



City Of Kingston

Ontario

By-Law Number 2022-145

A By-Law to Provide for the Conveyance of Parkland or Cash-in-Lieu of Parkland Conveyance, and to Repeal By-Law Number 2013-107, A By-Law to Provide for the Conveyance of Land for Park Purposes, or Cash-In-Lieu of Parkland Conveyance, in its entirety

("Parkland Conveyance By-Law")

Passed: September 6, 2022

Index

Title	Section Number
Definitions & Interpretation	1-2
Application	3
Parkland Dedication Requirements <ul style="list-style-type: none"> • Residential Uses • Commercial or Industrial Uses • Long Term Care Home • Mixed Uses 	4
Condition of Lands for Parkland Dedication	5-11
Parkland Dedication Exemptions	12-14
Parkland Dedication Reductions	15-18
Cash-in-Lieu of Parkland	19-23
Special Rules for Consent Applications <ul style="list-style-type: none"> • Flat rate for residential lot(s) – Table A on Page 12 	24-26
Land Valuation for Purposes of Cash-in-Lieu	27-32
Cash-in-Lieu of Parkland Reductions	33
Timing	34-36
Disputes	37
Offence & Penalty	38
Administration	39-44

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Passed: September 6, 2022

Whereas Sections 42, 51.1 and 53 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, authorize Council to pass a by-law requiring land or cash-in-lieu of land to be conveyed to the municipality for park or other public recreational purposes as a condition of development, redevelopment, or subdivision of land(s); and

Whereas the Council of The Corporation of the City of Kingston has adopted an Official Plan that contains specific policies with respect to the provision of lands for park or other public recreational purposes; and

Whereas the Council of The Corporation of the City of Kingston deems it expedient to repeal and replace By-Law Number 2013-107, A By-Law to Provide for the Conveyance of Land for Park Purposes, or Cash-In-Lieu of Parkland Conveyance, as amended, which was passed on May 21, 2013;

Therefore be it resolved that the Council of The Corporation of the City of Kingston hereby enacts as follows:

Definitions & Interpretation

1. For the purposes of this By-Law, the following definitions apply:

- a) **“Buffer Land”** means an area of land in which Development or site alteration is limited or prohibited by the Official Plan in order to protect the natural heritage features of the area, or the ecological function of the area, from negative impacts. Buffer Land does not include lands designated Environmental Protection Area in the Official Plan or any land within the regulatory floodplain.
- b) **“City”** means The Corporation of the City of Kingston.
- c) **“Corridor & Centres”** means the areas identified as such on Schedule ‘A’ of this By-Law.
- d) **“Council”** means the Council of the City.
- e) **“Designate”** means a person who is an employee of the City and who has been appointed by the Director to administer all or part of this By-Law on behalf of the Director.

- f) **“Development”** means the creation of a new lot, a change in land use, or the construction of buildings and structures, in each case requiring approval under the *Planning Act*, and “Developed”, “Redeveloped” and “Redevelopment” have corresponding meanings.
- g) **“Director”** means the Director of Planning Services or Designate, or in the event of organizational changes, the director of the appropriately titled department.
- h) **“Downtown and Harbour Area”** has the meaning ascribed to it in the Official Plan.
- i) **“Dwelling Unit”** means any property that is used or designed for use as a domestic establishment in which one or more persons may sleep and prepare and serve meals.
- j) **“Employment Land”** means land designated as Business Park Industrial or General Industrial in the Official Plan.
- k) **“Gross Floor Area”** means the total floor area of all floors of a building above finished grade, measured between the outside of the exterior walls or between the outside of exterior walls and the centre line of party walls dividing the building from another building, but excluding: areas of enclosed malls used as a common area between stores; areas used for mechanical equipment, electrical equipment or similar service areas such as garbage or recycling rooms; areas used for stairways and elevator shafts; areas used as storage lockers; areas used for loading spaces, bike spaces and parking spaces; any floor area with a floor to ceiling height of less than 1.8 metres; area in an attic having headroom of 2.1 metres or less for at least half the attic floor area, unless otherwise specified; and balconies, porches, decks and mezzanines.
- l) **“Gross Land Area”** means the total area of all lands that are subject to a Development or Redevelopment application, including any land which is to be dedicated for parks purposes or easements, but does not include any lands designated as Environmental Protection Area in the Official Plan.
- m) **“Heritage Building”** means an existing building or portion of a building on a Protected Heritage Property, or which is identified as a heritage-contributing building in the applicable City Heritage Conservation District Plan.
- n) **“Land Price Index”** means the new housing price index, for land only, for the Ottawa-Gatineau Region, as published in the Canadian Housing Statistics, Housing Costs by Canada Mortgage and Housing Corporation (CMHC).
- o) **“Local Board”** means a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any *Act* with respect to the affairs or purposes of the City.

