SUBJECT: Process for Property Designation Under Part IV of the Ontario Heritage Act (PED08211) (City Wide)

RECOMMENDATION:

(a) That the process for designating properties in the City of Hamilton under Part IV of the Ontario Heritage Act, as contained in Appendix “A” attached to Report PED08211, be approved.

(b) That the cultural heritage evaluation criteria contained in Appendix “B” attached to Report PED08211 and referred to as “The City of Hamilton: Cultural Heritage Evaluation Criteria”, be adopted and approved for use in the designation of properties under Part IV of the Ontario Heritage Act.

(c) That the designation of the property at 167 Book Road East, Ancaster (the Book House) be assigned a high priority, and that Council direct staff to carry out a Cultural Heritage Assessment, 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.

(d) That the designation of the property at 397 King Street West, Dundas (Dundas District High School) be assigned a high priority, and that Council direct staff to carry out a Cultural Heritage Assessment, 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.

(e) That the priorities for property designation under Part IV of the Ontario Heritage Act, as contained in Appendix “C” to Report PED08211, be approved.

(f) That, with respect to the designation of the property at 191 Barton Street East, Hamilton (the Smart Turner Building), which was previously considered by Committee (Report PED05197), the following be approved:
i) That the designation of 191 Barton Street East, as a property of cultural heritage value pursuant to the provisions of Part IV of the Ontario Heritage Act, be approved;

ii) That the Statement of Cultural Heritage Value and Description of the Heritage Attributes, attached as Appendix “D”, be approved; and,

iii) That the City Solicitor be directed to take appropriate action to designate 191 Barton Street East under Part IV of the Ontario Heritage Act, in accordance with the Notice of Intention to Designate, attached as Appendix “E”.

(g) That after consultation with the Hamilton Municipal Heritage Committee, the following properties be added to the municipal register of property of cultural heritage value or interest:

i) 167 Book Road, Ancaster
ii) 397 King Street West, Dundas (Dundas District High School)
iii) Book Cemetery, Ancaster
iv) 82-112 King Street East, Hamilton (Royal Connaught)
v) 52-56 Charlton Avenue West, Hamilton
vi) 654 Garth Street, Hamilton (Chedoke House)
vii) 91 John Street South, Hamilton
viii) 9300 Airport Road, Mount Hope (RCAF 447)
ix) 103 Catharine Street North, Hamilton
x) 3027 Homestead Drive, Mount Hope
xi) 1062 Golf Club Road, Binbrook (Woodburn)

(xii) Gage Park, Hamilton
(xiii) Tisdale House, Ancaster

(h) That the following issues be removed from the Outstanding Business List:

i) Designation of 191 Barton Street East, Hamilton;
ii) Book House, 167 Book Road East, Ancaster; and,
iii) Request to Designate 397 King Street West, Dundas - Dundas District High School.

(i) That Report PED08211 be forwarded to the Hamilton LACAC (Municipal Heritage Committee) for information.
EXECUTIVE SUMMARY:

The purpose of this report is to address the designation of three properties under the Ontario Heritage Act, as well as a proposed process for all designations which takes into consideration the Ontario Heritage Act, Heritage staff resources and the Ontario Divisional Court ruling in Tremblay v. Lakeshore (Town).

The three subject properties are:

- 191 Barton Street East, Hamilton, known as the Smart Turner Building (PED05197);
- 167 Book Road East, Ancaster, known as the Book House (PED07218); and,
- 397 King Street West, Dundas, known as the Dundas District High School (PED07249).

All three properties have been brought forward previously for consideration for individual designation under Part IV of the Ontario Heritage Act, together with a number of matters related to their processing under the Ontario Heritage Act. One of the designations was directed by Council, one was initiated by the Municipal Heritage Committee, and the other was initiated by a third party. None were initiated by the property owner.

As part of Committee deliberations on these designations the views of the property owner were discussed particularly with reference to the Divisional Court’s decision in the matter of Tremblay v. Lakeshore (Town). Accordingly, this report provides Council with a legal opinion regarding the Tremblay decision, which addressed the role of owner consent in the designation process. Having examined the Divisional Court’s decision, and in order to address the outstanding, as well as future designations, staff has concluded that there is a need for a revised process for Part IV designations.

Currently, City staff has followed a designation process largely based upon situations where owners have initiated designation, and after Council has been advised by its Municipal Heritage Committee, renders a decision on the designation of the property. While not required, specified or otherwise directed by the Act, staff advises Council on designations through a staff report, accompanied and supported by a Cultural Heritage Assessment of the property, together with a proposed By-law, which contains the Statement of Cultural Heritage Value and Description of Heritage Attributes. The Act requires the preparation of a Statement of Cultural Heritage Value and Description of Heritage Attributes, which accompanies the Designating By-law.

Significant staff time and resources are required to research properties proposed for designation and to prepare the necessary documentation in order for any designation to be defensible if appealed to the Conservation Review Board. Recent concerns expressed by Committee about owner involvement in the designation of a property have resulted in three properties being tabled at Committee for further consideration. In order to address the prudent use of Heritage staff resources, preliminary screenings were carried out for two of the properties (the Book House and Dundas District High School).
and direction was requested of Committee and Council prior to preparing the more time consuming and comprehensive Cultural Heritage Assessments.

Following review of these two properties, the former Smart-Turner property (which was originally directed for designation by Council), the implications of the Divisional Court ruling in the matter of Tremblay v. Lakeshore (Town), and the need to adequately manage future Part IV designations over the next four to five years, staff has derived an amended method of processing designations, however they are initiated.

Staff is proposing a process which would result in a consistent approach for all designations, whereby all potential designations would be subject to preliminary screening and then assignment to an associated system of priorities within staff's work program. As outlined in the proposed designation process (Appendix “A”), Council would have the opportunity to set priorities for designations that have been through the preliminary screening to provide for the effective use of staff and volunteer Committee resources.

