

Town of Whitby

Staff Report

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Report Title: Review of the Municipal Heritage Register

Report to: Committee of the Whole

Date of meeting: June 3, 2024

Report Number: PDP 25-24

Department(s) Responsible:

Planning and Development Department
(Planning Services)

Submitted by:

Roger Saunders, Commissioner of
Planning and Development

Acknowledged by M. Gaskell, Chief Administrative Officer

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1. Recommendation:

1. That:

- a. Council authorize staff to undertake Cultural Heritage Evaluation Reports and issue Notices of Intention to Designate under Section 29 of the Ontario Heritage Act, for properties that LHC Heritage Planning & Archaeology Inc. has recommended as priority candidate properties for designation, where the owner is amenable to designation;
- b. After the 30-day Objection period has passed per Section 29 (6) of the Ontario Heritage Act, Council consider passing a by-law designating the properties referred to in Recommendation 1(a), under Part IV, Section 29 of the Ontario Heritage Act;

2. That:

- a. Council authorize staff to undertake a Cultural Heritage Evaluation Report, for properties that LHC Heritage Planning & Archaeology Inc. has recommended as priority candidate properties for designation, where staff remain in discussions with the owner, or the owner has not yet responded, and the property meets three or more criteria for designation Ontario Regulation 9/06;

- ## 2. Highlights:

- Amendments to the Ontario Heritage Act (the Act) under Bill 23, the *More Homes, Built Faster Act 2022*, will result in properties on the Municipal Heritage Register (the Register) that are 'listed', but not yet designated, to be deemed removed from the Register as of January 1, 2025, after which they cannot be added back for a period of 5 years.
- The Town currently has over 200 'listed' properties on the Town's Municipal Heritage Register (the Register).
- Staff, in consultation with the Heritage Register Review Sub-committee of the Heritage Whitby Advisory Committee (HWAC), undertook a preliminary review of the 'listed' properties to identify properties with potential for Part IV designation under the Act.
- LHC Heritage Planning & Archaeology Inc., (LHC), was retained to undertake a qualified professional heritage consultant's review of the Register to identify priority candidate properties with potential for designation.
- LHC has indicated that, for those properties that do not advance towards designation, an option for Council's consideration is to remove all remaining listed properties from the Register, in advance of January 1, 2025 deadline, to avoid the five-year moratorium on adding those properties back onto the Register. This approach would allow more time to investigate those properties in the future, should they merit designation.

3. Background:

In October 2022, the Provincial Government introduced Bill 23: the *More Homes, Built Faster Act* (Bill 23), which received Royal Assent on November 28, 2022. Bill 23 introduced broad changes to the land use planning system in Ontario and included amendments to several pieces of legislation related to land use planning, including the Ontario Heritage Act.

Schedule 6 of Bill 23 includes amendments that make broad changes to Heritage Planning in Ontario. Many of the Amendments came into force on January 1, 2023. This staff report focuses on the Bill 23 changes related to properties on the Municipal Heritage Register (the Register) that are 'listed', but not yet designated, and identifies a preliminary short list of priority candidate properties with potential to be considered for Part IV heritage designation prior to the Bill 23 deadline of December 31, 2024.

Listed Properties

Listed properties (i.e. properties listed on the Town's Municipal Heritage Register but not yet formally designated) are those that have potential cultural heritage value or interest, for Council, Heritage Whitby Advisory Committee and/or staff to explore when these properties are proposed for demolition, (re)development, or removal from the Register.

Many municipalities across Ontario, including the Town of Whitby, include listed properties on the Register, so that they may be evaluated in the future using the criteria provided by Ontario Regulation 9/06 for formal Part IV designation, or for removal from the Register if they cannot meet the criteria for designation. (Refer to Attachment #1 for excerpt from Ontario Regulation 9/06 outlining the criteria).

Currently, the Town has 209 listed properties on the Register. There are no restrictions placed on these listed properties with regards to alterations. However, the property owner must provide Council with 60-days notice prior to any proposed demolition.

