

**Minute No. 538**

**Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – May 5, 2014**

**Item No. 2                      Historical Resources By-law**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and adopted the following:

1. That a new Historical Resources By-law (draft attached as Appendix A to this Report) incorporating the features outlined in this Report and repealing the existing Historical Buildings By-law, be enacted and generally taking effect June 1, 2014.
2. That the fees set out in Appendix E be approved and come into effect on June 1, 2014, the effective date of the new By-law.
3. That a “Commemorative List” of Historic Resources created by the By-law be produced immediately as a means of recognizing those resources that merit commemoration without the imposition of any obligations or controls.
4. That the Director of Planning Property and Development be authorized to send letters to owners of all buildings currently on the Conservation List and Inventory of Historic Buildings, advising them of the status of their buildings and the process the City will follow with respect to them as the new By-law is adopted.
5. That the Public Service report back within 180 days on mechanisms to prevent heritage resources from being allowed to deteriorate by incurring structural and safety concerns (de facto demolition by neglect); by strengthening relevant policy and by-laws including but not limited to the Vacant Buildings By-law.
6. That the proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

**Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – May 5, 2014**

## DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,

That the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management be adopted by consent.

Carried

## EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 14, 2014, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and submitted the matter to Council.

## STANDING COMMITTEE RECOMMENDATION:

On May 5, 2014, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management concurred in the recommendation of the Winnipeg Public Service, with the following amendment:

- Delete “May 1, 2014” in Recommendations 1 and 2 and replace it with “June 1, 2014”.

and submitted the matter to the Executive Policy Committee and Council.

Further on May 5, 2014, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management received a communication dated May 3, 2014 from David Sanders, in opposition to Historic Resources By-law.

**ADMINISTRATIVE REPORT**

**Title:** New Historic Resources By-law

**Critical Path:** Standing Policy Committee on Downtown Development, Heritage and Riverbank Management - Executive Policy Committee - Council

**AUTHORIZATION**

Author	Department Head	CFO	CAO
J. Kiernan	B. Thorgrimson	N/A	D. Joshi A/CAO

**RECOMMENDATIONS**

1. That Council enact a new Historic Resources By-law (draft attached as Appendix A to this Report) incorporating the features outlined in this Report and repealing the existing Historical Buildings By-law, and generally taking effect May 1, 2014.
2. That the fees set out in Appendix E be approved and come into effect on May 1, 2014, the effective date of the new By-law.
3. That a “Commemorative List” of Historic Resources created by the By-law be produced immediately as a means of recognizing those resources that merit commemoration without the imposition of any obligations or controls.
4. That the Director of Planning Property and Development be authorized to send letters to owners of all buildings currently on the Conservation List and Inventory of Historic Buildings, advising them of the status of their buildings and the process the City will follow with respect to them as the new By-law is adopted.
5. That the Public Service report back within 180 days on mechanisms to prevent heritage resources from being allowed to deteriorate by incurring structural and safety concerns (de facto demolition by neglect); by strengthening relevant policy and by-laws including but not limited to the Vacant Buildings By-law.
6. That the proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

## REASON FOR THE REPORT

Only Council can enact By-laws. The City Organization By-law (7100/97, section 13.4) delegates the administration of the Historic Buildings By-law to the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management (SPC on DDHRM).

## IMPLICATIONS OF THE RECOMMENDATIONS

The proposed new Historic Resources By-law constitutes a reworking of the existing Historical Buildings By-law No. 1474/77. The proposed new by-law will:

- Ensure congruency with *The City of Winnipeg Charter, OurWinnipeg* and *Complete Communities*;
- Incorporate and align with up-to-date best practices for heritage conservation;
- Improve notification and fairness to building owners throughout the process of listing and de-listing buildings;
- Improve public access to and transparency of the process of listing and delisting buildings;
- Ensure fairness, clarity and certainty throughout the process of reviewing and listing historical resources.

The By-law supports the implementation of OurWinnipeg and the Complete Communities Direction Strategy, both of which include Heritage Conservation as distinct sections.

The Historic Resources By-law will not impose an obligation to maintain vacant heritage buildings at a higher standard than is required of all vacant buildings under the Vacant Buildings By-law No. 79/2010. This issue may be dealt with in a subsequent report.

The Historic Resources By-law does not significantly impact the general principles of the Heritage Conservation Tax Credit Program (governed under By-law No. 7155/98.) It does, however, provide that a building that is removed from the List of Historical Resources is no longer eligible for the tax credit.

## HISTORY

In August 1978, By-law No. 1474/77, the Historical Buildings By-law, was adopted by City Council. It established the basic procedures for the City's Heritage program, including governance of the Historical Buildings Committee (HBC), process for listing/removing buildings from the Conservation List, Historic Buildings Inventory, etc.

In September 2003, the Planning, Property and Development Department began a review of this by-law to determine whether updates were required after more than 25 years. The process

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has involved key stakeholders, other municipalities, Councillors, and the Historical Buildings Committee (HBC) to receive and integrate important feedback.

The resulting Historical Resources By-law proposed in this Report will renew heritage practices, as well as achieve congruency with *The City of Winnipeg Charter and OurWinnipeg*. It will simplify heritage procedures, provide concise, transparent direction for owners of heritage resources, and round out HBC membership. It will align Winnipeg's heritage program with current national and international best practices.

During this review, and to some extent in anticipation of its outcome, various aspects of the City's heritage program have been addressed to accommodate/simplify transition and implementation. These include:

- *Historic Property Notices registered* - A 2010 amendment to *The City of Winnipeg Charter* required the City register a Historic Property Notice against the title of each structure on the Conservation List (Section 157.1.) This Notice alerts owners, potential purchasers and others of a property's heritage status and obligations therein. Registration of these Notices was completed in 2012 and the Notices continue to be registered against new buildings added to the Conservation List.

- *Management of the Historic Buildings Inventory* – the Inventory was created in the late 1970s as a pool of *potential* heritage structures to be evaluated as time and resources permitted. This list initially numbered over 1,000, but has undergone critical review in the past few years in an effort to distill it down to the most eligible properties. In the spring of 2013, the HBC recommended the removal of a number of structures that were felt to have lost their historic integrity, reducing the total to approximately 360 structures.
- *Evaluation criteria revised* – the standard scoring form for evaluating properties for heritage listing is currently being revised to consider new categories (i.e. Structures built post 1940, landscapes, parks, etc.)
- *Heritage Districts studied* – a study is currently underway to examine the feasibility of creating Heritage Districts in Winnipeg. Although this is not addressed in the proposed by-law, it is a potential tool to augment existing programs.

## DISCUSSION

### **Key changes/highlights of the proposed by-law include:**

#### **New Types of Recognition for Historical Resources**

- Recent changes to *The City of Winnipeg Charter* provide that heritage recognition can now extend beyond buildings to include objects, areas, landscapes, parks, bridges, etc. – but not people or events. The new By-law will reflect this extended scope.
- A new category of recognition will be created: The “Commemorative List” will identify historical resources for historical recognition alone; there will be no controls or restrictions for owners of buildings on this List. The Director of Planning, Property and Development (PP&D) is responsible for placement of resources on the Commemorative List. The creation of the Commemorative List will take place immediately upon enactment of the By-law by Council, notwithstanding that the rest of the By-law will take effect on May 1, 2014.

#### **New Processes for Listing and Delisting**

- Two processes are proposed for deciding whether or not to list historical resources – one initiated by the owner; and one initiated by the Director (see Appendix B for flow-chart.) These processes are clearer and fairer than the current process.
- In both processes, the criteria for adding or removing a resource from the List will be:
  - The importance of the resource in illustrating or interpreting history in the city or a neighbourhood of the city;
  - Its association with important individuals, groups or events;
  - Its value in illustrating the architectural or design history of the city;
  - Whether it embodies unusual architectural or design characteristics or a particular style or method of construction;
  - Its location in an area of historical or architectural interest; and
  - The historical or architectural integrity of the resource.

- In addition, the Standing Policy Committee will be able to consider the economic viability of protecting the resource.
- The proposed new By-law will no longer use the numeric grading system to identify protections of historical elements of listed properties. Instead, listings will include a description of “character-defining elements” – those elements of key heritage significance that are being given protection from demolition or alteration.
- Once a decision has been made about adding a resource to or removing a resource from the List, no substantively similar application will be allowed for five years, subject to contrary direction from the Standing Policy Committee.