**BACKGROUND:**

**Purpose**

This report was precipitated by a series of motions made by the Planning and Economic Development Committee from 2004 to 2006, and the Economic Development and Planning Committee in 2007 dealing with specific designation requests. The purpose of this report is to:

- Review the current process used by the City to designate property considered to be of heritage value;
- Review work plan and resources implications with respect to requests to designate individual properties under Part IV of the Ontario Heritage Act;
- Consider legal implication of the Tremblay decision;
- Recommend a revised designation process;
- Establish a system of priorities for all outstanding designations; and,
- Address three outstanding designations that are at various stages of the process.

In the matter of the latter point, there are three outstanding designations matters to date that require consideration and possible resolution as follows:
191 Barton Street East (The former Smart-Turner Building, Report PED05197)

- At a Special Council Meeting, February 3, 2004, dealing with the redevelopment of lands at Wellington Street North and Ferguson Avenue North by the Hamilton Health Sciences Corporation, Council passed a motion “That staff be directed to begin discussions with Hamilton Health Sciences to ensure the “Smart-Turner Building” on Barton Street East is designated as a Heritage Building under the Ontario Heritage Act and that any future development on the site retain the character and architectural integrity of the building.”

- Following completion of a Cultural Heritage Assessment by Heritage staff, the Hamilton LACAC (Municipal Heritage Committee) was consulted, and at its meeting of October 27, 2005, recommended that Council designate the subject property and that staff be directed to take appropriate action in this regard.

- At the December 6, 2005 Planning and Economic Development Committee Meeting, a staff report, “Recommendation to Designate 191 Barton Street East, Hamilton, Under Part IV of the Ontario Heritage Act (PED05197) (Ward 2)”, recommending the designation of the property, was brought forward for consideration. The report was referred back to LACAC (Municipal Heritage Committee) for consideration.

- At the February 21, 2006 Planning and Economic Development Committee Meeting, Committee tabled the matter until May 16, 2006. The future tenant of the building expressed concerns about the potential for additional costs associated with designating the property. The tenant continued working on structural analysis and design details for renovations to the building and requested that the designation be deferred until this work was completed.

- At the May 16, 2006 meeting, the Planning and Economic Development Committee again tabled the item to be considered at the September 19, 2006 Planning and Economic Development meeting.

- At the September 19, 2006 meeting, the matter was tabled to the October 3, 2006 meeting, with an invitation to be extended to the future tenant of the building to appear.

- At the October 3, 2006 meeting, an update was provided by a Councillor on the matter indicating that it would be brought back to Committee in early 2007, later to be amended to early 2008.

- The matter is now an Outstanding Business item.

167 Book Road East, Ancaster (The Book House, Report PED07218)

- At its meeting of June 28, 2007, the Hamilton LACAC (Municipal Heritage Committee) recommended that Council direct staff to undertake a cultural heritage assessment.
• On August 7, 2007, a staff report (PED07218) was brought forward to the Economic Development and Planning Committee recommending that staff be authorized and directed to carry out a Cultural Heritage Assessment of 167 Book Road East, Ancaster. Committee tabled the item to a future meeting until such time as the Ward Councillor had a chance to meet with the owner of the property, the Roman Catholic Diocese.

• Recently, this item was referred back to staff (April 15, 2008, Economic Development and Planning Committee Meeting).

• At the April 24, 2008 Municipal Heritage Committee meeting, the previous advice from the Committee was deleted and replaced with the following motion: “That the Economic Development and Planning Committee be advised that in the event that the preservation, in situ, of the Book House, 167 Book Road East, Ancaster, is not possible, the Hamilton LACAC (Municipal Heritage Committee) support the relocation of the historic building to an appropriate location, subject to the completion of a cultural heritage impact assessment, the designation of the building under Part IV of the Ontario Heritage Act, and the restoration of the building.”

• At the May 20, 2008 Economic Development and Planning Committee, the following motion was passed: “That in the event that the preservation, in situ, of the Book House, 167 Book Road East, Ancaster, is not possible, the relocation of the historic building to an appropriate location be supported, subject to the completion of a cultural heritage assessment, the designation of the building under Part IV of the Ontario Heritage Act, and the restoration of the building.”

• The matter remains as an Outstanding Business item.

397 King Street West, Dundas (Dundas District High School, Report PED07249)

• At its meeting of May 24, 2007, the Hamilton LACAC (Municipal Heritage Committee) considered a request from the Community Heritage Advisory Panel (CHAP) for Dundas for designation of the Dundas District High School, and recommended that Council direct staff to undertake a cultural heritage assessment. (The Dundas CHAP is an informal advisory group that assists in informing the Municipal Heritage Committee of local heritage concerns).

• On September 18, 2007, a staff report was brought forward to Economic Development and Planning Committee recommending that staff be directed 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. Committee passed a motion to table the matter so that the matter could be taken to the City-School Board Liaison Committee on September 20, 2007, for their consideration. Committee also passed a motion directing Planning staff to obtain a legal opinion regarding the Ontario Divisional Court ruling in the matter of Tremblay v. Lakeshore (Town), a court decision dealing with non-owner initiated requests to designate, and bring the opinion back to the Committee for review.
• At the April 15, 2008 Economic Development and Planning Committee Meeting, it was reported that the matter of the designation of 397 King Street West, Dundas District High School, had not been considered by the School Board Liaison Committee.

• The matter remains as an Outstanding Business item.

At the April 15, 2008 Economic Development and Planning Committee Meeting, all three items, and the matter of the Tremblay decision, were referred back to staff in anticipation of a single report. In reviewing these three non-owner initiated property designations, it became apparent that in addition to clarifying the role of owner involvement, the designation process and its impact on Heritage staff resources would also need to be considered.

