

BY-LAW NO 1-07

ROTHESAY HERITAGE PRESERVATION BY-LAW

BE IT ENACTED by the Council of Rothesay under the authority vested in it by the *Municipal Heritage Preservation Act*, Chapter M-21.1, Acts of New Brunswick 1978, as follows:

INTERPRETATION

1. In this By-law,

“**Act**” means the *Municipal Heritage Preservation Act*, 1978, Statutes of New Brunswick, Chapter M-21.1;

“**Appeal Board**” means the Assessment and Planning Appeal Board established under the *Assessment and Planning Appeal Board Act*;

“**Appurtenances**” includes but is not limited to walls, fences, light fixtures and standards, steps, paving and signs;

“**Assessed value**” means the real and true value of a property as determined by assessment under the *Assessment Act*.

“**Board**” means the Preservation Review Board appointed pursuant to Section 8 of the Act;

“**Building**” means any structure whether temporary or permanent, used or build for the shelter, accommodation or enclosure of persons, animals, material or equipment

“**Certificate**” means a Certificate of Appropriateness provided for by the Act;

“**Council**” means the Mayor and Councillors of Rothesay;

“**Design**” means general appearance of the exterior of a building or structure, including size, shape, exterior surface textures, qualities and types of exterior materials, relationship to its site, and other matters relating to the nature of the exterior appearance;

“**Design Guidelines**” means design principles and standards which are developed by the Board from time to time to guide decision-making regarding renovation and new construction in a preservation area;

“**Development**” means the erecting, placing, relocation, removing, renovating, restoring, demolishing, altering, repairing or replacing of the exterior of a building or structure, in whole or in part, or the erection of any external signage other than traffic control devices or statutory notices, within a preservation area and, with respect only to that portion of the preservation area described in the attached Schedule "B", shall also include landscaping and permanent recreational facilities;

“Height of a building or structure” means the vertical distance from the ground at the centre of the building façade to the highest point of the coping of a flat roof between the eaves and a ridge or to the deck line of a mansard roof or the average height between the plate and ridge of a gable, hip, or gambrel roof and excluding such structures as chimneys, and steeples;

“Incompatible” means a building or structure that, in the opinion of the Board, does not have architectural and/or historical significance;

“Landscaping” means to change the appearance of land and/or altering its contours and/or planting/removing trees and shrubs;

“Listing agreement” means the agency agreement formed between a vendor as Principal and their agent regarding the trade of property and includes the New Brunswick Real Estate Board’s standard listing agreement form and includes those agreements which are listed on the New Brunswick Real Estate Board’s MLS® (“MLS® LISTINGS”) and, unless the context indicates otherwise, exclusive listings.

“Maintenance” means routine, cyclical, non-destructive actions necessary to slow or prevent the deterioration of a building, structure or historic place. It entails periodic inspection; routine, cyclical, non-destructive cleaning; minor repair and refinishing operations; replacement of damaged or deteriorated materials with compatible traditional materials and details of similar profiles as the original. It does not include any alteration, design change and/or replacement where such replacement involves a change in design or material. For the purpose of this By-law the cleaning of a masonry building or structure is deemed to constitute an alteration to the exterior surface texture and is not considered maintenance.

“Municipality” means Rothesay;

“Owner” means the registered owner of a building or structure within a preservation area or an agent of that person, or a person in possession of a bona fide contract to purchase same;

“Preservation area” means a preservation area established under Section 5 of the Act and designated in Section 3 of this By-law;

“Standards” means the standards of development set out in this By-law.

PURPOSES

2. The purposes of this By-law are:
 - (a) To promote the economic, educational, cultural and general development of the municipality through the preservation and protection of the distinctive characteristics of buildings and places of historical or architectural significance in preservation areas, through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith;
 - (b) To ensure the development of buildings and structures within the preservation area is undertaken in a form compatible with the historical or architecturally significant styles found in the municipality;

PRESERVATION AREA

3.
 - (1) That portion of the municipality described in the attached Schedule "A", which forms part of this By-law, is hereby established and designated as a preservation area.
 - (2) This By-law shall apply to the preservation area established by subsection (1).