- p) **“Long-Term Care Home”** means a place that is licensed as a long-term care home under the *Fixing Long-Term Care Act, 2021*, S.O. 2021, c. 39, Sched. 1, and includes a municipal home, joint home or First Nations home approved under that *Act*.
- q) **“Market Appraisal”** means a written opinion of value prepared in accordance with the Canadian Uniform Standards of Professional Appraisal Practice of the Appraisal Institute of Canada by an accredited real estate appraiser, which identifies the fair market value of one or more parcels of land.
- r) **“Major Water Body”** includes Lake Ontario, the St. Lawrence River, the Great Cataraqui River, Rideau Canal, Loughborough Lake, Collins Lake and the Little Cataraqui Creek up to Bath Road, as outlined in Schedule ‘B’ of this By-Law.
- s) **“Not-for-Profit Organization”** means a corporation registered as a charity and regulated under the *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15, or regulated by one or more provincial and/or federal act(s).
- t) **“Occupied”** means a building occupied by a tenant for at least 12 consecutive months prior to the date of the Development application.
- u) **“Official Plan”** means the City of Kingston Official Plan.
- v) **“Owner”** means the registered owner of land as listed on the provincial land registry within the Ontario Land Registry Office.
- w) **“Planning Act”** means the *Planning Act*, R.S.O. 1990, c. P.13.
- x) **“Protected Heritage Property”** means a property designated under Part IV or Part V of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, including properties that are the subject of a Heritage Conservation Easement under Part II or Part IV of that *Act*.
- y) **“Rental Affordable Housing Unit(s)”** means a rental residential Dwelling Unit for low or moderate income households which:
 - i) has a monthly rent that is less than or equal to 80% of the CMHC average monthly rent; and
 - ii) is guaranteed to be affordable and is registered with the City as an affordable housing unit for a minimum of 15 years.
- z) **“Rural Area”** means lands located outside of the Urban Area.
- aa) **“Urban Area”** means lands within the Urban Boundary, as defined in the Official Plan.
- bb) **“Williamsville Main Street Corridor”** has the meaning ascribed to it in the Official Plan.

2. For the purposes of interpreting this By-Law:
 - a) a reference to any legislation, regulation, or by-law or to a provision thereof includes a reference to any legislation, regulation or by-law enacted, made or passed in substitution thereof or amendment thereof;
 - b) any reference to legislation includes all of the regulations made thereunder; and
 - c) “include”, “includes” and “including” indicate that the subsequent list is not exhaustive.

Application

3. This By-Law applies to all lands within the geographic boundaries of the City of Kingston.

Parkland Dedication Requirements

4. As a condition of the Development or Redevelopment of land, the Owner shall be required to convey to the City land to be used for park or other public recreational purposes. The amount of land required to be conveyed to the City for such purposes shall be calculated as follows:

Residential Uses:

- a) When land is Developed or Redeveloped for a residential use:
 - i) where the gross density of the land is 30 Dwelling Units per hectare or less, 5% of the Gross Land Area shall be conveyed to the City;
 - ii) where the gross density of the land is greater than 30 Dwelling Units per hectare, 1.2 hectares per 1,000 people, not to exceed 1 hectare per 300 Dwelling Units, shall be conveyed to the City, up to a maximum of 10% of the Gross Land Area; and
 - iii) where the land is within the Corridor & Centres, 0.6 hectares per 1,000 people shall be conveyed to the City, up to a maximum of 5% of the Gross Land Area.