The Ontario Heritage Act: Designation Provisions

The Ontario Heritage Act does not prescribe who initiates designation and how such designations, once initiated, are brought to Council for formal consideration. Subsection 29(1), under Part IV of the Act, simply provides that the Council of a municipality:

“may, by by-law, designate a property within the municipality to be of cultural heritage value or interest if,

(a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed by regulation, the property meets the prescribed criteria; and,

(b) the designation is made in accordance with the process set out in this section. 2005, c. 6, s. 17 (1)."

Since amalgamation, most designations have been requested by owners. However, the Act does not require that the owner request the designation, or even consent to it. The Act does provide for an appeal process.

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.
Funding Programs

In order to complement the regulation of the properties under the Ontario Heritage Act, the City of Hamilton has provided access to heritage grant and loan programs to assist in the continuing conservation of these properties. The City of Hamilton has a variety of loan and grant programs available for owners of designated properties, namely:

- The Commercial Heritage Improvement and Restoration Program (CHIRP), which provides matching grants to a maximum of $20,000 for the conservation of heritage attributes of designated commercial properties.

- The Hamilton Community Heritage Fund (HCHF), which provides interest-free loans to a maximum of $50,000 for the conservation of heritage attributes of designated properties.

- The Downtown Hamilton Heritage Property Grant Program (DHHGP) provides financial assistance in the form of a grant for structural/stability work required to conserve and restore heritage features of designated properties located within the Downtown Hamilton Community Improvement Project Area. The grant is based on 25% of the total cost of property rehabilitation, to a maximum of $150,000, for eligible work under the program.

The City of Hamilton’s Current Designation Process

Since amalgamation in 2001, the City of Hamilton has followed an informal process for designation under Part IV of the Ontario Heritage Act as follows:

1. A request for designation is submitted to the City, in writing, to staff or through the Municipal Heritage Committee (MHC).

2. Heritage staff undertakes a preliminary screening using both “in-house” draft criteria created in 2003, and since 2006 the Ontario Heritage Act criteria prescribed in Ontario Regulation 9/06, to determine if the request warrants a comprehensive cultural heritage evaluation. Following the completion of the preliminary heritage assessment, if staff is of the opinion that the property is of insufficient or of no heritage value and does not warrant further assessment, staff would inform the person/body who requested the designation that the designation request would not be processed.

3. Where the property warrants a comprehensive cultural heritage assessment, a memorandum is prepared by staff for consideration by the Municipal Heritage Committee at its regular meeting. The minutes of the Municipal Heritage Committee are reported to the Economic Development and Planning Committee.
4. For properties that are considered suitable for further investigation, a Cultural Heritage Assessment report is prepared comprised of historical, architectural and contextual field work and research, together with analysis and evaluation of whether the property meets the City of Hamilton’s heritage evaluation criteria and those contained in Ontario Regulation 9/06.

5. The Cultural Heritage Assessment report is forwarded and reviewed by the Inventory and Research Sub-committee of the Municipal Heritage Committee.

6. Following review by the Inventory and Research Sub-committee, a staff report with the Cultural Heritage Assessment, accompanied by a draft By-law and Statement of Cultural Heritage Value, is placed on the MHC’s agenda for consideration and approval.

7. Following consideration by the MHC, a staff report, including the Cultural Heritage Assessment, draft By-law and Statement of Cultural Heritage Value, is forwarded to the Economic Development and Planning Committee for recommendation to Council.

8. Council makes a decision on the proposed designation.

9. If Council concurs with the proposed designation, a Notice of Intention to Designate, as required by the Ontario Heritage Act, is served on the property owner, the Ontario Heritage Trust, and published in a local newspaper.

Following this internal process, the Act provides that the provisions of the Act apply, and objections to a designation can be received up to 30 days from the time of the publication of the Notice of Intention to Designate. These objections can be from the owner or from a third-party. Objections are referred to the Conservation Review Board (CRB). The CRB does not make binding rulings (unlike the Ontario Municipal Board) but is charged with reviewing the decisions of municipal Councils and then making findings, including recommendations, which are reported to the municipal Council and all other parties. Council may, after receiving the CRB’s recommendations, proceed with designation or decline to designate. If Council decides to designate the property, the designating By-law is passed and registered on title.

CRB rulings indicate that it must be satisfied that a property meets the criteria for designation established under Ontario Regulation 9/06. Typically, the Cultural Heritage Assessment report prepared by staff would be relied upon in support of a property’s heritage interest or value.

A flow chart of the current process is provided in Appendix “F”. Many municipalities use a process similar to Hamilton’s to designate properties.
Criteria for Designation

In 2003, prior to the release of the Ontario Regulation 9/06 establishing criteria for municipal designations, staff in consultation with the Municipal Heritage Committee (MHC), developed criteria for heritage property evaluation (Appendix “B”). Hamilton’s criteria were developed in order to harmonize its approach to Cultural Heritage Assessments and to improve the defensibility of proposed designations. All proposed designations, since this document was endorsed by the MHC on June 19, 2003, have been subject to this rigorous evaluation process, resulting in comprehensive reports.

The City criteria includes a number of categories: Historical Associations, Architecture and Design, Integrity, Environmental Context, and Social Value. The intent is to follow contemporary heritage conservation principles and practice in the evaluation of heritage properties, namely clearly identifying and understanding where cultural heritage value or values reside in a property. To be designated, heritage properties must meet at least one criterion of cultural heritage value or interest. The more “values” that are identified, the greater the overall heritage value of the property, and the more compelling the rationale for designation.

In 2006, the Province issued criteria for determining cultural heritage values, through Ontario Regulation 9/06 to the Ontario Heritage Act. The regulation identifies three broad categories under which three subsets of criteria are further identified. Subsection 1.(2) of the Regulation states that “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.”

