

Memo



Date: July 19, 2011
File: 6800-20
To: City Manager
From: Planner, Policy and Planning
Subject: Heritage Revitalization Agreements Review
Report Prepared by: L. Bytelaar, Planner

Recommendation:

THAT Council directs staff to use the revised Heritage Revitalization Agreement Guidelines in the form attached as Appendix A to the Report of the Planner, Policy and Planning dated July 19, 2011 when drafting Heritage Revitalization Agreements;

AND THAT Council directs staff to continue to work with owners of properties protected by Heritage Revitalization Agreements to achieve compliance with the applicable Heritage Revitalization Agreement Bylaws;

AND THAT staff report back to Council within three (3) months on the extent to which compliance has been achieved and with recommendations regarding potential next steps where compliance has not been achieved;

AND FURTHER THAT Council directs Policy and Planning staff, in conjunction with Bylaw Enforcement staff to conduct site visits to existing Heritage Revitalization Agreements every second year to ensure the agreement is working as effectively as possible for both the City and the property owner.

Purpose:

To address the October 4, 2010 directive from Council that staff "review the Heritage Revitalization Agreement program in its entirety to ensure that the program is protecting the residential character of neighbourhoods while preserving heritage properties; AND THAT Council direct staff to investigate compliance with existing Heritage Revitalization Agreements."

Background:

A Heritage Revitalization Agreement is a voluntary written agreement negotiated by the City of Kelowna and the owner of a heritage building. The agreement outlines the duties, obligations and benefits negotiated by both parties. An HRA may vary or supplement provisions related to zoning, DCC's, subdivision and development requirements. In exchange for the variances or supplemental provisions, the property owner agrees to steps that will protect and/or enhance a heritage register property. Applications for HRA's are reviewed by the Community Heritage Commission and the Advisory Planning Commission prior to Council consideration. If approved by Council, the HRA is registered in the Land Titles Office and carries forward with the land.

A handwritten signature in black ink, appearing to be the initials "L. Bytelaar".

Following a presentation regarding the OCP to the Kelowna South-Central Association of Neighbourhoods (KSAN), staff heard concerns about the amount of commercial uses in the neighbourhood. Staff brought forward this concern to Council, at which time Council directed staff to: “review the Heritage Revitalization Agreement program in its entirety to ensure that the program is protecting the residential character of neighbourhoods while preserving heritage properties, and; investigate compliance with existing Heritage Revitalization Agreements.”

Shortly after staff’s presentation to Council on October 4, 2010, a call was received from BC Assessment BC staff who inquired about four residential properties. The four properties had sold far above assessed value and with real estate listings as commercial sites. This was especially notable at a time of a very soft housing market. BC Assessment was interested in determining how these properties are being recognized in the marketplace so that they can be assessed accurately and equitably. It was noted that the properties identified by BC Assessment were all heritage register properties, two of which are in the Bernard/Lawrence Avenue. This raised concern that the houses are being sold at inflated rates, which means the only viable long-term use may be as commercial sites. For example, the real estate listing for 862 Bernard Avenue stated “bring your business here” despite residential zoning of the property. The property sold at \$124,000 above assessed value. Another property in the Bernard/Lawrence neighbourhood sold for approximately \$185,000 above assessed value.

Beginning in April, 2011, staff from the Policy and Planning Department and Bylaw Services were able to complete site visits to the thirteen properties protected by HRAs in Kelowna. The findings from these site visits are:

- Five of the thirteen properties are strictly for residential use;
- One of the thirteen properties is strictly for commercial use;
- Seven of the thirteen properties have commercial uses in a residential property;
- Generally, property owners who had a commercial use in a residential property felt that they were ‘stewards’ of the heritage house, and commented that the heritage conservation work done to the properties was quite costly but necessary to preserve the heritage quality of the building;
- Of the seven properties that require one or more residential suites on site (in the main residential unit or in a built accessory building), five properties have built the residential suite;
- Of the five heritage properties that have the requisite of a residential suite on site, only two have suites that are occupied. Concern regarding suitable tenants for a shared commercial/residential site was expressed by owners;
- Ten of the thirteen properties have been well restored and are well maintained;
- One of the thirteen properties requires exterior maintenance;
- Two of the thirteen properties require interior maintenance;
- Most of the residential properties with commercial use generally had the feel and use of a commercial property, with the residential use being secondary, if present at all;

- Five of the thirteen heritage property owners were adhering to the existing bylaw for their property; and
- Overall, eight of the thirteen properties had compliance issues (i.e. no residential component, residential component not occupied, no fence, no carriage home, no plaque, incorrect hours of operation, etc.).

