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Demolition By-laws: Best Practices

Municipal management and control of the demolition of immovables was tightened in 2021 with the adoption of the *Act to amend the Cultural Heritage Act and other legislative provisions* (2021 c. 10; Bill 69). This law contained amendments to the *Act respecting land use planning and development* (ALPD), making it mandatory for municipal bodies to adopt a by-law on the demolition of immovables by April 1, 2023.

Many municipalities were already familiar with such by-laws, considering that the power to adopt them had existed in the ALPD since 2005. For others, it was an opportunity to quickly familiarize themselves with the mechanism, as they had never used it before. Given that some municipal bodies have had to hastily draft and adopt their demolition by-laws in order to meet the April 1, 2023, deadline, we felt it was appropriate to share a few best practices for drafting and applying this newly mandatory law to help your municipality take full advantage of it.

Objectives

In order for municipalities to understand the importance of drafting demolition by-laws, as well as the different options available to them, we believe it is essential to understand the scope of the objectives that demolition by-laws can help to achieve.

More specifically, the context of Bill 69, as well as the fact that it mainly contains amendments to the *Cultural Heritage Act*, suggest that demolition by-laws should largely focus on protecting heritage and historic immovables. However, municipalities may use them to pursue other goals. For example, a municipality may legitimately seek to prevent (or alleviate) a housing shortage by preventing rental properties from being demolished. It can also try to encourage good environmental practices by promoting the use of existing immovables, thereby limiting the consumption of construction materials. The by-law can even be a good way to control the land use that will replace an immovable whose demolition has been authorized.

Covered immovables

The ALPD states that demolition by-laws must cover heritage immovables at a minimum. However, municipalities are free to apply the by-law to other types of immovables, and we encourage them to be creative in establishing the criteria for determining which ones are covered. Among others, municipalities can subject immovables to the by-law by virtue of their construction date, use, location, or even the materials of which they are built. For example, all immovables in an industrial district could be exempted from the demolition by-law, except for those built before a given year and those with wooden frames (regardless of when they were built).

It should be noted, however, that if a by-law does not specify the immovables to which it applies, the ALPD states that all immovables in a municipality will be subject to it.

Covered work

In the absence of a definition of “demolition” in the ALPD, it must be assumed that all “demolition work,” in the common and usual sense of the term, is covered by the demolition by-law. This includes partial demolition, so we believe it is necessary to clearly define “partial demolition” in the by-law to prevent conflicting interpretations. There are a number of ways to do this. The by-law may stipulate that only demolition work affecting a certain percentage of the immovable’s footprint is subject to the by-law. This approach is simple to apply, but has the disadvantage of not covering demolition done only on one floor of an immovable (and therefore not affecting its “footprint” per se). The threshold can also be set as a percentage of the immovable’s volume, but this could mean that some work will slip under the radar—for example, demolishing a stone or brick façade of significant heritage interest does not affect much of an immovable’s volume, but has major consequences for its appearance. It may therefore be useful to dictate that certain types of work be expressly considered “partial demolition” of an immovable (for example, “all work involving the removal or dismantling of the exterior cladding of an immovable”), while obviously taking care not to distort the notion to the point where the municipality could be criticized for over-regulating.

That said, it is important to consider the practical scope of the criteria used to qualify certain work as “partial demolition,” to ensure that the objectives of the by-law are met.

Criteria for analyzing applications

The law stipulates that the demolition committee must consider certain criteria before it renders a decision on a demolition application, but here again, the municipality can be creative in establishing other criteria, depending on its objectives. For example, it can have the committee consider the environmental sustainability of the demolition project (such as whether there are initiatives to reuse or recover the demolition materials). It could also establish a criterion related to the owner's efforts to keep the immovable in good condition (to prevent "demolition by abandonment"), or to the inconvenience of renovating rather than demolishing, in order to ensure that the demolition is truly necessary.

Conclusion

Naturally, this is only a brief overview of what we consider to be the best practices in drafting and applying a demolition by-law. We hope, however, that it will help you consider all of the possibilities the ALPD offers municipalities to adapt their by-laws to suit their needs, and understand how useful this tool can be in guiding projects on their built heritage.



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