Since 2006, the criteria set out in the provincial regulation and the City’s criteria have been applied by Heritage staff as part of the preliminary screening of the property being considered for designation (Step 2 - as identified above).

**Designated Properties in Hamilton**

At present, the City of Hamilton has 250 Part IV, individually designated properties. This number includes all of the former municipal designations made prior to amalgamation and the 26 designations (see Appendix “G”) that have been approved since amalgamation, approximately three to four properties per year. The following table indicates the number of individually designated properties by former municipality.

<table>
<thead>
<tr>
<th>Former Municipality</th>
<th>Number of Designated Properties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ancaster</td>
<td>22</td>
</tr>
<tr>
<td>Dundas</td>
<td>45</td>
</tr>
<tr>
<td>Flamborough</td>
<td>37</td>
</tr>
<tr>
<td>Glenbrook</td>
<td>2</td>
</tr>
<tr>
<td>Hamilton</td>
<td>124</td>
</tr>
<tr>
<td>Stoney Creek</td>
<td>20</td>
</tr>
</tbody>
</table>

**List of properties to be considered for designation**

There are 13 properties pending consideration for designation and which form part of Planning staff’s work program. A prioritized list, as discussed in Part I of the Analysis/Rational section of this report, is attached as Appendix “C”. Under the current process, these properties are placed in order of the date of request or Municipal Heritage Committee referral and/or Council direction. Unless otherwise directed, staff typically undertakes work on a “first come, first served” basis.

In addition to those designations currently in the work program, research and assessment of other properties may be required from time to time. On occasion, a property is considered at risk and made a priority for review as a result of the threat of demolition or development. For example, on May 12, 2008, Committee of the Whole passed the following motion “That the Planning and Economic Development Department and the City’s Municipal Heritage Committee expedite a report regarding a Designating By-law under the Ontario Heritage Act for the significant heritage attributes of 46-52 James Street North (William Thomas Building) for consideration by Council.”
Currently, there are 13 properties to be considered for designation in the work program. The requests span a variety of properties including institutions (a hospital and former high school), a hotel, residential properties, parks and a cemetery. Two of the properties are discussed in this report with direction sought to proceed with their designations, and significant research for a cultural heritage assessment has been completed on the Book Cemetery. Some properties have been the subject of preliminary assessments that have been forwarded to Municipal Heritage Committee and work on the remaining properties has not been initiated. Assigning priorities to these properties is discussed in the “Analysis/Rationale” section of this report and are contained in Appendix “C”.

Given the provisions of the Ontario Heritage Act, the current work program of staff, the limited capacity to undertake cultural heritage assessments above and beyond the three-four designations per year, and the Tremblay decision, the following section, “Analysis/Rationale”, examines strategies to better accommodate the processing of designations.

**ANALYSIS/RATIONALE:**

This portion of the report addresses a number of matters that affect the processing of designations including the involvement of the owner, the capacity of staff to assess and evaluate designations and the establishment of a work program based upon designation priorities.

The “Analysis/Rationale” section is divided into two Parts. Part I addresses administrative and legal matters, including work plan issues, third-party initiated designations, and proposed revisions to the City’s designation process.

Part II of the “Analysis/Rationale” section addresses the three specific designations that are outstanding and are at various stages in the designation process. Proposals are made for the disposition of these three outstanding matters.

**PART I**

**Staff Work Program**

Within the annual work program, in addition to other responsibilities, Heritage staff can typically process three to four properties through the designation process, including the preparation of the comprehensive cultural heritage assessments and the processing of the By-laws in conjunction with Clerks. This has resulted 26 designations that have been approved since amalgamation.

Significant staff resources are devoted to the administration and processing of designations. For example, it is critical that the cultural heritage assessment be thorough given the potential for objections, therefore, the research is complex and time consuming as is the preparation of the report. The research includes site visit(s), photo-documentation, and research of the property’s architectural and historical background.
Both primary and secondary sources are examined, which often requires work at off-site archives, libraries and universities.

Following Council direction to designate 191 Barton Street East (Smart-Turner Building) (PED05197), which was brought back to Planning and Economic Development Committee in February 2006, together with a full cultural heritage assessment supporting the anticipated designation, Committee minutes record that:

Councillor McHattie gave an overview of the discussions which had taken place between representatives of Hamilton Health Sciences, the owner of the site, and representatives from Mark Preece House, the potential future users of the building. He explained how he and Chair Pearson had discussed with the proponents the issues regarding designation of the building. The proponents are still working on their structural analysis and design details, and have requested that the designation be held until this work is completed, in May of this year.

Recognizing that Committee was concerned about the involvement of owners in the designation process, coupled with work program and staff resource allocation issues arising from designations initiated for properties at 167 Book Road East, Ancaster (the Book House) (PED07218) in August 2007, and 397 King Street West, Dundas (Dundas District High School) (PED07249) in September 2007, staff brought these two items forward for further direction.

In both instances, staff prepared a preliminary heritage assessment of each property and advised on direction to prepare a comprehensive cultural heritage assessment. These preliminary assessments provided the necessary information and rationale to determine if a full cultural heritage assessment of each property was appropriate. In both instances, Committee deferred both matters to allow for further consideration and discussion with affected parties.

These three proposed designations (Smart-Turner, Book House and Dundas District High School), together with the current list of properties to be considered for designation, has resulted in a four to five year work program of approximately 14 properties (see Appendix “C”) at various stages of processing.

Heritage staff sees merit in ensuring that all initiated designations are dealt with in a consistent manner to ensure that staff resources are utilized effectively, and that Council has all relevant information before it when making a decision in accordance with the Tremblay decision. Prioritizing designations would be a sound way of managing them, as discussed later under “A Revised Process”.