Commercial or Industrial Uses:

- b) When land is Developed or Redeveloped for commercial or industrial use, 2% of the Gross Land Area shall be conveyed to the City.

Long-Term Care Home:

- c) When land is Developed or Redeveloped for a Long-Term Care Home, 2% of the Gross Land Area shall be conveyed to the City.

Mixed Uses:

- d) When land is Developed or Redeveloped for mixed uses:
 - i) for mixed uses on a site, the land to be conveyed shall be the sum of the requirements proportionate to the site area allocated to each use at the rates set out in this Section 4; or
 - ii) for mixed uses within a building, the land to be conveyed shall be the sum of the requirements proportionate to the Gross Floor Area allocated to each use at the rates set out in this Section 4.

Condition of Lands for Parkland Dedication

- 5. All lands to be conveyed to the City pursuant to this By-Law must be in a location and in a condition satisfactory to the City. The City may elect not to accept the conveyance of any land where the parcel configuration, size or location is constrained or is otherwise deemed to be undesirable or unsuitable by the City for its intended purpose. Factors that will be considered in determining suitability for conveyance include, but are not limited to, the following:
 - a) whether the lands have frontage on a public road, which provides visibility and accessibility;
 - b) whether the lands are of adequate size and configuration to accommodate park amenities, such as sports fields, playgrounds, and programmable open space;
 - c) whether the lands are equitably distributed within the proposed Development and are generally in a centralized location within the proposed Development;
 - d) whether the lands are abutting complementary neighbouring land uses; and
 - e) whether the conveyance of the lands is consistent with the Official Plan and secondary plan policies for the area.
- 6. The City will not accept Environmental Protection Areas and hazardous lands, as defined in the Official Plan, to fulfill parkland dedication requirements.
- 7. Prior to the transfer of the deed for any parkland pursuant to this By-Law, the City must be satisfied, in its sole and absolute discretion, that the City's normal course of environmental due diligence has been met.
- 8. The City may, at its discretion, accept the conveyance of parkland that is not contiguous to the Development lands, provided that the value of the land to be conveyed off-site is approximately equal to the value of the lands that would otherwise be conveyed on-site, as determined in accordance with this By-Law.

9. The Owner must restore the land to be conveyed to the City to a condition satisfactory to the City prior to any conveyance where it has been determined by the City that the lands to be conveyed have been physically disturbed in any way, including by the dumping of debris, unconsolidated fill, or other refuse, or by the stripping of topsoil.
10. All lands to be conveyed to the City pursuant to this By-Law must be free and clear of all legal and other encumbrances.
11. All costs associated with the conveyance of land in accordance with this By-Law shall be the responsibility of the Owner.

Parkland Dedication Exemptions

12. No additional conveyance of parkland will be required for subsequent Development on lands where parkland was previously conveyed for an existing or former Development on the lands and/or where the lands were Occupied within 10 years prior to the Development application, unless:
 - a) there is an increase in density;
 - b) there is a change from institutional, industrial, or commercial to residential; or
 - c) Dwelling Units are added within an existing structure that increases the number of existing bedrooms.

In the above instances, the amount of land required to be conveyed pursuant to this By-Law will be calculated based on the number of new Dwelling Units that are added.