Owner-initiated process for listing

- Under this process, the property owner will be able to apply to the Director of PP&D to have a resource nominated. The Director can approve or reject an application from the owner. (A building or other resource that is rejected for nomination can still be placed on the Commemorative List.)
- Subject to a refundable \$250 fee, the owner will be able to appeal a rejected application to the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management (SPC on DDHRM), who can either order that the resource be nominated (i.e. that it be reviewed by the Historical Buildings and Resources Committee as well as the SPC on DDHRM) or reject the appeal.
- Once a resource is nominated, it cannot be demolished, although it can be altered (unless the Director intervenes to protect it in an emergency - see below).
- All nominations must be reviewed by the Historical Buildings and Resources Committee (HBRC) within a maximum of 36 months. The HBRC must make a recommendation to the SPC on DDHRM concerning a nomination. If it recommends that a resource be listed, it must identify which character-defining elements should be protected by the listing.
- The SPC on DDHRM must make a determination about whether or not to list the resource. If it determines that the resource should be listed, it must identify specific elements that are to be protected. Only elements identified in the nomination or in the HBRC recommendations may be identified by the SPC.
- The SPC’s determinations must be considered by Council unless they are identical with the recommendations of the HBRC and the owner does not object; or unless the resource is owned by the City. In these cases, the SPC’s determinations become a final decision.

Director-initiated process for listing

- The Director will be able to nominate a resource for listing if:
  - the building is owned by the City of Winnipeg; or
  - the building is not a single family residential building and is of widespread significance to the City or community.
- The owner will be able to appeal the decision of the Director to nominate a resource to the SPC. No fee is payable for this appeal. The SPC can order that the resource should not be nominated or can uphold the Director’s decision to nominate.
- A Director-initiated nomination has to be reviewed by the HBRC at no fee to the owner. As with an owner-initiated nomination, the HBRC would then make a recommendation to the SPC on the nomination.

- As with an owner-initiated nomination, if the SPC on DDHRM chooses to list the building, it must identify which elements will be protected.
- As with the owner-initiated process, the SPC determination may not be final. A final decision must be made by Council unless the SPC adopts all of the recommendations of the HBRC and the owner does not object, or unless the building is owned by the City.

#### Process for delisting or modification of listing

- The Director will be able to apply for delisting of a building or modification of the listing if the character-defining elements have been damaged or destroyed to the point where it no longer meets the criteria for listing or if the listed resource poses a health or safety hazard.
- The owner will be able to apply for a delisting or modification of the listing for any reason.
- Essentially, the same process will apply to applications for delisting or modifications as apply to nominations for listing (see Appendix C for flow chart).
- In hearing an application to delist a resource, the SPC on DDHRM must consider:
  - (a) whether the character-defining elements of the resource have been so damaged or destroyed that its heritage values do not justify it being on the list;
  - (b) the health or safety hazard posed by the listed element;
  - (c) the economic viability of continuing to conserve the resource;
- When considering the merits of other options for redeveloping the property, the SPC on DDHRM can only take into account potential developments that have zoning approvals and building permits.

#### Fairness for owners

- Owners of buildings will not lose the right to demolish or alter their building without a process that appropriately considers their interests. Owners will be notified throughout the process and be given the chance to make representations to decision-making bodies.
- Owners will be notified:
  - when their building is nominated for listing or the Director decides against nominating it;
  - at least 30 days before the HBRC conducts a review of the nomination for listing or their application to remove the building from the List;
  - when the HBRC has made recommendation(s) to the SPC concerning the nomination or the application to remove the building from the List or modify the listing;
  - at least 14 days before the nomination or application will be considered by the SPC;
  - of the SPC's determinations; and
  - if applicable, Council's decision.
- In addition, the owner will be entitled to submit written material to the HBRC for its deliberations and will have full rights to make representations when the nomination or application is considered by the SPC.
- Although the Director will be allowed to nominate a building, it is expected that as a rule, the current practice of seeking the owner's consent prior to listing would continue. The Director's power to nominate is likely to be used only in extraordinary circumstances.



- Only specifically-listed elements of a building will be protected from alteration or demolition; the owner would be free to alter other parts of the building without having to obtain a Heritage Permit.
- The owner will have the following rights of appeal:
  - Appeal to SPC of Director's decision to reject owner's application to have the resource nominated – fee applicable but may be refunded by SPC
  - Appeal to SPC of Director's decision to nominate – no fee
  - Appeal to SPC of Director's use of emergency preservation powers – no fee.
  - Appeal to SPC of designated employee's decision on Heritage Permit – fee applicable but may be refunded by SPC
- Unlike the current situation with a building on the Inventory, an owner's powers to demolish a building will not be able to be suspended indefinitely by a nomination. A nominated building will have to be considered for listing within a maximum of 36 months. In addition, upon payment of a fee, the owner will be able to apply for an expedited hearing.
- Owners of buildings that are on the Inventory when the By-law takes effect will be notified of the status of the building and given the same rights as owners of nominated buildings.

#### **Transparency for the public**

- The Historical Buildings and Resources Committee will be subject to all governance procedures associated with Advisory Committees, including regularly scheduled meetings open to the public, minutes posted in the public record, etc. However, some matters may be considered in camera as per by the In Camera By-law No. 21/2011, and as with Council or other Council committees, members of the HBRC will be able to hold informal seminars and will be able to assign work to sub-committees.
- The HBRC may seek the opinions and advice of experts and advocates as required.
- Meetings at the SPC on DDHRM, Executive Policy Committee and Council which deal with historical resources are open to the public, with agendas published in advance.
- The designated employee will be required to publish a notice on the City's website when a heritage permit is being issued against the advice of the HBRC. The public will have the chance to appeal a designated employee's authorization of alterations of heritage resources that has not been recommended by the HBRC.

#### **Clarity for Historical Buildings and Resources Committee (HBRC)**

- The HBRC will function solely as an advisory committee, providing unbiased and independent recommendations and advice to the Standing Policy Committee, the Director of PP&D, and Designated Employees.
- Membership will total up to 13, including a Councillor as Chair and two additional Councillors appointed at the annual organization meeting of Council.
- Membership will continue to include experts from various organizations (e.g. Province of Manitoba, Government of Canada, Manitoba Association of Architects, etc.)
- New members will include a professional engineer, a landscape architect and two members-at-large.
- Advocacy groups will not be represented on the HBRC, as the HBRC's mandate is to provide unbiased and independent advice on heritage matters.

- The current practice of Councillors not voting on the listing or delisting of properties and the issuance of permits for alterations of historical buildings will be reflected in the By-law.

### **Heritage Permits**

- A Heritage Permit will replace a Certificate of Suitability as the mechanism by which owners can alter the character-defining elements of a listed resource.
- Existing fees for approval of alterations will continue unchanged (\$132.00)
- Heritage Permits will be issued by the Designated Employee (DE). The DE must follow guidelines created by the HBRC or must consult the HBRC before making a decision about a Heritage Permit.
- Where the DE does not concur with the HBRC recommendations/guidelines, a notice must be published on the City's website and, for a refundable fee of \$250; members of the public will be able to appeal the designated employee's decision to the SPC.

### **Fees & Offences**

- Processing and Service fees are recommended for applications, appeals, and requests for expedited decisions (See Appendix E). These can be approved by Council by resolution.
- Offences will be clearly stated in the By-law.
- The minimum fine for demolishing or altering a listed resource without authorization will be \$1,000 with a maximum fine of \$1.0 million. (Please note, however, that *The Summary Convictions Act* specifically permits Judicial Justices of the Peace to impose fines lower than the minimum amount.)

### **Powers of Director**

- Besides being able to nominate a resource, the Director will be able to intervene to protect a nominated resource from irreparable alterations in emergencies. When this happens, the owner is entitled to an expedited hearing of the nomination without a fee.

### **Transition**

- The existing *Conservation List* (designated buildings) will be renamed the *List of Historic Resources*, with all protections transferred over. This List will continue to appear on the City's website (as did the Conservation List it is replacing.)
- The existing *Inventory of Historical Buildings* will cease to exist. All structures on it when the By-law comes into force will be deemed to have been nominated. These will then be evaluated and either recommended or rejected for listing within a maximum of 36 months. (A rejected resource may nonetheless be placed on the Commemorative List.)
- It is reasonable to expect that by May 1, 2014, (the date the By-law comes into effect) approximately 330 of the 460 structures currently on the Inventory will have been transferred to the Commemorative List; while the remaining 130, (assumed to have moderate to high heritage significance) will have been nominated. As per Recommendation 4, letters informing all 460 owners of this anticipated transition will be sent out immediately should Council approve of this Report.
- The majority of the By-law will come into force on May 1, 2014. However, the Commemorative List will come into effect immediately, permitting the Director to begin placing buildings that are currently on the Inventory onto the Commemorative List.