**Owner Consent to Designate**

In the past, the Economic Development and Planning Committee has expressed concerns about designating properties without owner notification and consent. As mentioned earlier in this report, the Act does not prescribe the process of how a
property comes before Council to consider designation. A designation potentially may be initiated in a number of ways, by:

- Council;
- The Municipal Heritage Committee (as advisers to Council under Part IV of the Act);
- The owner; or,
- A third party.

Further, the Act anticipates that a designation may be made without the owner’s consent. Indeed, the owner need not be notified that a property is being considered for designation until the Notice of Intent to Designate is served (as required under Subsection 29(3)). However, as a matter of good practice, Heritage staff engages owners in the early stages of the process.

Legal Opinion

In response to Council’s direction to obtain a legal opinion regarding the Divisional Court ruling in the matter of Tremblay v. Lakeshore (Town) (see Appendix “H”), a court decision dealing with a non-owner initiated request to designate a property, legal counsel has provided the following opinion:

“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 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.”

Appeal Process

Owners and any other person have the opportunity to object to a decision to designate a property under the Act, and can have the matter referred to the Conservation Review Board (CRB) for a hearing. Following the hearing, the CRB is required to report to Council setting out its findings of fact, its recommendations as to whether or not the
property should be designated and any information or knowledge used by it in reaching its recommendations. The CRB report is sent to the other parties to the hearing.

The CRB considered its jurisdiction in its finding in the matter of a Notice of Intention to designate the John Ramer House and Barn in the Town of Markham (April, 2008). It found that it could address only the cultural heritage value or interest of property:

“Jurisdiction of the Board

All parties were reminded that the jurisdiction of the Board is to hear evidence within the framework of the Ontario Heritage Act, specifically the application of the criteria outlined in Ontario Regulation 9/06 or equivalent criteria typically applied by the Town of Markham to determine the cultural heritage value or interest of a property.

It was outlined that the Board does not address issues of demolition or selective demolition, as these are the jurisdiction of Council and, on appeal, the Ontario Municipal Board.

The Board does not address issues of the costs of physical maintenance or repairs, the current physical state of a structure or any future use of a structure, as these are outside the matter of cultural heritage value or interest.

The Board does not address any planning applications or issues that are under the jurisdiction of the Planning Act. These are issues between the applicant and the municipality.

Evidence on any of these matters will only be heard if it gives context to the discussion of cultural heritage value or interest and any heritage attributes or features that may support that value or interest.”

The Board must also be satisfied that a property meets the criteria for designation as specified in the O. Reg. 9/06 and any equivalent criteria applied by the municipality - in the case of the City of Hamilton, the Cultural Heritage Assessment report.

In order to properly support a designation before the CRB, it is important that Cultural Heritage Assessment reports be comprehensive. The CRB has heard 17 appeals of Notices of Intention to Designate since 2003. Of these 17 appeals, the CRB advised that 4 were considered to be unsupportable. It is clear upon reviewing these appeals, that the CRB is expecting accurate and detailed research and analysis that satisfies the intent of the Ontario Heritage Act and the associated O. Reg. 9/06. The following are extracts from their findings which highlight critical areas of concern:
89 Kingsway Crescent (Isaac M. Scott House), City of Toronto. (September 2005)

“On the basis of the evidence it heard, and for the following primary reasons, the Board recommends to the Council of the City of Toronto not to proceed with designation under the Ontario Heritage Act of the property known as 89 Kingsway Crescent (Isaac M. Scott House):

1. It was not demonstrated that the Property contributes significantly to the understanding and appreciation of the cultural heritage associated with the historic community of Lambton Mills or the larger community of Etobicoke. It was, however, demonstrated that other properties with an association to the historic community of Lambton Mills exist, or may be found to exist (these properties should be included on the City of Toronto Heritage Properties Inventory as part of the process toward recognition and conservation, notably 110 Kingsway Crescent).

2. It was not demonstrated that the Property is associated with an individual who is known to have contributed to the history or development of Lambton Mills.

3. The association of the Property with Fisher Mills is through ownership of the real property by Thomas Fisher and his descendants, but it was not demonstrated that, in this case, this contributes to the knowledge and understanding of the important milling history of Lambton Mills.

4. It was not demonstrated that the 1905 form of the Property contributes to the knowledge of a particular architectural style, period of construction, or craftsmanship, although the Property does embody information about the evolution of building alteration.”

84 High Street East (The Hamilton Property), City of Mississauga. (July 2006)

“Recommendations for the City of Mississauga

The Board concludes that while the Property known as 84 High Street does have some historical, architectural and contextual merit, it is not sufficient to warrant designation. The Board, therefore, recommends to the Council of the City of Mississauga that the City not proceed with the designation of the property…

The Board also suggests that the City develop a more rigorous method for the evaluation of properties proposed for designation…”
174 King Street East, (The Moody - Trachsler House), City of Mississauga. (September 2007)

“Recommendations for the City of Mississauga:

Based on the evidence heard, the Board is not definitively convinced that this property meets the criteria for designation under Section 29 of the Act. Of concern to the Board is the highly polarized evidence presented by the Parties and the lack of clarity in the evidence supporting the City’s case for designation. Specifically, the evidence provided by the City in assessing the age of this structure was put into question through the expert evidence provided by the two Objectors. Even upon cross-examination, the City could not address many of the issues raised by the Objectors as per the age of the structure.

Under the Act, the Board’s role is to make recommendations that are to be contemplated when Council renders its final decision on designation. Given the structure of the hearing process, the onus falls upon the City to prove to the Board that the subject property has cultural heritage value or interest as defined by the evaluation criteria of Ontario Regulation 9/06 or the municipal equivalent.