At the May 5th Community Heritage Commission (CHC) meeting, the Commission recommended that the residential component (secondary suite, principal dwelling, etc.) of the HRA be strongly enforced when in conjunction with a non-residential use. The residential component minimizes the impacts on the residential character of a neighbourhood as well as provides security along a particular block where a high concentration of adaptive re-use occurs. While some of the properties are not in residential areas, the majority of the properties with HRAs are located in or in close proximity to residential areas.

At the July 7th CHC meeting, the Commission supported the suggested recommendations noted above. The Commission members want to ensure the HRA process is not viewed as onerous rather encourages property owners to consider options for adaptive reuse. The Commission confirmed that the compliance issue with the properties that require a residential component was their greatest concern.

In order to ensure the residential character of neighbourhoods and the long-term viability of the HRAs as a local heritage preservation tool, it is recommended that Council authorize the following process:

1. Site visits by a staff member from Policy and Planning accompanied by a Bylaw Enforcement Officer would be conducted every second year;
2. For properties that are not in compliance to their HRA, a letter will be sent out indicating the compliance issue(s). Potential next steps may include amending individual Heritage Revitalization Agreements or initiating action to cancel individual Heritage Revitalization Agreements;
3. The property owners will be given three months for them to achieve compliance and ensure adherence to the bylaw, or in cases where applicable, amend the bylaw, before Bylaw Enforcement action is issued (see Appendix B).

There are also recommended changes to the Guidelines, attached as Appendix A. Changes are shown in bold italics.

External Agency/Public Comments:

“BC Assessment has no comment that needs to be included. But thank you for including me in this discussion and please let me know the verdict of this review.” Amanda Boru, BC Assessment

Internal Circulation:

Director, Land Use Planning
 Director, Real Estate & Building Services
 Bylaw Enforcement Supervisor, Corporate Services

Legal/Statutory Authority:

Local Government Act, sections 956, 957 and 966

Existing Policy:

Official Community Plan 2030, policy 5.7.3 **Heritage Revitalization Agreements**. Consider the adaptive reuse of heritage buildings appropriate within any future land use designation, provided that a Heritage Revitalization Agreement is negotiated with the City and provided that the project meets the criteria established for sensitive neighbourhood integration.

Official Community Plan 2030, policy 9.2.3 **Financial Support**. Continue to support the conservation, rehabilitation, interpretation, operation and maintenance of heritage assets through grants, incentives and other means.

Considerations not applicable to this report:

Legal/statutory Procedural Requirements:

Alternate Recommendation:

Financial/Budgetary Considerations:

Community & Media Relations Considerations:

Personnel Implications:

Submitted by:



Lauren Bytelaar, Planner, Policy and Planning

Reviewed by:



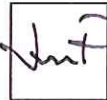
Theresa Eichler, Manager, Community Planning

Reviewed by:



Gary Stephen, Acting Director, Policy and Planning

Approved for inclusion:



Jim Paterson, General Manager, Community Sustainability

cc: Deputy City Clerk
Dan Maja, Bylaw Services
Laurie Lundman, Bylaw Services

Attachments: Appendix A, Revised Heritage Revitalization Agreement Guidelines
Appendix B, Heritage Revitalization Agreement - 5.0 Breach

City of Kelowna Adaptive Re-use Guidelines for Residential Heritage Buildings

The Kelowna Official Community Plan recommends the use of Heritage Revitalization Agreements to allow for the adaptive re-use and continuing protection of heritage buildings. Entering into a Heritage Revitalization Agreement with the City of Kelowna allows owners of heritage buildings to use their building for purposes that would not otherwise be allowed. The additional revenue obtained from these adaptive re-uses can then be used to help restore and maintain their heritage building. In turn, the community benefits from the conservation of Kelowna's built heritage.

Please note: changing a residential building to a commercial use may require modifications so as to meet the requirements of the BC Building Code.