- Any applications in the system on May 1, 2014 will continue to be dealt with as per the Historical Buildings By-law No. 1474/77. Any new applications submitted after this date will be subject to the new By-law.

**Consequential amendments**

- The City Organization By-law will be amended to clarify that the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management has exclusive responsibility for historical buildings and resources.
- The Heritage Conservation Tax Credit By-law will be amended to provide that the tax credit is not available to properties that have been removed from the List.
- All by-laws of the City of Winnipeg will be amended by replacing “Historical Buildings Committee” with “Historical Buildings and Resources Committee.”

For further information, please refer to Appendices:

- A. Draft Historical Resources By-law
- B. Flow Chart for Listing Resources
- C. Flow Chart for Delisting and Modification of Listings
- D. By-law Change Summary
- E. Proposed Fee Schedule

**FINANCIAL IMPACT****Financial Impact Statement**Date: **April 7, 2014**

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**Project Name:****New Historic Resources By-law****COMMENTS:**

While Schedule E does outline fees associated with applications, appeals and expedited hearings, the volume of such items is not reasonably estimable at this time. Also, the related financial implications are not material in nature. As such, there are no financial implications associated with the recommendations contained in this report.

*"Original Signed By"* \_\_\_\_\_

Mike McGinn, CA  
Manager of Finance

## CONSULTATION

### In preparing this report there was consultation with:

Legal Services  
Office of the City Clerk  
Historical Buildings Committee  
Community Stakeholders

## SUBMITTED BY

Department: Planning, Property and Development  
Division: Planning and Land Use  
Prepared by: Jennifer Hansell  
Date: April 8, 2014  
File No.: O:\Reports Directive\Planning and Land Use\Heritage\2014\New Historic Resources By-law March 17, 2014 doc

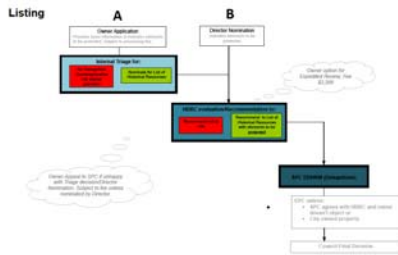
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**Appendix A. Draft Historical Resources By-law**

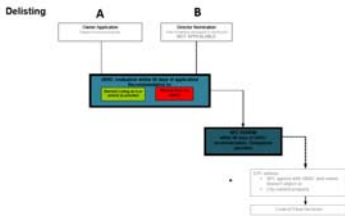


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**Appendix B. Flow Chart for Listing Resources**



**Appendix C. Flow Chart for Delisting and Modification of Listings**



**Appendix D: By-law Change Summary**

Section	Current By-law	Proposed By-law	Comments
1.1	1.1	1.1	
1.2	1.2	1.2	
1.3	1.3	1.3	
1.4	1.4	1.4	
1.5	1.5	1.5	
1.6	1.6	1.6	
1.7	1.7	1.7	
1.8	1.8	1.8	
1.9	1.9	1.9	
1.10	1.10	1.10	
1.11	1.11	1.11	
1.12	1.12	1.12	
1.13	1.13	1.13	
1.14	1.14	1.14	
1.15	1.15	1.15	
1.16	1.16	1.16	
1.17	1.17	1.17	
1.18	1.18	1.18	
1.19	1.19	1.19	
1.20	1.20	1.20	
1.21	1.21	1.21	
1.22	1.22	1.22	
1.23	1.23	1.23	
1.24	1.24	1.24	
1.25	1.25	1.25	
1.26	1.26	1.26	
1.27	1.27	1.27	
1.28	1.28	1.28	
1.29	1.29	1.29	
1.30	1.30	1.30	
1.31	1.31	1.31	
1.32	1.32	1.32	
1.33	1.33	1.33	
1.34	1.34	1.34	
1.35	1.35	1.35	
1.36	1.36	1.36	
1.37	1.37	1.37	
1.38	1.38	1.38	
1.39	1.39	1.39	
1.40	1.40	1.40	
1.41	1.41	1.41	
1.42	1.42	1.42	
1.43	1.43	1.43	
1.44	1.44	1.44	
1.45	1.45	1.45	
1.46	1.46	1.46	
1.47	1.47	1.47	
1.48	1.48	1.48	
1.49	1.49	1.49	
1.50	1.50	1.50	

**Appendix E: Proposed Fee Schedule**

Application Fees

Application by owner to Nominate a Historical Resource	\$250
Application to De-list a Historical Resource (by owner)	\$2,500 (refundable)
Heritage Permit	\$132

Appeal Fees

Appeal of Director's decision not to nominate (by owner)	\$1,500 (refundable)
Appeal of Director's decision to nominate (without owner's consent)	no fee
Appeal of designated employee's decision re. Heritage Permit (by owner)	\$250 (refundable)
Appeal of Director's decision not to permit alteration of nominated resource	no fee

Expedited Hearing Fees

Owner's application for an expedited hearing by the HBRC/SPC	\$2,500 (non-refundable)
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Withdrawals of any application = 50% of fee refunded

\*\*Note the existing Fee for a Heritage Permit (Certificate of Suitability) of \$132 is set out in s. 16 of the Planning, Development and Building Fees By-law. This By-law is being amended to have this fee removed so that, in the future, Council can establish this fee by simple resolution.

# DRAFT

## THE CITY OF WINNIPEG

### BY-LAW NO.

A By-law of THE CITY OF WINNIPEG to protect and conserve buildings, land, elements of a building or land, or areas of special architectural or historic interest

**THE CITY OF WINNIPEG**, in Council assembled, enacts as follows:

#### **Short title**

1. This By-law may be referred to as the "Historical Resources By-law".

#### **Definitions and interpretation**

- 2 In this By-law

**"alteration"**, in respect of a historical resource, includes

- (a) the construction or installation of an addition to a building or element of a building, including the installation of any sign, advertisement, hoarding or wall;
- (b) the modification, repair, restoration, renovation or maintenance of a building or element of a building;
- (c) an action that results in damage to the exterior of a building, or to land, or an element of a building or land;
- (d) an excavation, or the construction or installation of a permanent or temporary structure of any kind the property on which a resource is located;

**"building"** includes a structure, statue, memorial, monument, fountain, gate, bridge or any other fixture or immovable object;

**"citizen"** means a person, other than a member of Council, who resides in Winnipeg and is eligible to vote in a civic election in the City of Winnipeg;

**"conservation"** includes all actions or processes that are aimed at safeguarding a resource so as to retain its heritage value and extend its physical life, and includes preservation, rehabilitation and restoration or a combination thereof;

**"Council"** means the Council of the City of Winnipeg;



**“demolition”**, in respect of a resource, includes

- (a) the destruction, removal, dismantling of a resource; and
- (b) a significant and irreversible alteration of a resource;

and, without restricting the generality of the foregoing, includes any action for which a demolition permit under the Winnipeg Building By-law is required;

**“Designated Committee”** means the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management;

**“designated employee”** means

- (a) the Director; and
- (b) the Heritage Planner and other employees of the City who have been given responsibility by the Director for heritage matters or have been authorized by the Director to administer and enforce this By-law;

**“Director”** means the Director of the Department with responsibility for heritage planning and currently refers to the Director of Planning, Property and Development for the City of Winnipeg;

**“element”** means a feature or aspect of a building or land;

**“heritage permit”** means a permit issued by the designated employee pursuant to Part 3 of this By-law;

**“heritage values”** means heritage values embodied by a resource based on the following criteria:

- (a) its importance in illustrating or interpreting the history of the city or a neighbourhood;
- (b) its association with important individuals, groups or events;
- (c) its illustration of the architectural or design history of the city;
- (d) its embodiment of distinct or unusual architectural or design characteristics or a particular style or method of construction;
- (e) its location in an area of historical or architectural interest; and
- (f) its historical or architectural integrity.