While the recommendation of the Board is not to designate this property under Section 29 of the Act, the Board recognizes that the City did not physically visit and inspect this property, as had the Objectors. If this property is indeed of the vintage and significance suggested by the City, it appears that its loss as an aspect of the heritage of the municipality would be unfortunate. Therefore, the Board suggests that the City undertake a site inspection of the physical property and better assess the merits of the case made by the Objectors, before Council renders a final decision on designation. This would better enable the City to truly determine and describe the history of this structure and make the appropriate decision regarding protection or not for this property.”

185 Beta Street (Formerly 183 Beta Street), City of Toronto. (March 2008)

“Discussion

It is the Board’s position that the ability of a municipality to protect a property within its jurisdiction under s.29 of the Ontario Heritage Act brings with it the obligation that the reasons given for this protection be as accurate as possible.

The Board recognizes that the nature of historical research and physical documentation of a property are such that some conjecture is unavoidable and acceptable. There is the understanding that future investigation may reveal aspects of the property not known when the bylaw was passed.
Based on the evidence heard, the Board considers several aspects of the proposed statement of cultural heritage value or interest and list of heritage attributes (Reasons for Designation) to be unsubstantiated, and therefore misleading. Information from earlier research reports has been carried forward, seemingly without sufficient verification and/or clarification. This questions the validity of the proposed bylaw.”

As noted previously, the CRB is a “recommending” tribunal; therefore, the advice, findings and recommendations of the CRB report do not bind Council. Council maintains the authority to make the final decision on designations. Following the receipt of the CRB report, Council can consider the recommendations of the Board in its decision to either designate the property or not to designate.

**A Revised Process**

Heritage staff is recommending that the designation process be amended to have the preliminary assessment of a property brought forward directly to Committee and Council for consideration and direction. Staff would provide advice, addressing three issues:

- The appropriateness of and requirement for a comprehensive cultural heritage assessment report;

- The requirement for consultation with the Hamilton Municipal Heritage Committee as required by the *Ontario Heritage Act*; and,

- The priority to be assigned to the designation of the property regardless of how initiated.

The amended process is briefly described below and (set out in the flow chart in Appendix “A”).

1. A request for designation of property is initiated and brought to the attention of staff.

2. Heritage staff undertakes a preliminary screening of the property using both “in-house” criteria and the *Ontario Heritage Act* criteria prescribed in Ontario Regulation 9/06 to determine if a comprehensive cultural heritage evaluation of the property is warranted.

3. A staff report is prepared for consideration by the Economic Development and Planning Committee and Council advising on whether the preparation of a comprehensive cultural heritage assessment is appropriate and the priority to be assigned. (Where appropriate, recommendations may also be made with respect to inclusion of the property in the municipal register of property of cultural heritage value or interest in order to provide interim protection against demolition or removal.)

4. For properties that are considered suitable for further investigation, a Cultural Heritage Assessment report is prepared comprising historical, architectural and contextual field work and research, together with analysis and evaluation of the
cultural heritage value or interest of the property and the specific criteria satisfied in Ontario Regulation 9/06 and the City’s heritage evaluation criteria.

5. The Cultural Heritage Assessment report is forwarded and reviewed by the Inventory and Research Sub-committee of the Municipal Heritage Committee.

6. Following review by the Inventory and Research Sub-committee, a staff report with the Cultural Heritage Assessment, accompanied by a draft By-law and Statement of Cultural Heritage Value, is placed on the MHC’s agenda for consideration and approval.

7. Following consideration by the MHC, a staff report including the Cultural Heritage Assessment, draft By-law, and Statement of Cultural Heritage Value, is forwarded to the Economic Development and Planning Committee for recommendation to Council. The Economic Development and Planning Committee considers all of the circumstances in regard to the particular property including the staff report, the Cultural Heritage Assessment, the Municipal Heritage Committee recommendations, and any other submissions from the property owner, members of the public, community representatives, or any other relevant information.

8. Council makes a decision on the proposed designation.

If Council concurs with the proposed designation, a Notice of Intention to Designate, as required by the Ontario Heritage Act, is served on the property owner, the Ontario Heritage Trust, and published in a local newspaper.

The prioritization of a designation in respect of preliminary assessments would continue to be dealt with on a “first come, first served” basis with respect to the first stage of initial screening. As part of the staff report brought forward to Committee and Council for consideration, staff would identify the priority for further work advising Committee and Council to set a high, medium or low priority for the designation request in the context of a four to five year timeframe. These priorities would tentatively 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.

Reasons for assigning different priorities would be contained in the body of the staff report, and 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.

Clearly, as new properties are added, the necessary adjustments would be made to the work plan to accommodate Council direction.

The advantages of the amended process are as follows:

• Ensures that all designations initiated would be dealt with in a consistent manner using a consistent process;
• Leads to efficient/effective use of limited staff resources; and,
• Provides Council with an opportunity to set priorities for proposed designations.

While this change will have a slight impact on staff time, i.e., preparation of additional staff reports to Committee and Council advising on the results of the preliminary heritage assessment, the longer term benefits of better resource allocation and ensuring Committee and Council have all required information before them when making a final decision outweigh these impacts.

With respect to the current list of requests to designate, rather than leaving them in which they were received, Heritage staff has prioritized them for preliminary assessment based on a combination of whether work on a proposed designation has been initiated, perceived risk to the property, and the date of the request to designate. Staff recommends that the priorities, as set out in Appendix “C”, be adopted.

Consistent with the proposed process, it is also recommended that any of the properties on the list of requests to designated properties that are not currently on the municipal registry of properties of cultural heritage value or interest be included on the registry. This action will provide these properties with some interim protection against demolition or removal pending a future evaluation and consideration for designation.

