.

Details on Provisions to Suspend Development while Establishing an HCD

Process and Time Limit

The four provinces, identified in Table 2, use a similar process to enable municipalities to suspend development while establishing an area of significance. A municipal council has the option of adopting a by-law to control development temporarily within a defined study area when it initiates a process to establish an area of significance within this defined study area. Attachment A includes an example of a by-law adopted by the Council of the City of Vancouver in 2014 to declare a heritage control period while the municipality establishes its first heritage conservation area in a neighbourhood known as First Shaughnessy.

In three of the four provinces, the by-law can identify a time limit of one year maximum for this development control period. In Manitoba, no time limit is identified.

A provision to suspend development while establishing a Heritage Conservation District in Halifax could be enabled under the *Heritage Property Act*. This *Act* is likely the appropriate legislation to enable such a provision because the *Halifax Regional Municipality Charter* does not currently enable the municipality to control demolition or other development for the purpose of heritage conservation.

As a best case scenario, the entire process to establish a Heritage Conservation District Plan and Bylaw for the Old South Suburb is expected to take approximately one year. The process to implement the Plan may take longer, especially if amendments are required to the MPS and LUB, but there will be some form of control over inappropriate development once the HCD Plan and Bylaw are adopted. Therefore, a maximum control period of one year would be appropriate in Halifax. Council should have the option of identifying a shorter development control period in the by-law if necessary.

Subject of Control

Only Quebec limits the subject of development control in the by-law to demolition. In the three other provinces, a municipal council can describe which types of development to control in the by-law including such things as alterations of property, new construction, demolition or removal of buildings or structures. The by-law can also identify specific elements of an area to protect and specify types of development that are allowed without permission. The by-law can also establish processes regarding the issuance of development permissions. In Ontario, this provision for development control is subject to appeal.

Based on the background study prepared to initiate the process, Regional Council and the Minister will have a good idea of what heritage conservation measures will be considered for the Heritage Conservation District. Therefore, a by-law enabled by the amended legislation could identify what specific types of development are subject to control during the process of establishing the HCD Plan and Bylaw.

Limitations

Three of the four provinces set limitations on the provision for a development control period. In British Columbia, a heritage control period may be declared once only during any 10 year period for an area or portion of an area. In Ontario, a municipality cannot pass another by-law to designate another study area which includes a previously designated study area for a three-year period, if the by-law is appeal and the appeal is upheld. In Quebec, a property owner who contravenes a by-law is subject to a fine not exceeding \$25,000. This implies that a property owner can carry out any demolition for a \$25,000 fee.

Similar to British Columbia and Ontario, it would make sense to include a delay period wherein the municipality cannot pass another by-law to suspend development in an area, which was previously subject to such a by-law, once the by-law ceases to be in effect. In Ontario, this period is three years. This time period seems appropriate to the Halifax context.

If this by-law is enabled under the *Heritage Property Act*, any contravention of the by-law could be subject to the penalties identified under the Contravention of Act section of the *Act*.

Options for Halifax Regional Municipality

On review of the framework of Nova Scotia's existing heritage legislation and other provincial heritage legislation, there are several options worthy of consideration. Halifax Regional Council can request that the Province amend the *Heritage Property Act* and *Heritage Conservation Districts* regulations, where appropriate, to enable one of the following options:

- 1) Council may adopt a by-law that would suspend development, for a period not exceeding one (1) year, within the boundaries of an area that council has identified as part of a background study to establish a Heritage Conservation District. The by-law shall identify and restrict inappropriate development activity for the period in which it is in effect. Another by-law, under this provision, cannot be established, in an area which was previously subject to such a by-law, for a period of three years once the by-law ceases to be in effect.
- 2) Council may adopt a by-law that would suspend development, *for a period not exceeding three (3) years*, within the boundaries of an area that council has identified as part of a background study to establish a Heritage Conservation District. The by-law shall identify and restrict inappropriate development activity for the period in which it is in effect. Another by-law, under this provision, cannot be established, in an area which was previously subject to such a by-law, for a period of *ten years* once the by-law ceases to be in effect¹.
- 3) Council may adopt a by-law that would suspend development for a period not exceeding one (1) year within the boundaries of an area that council has identified as part of a background study to establish a Heritage Conservation District. The by-law shall only restrict demolition².