**“Historical Buildings and Resources Committee”** means the committee continued by section 37 of this By-law;

**“historical or architectural integrity”** means the authenticity of a historical resource’s identity that is evidenced by the survival of the following components that existed during the property’s historic period:

- location;
- design;
- setting;
- materials;
- workmanship;
- character and feeling; and
- association(s);

**“historical resource”** means a resource that has been listed;

**“Inventory”** means the Inventory of Buildings established under the Historical Buildings By-law No. 1474/77;

**“List”** means the List of Historical Resources established under this By-law;

**“listed resource”** means a building or land, or an element of a building or land that has been added to the List of Historical Resources;

**“listing”** means an entry on the List;

**“nominated”**, in respect of a resource, means

- (a) a resource which is deemed to have received a nomination to be added to the List under subsection 8(4); or
- (b) a resource that has received a nomination to be added to the List under Part 1, Division 2;

**“owner”**, unless the context requires otherwise, means the owner of the property on which a resource is located;

**“regular meetings”** means those meetings occurring on a predetermined monthly interval as outlined in the schedule distributed to the Historical Buildings and Resources Committee members at the start of each calendar year;

**“resource”** means a building or land, or an element of a building or land;

## **PART 1 - LIST OF HISTORICAL RESOURCES**

### **Division 1 – General**

#### **List of Historical Resources established**

3 A List of Historical Resources is hereby established that contains

- (a) the buildings, erections and structures set out in Schedule "A" of the Historical Buildings By-law No. 1474/77 as it existed immediately before this By-law came into force; and
- (b) any additional resources added to the List pursuant to this By-law.

#### **Transition from Conservation List**

4 For the purposes of clause 3(a), the restrictions imposed on a building by virtue of the Grade under which the building was registered pursuant to the Historical Buildings By-law No. 1474/77 are hereby adopted as protections imposed in respect of the building or one or more elements of the building pursuant to this By-law.

#### **Publication of listing**

5(1) A listing must set out the elements of the resource that are identified in a listing under subsection 19(2) or 20(4) and are subject to protection from demolition or alteration under subsection 6(1) and (2). If an element of a resource is not set out in the listing, it is not protected from demolition or alteration.

5(2) The Director shall ensure that the List is kept up to date and is posted on the City's website.

#### **Protections for listed resources**

6(1) Subject to Part 4, the owner of a property on which a listed resource is located must not

- (a) demolish or alter, or permit to be demolished or altered, the listed resource; or
- (b) construct, erect or locate a permanent or temporary building on the property in contravention of a listing.

6(2) For greater certainty, clause (1)(a) prohibits the owner of a property on which a listed resource is located from taking any action that would have the effect of destroying, removing or dismantling a listed resource.

6(3) No permit may be issued by the City that is inconsistent with the restrictions placed on a resource or a property by a listing by this By-law unless a heritage permit issued pursuant to this By-law authorizes the action for which a permit is sought.

6(4) Subject to subsection (5), an employee designated under a by-law of the City who is taking an action or measure to remedy a contravention of that by-law under subsection 185(1) of *The City of Winnipeg Charter* is bound by the obligations imposed on the owner of a resource under this section.

6(5) Notwithstanding subsection (4), where an emergency arises that affects the health or safety of persons or affects property, an employee who is authorized to take any action or measure under that by-law that is necessary to meet the emergency or to reduce its effects may do so without the need to comply with the obligations imposed by this By-law. However, an employee acting under this authority must:

- (a) take into account the fact that a resource has been listed and must make such efforts as are reasonable in the circumstances to conserve the protected elements of the resource; and
- (b) where it is reasonable to do so in the circumstances, consult with the Historical Buildings and Resources Committee prior to taking the actions or measures.

**Effect of decision by Designated Committee or Council**

7(1) Where, in accordance with this By-law, a decision has been made by the Designated Committee or Council that

- (a) a resource should not be added to the List; or
- (b) a resource should be removed from the List;

no restrictions imposed by this By-law apply in respect of that resource.

7(2) Subject to subsection (3), where a decision has been made in respect of a nomination to list a resource or an application to remove a resource from the List or for a listing to be modified in accordance with this By-law, no substantially similar nomination or application may be made for a period of five years.

7(3) Notwithstanding subsection (2), the Designated Committee may direct the Historical Buildings and Resources Committee to review a nomination or an application where there has been a material change of circumstances since a decision with respect to a substantially similar nomination or application was made.

**Division 2 – Nomination Process**

**Nomination for resources to be added to List**

8(1) Except for buildings on the Conservation List that are added to the List by section 3, no resource may be added to the List unless it has been nominated.

8(2) Subject to subsection (4), only the Director may nominate a resource to be listed. The Director may do so upon application by the owner of the resource to nominate the resource, or upon the Director's own initiative.

8(3) A building may not be nominated under this By-law unless it is at least 40 years old.

8(4) All buildings on the Inventory on the date this By-law comes into effect are deemed to have been nominated on the date this By-law comes into force and the nomination is deemed to include all elements of the building.

**Owner-initiated nomination process**

9(1) Upon payment of any applicable fee, the owner of a resource is entitled to apply to the Director to have the resource nominated for listing and, as part of the nomination, must identify the specific elements of the resource the applicant is seeking to be listed.

9(2) Where the owner applies under subsection (1), the Director must decide within 90 days whether or not to nominate the resource. This decision must be based on whether the Director considers that the resource has heritage values that are likely, upon further review, to result in a listing. The Director must notify the owner of his or her decision.

9(3) If the Director decides to nominate the resource, the nomination must identify the specific elements of the resource that the Director believes should be protected in the listing, which may be different than the elements identified by the owner in an application to nominate the resource.

9(4) If the Director decides not to nominate the resource, upon payment of any applicable fee, the owner may appeal the decision to the Designated Committee pursuant to *The City of Winnipeg Charter*. After hearing the appeal, the Designated Committee may uphold the appeal and direct the Director to nominate the resource, or may uphold the decision not to nominate the resource. The Designated Committee's decision on appeal is final and may not be further appealed.

#### **Director-initiated nomination process**

10(1) The Director is authorized to nominate a resource for listing on his or her own initiative only if he or she considers that the resource has heritage values that are likely, upon further review, to result in a listing and if

- (a) the resource is owned by the City of Winnipeg; or
- (b) the resource is not a single family residential building, and
- (c) the resource has heritage values of widespread significance to the City or the community.

The nomination must identify the specific elements of the resource that the Director believes should be protected in the listing.

10(2) The Director must give notice of the nomination to the owner of the nominated resource in accordance with section 41. The notice must include information about the owner's right of appeal under subsection (3).

10(3) The owner of a resource nominated under subsection (1) may appeal the nomination to the Designated Committee within 14 days of receiving or being deemed to have received notice of the nomination. No fee is payable for the appeal. After hearing the appeal, the Designated Committee may uphold the appeal and direct the nomination to be withdrawn, or may uphold the decision of the Director to nominate the resource. The Designated Committee's decision on appeal is final and may not be further appealed.

#### **Protections for nominated resources**

11(1) The owner of a nominated resource is prohibited from demolishing any element that is proposed in a nomination to be listed until the Historical Buildings and Resources Committee makes a recommendation concerning the nomination. During this time, no demolition permit may be issued in respect of the protected elements of that resource and any existing demolition permit in respect of the protected elements of that resource is suspended.

11(2) The protections imposed by subsection (1) take effect

- (a) in the case of an owner-initiated nomination process, when the application to nominate the resource has been received by the Director;
- (b) in the case of the deemed nomination of buildings previously on the Inventory pursuant to subsection 8(4), on the day this By-law comes into force; and
- (c) in the case of nominations by the Director, at the time the owner has received or is deemed to have received the notice required by subsection 10(2).

#### **Review of nomination by HBRC**

12(1) Subject to this section, the Historical Buildings and Resources Committee must hold a meeting to review and make recommendations concerning a nominated resource within 36 months of its nomination.

12(2) Notwithstanding subsection (1), the owner of a nominated resource is entitled to have the nomination reviewed by the Historical Buildings and Resources Committee on an expedited basis

- (a) upon application by the owner to the designated employee and payment of any applicable fee;
- (b) when the Director nominates a resource on his or her own initiative under subsection 10(1); or
- (c) when the Director issues an order prohibiting alterations of the resource under Part 2.

12(3) Unless the owner of the resource requests a postponement, the Historical Buildings and Resources Committee must conduct an expedited review within 90 days of the date the owner is first entitled to an expedited review.

#### **Criteria for HBRC review**

13(1) The Historical Buildings and Resources Committee must make a recommendation to the Designated Committee that a nominated resource should be listed only if the resource is of outstanding architectural or historic significance in the heritage values it embodies.

13(2) In making a recommendation to list a resource, the Historical Buildings and Resources Committee must identify which elements of the resource it considers should be protected in the listing because they contribute to the heritage value of the resource through their materials, form, location, spatial configuration, use, or cultural association or meaning.

