

Kensington Market Neighbourhood - Designation of Study Area By-Law

Date: July 23, 2018

To: City Council

From: Chief Planner and Executive Director, City Planning

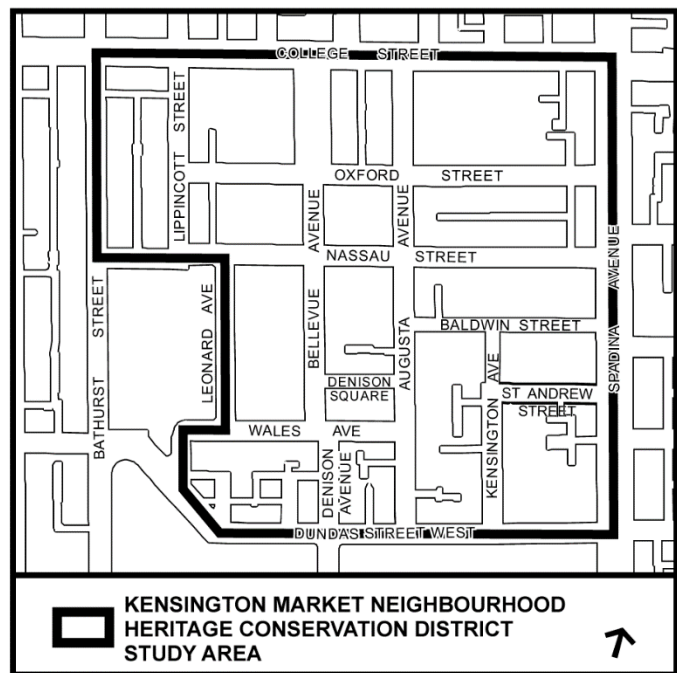
Wards: Ward 20 Trinity-Spadina

SUMMARY

This report proposes the designation of a Heritage Conservation District (HCD) Study Area By-law under the Ontario Heritage Act for the Kensington Market Neighbourhood HCD Study Area while City Planning is developing an HCD Plan to meet the requirements of the Ontario Heritage Act.

The Study Area is approximately 35-hectares bounded by College Street to the north, Spadina Avenue to the east, Dundas Street West to the south and Bathurst Street, Leonard Avenue and Carlyle Street to the west as shown in Attachment 1.

The proposed by-law will impose restrictions on the demolition or removal of any buildings or structures on commercial and mixed use properties within the study area for a period of one year.



RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning recommends that:

1. Pursuant to Section 40.1 of the Ontario Heritage Act, City Council enact the Kensington Market Neighbourhood Heritage Conservation District Study Area By-law, substantially in accordance with the draft by-law attached as Attachment 2 to the report (July 23, 2018) from the Chief Planner and Executive Director, City Planning Division, for the Kensington Market Neighbourhood Heritage Conservation District Study Area as shown in Schedule A of the attached draft by-law, in order to prohibit the demolition or removal of any buildings or structures on the commercial and mixed use properties listed in Schedule B for a period of one year.
2. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft By-law as may be required.

FINANCIAL IMPACT

The recommendations in this report contain no financial impact.

DECISION HISTORY

On March 5, 6, and 7, 2012, City Council adopted the document titled "Heritage Conservations Districts in Toronto: Procedures, Policies and Terms of Reference" (January 2012) Attachment 1 of the report (January 25, 2012) from the Chief Planner and Executive Director, City Planning for the nomination, studying and planning of Heritage Conservation Districts in Toronto.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.TE11.43>

At its meeting on March 31, 2015, City Council authorized and prioritized Kensington Market for a Heritage Conservation District Study.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PG2.8>

At its meeting on May 10, 2016, Toronto and East York Community Council adopted the expansion of the Kensington Market Heritage Conservation District Study Area boundary to Spadina Avenue, Dundas Street West, Bathurst Street and College Street.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TE16.66>. City Council delegated authority for this matter to the Toronto and East York Community Council.

ISSUE BACKGROUND

The Kensington Market Neighbourhood Heritage Conservation District (HCD) Study Area is approximately 35-hectares and is bounded by College Street to the north, Spadina Avenue to the east, Dundas Street West to the south and Bathurst Street, Leonard Avenue and Carlyle Street to the west. There are 868 properties located in the HCD study area, of which 335 are commercial and mixed use properties.