ADMINISTRATION

4. This By-law shall be administered by the Preservation Review Board in accordance with Section 9 of the Act.

GUIDANCE STANDARDS AND POLICIES

5.
 - (1) In order to foster consistent policies in preserving the historic and architectural character of preservation areas and to provide guidance to the public on appropriate standards of design for developments in a preservation area, the Board shall maintain a file or files containing:
 - (a) records of all applications, the action taken by the Board, plans and drawings submitted and any amendments thereto; and
 - (b) drawings, photographs and other descriptive or pictorial items showing structures, architectural styles, and materials appropriate to the municipality
 - (2) The Board may develop and adopt a set of design guidelines, subject to the approval of Council, to assist in the understanding of specific design parameters and shall refer to these guidelines when assessing applications for development in a preservation area.

CERTIFICATE OF APPROPRIATENESS

6. (1) Subject to subsection (2), no person shall carry out or cause to be earned out any development within the preservation area, whether a building permit or demolition permit has been issued or not, until a Certificate of Appropriateness has been issued by the Board, or the Board determines that a Certificate is not required, as in the case of ordinary maintenance.
- (2) No development in accordance with the Certificate shall be earned out until every right of appeal under the Act has been exercised in the particular case or until the time prescribed by the Act for the exercise of that right of appeal has expired.

APPLICATION FOR A CERTIFICATE OF APPROPRIATENESS

7. (1) An application for a Certificate of Appropriateness shall be filed with the Development Officer who shall not accept any application which is incomplete or appears to be incomplete.
- (2) An application shall be made by the owner of the property for which the development is proposed in the form prescribed by the Board and shall include:
 - (a) in the case of an existing building or structure
 - development plans and specifications which describe any proposed demolition or alterations to such building or structure or appurtenances related thereto, including additions, deletions and design changes, or
 - (b) in the case of new development
 - development plans and specifications of the proposed building or structure and appurtenances related thereto.
 - (c) in the case of development of the area described in Schedule “B”
 - in addition to development plans under subsection (2) (a) and (b), development plans and specifications which describe any proposed landscaping and appurtenances related thereto.
- (3) Prior to deciding on an application for a certificate the Board shall inform the applicant and property owners in the Heritage Area, if the application is for new construction or the application includes plans to increase the footprint or height of an existing building. As well, the Board shall make available a notice on the Rothesay website that such an application is under consideration.
- (4) Where the Board deems it necessary, a public hearing on an application may be conducted by the Board.

- (5) Evidence of the Board's approval shall be a certificate which shall be numbered and signed by the Chairperson, Vice-Chairperson or Board Secretary stating that the proposed development for which application has been made is approved, or the Appeal Board on appeal, bearing the date of approval, and any terms or conditions on which approval is granted.
- (6) The Board may issue a certificate subject to such terms and conditions as it considers necessary for the standard to be met.
- (7) If the Board determines that, upon receipt of a complete application, the proposed development is appropriate and that, in the opinion of the Board, the development complies with the provisions of the Act and this By-law, the Board shall issue a Certificate to the applicant within 30 days.
- (8) The Board may issue a Conditional Certificate of Appropriateness that will be replaced by a Certificate of Appropriateness when the Board determines the conditions have been met.
- (9) The Board may refuse to issue a Certificate where, in its opinion, the development plan submitted with the application is incomplete or shows that the proposed development, with the exception of demolition, is incompatible with the standards of development prescribed in Sections 9 or 10.
- (10) If the Board determines that a certificate should not be issued, it shall place upon its record the reasons for such determination and shall forthwith notify the applicant of such determination, furnishing him the reasons therefore, and any terms and conditions required by the Board to make the application acceptable.
- (11) An appeal from a decision of the Board as to any matter for which an appeal lies under the Act, may be made in accordance with the provisions of the Act.

STANDARDS OF DEVELOPMENT

- 8. (1) The exterior of any existing building or structure or any part thereof and any appurtenances thereto within the preservation area shall not be altered, reconstructed or otherwise changed without a Certificate and no Certificate shall be issued for such developments, with the exception of demolition, unless the development conforms to the standards set out in Section 9.
- (2) If an existing building or structure has been identified by the Board as incompatible with the Preservation Area any proposed development shall comply with the Standards for New Development set forth in Section 10.
- (3) The erecting or placing of a new building or structure within the preservation area shall be compatible with other buildings, streets and open spaces in the preservation area, including the design and setting upon the property. No Certificate shall be issued for such a development unless it conforms to the standards set out in Section 10.