**Owner's rights re. review by HBRC**

14(1) The owner of the resource being reviewed is entitled to make a written submission to the Historical Buildings and Resources Committee through the office of the City Clerk. If the submission is submitted at least fourteen days prior to the review, it must be considered by the Committee in its review of the nomination.

14(2) The designated employee must give notice of the pending review by the Historical Buildings and Resources Committee to the owner at least 30 days before the review. The notice must

- (a) identify the nominated resource and the elements that are proposed to be listed;
- (b) identify research material, reports and any other written material that will be considered by the Committee as part of the review and offer to provide them to the owner upon request;
- (c) advise the owner of the resource that he or she is entitled to submit written material for consideration by the Historical Buildings and Resources Committee and the date by which the written material must be submitted.

**Recommendations of HBRC**

15(1) After reviewing a nomination, the Historical Buildings and Resources Committee may make any recommendations with respect to the nominated resource it wishes to the Designated Committee. The Historical Buildings and Resources Committee is not bound in its recommendations by the terms of the nomination being reviewed.

15(2) The City Clerk must give the owner of the resource notice of the recommendations of the Historical Buildings and Resources Committee as soon as practical after the recommendations have been made.

**Protection for resources after recommendation by HBRC**

16(1) Subject to this section, the owner of a resource is prohibited from demolishing or altering, or permitting it to be demolished or altered, the elements of the nominated resource concerning which the Historical Buildings and Resources Committee has made a recommendation for listing in a manner inconsistent with any recommendation made by the Historical Buildings and Resources Committee to the Designated Committee.

16(2) The protection for the resource imposed in subsection (1) takes effect when notice of the Historical Buildings and Resources Committee's recommendations has been given to the owner of the resource under subsection 15(2) and extends until a final decision with respect to the nomination is made under this By-law.

16(3) For greater certainty, no restriction is imposed by this By-law on the owner of a resource under subsection (1) where the Historical Buildings and Resources Committee recommends that a nominated resource should not be listed.

### **Consideration by Designated Committee**

17(1) Subject to requests for postponements by the owner, the Designated Committee must consider the recommendations from the Historical Buildings and Resources Committee within 90 days after receiving the recommendations.

17(2) Subject to subsection (1), the Director is authorized to provide a report with respect to the nomination for consideration by the Designated Committee at the time it considers the recommendations of the Historical Buildings and Resources Committee.

17(3) The City Clerk notify the owner of the resource at least 14 days prior to the date the Designated Committee considers the recommendations from the Historical Buildings and Resources Committee with respect to the resource.

### **Criteria for decision by Designated Committee**

18(1) In determining whether a resource should be added to the List, the Designated Committee must consider whether the resource is of outstanding architectural or historic significance in the heritage values it embodies and may, in addition, consider the economic viability of conserving the resource.

18(2) A determination of the economic viability of protecting and preserving a resource under this section must be based on the following criteria:

- (a) the condition of the resource;
- (b) the costs of the continued repair and maintenance of the resource;
- (c) the importance and value derived from the conservation or continued conservation of the resource;
- (d) the efforts that have been made by the owner to date to conserve the resource; and
- (e) the merits of alternative proposals for the resource or the site on which it is located, other than conserving the resource by adding it to the List.

### **Options for Designated Committee**

19(1) After considering the Historical Buildings and Resources Committee's recommendations with respect to the nomination, the Designated Committee must determine whether or not the resource should be listed.

19(2) When it determines that a resource should be listed, the Designated Committee must set out in the listing the elements that it considers should be protected but may only include elements that were proposed either in the nomination or in the recommendations made by the Historical Buildings and Resources Committee.

### **Consideration of nomination by Council**

20(1) Subject to section 21, the determinations of the Designated Committee under section 19 concerning a nomination are recommendations to Council that must be considered by Council



within 60 days of the meeting of the Designated Committee at which the recommendations were made.

20(2) In considering a nomination, Council must use the same criteria as are required to be considered by the Designated Committee by section 18.

20(3) After considering the recommendations of the Historical Buildings and Resources Committee and the Designated Committee together with any recommendations made by the Executive Police Committee, Council may list or decline to list the resource.

20(4) When it decides to list a resource, Council must set out in the listing the elements that are to be protected but may only include elements that were proposed either in the nomination or in the recommendations made by the Historical Buildings and Resources Committee.

**When Designated Committee determinations are final**

21(1) Notwithstanding section 20, the determinations of the Designated Committee are deemed to be final decisions that are not to be considered by Council and may not be appealed if:

- (a) they are identical to the recommendations of the Historical Buildings and Resources Committee; and
- (b) the owner does not oppose the recommendations.

21(2) For the purposes of subsection (1), the owner is deemed not to oppose the recommendations of the Historical Buildings and Resources Committee if he or she neither

- (a) appears in person or by agent at the meeting of the Designated Committee at which the recommendations are considered to advise of his or her opposition; nor
- (b) advises the City Clerk in writing of his or her opposition to the recommendations of the Historical Buildings and Resources Committee prior to the meeting of the Designated Committee at which the recommendations are considered.

21(3) Notwithstanding that the owner has

- (a) appeared in person or by agent at the meeting of the Designated Committee at which the recommendations are considered to advise of his or her opposition; or
- (b) advised the City Clerk in writing of his or her opposition to the recommendations of the Historical Buildings and Resources Committee prior to the meeting of the Designated Committee at which the recommendations are considered;

the owner may withdraw his or her opposition to the recommendations by so advising the City Clerk in writing.

21(4) Notwithstanding subsection (1), where the owner of the resource is the City of Winnipeg, the determinations of the Designated Committee are deemed to be final decisions that are not to be considered by Council and may not be appealed.

### **Notifications of Designated Committee's recommendation and final decision**

22(1) The City Clerk must give notice to the owner of the resource of

- (a) the Designated Committee's recommendations and the date of the meeting of Council to consider those recommendations; and
- (b) a final decision with respect to the nomination.

The notice required by clause (a) must be given at least seven days prior to the meeting of Council to consider those recommendations.

22(2) The City Clerk must send notice of the Designated Committee's recommendations and the date of the meeting of Council to consider those recommendations to any person who requests such notice prior to the decision being made by Council and who provides an address to which the notice may be sent. This requirement is met if the notice is sent by ordinary mail or electronic mail.

### **Division 3 – Removal from or Modification of List**

#### **Definition**

23 In this Division, "application" means an application for a listed resource or a listed element to be removed from the List, or for a listing to be modified.

#### **Application for removal from or modification of List**

24(1) After paying any applicable application fee, the owner of a listed resource may apply for a listed resource or a listed element to be removed from the List or for the listing to be modified.

24(2) The Director may apply for a listing to be modified or a listed resource to be removed from the List but may do so only if

- (a) the resource is damaged or destroyed to the point where the resource no longer embodies heritage values sufficient to justify its continued inclusion on the List; or
- (b) the resource poses a health or safety hazard.

24(3) The Director's decision to apply under subsection (2) is not subject to appeal.

#### **Protection of listed resource pending decision on application**

25 The protections applicable to a listed resource remain in place until and unless the Designated Committee or Council, as the case may be, removes the resource from the List or modifies the listing in a manner that modifies or eliminates the protection.

#### **Review of application by HBRC**

26(1) The Historical Buildings and Resources Committee must review an application under this Division and provide recommendations to the Designated Committee within 90 days after the application is made.

26(2) The Historical Buildings and Resources Committee may recommend that a resource or an element of a resource be removed from the List if it no longer embodies sufficient heritage values to justify its continued inclusion on the List.

26(3) Sections 14 and 15 are applicable to the review of the application by the Historical Buildings and Resources Committee, with the changes necessary to accommodate an application rather than a nomination.

#### **Consideration by Designated Committee**

27(1) Subject to requests for postponements by the owner, the Designated Committee must consider the recommendations from the Historical Buildings and Resources Committee within 90 days after receiving the recommendations.

27(2) Subject to subsection (1), the Director is authorized to provide a report with respect to the nomination for consideration by the Designated Committee at the time it considers the recommendations of the Historical Buildings and Resources Committee.

27(3) In considering an application under this Division, the Designated Committee must consider whether the resource or the identified element of the resource continues to embody heritage values sufficient to justify its continued inclusion on the List and, if applicable, the hazard posed by the resource and may, in addition, consider the economic viability of conserving the resource or the identified element of the resource, using the criteria set out in subsection 18(2).