City Staff are currently in the Plan phase of the HCD Study for the Kensington Market Neighbourhood. At its meeting on September 28, 2017, the Toronto Preservation Board endorsed staff recommendations that the Kensington Market Neighbourhood merits designation as an HCD under the Ontario Heritage Act (OHA) and that an HCD Plan for the study area should be prepared. Community consultation conducted as part of the first phase of the HCD Study indicated that there is community support for an HCD in this area. The community considers the relationship of commercial and residential components of the neighbourhood as integral to the overall heritage character of the neighbourhood due to the long-standing live-work tradition in the area.

The community has also expressed concern about decreased affordability of rental units, the resulting pressure on current tenants, and the impact of increased rental costs on the overall character of the neighbourhood. While the HCD cannot regulate rental rates, it can prevent the demolition of properties within the study area while the City develops policies and guidelines to conserve the unique heritage character of the Kensington Market Neighbourhood.

At present, staff are conducting additional policy research and analysis of the study area and heritage planning best practices from around the globe in order to inform a "made in Kensington" district approach. The study area's complexity, including its identified tangible and intangible cultural heritage values and heritage attributes requires careful consideration. For example, the significance of lot widths to the overall heritage character of the study area needs an innovative policy response to conserve this heritage attribute. Staff will continue to work on the HCD Plan, including community consultation in Q4 2018, and will also consult with a community advisory group. It is anticipated that the HCD Plan will take approximately one year to develop. Upon completion, the HCD designation and HCD Plan for the Kensington Market Neighbourhood will be presented to the Toronto Preservation Board, Toronto East York Community Council and City Council in 2019.

Commercial and mixed use properties located in the Kensington Market Neighbourhood HCD Study Area are at risk of demolition as the City cannot deny or withhold a demolition permit where the applicant has complied with all applicable law. During the election period, staff have no authority to add properties with potential heritage value to the City's Heritage Register. Under section 40.1 of the OHA, municipalities have the option to enact a HCD Study Area By-law to maintain the stability and integrity of the area while the study is being undertaken. Study area by-laws are restricted to a one year period.

COMMENTS

The City of Toronto's Official Plan contains policies that seek to protect and manage cultural heritage resources, including significant buildings, properties, districts, landscapes and archaeological sites. The Official Plan recognizes the contribution of these resources to sustainable development and place making, and provides policies to guide their conservation and wise use. Revisions to the Official Plan in 2015 (OPA 199) have provided clarification and direction on the identification, study and evaluation of cultural heritage resources, including Heritage Conservation Districts (HCD) in Toronto. Section 5.1.3 Heritage Conservation states that HCDs will be protected by being designated under the Ontario Heritage Act.

Ontario Heritage Act

The Ontario Heritage Act (OHA) is the key piece of legislation for the conservation of heritage resources in Ontario. It regulates, among other things, how municipal councils can identify and protect heritage resources, including archaeological resources, within municipal boundaries. This is largely achieved through designation of individual properties under Part IV, or designation of HCDs under Part V.

Prior to designating a HCD, City Council must undertake a HCD study to determine if the area merits designation. Section 40 (2) of the OHA identifies the scope and required components of a HCD study. These include: an analysis of the character and appearance of the district; recommendations for the district's boundaries; objectives of the HCD plan; and recommended changes to the Official Plan and municipal by-laws, including zoning by-laws.

The OHA requires an HCD plan to include "policy statements, guidelines and procedures for achieving the stated objectives and managing change" in the district. A HCD plan contains policies and guidelines that are intended to conserve and enhance the cultural heritage value and heritage attributes of the district. These policies and guidelines will inform decisions on alterations, new construction and demolition.

Under section 40.1 of the OHA, municipalities have the option to enact a HCD Study Area By-law while the study is being undertaken. A study area by-law under section 40.1 of the OHA is restricted to a period of up to one year.

Since the OHA was amended in 2005, City Council has enacted two study area by-laws under section 40.1. Study area by-laws were enacted in the final year of the studies and successfully stabilized the areas while the Historic Yonge Street and King-Spadina HCD studies were completed. Where necessary, City Council has also adopted the inclusion of multiple properties within a study area on the Heritage Register as an additional interim protection measure for HCD study areas.