Changes to the Act related to listed properties as a result of Bill 23 include:

- Listed properties must be removed from the Register after two years from the date of listing (not applicable in Whitby), or the date of the amendments coming into force (January 1, 2023), unless a Notice of Intention to Designation (NOID) has been issued.
- Listed properties will continue to be removed if a final designation by-law is not passed within 120 days of the legislated timeframe from issuing a NOID. However, the deadline to pass the designation by-law can be extended by mutual agreement between Council and property owner.
- Listed properties for which a NOID has not been issued, and that are not designated by the deadline, will be deemed removed from the Register as of

January 1, 2025, and cannot be added back onto the Register for a period of 5 years.

- Adding a new listed property to the Register requires notice to the property owner.
- The Act provides for an Objection process to Council and an Appeal process to the Ontario Land Tribunal (OLT).
- Adding new listed properties to the Register requires that the property must meet at least one out of nine criteria under Ontario Regulation 9/06 to qualify for listing.
- Municipal Heritage Registers must be made available online, as of July 1, 2023. (The Town of Whitby Register is available on the Town's website.)

Designated Properties

The Town is a leader in heritage designation within the Region of Durham, and currently has one of the larger portfolios of designated properties within the Region, which includes:

- 71 properties designated under Part IV of the Ontario Heritage Act (individual property designation);
- 445 properties designated under Part V of the Ontario Heritage Act (located within the Town's two Heritage Conservation Districts); and
- Several properties designated under Part IV that are also designated under Part V, if located within an HCD.

Designation Process

The Ontario Heritage Act enables the Council of a municipality to designate individual properties under Part IV (Section 29) of the Act. These properties are formally evaluated through a Cultural Heritage Evaluation Report (CHER). If the property meets two or more criteria under Ontario Regulation 9/06, then Council can issue a Notice of Intention to Designate (NOID) for the property; consider any objections during the 30-day NOID period; and make a final decision to designate by By-law.

The Act also enables municipalities to designate a Heritage Conservation District (HCD) under Part V (Section 41 (1)) of the Act. The Town has established two HCDs (Brooklin and Werden's Plan Neighbourhood) and two additional HCDs (Perry's Plan and Four Corners) are planned for future consideration.

The Act also includes appeal rights to the Ontario Land Tribunal regarding final designation decisions made by municipal Councils. Such appeal rights did not exist prior to the passing of Bill 108, *the More Homes, More Choice Act, 2019*.

Owners of designated properties are required to apply for a Heritage Permit for alterations to their designated property to ensure that significant heritage attributes are not negatively impacted. These heritage permits are free of charge.

Provincial Policy Direction

Heritage conservation in Ontario is considered a Provincial Interest under Section 2(d) of the Planning Act and is directed by provincial policy under the Provincial Policy Statement (PPS) and the Growth Plan for the Greater Golden Horseshoe.

Section 2.6 of the PPS requires municipalities to conserve significant built heritage resources and cultural heritage landscapes. Likewise, Section 4.2.7 of the Growth Plan also requires municipalities to conserve their significant cultural heritage properties to “foster a sense of place and benefit communities”. The Growth Plan and PPS define significant built heritage resources as properties that have been identified to have cultural heritage value or interest as determined by the evaluation criteria found in Ontario Regulation 9/06 of the Ontario Heritage Act.

4. Discussion:

The changes introduced by Bill 23 require municipalities to review their Municipal Heritage Registers and make decisions regarding whether to issue NOIDs and designate listed properties, or if not, then they would be deemed removed from the Register as of January 1, 2025.

This report provides Council with information regarding a preliminary review of listed properties on the Register using evaluation criteria under O.Reg. 9/06 and identifies potential and priority candidate properties for designation due to their significant cultural heritage value or interest.

Preliminary Priority Candidate List for Part IV Designation

LHC Heritage Planning & Archaeology Inc., (LHC), was retained to undertake a cursory review of the listed properties on the Town’s Municipal Heritage Register, in response to Bill 23 changes to the OHA, to determine which properties are potential and priority candidate properties based on the number of criteria met under O.Reg. 9/06. Other factors and considerations for prioritization and potential designation included the likelihood of redevelopment in certain areas experiencing development pressures.