13. Where the Owner claims that a previous parkland conveyance has been made, the Owner shall be required to provide evidence of such previous conveyance, to the satisfaction of the City.
14. No conveyance for parkland is required for the following types of Development or Redevelopment:
 - a) any Development or Redevelopment that results in three or less Dwelling Units on a lot;
 - b) the enlargement of an existing Dwelling Unit;
 - c) the addition of one new Dwelling Unit to a building existing as of the date of passing of this By-Law that contains three or more Dwelling Units;
 - d) Development proposed by any municipality, Local Board or other government bodies, hospital, post-secondary institution or school as defined in Subsection 1(1) of the *Education Act*, R.S.O. 1990, c. E.2, or a place of worship as exempted from taxation under Section 3 of the *Assessment Act*, R.S.O. 1990, c. A.31;

- e) A home occupation, as defined in the City of Kingston Zoning By-Law Number 2022-62; or
- f) Development on Employment Land within City-owned Business Parks, Development on City-owned lands designated General Industrial in the Official Plan, or Development on Employment Land within the Old Industrial area located in Community Improvement Project Area 1A, as described in the City’s Brownfields Community Improvement Plan.

Parkland Dedication Reductions

- 15. The City may, in its sole discretion, reduce the parkland dedication requirements in this By-Law in order to secure Buffer Land that forms a continuous open space corridor along the Great Cataraqui River, as set out in the Official Plan, provided such Buffer Land meets the City’s requirements for parkland set out in this By-Law.
- 16. When the proposed Development is on land adjacent to a Major Water Body, the City may, in its sole discretion, reduce the parkland dedication requirements in this By-Law in exchange for the conveyance of Buffer Land, as set out in the City of Kingston Natural Lands and Parkland Acquisition Policy, provided such Buffer Land meets the City’s requirements for parkland set out in this By-Law.
- 17. Where the conveyance of parkland is not reasonably possible, the City may, in its sole discretion, accept an easement to permit public access and park use in lieu of the conveyance, provided the easement lands meet the City’s requirements for parkland set out in this By-Law. The area of the easement lands to be conveyed shall be:
 - a) two times the area of the lands that would otherwise be conveyed to the City pursuant to this By-Law for lands within the Corridor & Centres; or
 - b) three times the area of the lands that would otherwise be conveyed to the City pursuant to this By-Law for lands outside of the Corridor & Centres.
- 18. Despite the City of Kingston Natural Lands and Parkland Acquisition Policy, where the City accepts a combination of Buffer Land pursuant to Section 16 of this By-Law and an easement pursuant to Section 17 of this By-Law, the area of the easement lands to be conveyed shall be calculated in accordance with Subsection 17(b) above.

Cash-in-Lieu of Parkland

- 19. The City may, in its sole discretion, require the payment of money in lieu of, or in combination with, a conveyance of parkland where:
 - a) no opportunity exists to provide suitable parkland;
 - b) the parcel of land is too small, inappropriately configured and/or not suitably located to meet the City’s parkland needs;

- c) the required dedication of land would render the remainder of the site unusable or impractical for Development or Redevelopment, as determined by the City;
 - d) the City has identified land in a more appropriate or accessible location that has been or will be acquired by the City;
 - e) no opportunity exists to obtain waterfront land;
 - f) the area being Developed or Redeveloped is already appropriately served with parkland, as determined by the City; or
 - g) the Development or Redevelopment relates to a severance in the Rural Area.
20. In cases where the City requires the payment of money in lieu of a conveyance of parkland, the Owner shall be required to pay to the City an amount equal to the value of the land that would otherwise be conveyed pursuant to this By-Law as a condition of the Development or Redevelopment of land, subject to Section 24 of this By-Law.
21. In cases where a conveyance of land to be provided pursuant to this By-Law does not fully meet the requirements of this By-Law, the balance of the parkland dedication requirement shall be made up of cash-in-lieu payment, calculated by deducting the value of the land conveyed from the total amount of cash-in-lieu required.
22. All money received by the City through payments of cash-in-lieu of parkland shall be paid into the Cash-in-Lieu of Parkland Reserve Fund.
23. Where cash-in-lieu of parkland is required and is provided as a condition of site plan control approval, the required cash-in-lieu of parkland amount shall be subject to change to reflect any increase in property value if a building permit is not issued for the Development or Redevelopment within one year from the date of site plan control approval.

