SUBJECT: Request to Designate 111 Kenilworth Access, Hamilton (Known as the Barton Reservoir) Under Part IV of the Ontario Heritage Act (PED09241) (Wards 3 and 4)

RECOMMENDATION:

(a) That Council direct staff to carry out a Cultural Heritage Assessment of 111 Kenilworth Access, 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 111 Kenilworth Access, Hamilton, in the Register of Properties of Cultural Heritage Value or Interest following consultation with the Hamilton Municipal Heritage Committee, as per Recommendation (e) to Report PED09241 and the provisions of the Ontario Heritage Act, and that staff make appropriate amendments to the Register of Cultural Heritage Value or Interest.

(c) That if 111 Kenilworth Access, 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 low priority, and be added to staff’s workplan for completion in 2012, as per the attached Appendix “G” to Report PED09241.
SUBJECT: Request to Designate 111 Kenilworth Access, Hamilton (Known as the Barton Reservoir) Under Part IV of the Ontario Heritage Act (PED09241) (Wards 3 and 4) - Page 2 of 9

(e) That Report PED09241 be forwarded to the Hamilton Municipal Heritage Committee for information and consultation prior to the Council approved inclusion of 111 Kenilworth Access, Hamilton, in the Register of Cultural Heritage Value or Interest.

(f) That Report PED09241 be forwarded to the Director of the Culture Division of the Community Services Department and the Senior Director of the Water and Wastewater Division of the Public Works Department for information.

Tim McCabe
General Manager
Planning and Economic Development Department

EXECUTIVE SUMMARY:

Staff has received a request to designate 111 Kenilworth Access, Hamilton (known as the Barton Reservoir), under Part IV of the Ontario Heritage Act (see Appendix “A”). Under the Council approved designation process (approved October 29, 2008, Report PED08211), the following 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 workplan priority for this assessment work.

The Hamilton Municipal Heritage Committee has requested that the property known as the Barton Reservoir, located at 111 Kenilworth Access, Hamilton (see location map attached as Appendix “B”, and photographs attached as Appendix “C”), and owned by the City of Hamilton, be designated under Part IV of the Ontario Heritage Act. The Barton Reservoir comprises the reservoir basin, a standpipe and other pipes and valves and remnants of the superintendent’s residence and park adjacent to the Reservoir. The Reservoir is associated with the 1857 Hamilton Waterworks and other off-site resources, such as a former pipeline right-of-way across the east end of Hamilton. The Barton Reservoir is not an operational reservoir.

The property has not been recognized or inventoried by the City of Hamilton, but the Barton Reservoir is associated with the former Hamilton Waterworks (currently the Hamilton Museum of Steam and Technology), which is designated under Part IV of the Ontario Heritage Act, and is a National Historic Site of Canada. The Hamilton Waterworks is also recognized as a Civil and Power Engineer Landmark by the
Canadian Society of Civil Engineers. 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 111 Kenilworth Access, 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 low priority within staff’s workplan. 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 appropriate City departments 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 known as the Barton Reservoir, located at 111 Kenilworth Access, 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 workplan priority of this further Cultural Heritage Assessment work within the context of a four to five-year timeframe, as per the Council-approved designation process.
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 Clerks. 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 2\textsuperscript{nd} or 3\textsuperscript{rd} year of the work program; or,
- A low priority would direct the request to the 4\textsuperscript{th} or 5\textsuperscript{th} 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:

111 Kenilworth Access, Hamilton (Barton Reservoir)

The Barton Reservoir was completed in 1859 as a component of the Hamilton Waterworks, the first water distribution system for the City. Water was drawn from Lake Ontario, filtered through sand basins, and pumped by steam engines to the Barton Reservoir, where it was then pumped with the assistance of gravity to provide drinking water and fire protection to the City. The Reservoir was constructed to hold 11 million gallons of water, and was built in an oval shape with a basin made of puddled clay, broken stones, and rubble masonry. A brick residence for the superintendent of the Waterworks and a park were also on the same grounds.
SUBJECT: Request to Designate 111 Kenilworth Access, Hamilton (Known as the Barton Reservoir) Under Part IV of the Ontario Heritage Act (PED09241) (Wards 3 and 4) - Page 5 of 9

When the James Street Reservoir was built in 1896, the Barton Reservoir was used only for storing water for emergency use. The Barton Reservoir was used until the Kenilworth Reservoir (adjacent) was completed in 1958. The Reservoir basin and standpipe remain relatively intact, while the superintendent’s house and outbuildings and the park remain primarily as archaeological remnants. Another recognizable remnant of the Hamilton Waterworks is the former right-of-way for the pipeline from the Pumping Station to the Reservoir, which cuts diagonally across the east side of Hamilton to Ottawa Street.