STANDARDS FOR EXISTING BUILDINGS AND STRUCTURES

9. (1) Any development on an existing building or structure within the preservation area, with the exception set out in Section 8(2) or Section 11 shall use such detailing and materials as would be, or might have been, traditional to its original façade and shall comply with the following regulations:
 - (2) In keeping with Subsection (1), the Board will consider proposals which;
 - (a) Recognize each historic place as a physical record of its time, place and use. Applications should not create a false sense of historical development by adding elements from other historic places or other properties or by combining features of the same property that did not coexist.
 - (b) Find a use for a historic place that requires minimal or no change to its character-defining elements.
 - (c) Evaluate the existing condition of character-defining elements to determine the appropriate intervention needed. Applications should use the gentlest means possible in any intervention and should respect heritage value when undertaking an intervention.
 - (d) Maintain character-defining elements on an ongoing basis. Work should involve the repair of character-defining elements by reinforcing their materials using recognized conservation methods. Work should involve the replacement in kind of any extensively deteriorated or missing parts of character-defining elements, where there are surviving prototypes for reference.
 - (e) Any intervention needed to preserve character-defining elements shall be physically and visually compatible with the historic place, and identifiable upon close inspection. Applicants should document any intervention for future reference.
 - (f) Repair rather than replace character-defining elements. Where character-defining elements, in the opinion of the Board, are too severely deteriorated to repair, and where sufficient physical evidence exists, replace with new elements that match the forms, materials and detailing of sound versions of the original character-defining elements. Where there is insufficient physical evidence, applicants should make the form, material and detailing of the new character-defining elements compatible with the character of the historic place.
 - (g) Conserve the heritage value and character-defining elements when creating any new additions to a historic place or any related new development. Applicants should make the new work physically and

visually compatible with and respectful of the historic place, and indistinguishable from the historic place upon close inspection.

- (h) Create any new additions or related new development so that the essential form and integrity of a historic place will not be impaired if the new work is removed in the future.

(3) Cleaning and Repointing of Masonry.

- (a) The cleaning of buildings and structures of masonry construction within the preservation area shall employ a technique which, in the opinion of the Board, will not damage the surface of the façade;
- (b) Any repointing must maintain the colour of the existing mortar on the building or structure and must maintain the same joint thickness of mortar already in place and the mortar used must be compatible with the existing masonry;
- (c) Any person who proposes to clean or cause to be cleaned any building or structure of masonry construction within the preservation area shall apply to the Board for a Certificate, which must have been issued by the Board before work is to proceed. For the purposes of this By-law, the cleaning of such a building or structure is deemed to constitute an alteration to the exterior surface texture and is not considered maintenance.

STANDARDS FOR NEW DWELLINGS AND STRUCTURES

10. Any new building or structure, or existing one indicated by the Board under Section 8(2), within the preservation area shall comply with the following regulations:

For the purposes of Section 10 the following definitions apply:

“adjacent buildings” means the primary buildings that are most proximate on each side of the development, fronting on the same side of the street.

“fronting” shall mean the one surface of a building that, is intended to be seen first, has an entrance and faces the street.

- (1) Any development proposed under Section 10 must draw its design inspiration from one of the following architectural styles located within the preservation area: Italianate, Second Empire, Queen Anne, Italian Renaissance, Neoclassical, Georgian, Colonial Revival and Victorian. The development shall stay true, in the opinion of the Board, to one of these styles and their character defining elements as described in A Guide to Canadian Architecture Styles.

- (2) A development shall use traditional detailing and traditional materials for its exterior façades in keeping with those found on existing buildings or structures of the same type and style within the preservation area. The Board shall permit the use of contemporary materials where their appearance is compatible with the appearance of traditional materials and detailing. When reviewing proposals to determine compatibility of contemporary materials, the Board shall consider but not be limited to the following:
- Proposed construction assembly detailing and the degree that proposed matches the appearance of the original;
 - Proposed cross-sectional profiles and the degree that proposed matches originals;
 - Proposed texture and finish and the degree that proposed matches the original;
- (3) Where the setbacks of neighbouring buildings or structures are uniform, the setback of the development shall conform thereto.
- (4) Where the setbacks of neighbouring buildings or structures are not uniform, then the setback of the development shall be no smaller than the smaller setback and no larger than the larger setback of the adjacent buildings. If the development is a corner lot then the setback of the adjacent building and average setbacks of the block shall set the parameters.
- (5) If the development is of an existing building that has been identified by the Board as incompatible with the Preservation Area under Section 8(2), then the existing setback shall be acceptable.
- (6) The height/width ratio of the façades of a development shall not vary by more than 10 percent from the height/width ratio of the façades of existing buildings constructed prior to 1950 and not substantially altered, within the same block as the development, fronting upon the same side of the street
- (7) The development should be centered on its building lot to allow for a pattern of open and occupied spaces.
- (8) The height of a development shall not be less than 80 percent and no more than 120 percent of the average height of adjacent buildings, fronting upon the same side of the street.