Table 1 provides LHC’s preliminary list of priority candidate properties for potential designation, based on how many criteria each meets under O.Reg 9/06 (refer to Attachment #1). The potential and priority candidate properties in Table 1 meet two or more O.Reg. 9/06 criteria, as identified by the Town’s heritage consultant LHC (refer to Attachment #2).

Table 1: Summary of LHC’s Preliminary Evaluation and Consultation with Owners

Property Address	Number of Criteria Met	Consultation with Property Owner
401 Reynolds St.	Meets 5 of 9 criteria	Still in discussion.

Property Address	Number of Criteria Met	Consultation with Property Owner
Trafalgar Castle School		
9465 Baldwin St. N. Myrtle United Church	Meets 4 of 9 criteria	No Response.
740 Columbus Rd. W. (Note 1)	Meets 4 of 9 criteria	Amenable to designation.
301 Bryon St. N. William Westlake House	Meets 4 of 9 criteria	No response.
300 Dundas St. W. All Saints Anglican Church	Meets 4 of 9 criteria	(Parish wardens) Opposed to designation. Awaiting confirmation from Diocese.
300 High St. Ontario County House of Refuge (Note 2)	Meets 4 of 9 criteria	Amenable to designation.
3040 Brock St. N. Lakeview Hall	Meets 3 of 9 criteria	Opposed to designation.
141 Pine St. Christopher Johnston House	Meets 3 of 9 criteria	Still in discussion.
326 Dundas St. W. Arthur Beall House	Meets 3 of 9 criteria	No response.
224 Brock St. S. Bell Telephone Building (now Tap & Tankard)	Meets 3 of 9 criteria	Opposed to designation.
121 Green St.	Meets 3 of 9 criteria	Opposed to designation.

Property Address	Number of Criteria Met	Consultation with Property Owner
Arthur Allin House		
506 John St. W. Rectory, St. John's Roman Catholic Church	Meets 3 of 9 criteria	Still in discussion.
129 Perry St. Dr. Eastwood House	Meets 3 of 9 criteria	No response.
205 Perry St. Major Harper House	Meets 3 of 9 criteria	No response.
1 St. Thomas St. St. Thomas Anglican Church	Meets 3 of 9 criteria	(Parish wardens) Opposed to designation. Awaiting confirmation from Diocese.
107 Winchester Rd. W Rectory, St. Thomas Anglican Church	Meets 3 of 9 criteria	(Parish wardens) Opposed to designation. Awaiting confirmation from Diocese.
618 Athol St. Graydon Goodfellow House	Meets 2 of 9 criteria	Amenable to designation.
110 Centre St. N John Ham Perry House	Meets 2 of 9 criteria	No response.
170 Columbus Rd. W.	Meets 2 of 9 criteria	Still in discussion
401 Green St. Thomas Deverell House	Meets 2 of 9 criteria	Opposed to designation.
417 Green St. James Johnston House	Meets 2 of 9 criteria	Opposed to designation.
216 Mary St. E.	Meets 2 of 9 criteria	Opposed to designation.

Property Address	Number of Criteria Met	Consultation with Property Owner
Major Harper's Machine Shop (Rousseau Furniture)		
300 Mary St. W. Methodist Church	Meets 2 of 9 criteria	No response.

Note 1: Property is associated with development applications (DEV-30-22). Heritage matters can be dealt with separately from, and in advance of, consideration of development applications. Cultural Heritage Evaluation Reports have been prepared for these properties as part of the development application submission.

Note 2: Property owner is amenable to designation; however, requests that designation only apply to existing building, and that Site Plan process be finalized prior to a Designation By-law being passed.

This report focuses on privately-owned properties only, at this time. There are publicly-owned properties that may have cultural heritage potential that can be addressed separately, at a later date.

Consultation with Property Owners

Although the Ontario Heritage Act does not require consent/concurrence from a property owner for designation to occur, it is a factor for Council's consideration in advancing properties through the designation process. In designating individual properties Council needs to consider/balance factors such as the public/community interest, private property owner's interest, development pressures, and the objection/appeal process.