27(4) Notwithstanding subsection (3), in considering an application under this Division, the Designated Committee must not consider the merits of alternative proposals for the resource or the site on which it is located unless the owner has obtained zoning approvals and building permits consistent with his or her plans for redevelopment of the site.

27(5) The Designated Committee may make any determination with respect to the application that was sought in the application or that was recommended by the Historical Buildings and Resources Committee or may determine that the application should be denied.

#### **Consideration of application by Council**

28 Sections 20, 21 and 22 apply, with changes as necessary to accommodate an application rather than a nomination, to consideration of the application by Council, the circumstances in which the determinations of the Designated Committee are final, and requirements with respect to notices.

## **PART 2 DIRECTOR'S EMERGENCY CONSERVATION POWERS**

### **Emergency conservation powers of Director**

29(1) Notwithstanding any other provision in this By-law, where

- (a) a nomination to add a resource or an element of a resource to the List has been made;
- (b) the Director is satisfied that the resource embodies extraordinary heritage values; and
- (c) there is reason to believe that irreparable alterations to the resource or an element identified in the nomination are imminent;

the Director may issue an emergency conservation order prohibiting alterations in respect of the resource that would otherwise be permitted under this By-law.

29(2) An emergency conservation order issued under this section must be given to the owner of the resource in accordance with section 117 of *The City of Winnipeg Charter* and takes effect upon it being so given.

29(3) An appeal of an emergency conservation order made under this section may be made to the Designated Committee in accordance with *The City of Winnipeg Charter*. No fee is payable for the appeal.

29(4) Subject to the emergency conservation order being overturned, in whole or in part, on appeal, the owner of a resource identified in an emergency conservation order must not contravene the order until the nomination has been reviewed and a recommendation concerning the nomination has been made by the Historical Buildings and Resources Committee. Once the Historical Buildings and Resources Committee has made a recommendation concerning the nomination, section 16 applies.

### **PART 3 HERITAGE PERMITS**

#### **Heritage permits**

30(1) Subject to this section, upon application by or on behalf of the owner of a listed resource, the designated employee may issue a heritage permit authorizing the owner of a listed resource to carry out alterations in respect of the resource. The heritage permit may only allow alterations that are consistent with conservation of the heritage values embodied by the elements identified in the listing.

30(2) A heritage permit may be issued subject to conditions or restrictions.

30(3) The decision of the designated employee to issue or to deny a heritage permit and to impose conditions or restrictions on the heritage permit must be based upon the following factors:

- (a) the fundamental goal of conserving and enhancing the heritage values referred to in the listing embodied by the resource;
- (b) the practical necessity for the proposed alterations for which a heritage permit is being sought;

- (c) the benefits of various techniques or approaches by which the proposed alterations could be conducted;

and the decision must be consistent with the *Standards and Guidelines for the Conservation of Historical Places in Canada* published from time to time by Her Majesty the Queen in Right of Canada.

#### **Reference to HBRC mandatory**

31(1) Subject to subsection (2), prior to making a decision concerning the issuance of a heritage permit, the designated employee must refer the application for consideration by the Historical Buildings and Resources Committee and must take into account the advice of the Historical Buildings and Resources Committee in making a decision.

31(2) Subsection (1) does not apply where, in making a decision concerning an application for a heritage permit, the designated employee applies guidelines established from time to time by the Historical Buildings and Resources Committee.

#### **Notice of decision to owner**

32(1) The designated employee must give notice to the owner of the resource of his or her decision concerning the application for a heritage permit in accordance with *The City of Winnipeg Charter*.

32(2) If the designated employee fails to notify the owner of a decision in respect of an application for a heritage permit within 90 days after the owner has provided all of the information necessary for the designated employee to make a decision with respect to the application, the owner may proceed with the alteration for which a heritage permit was sought without the need for a heritage permit.

32(3) An application for a heritage permit is not complete until all the information reasonably necessary for the designated employee to make a decision in respect of an application has been provided to the designated employee.

#### **Public notice of decision**

33 Where the designated employee makes a decision in respect of a heritage permit that differs substantially from the advice of the Historical Buildings and Resources Committee:

- (a) he or she must publish on the City's website a notice that contains:
  - (i) the decision made in respect of the application for a heritage permit;
  - (ii) a statement that any resident of Winnipeg may appeal the decision to the Designated Committee within 14 days of the publication of the notice;
  - (iii) the information required to be provided by subsection 116(2) of *The City of Winnipeg Charter*, and

- (b) he or she must notify the Chair of the Historical Buildings and Resources Committee of this decision.

**Decision subject to appeal**

34(1) Upon payment of any applicable fee, the owner of a resource is entitled within fourteen days to appeal to the Designated Committee a decision by the designated employee concerning an application to issue or refuse to issue a heritage permit in respect of that resource.

34(2) Upon payment of any applicable fee, any resident of Winnipeg is entitled within fourteen days of the publication of the decision under section 33 to appeal to the Designated Committee a decision by the designated employee concerning an application to issue or refuse to issue a heritage permit that differs substantially from the advice of the Historical Buildings and Resources Committee concerning the application for the heritage permit.

34(3) Where the designated employee makes a decision in respect of a heritage permit that differs substantially from the advice of the Historical Buildings and Resources Committee, the decision is not final and a heritage permit must not be issued until

- (a) the time period for appealing the decision has expired and no person has appealed the decision; or
- (b) where the decision has been appealed, the appeal has been heard and decided, in which case the heritage permit must reflect the decision of the Designated Committee.

**PART 4  
COMMEMORATIVE LIST**

**Commemorative list established**

35(1) There is hereby established a Commemorative List consisting of resources of significant historical or architectural interest which have not been added to the List.

35(1) Inclusion of a resource on the Commemorative List is intended solely to recognize significant historical and architectural resources and to encourage their conservation. It does not restrict the owner of the resource from developing or demolishing the resource.

**Director given authority to add to or remove from Commemorative List**

36(1) The Director is authorized to add resources to or remove resources from the Commemorative List based on his or her assessment of the significance of their heritage values.

36(2) The Director may establish one or more processes by which resources may be brought to his or her attention as worthy of being added to the Commemorative List.

**PART 5  
HISTORICAL BUILDINGS AND RESOURCES COMMITTEE**

**Historical Buildings and Resources Committee**

37(1) The Historical Buildings Committee established under the Historical Buildings By-law No. 1474/77 is hereby continued as the Historical Buildings and Resources Committee.

37(2) The Historical Buildings and Resources Committee consists of the following individuals appointed by Council:

- (a) up to three members of Council, one of whom shall be designated the Chair of the Historical Buildings and Resources Committee by Council;
- (b) two individuals with expertise in heritage resource conservation employed by the Province of Manitoba;
- (c) two individuals with expertise in heritage resource conservation employed by the Government of Canada;
- (d) two members in good standing of the Manitoba Association of Architects;
- (e) one member in good standing of Manitoba Association of Landscape Architects;
- (f) one member in good standing of the Association of Professional Engineers and Geoscientists of Manitoba;
- (g) two citizen members at large.

37(3) Members of Council shall be appointed to the Historical Buildings and Resources Committee at the annual organizational meeting of Council for terms of one year and may be re-appointed.

37(4) Subject to subsection (6), individuals who are not members of Council shall be appointed to the Historical Buildings and Resources Committee for terms of three years and may be re-appointed, except that citizen members at large may be re-appointed for a limit of one additional term.

37(5) When a member of the Historical Buildings and Resources Committee fails to serve out the entirety of his or her three year term, another individual may be appointed to serve out the remainder of the term.

37(6) Notwithstanding subsections (4) and (5), appointments of members who are neither members of Council nor citizen members at large may be for terms shorter than three years when this is required in order to ensure that roughly one-third of the terms end each year and, in any event, to avoid more than one-half of the terms ending in any single year.

37(7) Subject to subsections (4) and (5), Council may re-appoint members whose terms have expired, have resigned, have forfeited their membership by the operation of subsection (8) or have been expelled by the Historical Buildings and Resources Committee pursuant to subsection (3).

37(8) Subject to subsection 39(4), a member of the Historical Buildings and Resources Committee, other than a member of Council, who fails to attend at least 60% of regular meetings in a calendar year forfeits his or her membership on the Historical Buildings and Resources Committee.

37(9) Members of the Historic Buildings Committee are not appointed as representatives of their employers or the organizations or governments of which they are members but rather are appointed by Council to provide their expertise and advice in a disinterested manner.