Special Rules for Consent Applications

24. Despite anything to the contrary in this By-Law, the amount of parkland and/or cash-in-lieu of parkland required in connection with a consent application will be determined as follows:
- a) for a single residential lot created by a severance for the purpose of developing three or less Dwelling Units on the lot, a flat rate shall be applied, as set out in Table A. For clarity, this subsection (a) does not apply to a plan of subdivision;
 - b) despite subsection (a) above, parkland may be required to be conveyed to the City and the amount of parkland to be conveyed will be calculated in accordance with Subsection 4(a) of this By-Law for a single residential lot described in subsection (a) above when:

- i) the lot is adjacent to a Major Water Body; or
- ii) the lot is adjacent to an existing public park; or
- iii) the lot contributes to a Council approved pathway or trail, as shown on Schedule 5 (Pathways) of the Official Plan.

Table A

Flat rate for residential lot(s) created by consent for the purpose of developing three or less Dwelling Units on the lot

Location	Flat Rate*
Rural Area	\$1,335.08 per new residential lot
Urban Area	\$2,048.15 per new residential lot

*The flat rates shall be adjusted annually on January 1st in accordance with the Land Price Index.

- 25. The applicable flat rate payable shall be the flat rate that is in effect on the day before provisional consent to sever is given.
- 26. The dedication of parkland and/or the payment of cash-in-lieu of parkland for consent applications shall otherwise be conveyed and/or paid in accordance with this By-Law.

Land Valuation for Purposes of Cash-in-Lieu

- 27. Where cash-in-lieu of parkland is required, the value of the land shall be determined by:
 - a) a Market Appraisal based on the approved Development or Redevelopment, which reflects any required change in land use designation or zoning of the subject land, as approved by the City’s Business, Real Estate and Environment Department; or
 - b) the most recent land sale record for the land, provided that:
 - i) the land sale occurred no more than 24 months prior to the date of the Development or Redevelopment application;
 - ii) the land sale record is satisfactory to the City’s Business, Real Estate and Environment Department; and

- iii) the land sale was at fair market value and there has been no change that may impact the land value, all as determined by the City’s Business, Real Estate and Environment Department. Such changes may include, but are not limited to, changes in the zoning, Official Plan designation or a severance.
28. For cash-in-lieu of parkland, the value of the land shall be determined as of:
- a) the day before site plan control approval, subject to Section 23 of this By-Law; or
 - b) the day before approval of the draft plan of subdivision or condominium,
- as the case may be. If the land value is determined in accordance with Subsection 27(b) of this By-Law, the value of the land shall be determined as of the date of the land sale.
29. Despite anything to the contrary contained in this By-Law, the cash-in-lieu of parkland requirement for Development or Redevelopment within the Downtown and Harbour Area shall not exceed the following:
- a) \$1,426.79 per new Dwelling Unit; or
 - b) \$713.40 per new Dwelling Unit for Development, subject to Subsections 33(a) and (c) of this By-Law.
30. Despite anything to the contrary contained in this By-Law, the cash-in-lieu of parkland requirement for Development or Redevelopment within the Williamsville Main Street Corridor shall not exceed \$2,282.87 per new Dwelling Unit.
31. Despite anything to the contrary contained in this By-Law, the cash-in-lieu of parkland requirement for Development or Redevelopment outside of the Downtown and Harbour Area and the Williamsville Main Street Corridor shall not exceed \$5,707.18 per new Dwelling Unit.
32. The cash-in-lieu of parkland rates specified in Sections 29, 30 and 31 above shall be adjusted annually on January 1st in accordance with the Land Price Index.