Rationale for Proposed HCD Study Area By-law

The community is alarmed by the pace of change occurring in the Kensington Market Neighbourhood while the HCD Study is underway. Since the study was prioritized by Council in 2015, there have been 25 minor variance applications on commercial/mixed use properties; 17 minor variance applications on residential properties; and 6 demolition applications where 4 demolition permits have been issued within the Kensington Market Neighbourhood HCD Study Area. Recently, City Council had to urgently pass an Intention to Designate the Alexandria Block on College Street when the owner of the property located at 289 College Street submitted an application to demolish the property after it was identified for its heritage potential in the first phase of the HCD Study.

Commercial and mixed use properties located within the study area that have not been listed or designated under the OHA are at greater risk of demolition than residential properties as the City cannot deny or withhold a demolition permit where the applicant has complied with all applicable law. During the election period, City staff have no authority to add properties with potential heritage value to the City's Heritage Register. Without a study area by-law designation, the City cannot proactively protect potential heritage properties and the cultural heritage value of the Kensington Market Neighbourhood HCD Study Area in a timely manner as there is insufficient time and staff resources to evaluate all of the properties at risk.

Staff do not recommend imposing restrictions on residential properties within the study area as they are currently subject to demolition control under Municipal Code 363-11&12, which requires an approved building permit for a replacement building prior to the issuance of a demolition permit. City staff will continue to closely monitor minor variance applications to ensure that residential properties with potential heritage value are not demolished.

An HCD study area by-law would protect the integrity of the district and provide necessary stability for the Council-authorized and prioritized Kensington Market Neighbourhood HCD Study while Staff complete the HCD Plan. Staff anticipate delivering an HCD Plan with proposed policies and guidelines to conserve the heritage values and attributes of the Kensington Market Neighbourhood prior to the expiration of the study area by-law.

HCD Study Area By-law Designation

The proposed HCD Study Area By-law prohibits the demolition or removal of the buildings and structures located on the commercial and mixed use properties (335 properties) listed in Schedule B to the by-law within the proposed Kensington Market Neighbourhood Heritage Conservation District Study Area. The by-law will also:

- Allow alterations or erection of new buildings or structures on all properties;
- Allow demolition or removal of any buildings or structures located on any of the properties listed in Schedule B to the attached draft by-law with approved zoning in place and in full force and effect, in accordance with the approved zoning; and

- Allow demolition or removal of any buildings or structures on any of the properties listed in Schedule B to the attached draft by-law in accordance with approved zoning, if final zoning approval is obtained and comes into full force and effect during the one year study period.

Conclusion

The proposed HCD Study Area By-law prohibits demolition or removal of any buildings or structures on the commercial and mixed use properties located within the proposed Kensington Market Neighbourhood Heritage Conservation District Study Area listed in Schedule B to the by-law. It does not affect the processing of planning applications, the adoption of zoning by-laws or official plan amendments, the granting of variances by the Committee of Adjustment or any other City approvals required by City Planning or other divisions. It also allows for alterations, new construction and demolitions that have been granted through planning approvals received following its enactment.

The purpose of the proposed HCD Study Area By-law is to protect the integrity of the Kensington Market Neighbourhood while the City completes a Council authorized and prioritized HCD study. If a HCD study area by-law is not enacted, potential heritage properties will be at risk of demolition and the heritage value of the area could be diminished before a HCD designation by-law is passed by City Council. Staff anticipate delivering an HCD designation with an HCD Plan comprising proposed policies and guidelines to conserve the heritage values and attributes of the Kensington Market Neighbourhood in the third quarter of 2019, prior to the expiration of the study area by-law in one year.

CONTACT

Tamara Anson-Cartwright, CAHP
Program Manager
Heritage Preservation Services
Tel: 416-338-1083; Fax: 416-392-1973
Email: tamara.anson-cartwright@toronto.ca

Mary L. MacDonald, MA, CAHP
Senior Manager
Heritage Preservation Services
Tel: 416-338-1079 Fax: 416-392-1973
mary.macdonald@toronto.ca

SIGNATURE

Gregg Lintern, MCIP, RPP
Chief Planner and Executive Director
City Planning Division

ATTACHMENTS


Attachment No. 1 – Commercial Properties in the Kensington Market Neighbourhood
HCD Study Area Map