Notice of Intention to Designate (NOID) is a requirement under the Act. Consultation with property owners about the designation process is a best practice. Staff have consulted and will continue to consult with property owners regarding potential designation.

As noted, Provincial heritage policy direction requires municipalities to conserve significant heritage resources because of the benefits to the community through the preservation of historic properties.

Should an owner object to a potential designation, there are notification, objection and appeal processes outlined in the Act. These processes allow the owner to voice their concerns and objections to any proposed designation while still considering the heritage evaluation of the property. An owner's objection to a NOID is first heard by Council and, if a resolution is not achieved, the owner can appeal a Council's decision to designate by By-law to the Ontario Land Tribunal (OLT). In considering objections to a NOID,

Council must consider provincial heritage policy direction while also weighing any comments and concerns from the public and private property owners.

Below is a summary of general concerns identified through initial consultation with the property owners of priority candidate properties for designation;

- Decrease in property values;
- Potential impacts on future plans for the property;
- Potential impacts on business operations;
- Unable to sell the property in the future;
- Unable to make any changes, alterations/additions;
- Concerns regarding the evaluation criteria / evaluation process;
- Process for changes, alterations, additions, maintenance, etc., is onerous;
- Upkeep of heritage properties is too expensive;
- Increase in insurance costs; and
- Amount of Heritage Tax Rebate, and/or rebate may not offset potential Designation impacts.

Factors for Consideration

Below are factors for Council's consideration, should Council wish to initiate the designation process for the priority candidate properties:

- LHC's priority candidate list is based on their preliminary review of the Register where properties appear to meet the most criteria under O.Reg. 9/06 (to be confirmed through more detailed CHERs). Additional candidate properties may be brought forward at a later date following further review.
- Designating priority candidate properties of cultural heritage value or interest addresses a provincial policy direction (PPS, Planning Act, Growth Plan).
- Designating priority candidate properties increases the number of protected properties with high cultural heritage value or interest to the community and affirms the Town's commitment to cultural heritage preservation.
- Not designating priority candidate properties could result in the loss of cultural heritage resources on properties with high cultural heritage value or interest to the community.
- Issuing Notices of Intention to Designate may pose a risk for objections to Council and passing By-law(s) to designate under Part IV of the Act may pose a risk of appeals to the OLT.
- Although Designation under the Ontario Heritage Act could impact property values, any positive or negative impact would need to be assessed/determined on a case-by-case basis and would need to be balanced with consideration of overall public interest of heritage conservation.
- With regards to ability to sell individual and HCD designated properties – several properties have changed ownership since being designated.

- With regards to upkeep costs – the Town of Whitby Heritage Tax Rebate (HTR) program is available to eligible designated properties and provides some relief from any potential added expense of maintaining a designated property.
- With regards to process – alterations/additions to designated properties would follow the Town's established Heritage permit process. Heritage staff and HWAC work with property owners where sympathetic/compatible changes are typically approved. For most designated properties, internal attributes are not usually identified; rather, external attributes are protected, as they are what is most visible to and experienced by the community.

For the priority candidate properties, LHC recommends that the Town consider heritage designation. This will still require preparation of a detailed Cultural Heritage Evaluation Report (CHER) for each property that advances. A CHER would include an assessment using the criteria under O.Reg. 9/06 and is required to determine a statement of cultural heritage significance needed for issuing a NOID and for inclusion in the designation By-law. LHC has estimated that each CHER could cost between \$5,000 and \$7,500 per property. As such, should all of the potential candidate properties being recommended proceed to designation, an additional \$45,000 budget allocation would be required to complete all of the CHERs (see the Financial Considerations section for more details).

Remaining Properties on the Register

Non-priority, listed properties could be removed from the Register in advance of the January 1, 2025 deadline to avoid being subject to the 5-year moratorium imposed by Bill 23. If removed, they could be added back over time, and prior to the 5-year moratorium ending. Adding or returning a property to the Register now requires that the property owner be given Notice and the property must meet at least one (1) of the nine (9) criteria for determining cultural heritage value under O.Reg. 9/06.

