SUBJECT: Request to Designate 397 King Street West, Dundas - Dundas District High School (Ward 13) (PED07249)

RECOMMENDATION:

(a) That Council direct staff to carry out a Cultural Heritage Assessment of 397 King Street West, Dundas (Dundas District High School), to determine whether the property is of cultural heritage value and worthy of designation under Part IV of the Ontario Heritage Act, per Report PED07249.

(b) That if 397 King Street West, Dundas (Dundas District High School) is determined to be of cultural heritage value or interest, that staff prepare a Statement of Cultural Heritage Value and Description of Heritage Attributes for Council’s consideration for designation under Part IV of the Ontario Heritage Act, per Report PED07249.
EXECUTIVE SUMMARY:

The Community Heritage Advisory Panel (CHAP) for Dundas, which is a community based heritage committee that advises the Hamilton LACAC (Municipal Heritage Committee) on Dundas issues, has submitted a request to the City to have the Dundas District High School, 397 King Street West, Dundas, designated under Part IV of the Ontario Heritage Act, as a property of cultural heritage value (see Appendix A).

At its meeting of May 24, 2007, the Hamilton LACAC (Municipal Heritage Committee), in consideration of this request from CHAP, requested that staff prepare a report to Council seeking direction on the next steps in the process of designation. The Hamilton LACAC (Municipal Heritage Committee) is advising Council that staff should undertake a Cultural Heritage Assessment at this time.

There is no Council policy on third-party requests for designation. However, such requests are contemplated under the Ontario Heritage Act, and are supportable under recent case law. While it has been the general practice in the City of Hamilton for the owners’ support for designation, the consent of the owner is not required, and such consent has been ruled by the Courts to be inconsistent with the Ontario Heritage Act and its purpose.

BACKGROUND:

Typically, requests for designation are received from the owner, and it has been general practice for staff to prepare a Cultural Heritage Assessment directly on the request from the Hamilton LACAC (Municipal Heritage Committee) following their consideration of an owner’s request. In this instance, as the request is from a third-party and not from the owner, staff is seeking this direction from Council prior to undertaking the Cultural Heritage Assessment. The property is owned by the Hamilton-Wentworth District School Board.

City staff has consulted School Board staff for their comments on this request and has recently been advised that the Board of Trustees is recessed for the summer and does not reconvene until September. School Board staff has also indicated that, at a September Board meeting, a staff report could be presented to update the Board on the City's initiative, as well as seek input prior to City Council directing staff on the final disposition of this matter. Accordingly, at the time of writing this staff report, the property owner’s willingness to have the property designated is unknown.

Given the community concerns on this matter, recent case law, the prospect of future disposition and the potential cultural heritage value of this property, City staff is of the opinion that Council direction on this matter (i.e. to proceed with a Cultural Heritage Assessment of this property) would be appropriate. Council, at a later date, would still retain the discretion as to whether a designating By-law, under Part IV of the Ontario Heritage Act, should be enacted.
A recent court decision (Divisional Court File No.: 189/03 - Tremblay v. Lakeshore (Town), 2003 CanLII 6354 (ON S.C.D.C.)) determined that Municipal Councils can consider and may enact designation By-laws even if the owner is not in support of that designation. In the case of Tremblay v. Lakeshore, a third-party (a group of concerned citizens) asked the Town of Lakeshore to designate a building under the Ontario Heritage Act. A number of Town Council meetings ensued, during which the Town refused to initiate designation. The Town took the position that it could not entertain a request without the consent of the owner. It was determined by the Ontario Superior Court of Justice that requiring the consent of the owner is not consistent with an overall reading of the Ontario Heritage Act or its purpose. Indeed, the Act contemplates notice to the owner, possible objections, and a hearing process. Accordingly, the Court ruled that “in requiring the consent of the owner as a pre-condition to designation, the Town placed an unreasonable obstacle on its own discretionary powers, thereby fettering its discretion and aborting the process intended by the Act.”

**ANALYSIS/RATIONALE:**

Currently the Hamilton-Wentworth District School Board is considering the sale of properties located on the western end of Dundas close to the Niagara Escarpment (see Appendix A). The property contains the former Dundas District High School (on the north side of King Street); the ruins of the former Gore Mills (to the west of the school building) and the open space of the playing field (on the south side of King Street just west of Bond Street) (see Appendix B). In order to ensure the long-term preservation of this community heritage resource, the Community Heritage Advisory Panel for Dundas has requested that the City designate the property under Part IV of the Ontario Heritage Act.

The intent in designating property is to enable retention of a resource and a process of cultural resource management and conservation of identified, valued heritage features related to that resource. This is usually undertaken through the consideration of subsequent heritage permit applications for alterations and additions to a designated property.

Designation is typically guided by an objective and rigorous process resulting in a Cultural Heritage Assessment Report. The property at 397 King Street West, Dundas, would be assessed using both the City of Hamilton Criteria, and the Criteria for Determining Cultural Heritage Value or Interest, as defined in Ontario Regulation 9/06 of the Ontario Heritage Act. This process attempts to clearly identify those heritage values associated with a property. This report and associated By-laws would be prepared at this time if Council directs staff to do so.