Attachment No. 2 – Kensington Market Neighbourhood HCD Study Area By-law



Attachment No. 1 – Commercial Properties in the Kensington Market Neighbourhood
HCD Study Area Map




**Kensington Market Neighbourhood Heritage Conservation
District Study Area - Commercial Properties in Study Area**

 Study Area Boundary

Zoning By-law 569-2013
 Commercial Residential

Zoning By-law 438-86
 CR - Mixed-Use District
 MCR - Mixed-Use District


Not to Scale
Extracted: 07/20/2018

Authority: MM , moved by Councillor Cressy, seconded by Councillor Layton, adopted by City of Toronto Council on July 23, 24, and 25, 2018

CITY OF TORONTO
BY-LAW XXXX-2018

To designate the Kensington Market Neighbourhood area between College Street to the north, Spadina Avenue to the east, Dundas Street West to the south and Bathurst Street, Leonard Avenue and Carlyle Street to the west as a Heritage Conservation District Study Area.

Whereas the area known locally as the Kensington Market Neighbourhood between College Street to the north, Spadina Avenue to the east, Dundas Street West to the south and Bathurst Street, Leonard Avenue and Carlyle Street to the west and shown outlined in bold on Schedule A attached to this by-law includes a collection of commercial, mixed use, residential, and open space properties that together represent a significant cultural heritage landscape in Toronto; and

Whereas the purpose of a heritage conservation district study is to examine the character and appearance of an area to determine if the area should be preserved as a heritage conservation district and to consider and make recommendations with regard to the establishment of a district plan to guide changes to properties located within the district; and

Whereas the Ontario Heritage Act provides that if the council of a municipality undertakes a study of a heritage conservation district, the council may, by by-law, designate the area specified in the by-law as a heritage conservation study area for a period of up to one year; and

Whereas the Ontario Heritage Act provides that a heritage conservation district study area by-law may prohibit or set limitations with respect to the alteration of property and the erection, demolition or removal of buildings or structures, or classes of buildings or structures within the heritage conservation district study area;

The Council of the City of Toronto enacts:

1. The area shown outlined in bold on Schedule A attached this by-law (the Kensington Market Neighbourhood Heritage Conservation District Study Area) is designated as a heritage conservation district study area for a period of one year from the date of enactment of this by-law.
2. The City shall undertake a heritage conservation district study of the Kensington Market Neighbourhood Heritage Conservation District Study Area in accordance with the requirements of the Ontario Heritage Act, for the purpose of examining the character and appearance of the area to determine if the area, or any part of the area should be preserved as a heritage conservation district and to make recommendations with respect to the content of a heritage conservation district plan.

3. During the period of one year from the date of enactment of this by-law (the Study Period) no person shall demolish or remove or permit the demolition or removal of any of the buildings and structures located on the commercial and mixed use properties within the Kensington Market Neighbourhood Heritage Conservation District Study Area identified in Schedule B to this by-law.

4. Despite section 3 of this by-law:

A. Any properties listed in Schedule B that have prior to the date of enactment of this by-law, obtained approval to demolish or remove buildings or structures located thereon, in accordance with a final zoning by-law amendment approval, shall be permitted to proceed with any such demolition or removal in accordance with the approval granted.

B. Any properties listed in Schedule B that during the one year term of this by-law, obtain final approval for a zoning by-law amendment, such amendments to have come into full force and effect, which amendment permits the demolition or removal of buildings or structures located on those properties, shall be permitted to proceed with any such demolition or removal in accordance with the approval granted.

5. The City Clerk shall cause a copy of this by-law to be served upon the owners of all of the properties within the Kensington Market Neighbourhood Heritage Conservation District Study Area and upon the Ontario Heritage Trust within 30 days of the passage of this by-law and shall cause notice of this by-law to be posted on the City's web site for a period of 30 days in accordance with Municipal Code Chapter 162, Notice, Public, Article II, § 162-4.1. Notice requirements under the Ontario Heritage Act.

Enacted and passed on July XX, 2018.

Frances Nunziata, Ulli S. Watkiss,
Speaker City Clerk

(Seal of the City)

SCHEDULE B
LIST OF COMMERCIAL AND MIXED USE PROPERTIES WITHIN THE KENSINGTON
MARKET NEIGHBOURHOOD HERITAGE CONSERVATION DISTRICT STUDY AREA

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