SUBJECT: Request to Designate 140 Locke Street South, Hamilton Under Part IV of the Ontario Heritage Act (PED09264) (Ward 1)

RECOMMENDATION:

(a) That Council direct staff to carry out a Cultural Heritage Assessment of 140 Locke Street South, Hamilton, to determine whether the property is of cultural heritage value, and worthy of designation under Part IV of the Ontario Heritage Act.

(b) That Council include 140 Locke Street South, Hamilton, in the Register of Property of Cultural Heritage Value or Interest following consultation with the Hamilton Municipal Heritage Committee, as per Recommendation (e) to Report PED09264 and the provisions of the Ontario Heritage Act, and that staff make appropriate amendments to the Register of Property Cultural Heritage Value or Interest.

(c) That if 140 Locke Street South, Hamilton, is determined to be of cultural heritage value or interest, a Statement of Cultural Heritage Value and Description of Heritage Attributes be prepared by staff for Council’s consideration for designation under Part IV of the Ontario Heritage Act.

(d) That the Cultural Heritage Assessment work be assigned a medium priority, and be added to staff’s work program for completion in 2011, as per the attached Appendix “G” to Report PED09264.

(e) That Report PED09264 be forwarded to the Hamilton Municipal Heritage Committee for information and consultation prior to the Council approved inclusion of 140 Locke Street South, Hamilton, in the Register of Property of Cultural Heritage Value or Interest.
EXECUTIVE SUMMARY:

Staff has received a request to designate 140 Locke Street South, Hamilton, under Part IV of the **Ontario Heritage Act** (see Appendix “A”). Under the Council approved designation process (approved October 29, 2008, Report PED08211), this report contains a preliminary evaluation of the subject property using the criteria contained in **Ontario Regulation 9/06**. This preliminary evaluation of the property provides the basis for a recommendation for continuing Cultural Heritage Assessment work, and for assigning a work program priority for this assessment work.

The property owner has requested that the property located at 140 Locke Street South, Hamilton (see location map attached as Appendix “B”, and photographs attached as Appendix “C”), be designated under Part IV of the **Ontario Heritage Act**. The subject building, located at 140 Locke Street South, Hamilton, was built in 1896 as the Immanuel Congregational Church, and was later used by the Trinity United Church. The building is constructed of red brick and, although the building has been altered and added to, it displays architectural features that express the Gothic Revival style and a high-degree of craftsmanship. The building was converted to a commercial building in 1967, and has since been used as a variety of commercial and retail establishments.

The property has not been formally recognized or inventoried by the City of Hamilton. However, the property will be included in the upcoming Volume 7B - Inventory of Places of Worship, which includes all places of worship built prior to 1956 in urban Hamilton. As part of this report, a preliminary assessment of the property has been undertaken by staff using the criteria contained in **Ontario Regulation 9/06**. The property meets all three of the criteria, and is considered to have design and physical value, historical and associative value, and contextual value.

Through this report, staff recommends that the Economic Development and Planning Committee and Council direct staff to carry out a Cultural Heritage Assessment of 140 Locke Street South, Hamilton, to determine whether the property is of cultural heritage value, and worthy of designation under Part IV of the **Ontario Heritage Act** as a medium priority within staff’s work program, and that the property be afforded interim protection provided by inclusion in the **Register of Property of Cultural Heritage Value or Interest**. This further research and assessment work will provide Committee and Council with adequate information upon which to base a decision regarding designation under the **Ontario Heritage Act**. The Hamilton Municipal Heritage Committee and the property owner will be consulted during the preparation of the Cultural Heritage Assessment and the staff report.
BACKGROUND:

Designation under Part IV of the Ontario Heritage Act allows municipalities to recognize a property’s cultural heritage value or interest, and to conserve and manage the property through the heritage permit process enabled under Sections 33 (alterations) and 34 (demolition or removal) of the Act. Where alterations to designated properties are contemplated, an owner is required to apply for, obtain, and comply with a heritage permit for any alteration that “is likely to affect the property’s heritage attributes, as set out in the description of the property’s heritage attributes” (Subsection 33(1)).

Designation does not restrict the use of a property, prohibit alterations or additions, or restrict the sale of a property. The City of Hamilton also provides heritage grant and loan programs to assist in the continuing conservation of properties once they are designated.

A process for considering requests for designation was approved by Council on October 29, 2008 (see Appendix “D”), and recognizes the Divisional Court decision Tremblay v. Lakeshore (Town).