Objectives related to permitting the adaptive re-use of residential heritage buildings:

- To conserve Kelowna's residential heritage buildings listed in the Kelowna Heritage Register by enhancing their appearance and viability as functional buildings;
- To retain the desirable qualities of older residential neighbourhoods such as heritage houses, mature landscaping and pedestrian oriented street environments;
- To favourably consider a limited range of uses which would achieve the adaptive re-use of heritage buildings and at the same time, would preserve the prevailing character of neighbourhoods by limiting impacts such as high amount of traffic, noise, smell, etc.;
- To ensure that allowing adaptive re-uses within heritage buildings does not have a negative impact on the viability of existing commercial areas within Town Centre areas.

The Adaptive Re-use Guidelines apply to areas designated Residential in the Official Community Plan. The following guidelines reinforce that there is an essential relationship between the proposed use in a heritage building and the location of the heritage property relative to the surrounding streets and the character of the neighbourhood. The type and intensity of a proposed adaptive re-use will be assessed according to which category of roadway will best be able to accommodate that particular use. The roadway categories are based on the Official Community Plan 20 Year Major Road Network Plan.

On major roads, a greater variety and intensity of uses can be supported without affecting the character of the area given the existing impacts of prevailing traffic volumes. The potential exists in these locations to allow adaptive re-uses normally considered not appropriate within residential locations, provided controls are in place to limit scale and concentration of adaptive re-uses within a given area.

For the purpose of these guidelines, roads not identified as major roads on the 20 Year Major Road Network Plan will be considered local roads. Adaptive re-uses that can be supported along local roads also include those uses that would typically be permitted in residential zones, such as home based businesses, bed and breakfast homes, care centres, secondary suites and group homes. The difference would be that the scale and conditions of such uses could be expanded, to a lesser degree than on major roads, under a Heritage Revitalization Agreement.

Site Specific Criteria

After consideration has been given to location, each adaptive re-use proposal must be assessed on its own merits as to whether the proposal would be appropriate within the context of the heritage building, the surrounding neighbourhood and adjacent property characteristics. In this regard, the following factors should be considered:

1. Neighbourhood Resident Concerns

The concerns of neighbouring property owners should be considered. Identifying and, wherever possible, resolving these issues when developing the terms and conditions specific to an application is important. Applicants are encouraged to discuss their proposed adaptive reuse with neighbouring property owners.

2. Residential Component

A residential component (secondary suite, principal dwelling, etc.) *is mandatory* in conjunction with a non-residential use in order to minimize impacts on the residential character of a neighbourhood. For security purposes, incorporating a residential component is particularly important where a high concentration of adaptive re-uses occurs along a particular block.

3. Concentration of Adaptive Re-Uses

Careful consideration must be given to avoid a concentration of adaptive re-uses in any given area. In this regard, consideration should be given to maintaining the existing neighbourhood character. In addition, consideration should be given to whether or not permitting an adaptive re-use or a concentration of adaptive re-uses would limit the ability to redevelop the area to higher density uses supported in the OCP.

4. Design Standards

Any heritage building restorations, renovations or alterations must respect the heritage character of the building and its surrounding area. Reference should be made to the character-defining elements for the property as detailed in the Heritage Register record.

5. Scale

The size and intensity of the adaptive re-use component should be compatible with the surrounding neighbourhood and able to be readily accommodated within an existing heritage building. The requirements of a specific use and the available floor area in the existing building will limit the extent and nature of the adaptive re-use proposal. It is recommended that the number of employees not exceed four non-resident employees at any given time for adaptive re-

uses along major roads and two non-resident employees at any given time for adaptive re-uses along local roads. *In addition to this, it is recommended that, the non-residential floor area not exceed 60% to a preferred maximum of 232 sq. m (2500 sq. ft) for adaptive re-uses along major (collector or arterial¹) roads, and 40% to a preferred maximum of 139 sq. m (1500 square feet) for adaptive re-uses along local roads.*

6. Signage

Signage should be limited to one non-illuminated nameplate not to exceed 0.23 sq. m. (2.5 sq. ft.) in area and shall be placed within, flat against or hanging from the dwelling unit. Along major roads, signs of this size and dimension may be hung from a free standing post.