Cash-in-Lieu of Parkland Reductions

33. Where cash-in-lieu of parkland is required, the cash-in-lieu of parkland requirements may only be reduced in the following circumstances:
- a) when land is Developed to include Rental Affordable Housing Units, the reduction may be proportionate to the number of Rental Affordable Housing Units provided, at the following rates:
 - i) where the monthly rent is between 20% and 39% below the defined average market rent, as determined by the City’s Housing and Social Services Department, a 50% reduction of the applicable cash-in-lieu of parkland requirement per Rental Affordable Housing Unit; or

- ii) where the monthly rent is 40% or greater below the defined average market rent, a 100% reduction of the applicable cash-in-lieu of parkland requirement per Rental Affordable Housing Unit;
- b) When the proposed Development is being undertaken by a Not-For-Profit Organization, the cash-in-lieu of parkland requirement may be reduced at the discretion of the Director, provided that such reduction shall not exceed a land value equivalent of \$25,000. Any reduction above such amount shall require approval of Council. This value shall be adjusted annually on January 1st in accordance with the Land Price Index; and
- c) When newly created Dwelling Units are added to, or commercial or industrial Development occurs in, a Protected Heritage Property, a 50% reduction in the cash-in-lieu of parkland requirement will be applied, provided the cultural heritage value of the property is conserved to the satisfaction of the City and the new Dwelling Units are, or the commercial or industrial Development is:
 - i) located within the Heritage Building; or
 - ii) fully contained within an addition to the Heritage Building that does not exceed 100% percent of the Gross Floor Area of the Heritage Building. New Dwelling Units or commercial or industrial Development in an addition that exceeds the Gross Floor Area of the Heritage Building will not qualify for the reduction.

Timing

- 34. For Development and Redevelopment, the parkland conveyance requirements, and the timing of the conveyance, will be determined at the time of Development or Redevelopment and the amount of land will be identified as a condition of Development or Redevelopment.
- 35. Where the Owner is required to pay money to the City in lieu of parkland conveyance, the Owner shall pay the amount owing in full prior to the issuance of a building permit or, if more than one building permit is required for the Development or Redevelopment, before the issuance of the first permit.
- 36. For clarity, where the Owner is required to pay money to the City in lieu of parkland conveyance, the Owner shall not construct a building on the land for Development or Redevelopment unless the payment of cash-in-lieu has been made or arrangements satisfactory to the City have been made for payment.

Disputes

- 37. In the event of a dispute between the City and the Owner as to the amount of land required to be conveyed or the amount of money required to be paid, either party may apply to the Ontario Land Tribunal to have the matter determined pursuant to Subsections 42(10) and (11) of the *Planning Act*.

Offence & Penalty

38. Every person who contravenes any provision of this By-Law is guilty of an offence and on conviction is liable to pay a fine, exclusive of costs, and such other penalties, as may be provided for or imposed under the *Provincial Offences Act*, R.S.O. 1990, c. P.33.

Administration

39. The Director is responsible for the administration of this By-Law.
40. If a court of competent jurisdiction declares any provision, or any part of a provision, of this By-Law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this By-Law that each and every provision of this By-Law be applied and enforced in accordance with its terms to the extent possible according to law.
41. This By-Law may be referred to as the **“Parkland Conveyance By-Law”**.
42. City of Kingston By-Law Number 2013-107 is hereby repealed in its entirety as of the date this By-Law comes into force.
43. Despite the provision above, City of Kingston By-Law Number 2013-107 shall continue to apply to any Development applications that were deemed complete by the City prior to the date this By-Law comes into force.
44. This By-Law will come into force and take effect on the date of its passing.