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 Barton Reservoir was designed by Thomas Keefer, a nationally significant engineer who was also the designer for the Hamilton Waterworks, and constructed in a similar design as the McTavish Reservoir that he designed for Montreal. The Barton Reservoir was constructed to hold 11 million gallons of water and was built in an oval shape with a concrete border and a basin made of puddled clay, broken stones, and rubble masonry. The reservoir is an important component to the overall design of the 1857 water distribution system for Hamilton, and remains relatively intact. Another physical example associated with the Hamilton Waterworks is the former right-of-way for the pipeline from the Pumping Station (currently the Hamilton Museum of Steam and Technology) to the Barton Reservoir, which cuts diagonally across the east side of Hamilton to Ottawa Street. The Hamilton Waterworks is an example of early engineering and water supply system design, and together the remnant features form a cultural heritage landscape having design and/or physical value, possibly of provincial and national significance.

2. **Historical Value or Associative Value:**

   The Barton Reservoir and pipeline right-of-way are associated with the 1857 Hamilton Waterworks, the development of municipal water systems in North America and Canada, and the engineering works of Thomas Keefer. The 1857 Hamilton Waterworks was one of the earliest water distribution systems in Canada, and is the last remaining intact facility of its time period. The Hamilton Waterworks were designed by Thomas Keefer, Chief Engineer of the Montreal Water Board, who also designed a water-supply system for Ottawa (1874). The
Barton Reservoir is an original component of the Hamilton Waterworks, and has historical and associative value.

3. **Contextual Value:**

   The Barton Reservoir remains in its original location, and its context has remained relatively unchanged. The Reservoir’s elevated position at the base of the Niagara Escarpment and partway between Lake Ontario and Hamilton’s downtown demonstrate its function in the water distribution system. The Barton Reservoir displays contextual value. The Hamilton Waterworks (currently the Hamilton Museum of Steam and Technology) and the former pipeline right-of-way contribute to this contextual value.

**Conclusion**

Staff concludes that the property located at 111 Kenilworth Access, Hamilton (known as Barton Reservoir), 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 111 Kenilworth Access, Hamilton, be assigned a low priority within the staff work program. Staff believes that this work is a low priority because it is currently City-owned, and not subject to any significant pressure for alteration or loss. The property comprises the remnants of the former reservoir, park and superintendent’s dwelling, which will not substantially deteriorate or face immediate threats without the protection of the *Ontario Heritage Act*.

The assignment of a low priority to the subject designation request would place the research and preparation of a Cultural Heritage Assessment on the staff work program for 2012, and would not displace any of 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 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.

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, the Owner of the property has not been consulted, and Council does not yet have before it information with respect to the Owner’s, 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
SUBJECT: Request to Designate 111 Kenilworth Access, Hamilton (Known as the Barton Reservoir) Under Part IV of the Ontario Heritage Act (PED09241) (Wards 3 and 4) - Page 8 of 9

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 Hamilton Urban 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 (in this instance the Owner is the City), 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 Public Works Department 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 designation process, it is recommended that the Public Works Department and Community Services Department be forwarded a copy of this report and advised of any further assessment work to be completed.
This request for designation originated from the Hamilton Municipal Heritage Committee. Although it is assumed that the Hamilton Municipal Heritage Committee would be in agreement regarding inclusion of the subject property in the Register, 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.

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
Attachments. (7)
Excerpt from the Minutes of the Hamilton Municipal Heritage Committee meeting
February 26, 2009

(Adkins/Bratina)

That Heritage staff be requested to prepare a cultural assessment of the East End Reservoir to determine whether the property is worthy of designation, and present their recommendations to the Economic Development and Planning Committee for consideration.

CARRIED
Barton Reservoir and Superintendent’s Residence (no date)

Barton Reservoir (no date)
Reservoir Park and Superintendent’s Residence (no date)

Existing Basin Floor and Sides
Existing Basin
Existing Standpipe
DESIGNATION PROCESS

1. Designation initiated
2. Preliminary Staff screening property meets one or more of three Ontario Heritage Act (OHA) criteria
   - (Yes) Staff Report and Preliminary Screening To EDPIC and Council for direction and prioritization
   - (No) Property does not move forward and person/body that initiated request informed
3. High Place on Current Year Work Plan
4. Medium Place on Work Plan in 2-3 Years
5. Low Place on Work Plan in 4-5 Years
6. Full cultural heritage assessment prepared (full screening with City criteria and OHA criteria)
7. Assessment reviewed by Inventory and Research Subcommittee of the Municipal Heritage Committee
8. MHC considers staff assessment
9. MHC provides advice to EDPIC via Staff report and recommendation
10. Staff Report, Cultural Heritage Assessment, Draft By-law and Statement of Cultural Heritage Value forwarded to EDPIC for consideration
11. Council makes a decision on the proposed designation
   - (Yes) Proposed designation approved
     - Notice of Intent to Designate served and advertised
     - (Yes) Obligation received within 30 days
     - (No) Proposed designation referred to Conservation Review Board (CRB)
   - (No) Proposed designation denied
12. Council considers CRB report and recommendations
13. Council approves designation
14. Designation by-law passed and registered on Title

Council Approved on October 29, 2008
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 approved by Council on August 10, 2009, Report PED09212)

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