**Preliminary Assessment**

A preliminary assessment of the Dundas District High School and associated attributes is as follows:
Design Value: The Dundas District High School was built in 1928 to the designs of the noted Hamilton architect William J. Walsh in the Collegiate Gothic style. Although the completed building was not as grand as the architect had originally envisioned (due to budget restrictions), it is nevertheless a well-proportioned substantial three-storey building clad in rug brick with fine carved stone detailing. The stone Gothic ornamentation includes pinnacles, gargoyles, decorative crests and door lintels that mark the entrance for girls on one side and boys on the other. Stylistically, the building is comparable to other Hamilton schools of the same era and style such as George R. Allen and Westdale High School. There are a number of additions (1948, 1953, 1956, 1968), yet the building retains a high degree of architectural integrity, especially on its most significant front façade on King Street.

Historical Value: The history of the former Dundas District High School dates back to 1849 when the Dundas Select Academy was established as a private grammar school on Ogilvie Street. The existing building at 397 King Street West was constructed in 1928 on the former mill property donated by Robert and Frank Fisher—the Fisher brothers agreed to donate their property containing the Fisher Paper Mill (Gore Mills), plus the vacant lot on the opposite side of King Street, with a stipulation placed on the deed that the property must be kept in perpetuity for educational and public playground use. The need to build a large high school at the time was a testament to the demands of the growing local population, a need that was echoed in the 1980’s when the school was revived for use.

Contextual Value: The former Dundas District High School is a landmark in Dundas, located on the western edge of the former town of Dundas, just below the Niagara Escarpment. The property includes the remains of the original Fisher mill. Directly across the street, on the south side of King Street, a playing field, also owned by the School Board, adds to the context and is marked by a significant Chinquapin Oak tree, an exceptionally rare species, estimated to be at least 200 years old and listed on the Ontario Honour Roll of Trees.

ALTERNATIVES FOR CONSIDERATION:

Under Part IV of the Ontario Heritage Act, the designation of property is a discretionary activity on the part of Council. Council, as advised by its Municipal Heritage Committee, may consider two alternatives: agree to consider designation of the property or decline to consider designation of the property.

Decline to Designate

By declining to consider designation, the municipality would be unable to provide protection to this heritage resource (designation provides protection against inappropriate changes and demolition). Without enacting designation, the property would not be eligible for heritage grant and loan programs from all levels of government. Designation does not restrict the use of property, nor does it restrict the sale of a property, or affect its resale value. Accordingly, given the preliminary assessment of
this property, staff is of the opinion that further evaluation and prospective designation is warranted. Declining to consider designation at this time is not considered to be an appropriate conservation alternative.

Declining to consider designation would not be in keeping with the “Triple Bottom Line” and would not move the City closer to the vision for a sustainable community. Also, this alternative would not be in keeping with the intent of the powers vested in municipalities under the Ontario Heritage Act. The City, if declining to consider designation, may place itself in a similar position to the Town of Lakeshore (as noted above and under Legal Implications, below).

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial - Not applicable.

Staffing - Staff time would be allotted to the preparation of the Cultural Heritage Assessment as part of routine responsibilities.

Legal - The designation process will follow the requirements of the Ontario Heritage Act and provide for adequate notice of Council’s intention to designate the property to the owner and the Ontario Heritage Trust. A property owner can make a formal objection to the designation under the Ontario Heritage Act, with a potential hearing before the Conservation Review Board, prior to Council approving the designating By-law.

A recent court decision (Divisional Court File No.: 189/03 - Tremblay v. Lakeshore (Town), 2003 CanLII 6354 (ON S.C.D.C.)) determined that Municipal Councils must consider and enact designation By-laws even if the owner is not in support of that designation. In the case of Tremblay v. Lakeshore, a third-party (a group of concerned citizens) asked the Town of Lakeshore to designate a building under the Ontario Heritage Act. A number of Town Council meetings ensued, during which the Town refused to initiate designation. The Town took the position that it could not entertain a request without the consent of the owner. It was determined by the Ontario Superior Court of Justice that requiring the consent of the owner is not consistent with an overall reading of the Ontario Heritage Act or its purpose. Indeed, the Act contemplates notice to the owner, possible objections, and a hearing process. Accordingly, the Court ruled that “in requiring the consent of the owner as a pre-condition to designation, the Town placed an unreasonable obstacle on its own discretionary powers thereby fettering its discretion and aborting the process intended by the Act.”
POLICIES AFFECTING PROPOSAL:

Official Plan policies of the former Town of Dundas support the conservation, protection and management of cultural heritage features. Considering designation of 397 King Street West (Dundas District High School) Dundas, will be in accordance with these policies.

RELEVANT CONSULTATION:

Pursuant to Subsection 29 (2) of the Ontario Heritage Act, Council is required to consult with its Municipal Heritage Committee respecting designation of property under Subsection (1). At its meeting of May 24, 2007, the Hamilton LACAC (Municipal Heritage Committee) considered this request from the Community Heritage Advisory Panel for Dundas for designation of the Dundas District High School, and recommended that Council direct staff to undertake a cultural heritage assessment. If staff is directed to prepare the cultural heritage assessment, the recommendation and report will be considered by the Hamilton LACAC (Municipal Advisory Committee) before being presented to Council.

CITY STRATEGIC COMMITMENT:

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, archeological and cultural heritage are supported and enhanced.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Waste is reduced and recycled.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes ☐ No

:SV
Attachs. (2)