A request to designate the property located at 140 Locke Street South, Hamilton, under Part IV of the Ontario Heritage Act has been received (see Appendix “A”). Under the Council-approved process for considering requests for designation, preliminary screening has been conducted (see Analysis section of this Report) referencing the criteria contained in Ontario Regulation 9/06 (see Appendix “E”) to determine if further Cultural Heritage Assessment work is warranted. This report also identifies a staff recommendation for the work program priority of this further Cultural Heritage Assessment work within the context of a four- to five-year timeframe.

Work Program Priority

The Council-approved designation process provides for the prioritization of detailed research and assessment work. Within the annual work program, Heritage staff can typically process three to four properties through the designation process, including the preparation of the comprehensive Cultural Heritage Assessment reports and the processing of the designation By-laws in conjunction with the Clerks Department. According to the Council approved process, Committee and Council may assign a high, medium, or low priority to a designation request in the context of a four- to five-year timeframe. These priorities generally fall within the following time frames:

- A high priority would direct staff to prepare the cultural heritage assessment within the current year’s work program;

- A medium priority would direct the designation request to the 2nd or 3rd year of the work program; or,

- A low priority would direct the request to the 4th or 5th year of the work program.
Work program priorities are assigned based on a number of factors, including:

- Risk to the property with respect to demolition or removal;
- Funding eligibility;
- Heritage value associated with the property;
- Current level of property maintenance;
- The property is City-owned; and,
- Work program/Staff resources.

The currently approved work program priorities are contained in Appendix “F”.

**ANALYSIS/RATIONALE:**

**140 Locke Street South**

The subject building, located at 140 Locke Street South, Hamilton, was built in 1896 as the Immanuel Congregational Church. The building is constructed of red brick in the Gothic Revival style and features decorative brickwork, arched windows and doorways, wooden window tracery, brick buttresses with stone caps, stone window sills and coping and an oriole window. When the building was constructed, it was one of only a few structures along Locke Street South. In the early 1900’s, a mixed use building was erected to the south of the church, and the west side of the Locke Street began to develop as a commercial street.

The interior of the church building was renovated in 1926, but financial problems and a dwindling congregation forced the congregation to amalgamate with the nearby Trinity United Church. The Trinity United Church congregation, formerly Trinity Methodist Church, began in 1885 as a Sunday School in a frame building on Canada Street. In the 1950’s, several memorial windows were installed in the church.

In 1963, the building was damaged by a fire that originated in the basement, but damage was limited to $5,000. Soon after, the church was closed and the congregation moved to Zion United Church on Pearl Street.

In 1967, the building was bought by Whitehall Antiques and was used as an auction hall. The building was sold again in the early 1990’s, and was used as a retail store known as the Light Computer Centre. In 1990-91, the Light Computer Company completed extensive renovations to the exterior and interior, and the owners of the building were presented with a Property Enhancement Plaque from the Locke Street Business Improvement Area. Recently, the building has been used for a variety of retail stores, and is currently owned by Spiritual Solutions Investments Incorporated.

**Preliminary Evaluation - Ontario Regulation 9/06**

In 2006, the Province issued criteria for determining cultural heritage value or interest under the Ontario Heritage Act. The regulation identifies three broad categories: Design or Physical Value, Historical or Associative Value, and Contextual Value, under which three subsets of criteria are further identified (see Appendix “E”). The following provides
a preliminary evaluation using the criteria contained in Ontario Regulation 9/06 - Criteria for Determining Cultural Heritage Value or Interest:

1. **Design value or physical value.**

   The former church building is constructed of red brick in the Gothic Revival style distinguished by architectural features, such as decorative brickwork, arched windows and doorways, wooden window tracery, brick buttresses with stone caps, stone window sills and coping, and an oriole window. The building has been subject to several alterations and additions including, but not limited to: the replacement of the central entrance door with a window within the original opening; the addition of exterior storm glazing in front of the window tracery within the original window openings; the construction of a brick addition and side wall on the north side; and, the addition of signage to the front façade and roof. However, the building retains several original features, and its original built form and configuration remain easily distinguishable.

2. **Historical value or associative value.**

   The church building is associated with the congregations of the Immanuel Congregational Church and the Trinity United Church. The property is also associated with the late-nineteenth century development of Hamilton and the community surrounding Locke Street.

3. **Contextual value.**

   The subject building is located in its original location on Locke Street South. The former church building occupies an unusual location for a place of worship - directly adjacent to commercial buildings and with little to no setback or landscaped open space. The building contributes to the streetscape and character of Locke Street South, and is a landmark along Locke Street South.

**Conclusion**

Staff concludes that the property located at 140 Locke Street South, Hamilton, is of cultural heritage interest, sufficient for the property to warrant further research and assessment for purposes of possible designation under the Ontario Heritage Act.