### **Duties of Historical Buildings and Resources Committee**

38(1) The Historical Buildings and Resources Committee has the following powers, duties and functions:

- (a) to make recommendations concerning nominations and applications with respect to the List of Historical Buildings and Resources;
- (b) subject to the provisions of this By-law, to determine when reviews of nominated resources or applications under Part 1, Division 3 will take place;
- (c) to give advice to the designated employee when applications for heritage permits are referred to him or her under subsection 31(1);
- (d) to prepare guidelines referred to in subsection 31(2) for use by the designated employee in making decisions concerning applications for heritage permits;
- (e) to provide expert advice, information and assistance to the Designated Committee in respect of heritage plans, policies and programs and on other matters relating to heritage;
- (f) to encourage decision-makers to reflect heritage resource principles and facilitate heritage resource conservation activity in building standards, secondary plans, land use and other regulatory by-laws and planning decisions;
- (g) to encourage integration of heritage considerations into overall city and community planning and into investment and development decision-making;
- (h) to promote public understanding of the importance of conserving heritage resources and of protecting the physical and aesthetic context in which heritage resources and areas exist;
- (i) to offer expert advice to property owners, construction trades and others concerning means by which heritage resources can be protected and conserved;
- (j) to carry out the other functions assigned to it by this By-law or by Council.

38(2) In carrying out its duties and functions, the Historical Buildings and Resources Committee may seek the opinions and advice of experts and advocates, including representatives of the Manitoba Historical Society and the Heritage Winnipeg Corporation.



38(3) The Director must provide professional and technical support to the Historical Buildings and Resources Committee sufficient for the Historical Buildings and Resources Committee reasonably to perform its functions.

### **Procedures of Historical Buildings and Resources Committee**

39(1) The Historical Buildings and Resources Committee may establish rules concerning its procedures and the activities of its members that are not inconsistent with this By-law or *The City of Winnipeg Charter*, including rules concerning conflicts of interest. These rules take effect only when ratified by the Designated Committee. If no rule has been established in this By-law or under this provision concerning a matter, the Procedure By-law No. 50/2007 applies.

39(2) Without restricting the generality of subsection (1), the Historical Buildings and Resources Committee may establish subcommittees, which are not subject to the In Camera By-law, and may elect a Deputy Chair from among the members of the Committee.

39(3) The Historical Buildings and Resources Committee may expel a member, other than a member of Council, for violating rules set out in this By-law or rules established by the Committee.

39(4) At the request of a member who cannot attend meetings of the Committee for a period of time, the Historical Buildings and Resources Committee may suspend the membership of the member for up to six months.

39(5) For the purposes of carrying out the duties of the Historical Buildings and Resources Committee,

- (a) quorum consists of more than 50% of the total number of members appointed to the Historical Buildings and Resources Committee; and
- (b) subject to subsection 39(9), all matters must be decided by a majority of the members of the Historical Buildings and Resources Committee who are present at the meeting.

39(6) For the purposes of determining quorum, vacancies created by resignations, forfeitures of membership, expulsions and suspensions shall not be included in the total number of members of the Historical Buildings and Resources Committee.

39(7) At the discretion of the Chair of the Historical Buildings and Resources Committee, meetings to deal with urgent matters

- (a) may be held in addition to regular meetings;
- (b) may take place with one or more members participating by telephone; and
- (c) are binding where
  - (i) every member of Committee is notified of the meeting, including the agenda of the meeting, at least 24 hours in advance and given a reasonable opportunity to participate; and

- (ii) subject to subsection 39(9), at least 50% plus one member of the Committee participates in the vote.

39(8) As provided for in section 78 of *The City of Winnipeg Charter*, some or all of the members of the Historical Buildings and Resources Committee may convene seminars to receive or discuss information relevant to their work and these seminars are not subject to the provisions of the In Camera By-law.

39(9) Members of Council may participate in discussions concerning nominations, applications and references with respect to heritage permits but are prohibited from voting on the matter. Where this provision applies, the members of Council are not considered to be a member of the Committee for the purposes of clause (5)(b) and subclause (7)(c)(ii).

## **PART 5 MISCELLANEOUS**

### **Offences**

40(1) Any person who contravenes this By-law or an order issued under this By-law commits an offence.

40(2) Any person who demolishes or alters a resource in contravention of this By-law or an order issued under this By-law is subject to a fine of no less than \$1000.00 and no more than \$1 million for each contravention or each day during which a contravention is on-going.

### **Default rules for giving notice**

41(1) Unless otherwise specified, a requirement for giving notice imposed by this By-law may be met by

- (a) personal service on the person required to be notified; or
- (b) sending the notice by registered mail, delivery, fax or e-mail to an address determined in accordance with subsection (3).

41(2) Where notice is given by one of the methods set out in clause 30(1)(b), it is deemed to have been received on the third day after the day it was mailed, delivered, faxed or e-mailed.

41(3) Where it is necessary to determine an address for giving notice for the purposes of this By-law:

- (a) if the document to be given relates to an application made by or on behalf of a person, the address provided as part of the application, including a fax number or e-mail address, may be used;
- (b) if the person to whom the document is to be given or to whom a document is to be sent has provided an address for the purposes of being given or sent notice, the address so provided, including a fax number or e-mail address, may be used.

- (c) if the person to whom the document is to be given or to whom a document is to be sent is the owner of real property, either of the following addresses may be used:
  - (i) the address maintained by the tax collector for the purpose of issuing the tax notice for that property; or
  - (ii) if the person is a registered corporation that has not been dissolved, the address of the registered office of the corporation shown in the articles or incorporation or in the last notice filed under section 19 of The Corporations Act, C.C.S.M. c. C225.

### **Powers of designated employees**

42(1) The Director and other employees of the City to whom this power is delegated by the Director may conduct inspections and take steps to administer and enforce this By-law and, without limiting the generality of the foregoing, may

- (a) issue orders prohibiting work being done in contravention of this By-law; and
- (b) may remedy a contravention of this By-law in accordance with *The City of Winnipeg Charter*.

The Director and employees designated for those purposes have the powers of a designated employee under *The City of Winnipeg Charter* for the purposes of administering and enforcing this By-law.

42(2) Without restricting the powers set out in subsection (1), after giving reasonable notice to the owner and occupant of a building, a designated employee may enter a building where this is reasonably required in order to assess its architectural or historical interest for the benefit of the Historical Buildings and Resources Committee, the Designated Committee and Council in reviewing or considering a nomination or an application under this By-law.

### **Appeals**

43 Except as otherwise provided in this By-law, an appeal from an order or decision of a designated employee that is authorized by *The City of Winnipeg Charter* or this By-law may be made to the Designated Committee by filing a written appeal with the City Clerk in accordance with *The City of Winnipeg Charter*.

### **Historical Buildings By-law repealed and replaced**

44(1) Subject to subsection (2), the Historical Buildings By-law No. 1474/77 is hereby repealed and replaced with this By-law.

44(2) Notwithstanding subsection (1), if on May 1, 2014

- (a) an application has been made under section 12 (Delisting or change of grade) or 17 (Certificate of Suitability) of the Historical Buildings By-law No. 1474/77; or

- (b) the Historical Buildings Committee has made a recommendation with respect to a possible listing under The Historical Buildings By-law No. 1474/77;

the matter shall be dealt with as though the Historical Buildings By-law No. 1474/77 had not been repealed.

#### **Consequential amendments to City Organization By-law**

45 The City Organization By-law No. 7100/97 is amended:

- (a) in section 11, by striking out "*Heritage Matters*";
- (b) in section 13.2,
- (i) by adding
- "*Heritage Matters*"
- immediately after
- "*Planning and Land Use*"; and
- (ii) by striking out subclause (o)(i); and
- (c) by replacing 13.4(b) with "*administer the Historical Buildings and Resources By-law*".

#### **Consequential amendments to Heritage Conservation Tax Credit By-law**

46(1) The Heritage Conservation Tax Credit By-law No. 7155/98 is amended by this section.

46(2) Section 2 is amended by replacing the definition "*designated structures*" with the following:

**"DESIGNATED STRUCTURES"** means those buildings listed on the List of Historical Resources established under the Historical Resources By-law;

46(3) "*Buildings Conservation List*" is replaced with "*List of Historical Resources*" wherever it appears.

46(4) "*Historical Buildings By-law*" is replaced with "*Historical Resources By-law*" wherever it appears.

46(5) Subsection 3(2) is amended by replacing "*The*" with "*So long as the building remains a designated structure, the*" at the beginning of the subsection.