DEMOLITION, REMOVAL AND RELOCATION

11. (1) Subject to subsection (6) no building or structure within the preservation area, or any appurtenances thereto, shall be demolished, removed or relocated and no Certificate for such development shall be issued until:
 - (a) such building or structure has been identified by the Board as incompatible with the preservation area in terms of the standards prescribed in section 9 and/or 10; or
 - (b) the owner, or his/her agent, has made a publicly advertised offer to sell such building or structure and the land pertaining thereto, for a period of not less than six months, in accordance with the procedure set forth in subsection 2 of this Section, and no “offer” contract has been made for the sale of the property; or
 - (c) the owner has listed for sale such building or structure and the land pertaining thereto with a Multiple Listing Service® and has entered into a contract thereto with a licensed real estate agent or broker for a period of not less than six months, (the Listing Agreement), in accordance with the procedure set forth in subsection 2 of this section, and no contract has been made for sale of the property.
- (2) The owner, who is making an Offer to Sell or who has entered into a Listing Agreement for such building or structure shall:
 - (a) Before publishing the Offer to Sell, file such Offer to Sell with the Development Officer and at the owner’s expense, cause a Notice of the Offer to Sell to be published in a newspaper of general circulation in the municipality. The owner is to ensure that such Notice is to appear at least once a month for a period of not less than six calendar months and ensure that the Offer to Sell is at a price based on the real and true value of the property, as described in Section 13; or
 - (b) When entering into a contract with a Multiple Listing Service® file such Listing Agreement with the Development Officer and at the owner’s expense ensure that the listing on MLS® runs continuously for a minimum of not less than six calendar months and ensure that the Listing Agreement is at a price based on the real and true value of the property, as described in Section 13.
- (3) The Development Officer, upon receiving the Offer to Sell pursuant to subsection 2(a), or the Listing Agreement pursuant to subsection 2(b), shall forthwith notify the Minister responsible for the Act.

- (4) (1) The Notice of the Offer to Sell shall:
- (a) appear in the real estate section of the newspaper;
 - (b) be at least one column in width;
 - (c) have at the top of the ad a headline in 24 pt. type in capitals, indicating the name of the Heritage preservation area that the property is located within;
 - (d) use 8 pt. type in the text of the ad;
 - (e) identify the property and its location;
 - (f) state the offering price;
 - (g) state the date the Offer to Sell is to begin, which date shall not be earlier than the date such offer was filed with the Development Officer pursuant to subsection 2(a);
 - (h) include a black and white photograph of the property, to be a minimum of the width of the column by whatever necessary height, that clearly illustrates the character defining elements of the property; or
- (2) The Listing Agreement shall be in the form principally used by licensed real estate agents and brokers and shall cause the property to:
- (a) be listed with a licensed real estate salesperson who is a member of the Saint John Real Estate Board;
 - (b) be listed via the Multiple Listing Service®;
 - (c) adhere to the Saint John Real Estate Board's MLS® Rules and Regulations and its policies for the suitable presentation of the property for marketing purposes;
 - (d) include a photograph representing a clear and accurate representation of the property for sale and its heritage character defining elements; and
 - (e) Exclusive listings with a Realtor® shall not be acceptable for the purposes of this By-law.
- (5) If the Offer to Sell or the Listing Agreement is at a price in excess of the most recently assessed value of the property, under the Assessment Act (Chapter A-14 of RSNB) the Board shall refuse to approve the Notice or the Listing Agreement until such time as the owner has amended the Notice or the Listing Agreement accordingly or the owner has established to the satisfaction of the Board that the price is reasonable under the circumstances using the procedure indicated in Section 13 of this By-Law.

- (6) A Certificate of Appropriateness for demolition shall be valid for a period of not more than 180 days from the date of issuance.