7. Parking / Access

Consideration must be given to on-site parking, access and traffic generation associated with adaptive re-use proposals. In order to limit the impact on adjacent properties, the required number of on-site parking spaces should conform to the Parking Schedule of the Zoning Bylaw.

8. Hours of Operation

No generation of vehicular traffic or parking of vehicles in excess of that permitted for the zone in which the adaptive re-use is located should be permitted during non-regular working hours. Generally, working hours should be limited to daytime hours, Monday through Friday.

9. Screening

Screening helps lessen the impact of an adaptive re-use in a residential area. In this regard, outdoor storage and parking areas associated with an adaptive re-use should be well screened with fencing and landscaping which are compatible in design with the heritage building and which form a year round dense screen.

¹ As shown on the 20 year Road Network Plan in the Official Community Plan.

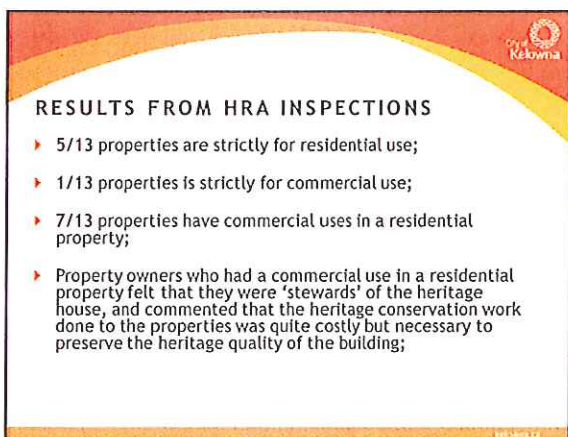
Appendix B

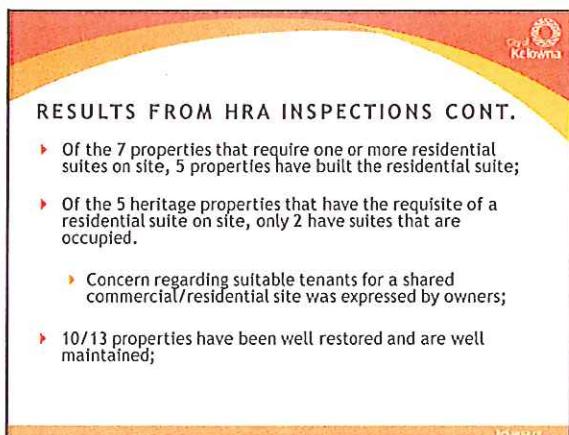
(please note, breach is taken out of existing Heritage Revitalization Agreement)

5.0 Breach

In the event the Owner is in breach of any term of this agreement, the City may give the Owner notice of writing of the breach and the Owner shall remedy the breach within 30 days of receipt of the notice. In the event that the Owner fails to remedy the breach within the time limited by the notice, the City may, by bylaw and after conducting a public hearing in the manner prescribed by Sections 890 through 894 of the *Municipal Act*, cancel this agreement whereupon this agreement shall be terminated and all use and occupation of the heritage property shall thenceforth be in accordance with the City of Kelowna's *Zoning Bylaw* and in accordance with all other bylaws and regulations of authority having jurisdiction.









RESULTS FROM HRA INSPECTIONS CONT.

- ▶ 1/13 properties requires exterior maintenance;
- ▶ 2/13 properties require interior maintenance;
- ▶ Most of the residential properties with commercial use generally had the feel and use of a commercial property, with the residential use being secondary, if present at all;
- ▶ 5/13 heritage property owners were adhering to the existing bylaw for their property; and
- ▶ 8/13 properties had compliance issues

EXAMPLES OF COMPLIANCE ISSUES



No residential component




Residential component but not occupied


EXAMPLES OF COMPLIANCE ISSUES CONT.



Not maintaining exterior of the heritage building



Residential component but not occupied



RECOMMENDATION:

- ▶ Staff to:
 - ▶ Ensure HRAs conform with HRA Guidelines
 - ▶ Work with property owners to achieve compliance
 - ▶ Report back to Council in 3 months and recommend:
 - ▶ Amend HRA
 - ▶ Initiate action to cancel HRA (see Breach - Appendix B)
 - ▶ Conduct site visits with Bylaw Enforcement every 2nd year to ensure compliance.

1439967.4