PART II

Since amalgamation, 26 individually designated properties have been approved by Council. A total of 13 are at various stages of the designation process (see Appendix “C”). At the April 15, 2008 Economic Development and Planning Committee, three designation matters that were on the outstanding items list were referred back to staff with the understanding that this report would address these items:

• 167 Book Road East, Ancaster (the Book House);
• 397 King Street West, Dundas (Dundas District High School); and,
• 191 Barton Street East, Hamilton (the Smart Turner Building).
Outstanding Business Items/Requests to Designate in process

With respect to these matters, and in light of the proposed process set out above, staff recommends that 191 Barton Street East, Hamilton (the Smart Turner Building), be designated based on Council's original direction and the results of the full Cultural Heritage Assessment.

With respect to the two other properties, 167 Book Road East, Ancaster (the Book House) (PED07218) and 397 King Street West, Dundas (Dundas District High School) (PED07249), where preliminary assessments were prepared, that these should continue to be processed with direction to prepare a full Cultural Heritage Assessment with a high priority ranking for each based upon the perceived level of threat and the cultural heritage value of the properties.

All three properties and their disposition are discussed more fully as follows:

191 Barton Street East, Hamilton (the Smart Turner Building)

For the property known municipally as 191 Barton Street East (the Smart Turner Building), Hamilton, staff prepared and brought forward, at Council's direction, a designating By-law together with a full Cultural Heritage Assessment. The following is an excerpt from the Statement of Cultural Heritage Value and Description of Heritage Attributes, prepared for the property and appended to staff Report PED05157, highlighting the heritage value associated with this property:

"191 Barton Street East, containing the former Smart-Turner Building, possesses cultural heritage value expressed in its historical associations with the industrial growth of the City of Hamilton. The Smart-Turner Machine Company, a prominent manufacturer in the City, occupied the building for more than 90 years, starting at the turn of the twentieth century. The subject building, built 1876-77 as a malthouse, is a notable example of Victorian industrial vernacular stone architecture and it remains in its original location on Barton Street East providing insight into the physical and economic development of that area of the City. The building is a landmark on the streetscape and retains its original architectural configuration of a one and one-half storey stone building with gambrel roof and dormer windows. The property has potential archaeological value related to both the former industrial remnants and precontact settlement activity."

While the heritage value of the property has not been called into question, the tenants of the building had originally expressed concerns about the impact of the proposed designation on their proposed renovations. It is staff's understanding that the renovations have been completed, and that these alterations have not compromised the structure’s heritage integrity. Further, staff advises that designation does not prevent future renovation or additions to designated properties. Therefore, staff recommends:
That the designation of 191 Barton Street East, as a property of cultural heritage value pursuant to the provisions of Part IV of the Ontario Heritage Act, be approved;

That the Statement of Cultural Heritage Value and Description of the Heritage Attributes, attached as Appendix “D”, be approved; and,

That the City Solicitor be directed to take appropriate action to designate 191 Barton Street East under Part IV of the Ontario Heritage Act, in accordance with the Notice of Intention to Designate, attached as Appendix “E”.

167 Book Road East, Ancaster (the Book House)

The following is an excerpt from the preliminary assessment (PED07218) of the property:

“A preliminary assessment of the property at 167 Book Road East, Ancaster, and associated attributes is as follows:

**Design Value:** The Book House, built in 1831, is an excellent example of early Georgian architecture which was common throughout Ontario at the end of the nineteenth century. The two-storey red brick residence exhibits those characteristics of the style such as the regularity, symmetry, formal layout, double-hung sash-windows and gable roof.

**Historical Value:** The two-storey brick residence was built in 1831 by Adam Book, son of the early settler John Book, and stands today as the oldest brick dwelling in Ancaster.

**Contextual Value:** The Book House is located on the north side of Book Road East in the former Town of Ancaster. The property is associated with the original European settlement of the original Township of Ancaster. The nearby Book Family Cemetery documents many members of the Book family who took part in the clearing and cultivating of the Book property. The Adam Book House remains a landmark of nineteenth century agricultural settlement in the City of Hamilton. The John Book House, constructed 1814-1818 on the adjacent property to the east, was unfortunately lost to fire in 2005."

Following the advice provided by the Municipal Heritage Committee on April 24, 2008, Economic Development and Planning Committee, at its meeting of May 20 2008, passed the following motion:

“That in the event that the preservation, in situ, of the Book House, 167 Book Road East, Ancaster is not possible, the relocation of the historic building to an appropriate location be supported subject to the completion of a cultural heritage assessment, the designation of the building under Part IV of the Ontario Heritage Act, and the restoration of the building.”
Given the most recent direction on the property, and in the event that that building cannot remain at its current location, staff is of the opinion that the cultural heritage assessment be prepared to recognize and protect this cultural heritage resource and to minimize any potential delay in relocating the structure.

Based on the results of the preliminary assessment, combined with the recent motion by Municipal Heritage Committee, staff recommends:

- That staff be directed to prepare a Cultural Heritage Assessment report; and,
- That the property be assigned a high priority for the work plan and should be brought forward in the current year.

**397 King Street West, Dundas (Dundas District High School)**

The preliminary assessment (PED07249) of the property identified the following:

**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
Based on the preliminary assessment, staff recommends:

- That staff be directed to prepare a Cultural Heritage Assessment report; and,

- That the property be assigned a high priority for the work plan and should be brought forward in the current year.

**ALTERNATIVES FOR CONSIDERATION:**

**Process Alternatives**

**Status quo/no change**

While the use of the City’s current process (Appendix “F”), as discussed previously, treats all requests consistently, it has a significant impact on staff resources and does not provide an opportunity for Council input on the priority of the proposed designation.

**Priority Alternatives**

**Status quo/no change**

This alternative would recognize no priorities and simply relies on a “first come-first served” basis for work program management. This would not respond to a property’s heritage value, emergencies or changing circumstances.

**Book House and the Dundas District High School**

Both the recommendation for the Book House and the Dundas District High School recommend a high priority be placed on moving these properties through the designation process.