46(6) The following is added after subsection 4(2):

4(3) *The amount of any tax credit provided under 3 in respect of a designated structure is reduced in the first year it is used by the amount of a research fee*

*established by Council with respect to the inclusion of that designated structure on the List of Historical Resources.*

**Consequential amendments to accommodate new name of Historical Buildings Committee**

47 All by-laws of the City of Winnipeg are amended by replacing “*Historical Buildings Committee*” with “*Historical Buildings and Resources Committee*”.

**Coming into force**

48(1) Subject to subsection (2), this By-law comes into force on May 1, 2014.

48(2) Part 4 comes into force when this By-law is enacted by Council.

**DONE AND PASSED**, in Council assembled, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

Approved as to content:

\_\_\_\_\_  
Director of Planning, Property and Development

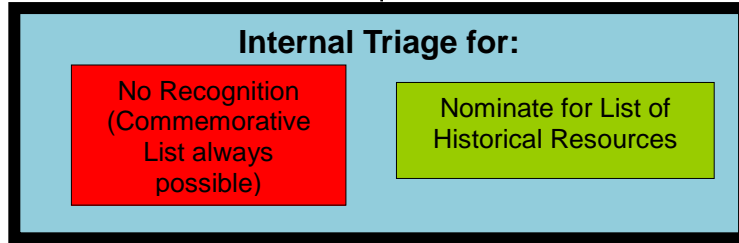
Certified as to form:

\_\_\_\_\_  
for City Solicitor/Manager of  
Legal Services

# Listing

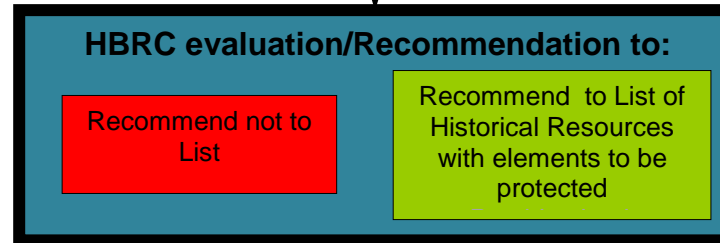
## A

**Owner Application**  
*Provides basic information & indicates elements to be protected; Subject to processing fee.*



## B

**Director Nomination**  
*Indicates elements to be protected*



*Owner option for Expedited Review, Fee \$2,500*

*Owner Appeal to SPC if unhappy with Triage decision/Director Nomination. Subject to fee unless nominated by Director.*

**SPC DDHRM (Delegations)**

**EPC unless:**

- SPC agrees with HBRC and owner doesn't object or
- City-owned property

**Council Final Decision**

# Delisting

## A

Owner Application  
*Subject to processing fee.*

## B

Director Nomination  
*Only if building damaged or destroyed*  
**NOT APPEALABLE**

**HBRC evaluation within 90 days of application**  
**Recommendation to:**

Maintain Listing as is or amend as provided

Remove from List (delist)

**SPC DDHRM**  
within 90 days of HBRC recommendation, Delegations permitted

EPC unless:

- SPC agrees with HBRC and owner doesn't object or
- City-owned property

Council Final Decision

Section	Historical Buildings By-law OLD	Historical Resources By-law NEW	Explanation
List of Historical Resources established 3; Transition from Conservation List 4	Buildings Conservation List, with Grades	List of Historical Resources, No Grades but character defining elements identified, all buildings transferred over upon enactment of by-law and all protections afforded therein continuous	Precise identification of the specific elements that need to be protected
Creation of Listings 5(1)	Listing was assigned a grade which denoted level of protection but was ambiguous	Listing must explicitly set out elements of the resource that are to be protected via a list of "character-defining element"	
5 (2)	No control over property beyond footprint of building	New structures potentially impacting a resource, to be located on the same property, must be approved via a Heritage Permit (including buildings, free-standing signs, etc.)	
Effect of decision by Designated Committee or Council 7(2)	No provisions for re-applying to list or de-list	Can only re-apply for Listing or de-listing after 5 years	
Nomination for resources to be added to List 8(1)	No nomination process	To be recognized in any manner, (Listed or Commemorated) a resource must first be Nominated. This may be owner-initiated (sec 10) or Director-initiated (sec 11.)	
8(2), 8(3)	No nomination process	The Nomination process occurs through the Director of PP&D; resource must be 40 years of age or more to be eligible, protocols for notifications, fees, appeals)	
8(4)	Inventory of Historical Buildings	All buildings on the Inventory on the date this by-law comes into effect are deemed to have been nominated	
Director-initiated nomination process 11(1)		Director may nominate City-owned buildings or others of his/her own accord, but not Single-family dwellings	
Protections for nominated resources 12(1)		Once nominated, a resource cannot be demolished and no alterations until HBRC has generated a list of CDE's	



Review of Nomination by HBRC 13(1)		HBRC has 36 months to review nominations	
13(2) 13(3)		The owner of a nominated resource is entitled to an expedited hearing, for fee, and subject to certain criteria. The HBRC has 90 days to conduct the expedited review.	
Owner's rights re. Review by HBRC 15(1)		HBRC will accept written submissions from owners of nominated resources which must be received within 7 days of their review	
Recommendations of HBRC 16(1)		HBRC can recommend a nominated resource be: Listed; Commemorated or not recognized in any way	
Protection for resources after recommendation by HBRC 17(1)		Once HBRC has made a recommendation on a nomination, certain protections are in place until a final decision has been made	
Consideration by the Designated Committee 18(1)		SPC has 90 days to consider the HBRC's recommendations, owner notified 14 days before SPC review	
Criteria for decision by Designated Committee 19(2)	No criteria for consideration of economic viability	SPC can consider economic vitality as per criteria provided	Reduces ambiguity in decisions
Consideration of nomination by Council 21(1)		Council only makes a decision if non-concurrence between HBRC, SPC and owner recommendations	
Application for removal from or modification of List 25		Delisting applications by owner subject to fee; Director may apply if resource deemed to have lost its heritage significance, HBRC has 90 days to consider. Procedures same as Listing. Not appealable.	
Consideration by Designated Committee 28(2)		SPC will only consider an alternate proposal for the site if redevelopment zoning approvals, permits, etc. in place.	
Emergency preservation powers of Director 32(1)		Director has emergency preservation powers to issue an Order prohibiting alterations before HBRC reviews a nomination/application if they believe irreparable alterations are imminent	

Heritage Permits 33(3)		Criteria provided for consideration of issuing/denying a Heritage Permit and must be consistent with Standards & Guidelines	
Reference to HBRC mandatory 34(1), 34(2)		Designated Employee will refer permit applications to the HBRC for consideration; rely on the advice of the HBRC; and/or apply established guidelines when considering a permit application.	
Notice of decision to owner 35(2)		Decision on a permit application must be made within 90 days	
Public notice of decision 36		When the DE's decision differs from that of the HBRC, the DE must publish a notice on the website. This is appealable by the owner, the public or a Councillor for a fee.	
Commemorative List 37	No means to recognize structures by commemoration only	"Commemorative List" created, is purely commemorative. Controlled by the Director of PP&D, and s/he may establish process(es) by which resources may be brought to his/her attention.	An option for owners who want to be recognized, but want no legal obligations or controls
Historical Buildings and Resources Committee 39(1)	Historical Buildings Committee	Historical Buildings and Resources Committee	
39(2)	3 Councillors, one of which is Chair + maximum 9 appointed citizen members from Manitoba Historical Society, Manitoba Ass'n of Architects, Province of Manitoba, Government of Canada	3 Councillors, one of which is Chair + maximum 10 appointed citizen members from Province of Manitoba, Government of Canada, Manitoba Ass'n of Architects, Manitoba Ass'n of Landscape Architects, Ass'n of Professional Engineers, 2 Citizens-at-large	Now includes additional technical expertise and citizens-at-large; all members have term limits; Councillors appointed at Council's annual Organizations meeting; Citizen appointment through the Commission & Boards Process
39(8)		Members must attend 60% of regular meetings in year or forfeit their membership	
Duties of HBRC 40(1)		Powers, duties and functions explicitly outlined, including open meetings, with in-camera seminars	
40(2)	Membership included select Advocacy groups	No advocacy members but may seek opinions from experts, including the MB. Historical Society and Heritage Winnipeg, etc.	More transparency and fairness in representation

Procedures of  
HBRC 41(1),  
41(2), 41(3)

HBRC may establish rules concerning  
its procedures and the activities of its  
members, may establish Sub-  
committees, may expel members for  
breaking rules