Council may also propose these options as amendments to the *Halifax Regional Municipality Charter* as such they would only apply to Halifax and not the rest of the province. However, further amendments to the *Charter* may be required to support a provision that would enable development controls for the purpose of heritage conservation.

Conclusion

Option 1, above, is the recommended provision for Halifax to suspend specific types of development while establishing a Heritage Conservation District. The *Heritage Property Act* is the appropriate legislation to include such a provision. One year is the appropriate timeframe for suspending development because the process to establish a Heritage Conservation District takes approximately one year, as a best case scenario. A by-law enabled by the amended legislation should identify what specific types of development are subject to control during the process of establishing the Heritage Conservation District because development other than demolition can have an impact on heritage value.

It would also be prudent to include a delay period of three years wherein the municipality cannot pass another by-law to suspend development in an area, which was previously subject to such a by-law, once the by-law ceases to be in effect.

¹ Since Council can suspend development for a period of three years, instead of one year, then Council cannot establish another by-law in the same area for a period of ten years, instead of three years.

² Since Council can only suspend demolition, instead of all inappropriate development, then there is no provision to delay another by-law in the same area.

**Provision to Suspend Development
while Establishing Old South Suburb HCD**

CPED Report

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FINANCIAL IMPLICATIONS

The HRM costs associated with this report can be accommodated within the approved 2015/16 operating budget for cost centre C002 - Urban Design.

Any revenues relating to new development, including permits and property tax increases, within the subject area will be deferred by no more than one year.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing achieved through the HRM website and public accessibility to the required Heritage Advisory Committee meeting and Regional Council.

ENVIRONMENTAL IMPLICATIONS

No concerns identified.

ATTACHMENTS

Attachment A: A By-law to declare a Heritage Control Period with respect to part of Vancouver

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902-490-4210, or Fax 902-490-4208.

Report Prepared by: Seamus McGreal, Heritage Planner, 902-490-4663

Report Approved by: Original Signed
Jacob Ritchie, Urban Design Manager, 902-490-6510

BY-LAW NO. 10991

A By-law to declare a Heritage Control Period
with respect to part of Vancouver

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

Name of By-law

1. The name of this By-law, for citation, is the "Heritage Control Period (First Shaughnessy) By-law".

Definitions

2. In this By-law:

"Area" means that certain area of the City of Vancouver enclosed by the broken line on the Map attached to this By-law as Appendix "A";

"Building" means any building located in the Area;

"Fixture or Feature" includes any fireplace, interior door, wall finishing, paneling, staircase, and tiling;

"Heritage Control Period" means the period of time stated in section 4;

"Heritage Alteration Permit" means a permit authorized under Part XXVIII, Division (5) of the *Vancouver Charter*;

"Landscape Feature" includes any fence, retaining wall, fountain, patio, terrace, statuary or other similar structure that is located outside the exterior walls of a building, as well as any hedge, shrub or tree that grows within two meters of the structure; and

"Property" means a legal parcel or lot in the Area.

Heritage Control Period

3. In order to allow for heritage conservation planning for the Area, Council declares a Heritage Control Period in the Area.

4. The Heritage Control Period commences on the date this By-law is enacted, and continues for a period of one year.

Heritage Alteration Permit

5. During the Heritage Control Period, an owner of Property may not cause, permit or allow:

- (a) alteration of the exterior of a Building on the Property;
- (b) a structural change to a Building on the Property;
- (c) a Building to be moved onto or off of the Property;
- (d) alteration, movement of or taking any other action that would damage a Landscape Feature on the Property;
- (e) alteration, movement of or taking any other action that would damage a Fixture or Feature on the Property; or
- (f) other alteration, excavation or construction on the Property;

unless a Heritage Alteration Permit is first obtained authorizing such work, but no Heritage Alteration Permit is required for routine maintenance, including pruning and trimming of flora.

6. Notwithstanding section 5, an owner of Property may take any action otherwise prohibited by section 5 of this By-law or section 591 of the *Vancouver Charter*, without acquiring a Heritage Alteration Permit, if the Property does not contain a Building that was erected, in whole or in part, prior to 1940.

7. During the Heritage Control Period, the Director of Planning is hereby delegated the authority to identify Property in the Area as heritage property and issue or refuse Heritage Alteration Permits for Property in the Area. When making a determination of whether a Property is heritage property, the Director of Planning may consider the:

- (a) age;
- (b) historic associations;
- (c) builder or architect;
- (d) architectural style; and
- (e) construction methods;

of a Building on a Property.