TERMS AND CONDITIONS OF CERTIFICATES FOR DEMOLITION

12. (1) (a) If, in the opinion of the Board, the nature of a property to be sold is such that it would require a publicly advertised Offer to Sell or a Listing Agreement of more than six months duration in order to attract potential purchasers, the Board may require the Notice of Offer to Sell or the Listing Agreement referred to in Section (b) and Section 11(1)(c) to remain in effect for a period not exceeding twelve months.
- (b) Where the Board makes such a determination it shall notify the owner in writing of its decision and the Board shall amend any published notice to sell or the Listing Agreement and shall pay the additional costs of the advertisement.
- (2) If at the end of the Offer to Sell or the Listing Agreement period, the property has not been sold, the owner shall so notify the Board, and the Board shall issue a Certificate for Demolition, subject to such terms and conditions as the Board deems necessary for the purpose of preserving any parts or character defining elements of such building or structure or appurtenances thereto, including entire façades which are of historic or architectural value and/or interest.
- (3) Upon issuing a Certificate for Demolition approving the demolition, removal or relocation of a building or structure or any part thereof, the Board shall forthwith, at its own expense,
- (a) cause a notice to be published in a newspaper of general circulation in the municipality stating that the building or structure in question has been approved for demolition, removal or relocation, the date of issue of the Certificate for demolition and outline the statutory right of appeal which exists against the Board's decision; and
- (b) notify the Minister responsible for the Act that the Certificate for Demolition has been issued.

REAL AND TRUE VALUE

This Section applies to actions taken under Section 11.

13. (1) If the owner wishes to Offer to Sell or enter into a Listing Agreement for a price higher than the most recent assessed value of the property, under the Assessment Act (Chapter A-14 of RSNB) an appraiser who is mutually agreeable to the owner and the Board and who is a member in good standing of the New Brunswick Association of Real Estate Appraisers, with an AACI stature shall determine the real and true value of the property, to which each party must agree to be bound, with cost of such determination to be shared equally by the two parties and such value shall be the average of the values determined by the following three approaches: i) Cost Approach; ii) Income Approach; and iii) Direct Comparison Approach.
- (2) If the determination of value finds that the Offer to Sell or the Listing Agreement of the property is at either its most recent assessed value under the Assessment Act, supra, or the real and true value as established by the appraisal, using the process established in Section 13(1), the Offer to Sell or the Listing Agreement may continue as if no question had been raised.
- (3) If the determination of value finds that the Offer to Sell or the Listing Agreement of the property is at a price in excess of either its most recent assessed value under the Assessment Act, supra, or the real and true value as established by the appraisal, using the process established in Section 13(1), the Offer to Sell or the Listing Agreement shall be void and of no force for the purposes of this Section, and the owner, if he wishes to take advantage of the right provided by Section 11 must file a new Notice of Offer to Sell or Listing Agreement at or below the real and true value under the Assessment Act, supra or the appraisal.
- (4) Notwithstanding any determination of value, if an owner has entered into a binding contract for the sale of the property prior to the date the determination of value is filed with the Board, the selling price shall be deemed to be reasonably related to the fair and true value of the property.

ORDINARY MAINTENANCE

14. Maintenance, as defined by this By-law, of the exterior of a building or structure or appurtenance thereto, is permitted and for the purpose of such maintenance a Certificate is not required.

SAFETY

15. For the purposes of this By-law:

- (a) Where the Council requires a development by any owner because of an unsafe or dangerous condition on grounds of public safety, nothing in this By-law shall operate to prevent such development from taking place.
- (b) Any development required by Council shall be carried out within the spirit of this By-law.

CONTRAVENTIONS AND PENALTIES

16. Contraventions of this By-law shall be dealt with and shall incur such penalties as provided by the Act.

SEVERABILITY

17. If any part of this By-law shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this By-law.

BY-LAWS REPEALED

18. (a) This Heritage By-law repeals and replaces any past Heritage By-laws and amendments thereto; specifically, it repeals and replaces Heritage Preservation By-law #64 of the Town of Rothesay.
- (b) Notwithstanding the repeal of the by-law noted, any Certificates which have been granted under that by-law are expressly continued and remain in effect as though granted under this by-law.

FIRST READING BY TITLE: 9 October 2007

SECOND READING BY TITLE: 13 November 2007

Advertised according to content on
www.rothesay.ca, in accordance with
Municipalities Act, R.S.N.B. (1973),
Chapter M-22 and amendments thereto: (Posted) 19 November 2007