**Work Program Priority**

Staff recommends that further research and cultural heritage assessment work for 140 Locke Street South, Hamilton, be assigned a medium priority within the staff work program. Staff believes that this work is a medium priority because the building requires repairs and restoration to conserve its heritage attributes and remain a viable component of the Locke Street South streetscape. If the building is designated, it would be eligible for City grant funding under the Commercial Heritage Improvement and Restoration Program (CHIRP) or an interest-free loan under the Hamilton Community Heritage Fund (HCHF). The owners have indicated that they intend to apply for this funding.
The assignment of a medium priority to the subject designation request would place the research and preparation of a Cultural Heritage Assessment on the staff work program for 2011, and would adjust the existing priorities (see Appendices “F” and “G”).

**ALTERNATIVES FOR CONSIDERATION:**

Council may direct staff to not complete a Cultural Heritage Assessment, and no further work will be completed by staff. This alternative is contrary to the Council-approved process for considering requests for designation whereby legitimate requests for designation must be addressed, and cannot be dismissed without complete consideration of all the issues (see Legal Implications section of this Report).

Council may also assign a different work program priority than recommended by staff. Given the consideration of all the factors noted in the Analysis section of this report, staff is of the opinion that the recommended work program priority is warranted.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

- **Financial:** None.
- **Staffing:** None.
- **Legal:** The City’s legal counsel was consulted in the preparation of the original staff report regarding the new designation process (Report PED08211). Planning staff has prepared the following review of the legal implications of the recommendations of this report in consultation with legal counsel:

The property owner’s consent is not a prerequisite for designation of a property under the *Ontario Heritage Act*. The role of the owner in a property designation was considered in *Tremblay v. Lakeshore (Town)*, a 2003 Divisional Court decision where a group of parishioners successfully challenged, by means of judicial review, the Council of Lakeshore’s decision not to designate a church. The court found that the interests of the public, community, and the owner must all be considered when a Council decides whether or not to designate a property. Further, the court found that the Council of Lakeshore had made the owner’s consent a condition of designation, effectively pre-empting any consideration of either the public interest or the community interest. In doing so, the Council actually fettered its discretion to make the designation decision, acting contrary to the *Ontario Heritage Act*.

Accordingly, a Council may decide, after considering all of the circumstances in regard to the particular property before it - including the staff report, the Cultural Heritage Assessment, the Municipal Heritage Committee recommendation, and any other relevant submissions such as an owner’s objections - that it is in the public interest and/or community interest to conserve a property, despite objections by the owner.
SUBJECT: Request to Designate 140 Locke Street South, Hamilton Under Part IV of the Ontario Heritage Act (PED09264) (Ward 1) - Page 7 of 8

In accordance with the designation process approved by Council on October 29, 2008, the purpose of this report is to provide staff with initial direction to complete further research and evaluation of the property for a later decision by Council. At this stage of the designation process, although the owner of the property has requested designation, Council does not yet have before it information with respect to the public’s or community’s interests. If staff is directed to proceed, Council will be able to make an appropriate decision on designation at a subsequent stage in the designation process when it has before it a staff report, the Cultural Heritage Assessment, a draft designating By-law, advice from the Hamilton Municipal Heritage Committee, and the positions of the property owner and any other interested parties.

POLICIES AFFECTING PROPOSAL:

The following policies apply:

Section C.6 - Heritage Resources of the former City of Hamilton Official Plan encourages the preservation, maintenance, reconstruction, restoration, and management of property considered to have historic, architectural, or aesthetic value (C.6.1).

Section 3.4 - Cultural Heritage Resources Policies of the Council-adopted Urban Hamilton Official Plan (adopted July 9, 2009) states that the City shall “protect and conserve the tangible cultural heritage resources of the City, including archaeological resources, built heritage resources, and cultural heritage landscapes” (3.4.2.1(a)), and “identify cultural heritage resources through a continuing process of inventory, survey, and evaluation, as a basis for the wise management of these resources” (3.4.2.1(b)). The policies also provide that the “City may, by By-law, designate individual and groups of properties of cultural heritage value under Parts IV and V, respectively, of the Ontario Heritage Act” (3.4.2.3). Although, the Urban Hamilton Official Plan has not been approved by the Ministry of Municipal Affairs and Housing, and is not in effect, these policies demonstrate Council’s commitment to the identification, protection, and conservation of the cultural heritage resources.