This By-Law was Given all Three Readings and Passed: September 6, 2022

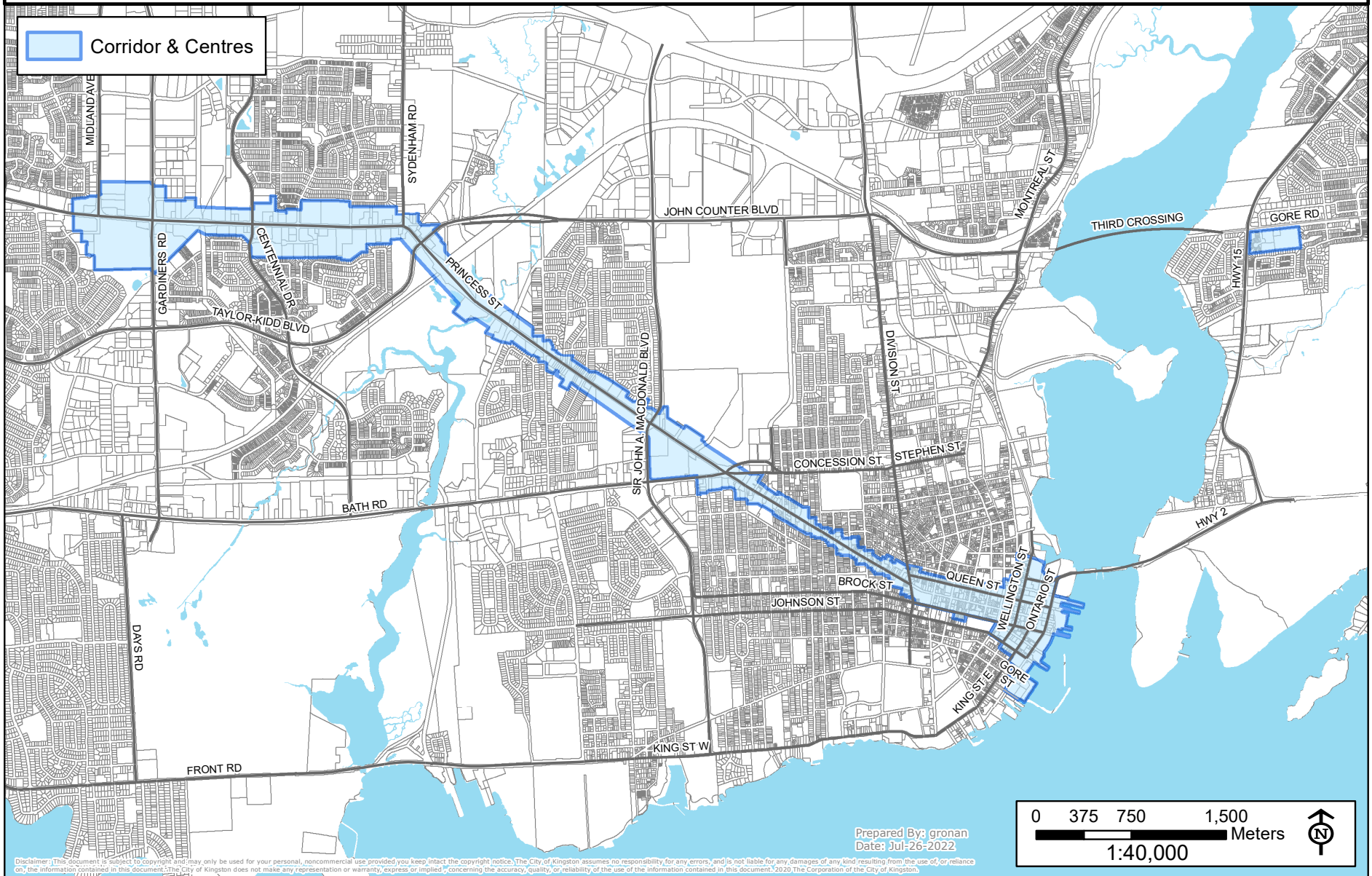
NOTE: Schedule A & B are attached to the PDF formatted By-Law.



Planning
Services

Schedule 'A' Corridor & Centres Boundaries

This is Schedule 'A' to By-Law Number 2022-145, passed this 6th day of September 2022.



Schedule 'B'

Major Water Bodies

Certificate of Authentication

This is Schedule 'B' to By-Law Number 2022-145, passed this 6th day of September 2022