THIRD READING BY TITLE
AND ENACTMENT: 10 December 2007

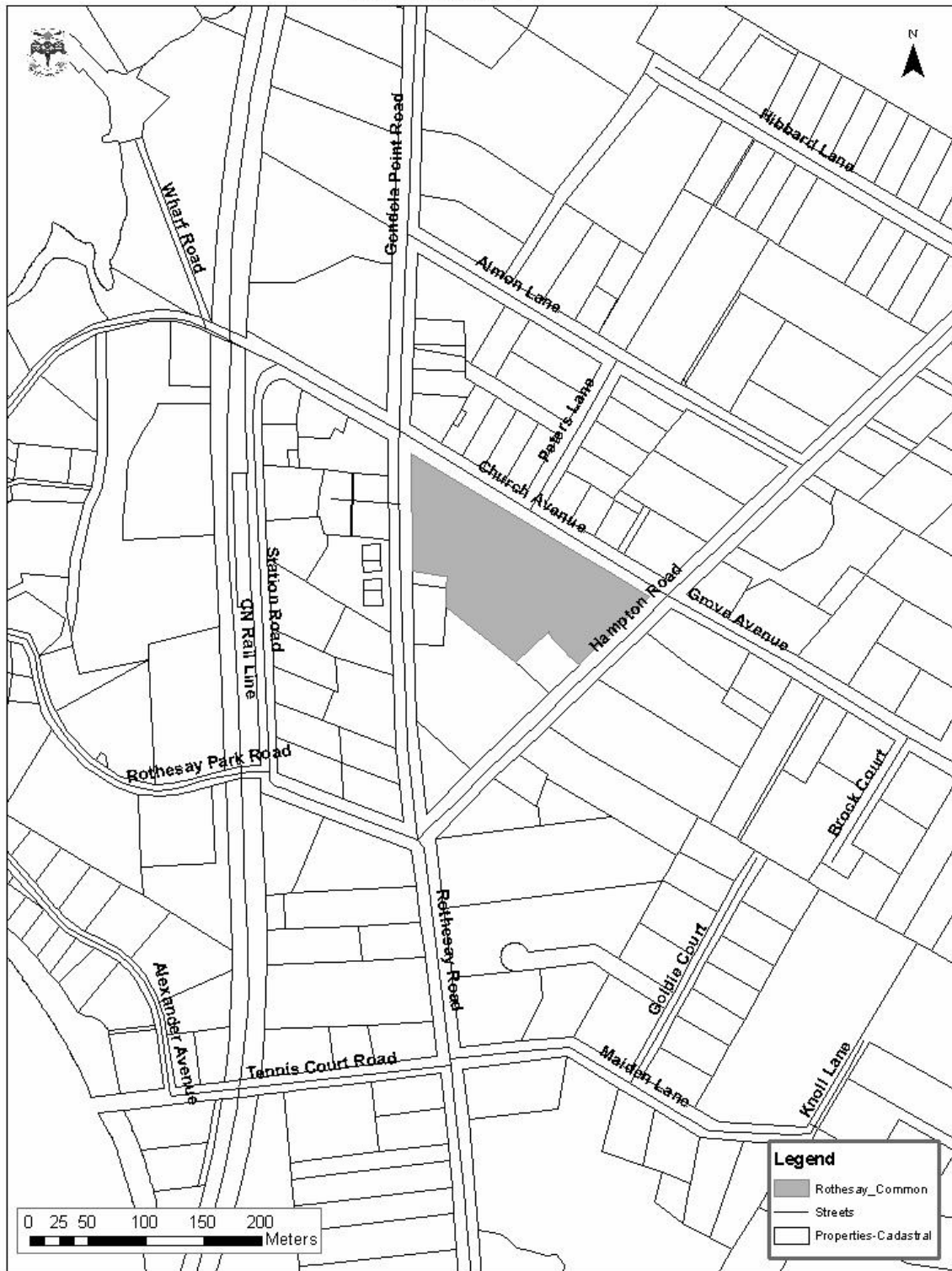
MAYOR

CLERK

Schedule "A"



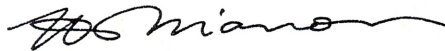
Schedule "B"



FEBRUARY 14, 2008

2008-79

Under subsection 10(1) of the Municipal Heritage Preservation Act,
the Lieutenant-Governor in Council approves By-Law Number 1-07, Rothesay
Heritage Preservation By-Law.



Herménégilde Chiasson
Lieutenant-Governor

This is to certify that the foregoing is a true copy of an Order of the Lieutenant-Governor in Council of the
Je certifie que le document qui précède est une copie conforme d'un décret du lieutenant-gouverneur en conseil

Province of New Brunswick, made on the
de la province du Nouveau-Brunswick, pris le

14 February 2008.

Deputy Clerk of the Executive Council/Greffier suppléant du Conseil exécutif