RELEVANT CONSULTATION:

This is the initial stage in the consideration of a request for designation under the process approved by Council on October 29, 2008. Typically, an owner of property is not consulted in the preparation of this report. Regardless of the owner's acceptance or objection to designation, Council does not have enough information at this time to determine whether it is in the public interest and/or community interest to conserve the property (see Legal Implications). The purpose of this report is to provide staff with direction to complete further research and evaluation of the property in order to assemble the information for a later decision by Council. The owner will be notified of any future Public Meeting(s) when consideration of the potential designation of the subject property is to be discussed, and would be notified of Council’s intent to designate and the passing of any By-laws under the public notification provisions of the Ontario Heritage Act. However, in keeping with Council’s intent in approving the
designated process, it is recommended that the owner be forwarded a copy of this report and advised of any further assessment work to be completed.

Staff will follow the Council-approved process (see Appendix “D”), and formally consult with the Hamilton Municipal Heritage Committee prior to inclusion of the subject property in the Register of Property of Cultural Heritage Value or Interest.

**CITY STRATEGIC COMMITMENT:**

The identification and assessment of the cultural heritage value and significance of the property is consistent with the 2008-2011 City of Hamilton Corporate Strategic Plan - Strategic Theme of promoting the City's image. Specifically, this due diligence is consistent with several of the Focus Areas, such as promoting effective inter-governmental relations, demonstrating a commitment to established policies and goals, protecting public health and safety, conserving resources, and managing the built environment in a sustainable manner.

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

**Community Well-Being is enhanced.** ☑ Yes ☐ No

Arts, culture, archaeological and cultural heritage are supported and enhanced.

This initiative promotes the conservation of Hamilton’s heritage. Protecting cultural heritage strengthens the community’s identity and distinctiveness.

**Environmental Well-Being is enhanced.** ☑ Yes ☐ No

Cultural heritage resources are conserved, contributing to Hamilton’s environmental amenities.

**Economic Well-Being is enhanced.** ☑ Yes ☐ No

Designation may provide access to local, provincial, and federal funding. Cultural heritage resources may provide opportunities for cultural heritage tourism and education.

**Does the option you are recommending create value across all three bottom lines?**

☑ Yes ☐ No

Cultural heritage resources are conserved and enhanced, resulting in strengthened community identity.

**Do the options you are recommending make Hamilton a City of choice for high performance public servants?**

☑ Yes ☐ No

This initiative demonstrates the City's commitment to implementing Council approved cultural heritage Official Plan policies and the Corporate Strategic Plan.

MH

Attachs. (7)
City of Hamilton
Meghan House
Designation Request

Dear Meghan House:

We, Maria Barroso & Carlos Saenz, owners of the property located at 140 Locke Street South, Hamilton, ON L8P4A9 are requesting designation for the property mentioned above, under the Ontario Heritage Act.

This building was constructed in 1870, and we have renewed the roof in 2007. However, it is now critical that we repair the main brick façade, which needs to be cleaned and sealed urgently due to humidity. We do not have the budget to do these repairs, and this is why we are asking to be part of the Downtown Repair and Restoration Grant Loan Program.

Thanks for your understanding.

Sincerely

[Signatures]

Spiritual Solutions Investments
Maria Barroso

Carlos A. Saenz
140 Locke Street South (Imperial Atlas of Wentworth County, 1903)

140 Locke Street South, known as Whitehall Auction Center (1975)
140 Locke Street South - East Elevation

140 Locke Street South - North Elevation
Ontario Heritage Act

ONTARIO REGULATION 9/06

CRITERIA FOR DETERMINING CULTURAL HERITAGE VALUE OR INTEREST

Criteria

1.(1) The criteria set out in Subsection (2) are prescribed for the purposes of Clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).

(2) A property may be designated under Section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

1. The property has design value or physical value because it:
   i. Is a rare, unique, representative or early example of a style, type, expression, material, or construction method;
   ii. Displays a high degree of craftsmanship or artistic merit; or,
   iii. Demonstrates a high degree of technical or scientific achievement.

2. The property has historical value or associative value because it:
   i. Has direct associations with a theme, event, belief, person, activity, organization, or institution that is significant to a community;
   ii. Yields, or has the potential to yield, information that contributes to an understanding of a community or culture; or,
   iii. Demonstrates or reflects the work or ideas of an architect, artist, builder, designer, or theorist who is significant to a community.

3. The property has contextual value because it:
   i. Is important in defining, maintaining, or supporting the character of an area;
   ii. Is physically, functionally, visually, or historically linked to its surroundings; or,
   iii. Is a landmark. O. Reg. 9/06, s. 1 (2).
## Requests to Designate Properties under Part IV of the Ontario Heritage Act:
### Priorities (as amended by Report PED09244)

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<td>167 Book Road, Ancaster</td>
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