8. If the Director of Planning determines that a Property is heritage property, he may issue a Heritage Alteration Permit that would allow for the renovation of the heritage property, and may impose terms, requirements and conditions on the Heritage Alteration Permit in accordance with sections 597 and 598 of the *Vancouver Charter*.

9. Notwithstanding section 5, an owner of Property may take any action otherwise prohibited by section 5 of this By-law or section 591 of the *Vancouver Charter*, without acquiring a Heritage Alteration Permit, if the Director of Planning determines that the

Property is not heritage property.

10. This By-law does not affect a Property that is subject to a heritage revitalization agreement entered into before or during the Heritage Control Period, to the extent that this By-law conflicts with the heritage revitalization agreement.

11. During the Heritage Control Period, the Director of Planning may withhold the issuance of a development permit that would result in alteration to a Building on a Property until a Heritage Alteration Permit that would authorize the work is issued, or it is determined that no Heritage Alteration Permit is needed.

12. During the Heritage Control Period, the Director of Planning may order a heritage inspection of a Property that contains a Building built in whole or in part prior to 1940, in order to assist in the determination of whether the Property is heritage property.

Reconsideration

13. If the Director of Planning issues or refuses a Heritage Alteration Permit under this By-law or determines that a property is heritage property under this By-law, then the owner of the Property may seek to have Council reconsider the decision by requesting a reconsideration in writing, by delivering that request to the Director of Planning within 14 days of the decision.

14. Council must reconsider the decision within a reasonable time, and may uphold or vary the decision.

Severability

15. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

Force and effect

16. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this 24th day of June , 2014

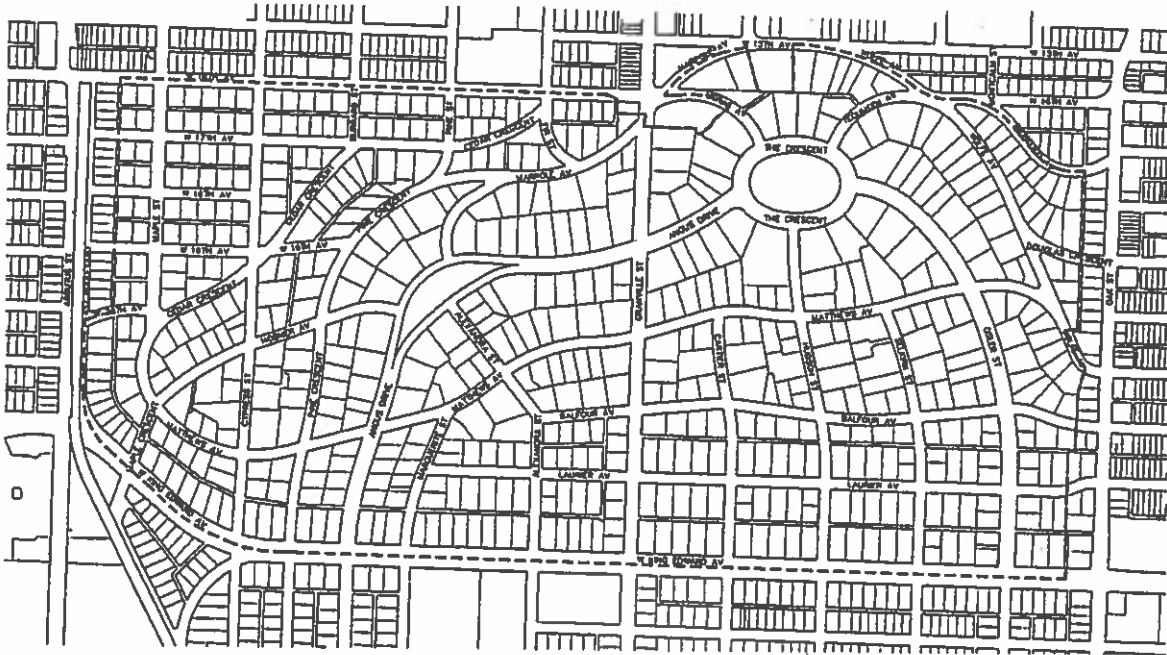
Original Signed by

Mayor

Original Signed by

City Clerk

APPENDIX A



LEGEND
--- FIRST SHAUGHNESSY DISTRICT

North: ↑
Scale: 1:25,000
Date: April 22, 2014

City of Vancouver
Planning and
Development Services