LHC recommends that any priority candidate properties that do not advance to a NOID and/or Designation in 2024 be removed from the Register prior to the deadline, and that a non-regulatory list be used to inform Town heritage planning goals and objectives when considering development applications. Removal of properties from the Register before the deadline requires that Council consult with its Municipal Heritage Committee. HWAC is aware of, and generally supportive of this option.

Next Steps

It is recommended that the designation process be undertaken for the priority candidate properties identified by LHC, where the owner is amenable. It is also recommended that the designation process be undertaken for priority candidate properties where the owner has not responded.

Upon issuance of a NOID, a property owner (including those who have not yet responded) would still be able to object to the NOID. Similarly, following issuance of a NOID, should Council wish to designate by By-law under the OHA, a property owner would still be able to appeal to the OLT.

Staff are seeking direction from Council regarding removal from the Register of any remaining listed properties on the Register, prior to the January 01, 2025 deadline. Any further additional candidate properties identified for designation may be brought forward for Council's consideration at a later date.

5. Financial Considerations:

Budget for the review of the Town's Municipal Heritage Register is included in the approved 2024 Capital Project # 81237201 - Designations for Municipal Heritage Register in the amount of \$60,000. The cost of LHC's preliminary review of the Register is approximately \$15,000. The remaining 2024 budget, in the amount of \$45,000 (= \$60,000 - \$15,000), would be allocated to preparation of individual CHERs towards designation.

As outlined in Table 1, three (3) of the property owners are amenable to designation and two (2) of the three (3) have already completed a CHER. The anticipated cost of the CHER for the remaining property where the property owner is amenable to designation would be approximately \$7,500 and would be accommodated within the remaining capital budget for project # 81237201.

Should Council wish to proceed to undertake CHERs for the 11 properties (in Table 1) where there has been no response or the Town is still in discussions with the property owner on designation, the anticipated CHER costs would be up-to approximately \$90,000 (= \$7,500 X 12), including the one (1) remaining property owner who is amenable to designation. In this case, there would be a budget shortfall of \$45,000 (= \$45,000 remaining budget - \$90,000 cost of the CHERs) in the capital project.

Accordingly, should Council wish to proceed CHERs for all 12 properties (including 1 where the property owners are amenable to the designation and 11 where the property owners have not yet responded or have not yet decided), it is recommended that capital project # 81237201 be increased by \$45,000 (from \$60,000 to \$105,000) funded from the Long-Term Finance Reserve (also known as the "One-Time" Reserve). The current uncommitted balance of the Long-Term Finance Reserve is \$2.88 million.

6. Communication and Public Engagement:

In March 2024, Staff contacted property owners of the priority candidate properties identified by LHC to provide an opportunity to discuss the Municipal Heritage Register review and the potential designation process. In April 2024, Staff met with those owners who responded.

In April 2024, Staff followed up with property owners who had not yet responded to provide another opportunity for consultation and met with additional owners who responded. Certain property owners have still not responded (refer to Table 1).

In May 2024, Staff notified all property owners on the priority candidate list (both those who were consulted, as well as those who have not yet responded), regarding this report being brought forward for Council's consideration.

Comments and concerns from those who have responded to date are outlined in Section 4 of this report.

7. Input from Departments/Sources:

Staff have consulted with the Heritage Register Review Sub-Committee of HWAC regarding the Register review and potential designations.

8. Strategic Priorities:

Protecting heritage properties supports Pillar #1 of the Community Strategic Plan, Whitby Neighbourhoods, by promoting and strengthening the local arts, culture, heritage, and the creative sector.

Heritage conservation further supports Pillar #2, Whitby's Natural and Built Environment, by enhancing community connectivity and beautification.

9. Attachments:

Attachment #1: Excerpt of O/Reg 9/06 – Evaluation Criteria

Attachment #2: LHC's Priority Candidate Properties and Recommendation Table