As alternatives, Council could assign the projects a:

1. Medium priority - move the property to the second or third year of the work program, or,

2. Low priority - move the property to the fourth year of the work program.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial: None.

Staffing: None.
The recommended process will enable the City to continue to satisfy the intent of the Ontario Heritage Act. Council will be in a position to decide on designations 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. The Act provides the owner or any other person with the opportunity to appeal the proposed designation to the Conservation Review Board.

**POLICIES AFFECTING PROPOSAL:**

Designating property under the Ontario Heritage Act is in keeping with provincial, regional and municipal legislation and policies. The development of a consistent approach to designation under the Ontario Heritage Act is in keeping with traceability, transparency, accountability and sound conservation and planning practice that is encouraged by the Niagara Escarpment Plan, Greenbelt Plan, Places to Grow, the Growth Plan for the Greater Golden Horseshoe and the Provincial Policy Statement. The Official Plan policies of the former Regional Municipality of Hamilton-Wentworth, Town of Ancaster, Town of Dundas, Town of Flamborough, Township of Glanbrook, City of Hamilton, City of Stoney Creek, as well as the draft new cultural heritage policies proposed to be included in the new Official Plan for the City of Hamilton, all generally called for the identification and encouragement, wherever possible, of the preservation and rehabilitation of heritage resources.

**Provincial Planning Directives and Policies**

The Planning Act recognizes cultural heritage conservation as a key component of good land use planning and lays out a process through which this translates into local policy. Section 2 of the Act provides an extensive listing of those matters of provincial interest that shall be regarded when certain authorities, including the Council of a municipality, carry out their responsibilities under the Act. Such responsibilities include all land use planning activities, such as the processing of development applications and policy development. One of these provincial interests (Subsection 2(d)) is directly concerned with:

> “The conservation of features of significant architectural, cultural, historical, archaeological or scientific interest…”

The Planning Act is the legislative basis, not only for discrete planning activities detailed in the Act, but also for the provincial issuance of policy statements. Policy statements, assembled as the Provincial Policy Statement (PPS) (2005), further identify matters of provincial interest and provide policy direction which municipalities must implement at the local level. All municipal actions under the Planning Act must be consistent with the Provincial Policy Statement.
The PPS clearly delineates the wise use and management of cultural heritage and archaeological resources as a provincial interest, and thus an important consideration for municipal planning policy development and decisions:

The Province’s cultural heritage and archaeological resources provide important environmental, economic and social benefits. The wise use and management of these resources over the long term is a key provincial interest.

Those PPS policies of particular relevance for the conservation of cultural heritage resources are found in Section 2, Wise Use and Management of Resources:

Ontario’s long-term prosperity, environmental health, and social well-being depend on protecting natural heritage, water, agricultural, mineral and cultural heritage and archaeological resources for their economic, environmental and social benefits.

The PPS significantly influences the manner in which municipalities approach cultural heritage resources, including alterations not only to the heritage resources themselves, but also to adjacent properties. Accordingly, Subsection 2.6 sets out provincial policy regarding cultural heritage and archaeological resources:

2.6.1 Significant built heritage resources and significant cultural heritage landscapes shall be conserved.

2.6.2 Development and site alteration shall only be permitted on lands containing archaeological resources or areas of archaeological potential if the significant archaeological resources have been conserved by removal and documentation, or by preservation on site. Where significant archaeological resources must be preserved on site, only development and site alteration which maintain the heritage integrity of the site may be permitted.

2.6.3 Development and site alteration may be permitted on adjacent lands to protected heritage property where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved.

Mitigative measures and/or alternative development approaches may be required in order to conserve the heritage attributes of the protected heritage property affected by the adjacent development or site alteration.

The PPS defines “conserved” to mean:

The identification, protection, use and/or management of cultural heritage and archaeological resources in such a way that their heritage values,
The notion of “identification” as part of meaningful action directed to conserve clearly supports the concept of designating properties and their “protection” through a variety of other mechanisms.

The Greenbelt Act (2005) is one of the key elements of the Provincial Government’s agenda to protect greenspace and agricultural land in the Greater Golden Horseshoe (GGH). The Greenbelt Plan (2005), issued under the Greenbelt Act, generally protects natural heritage features and agricultural land within the GGH from urban development. Municipal Official Plans must conform to the Greenbelt Plan. The Plan designates certain lands around the periphery of the City of Hamilton as Protected Countryside Area, where the intent is to permanently protect environmentally sensitive areas and agricultural land while supporting agriculture, and providing opportunities for recreation and natural resource extraction. There are also designations under the Greenbelt Plan for Towns and Villages, as well as Hamlets, and some areas in the east of the City of Hamilton which are Tender Fruit and Grape Lands.

As part of this protection mandate, Section 4.4 of the Plan, Cultural Heritage Resources, states that for lands within the Protected Countryside Area the following policies shall apply:

1. Cultural heritage resources are defined as man-made or natural features, including structures, objects, neighbourhoods, landscapes and archaeological sites that have been identified as significant by the local municipality or the province for being meaningful components of a community’s cultural heritage or identity.

2. Greenbelt municipalities should work with aboriginal groups and other stakeholders to identify and protect cultural heritage resources and plan toward maintaining, developing and using these resources in a manner that will benefit the local community and be compatible with the Greenbelt’s vision and goals.

3. Municipalities should build cultural components into their municipal plans and planning processes, including creating inventories of cultural heritage resources and planning for their ongoing protection and appropriate use. Municipal cultural plans should draw from and promote an integrated vision of local cultural development that emphasizes connections across the full range of arts, heritage, cultural industries, libraries, and other cultural activity.

The Greenbelt Plan’s directive to municipalities to plan for the ongoing protection and appropriate use of cultural heritage resources by identifying them as significant is also consistent with the intent of the PPS’s definition of “conserved”.

attributes and integrity are retained. This may be addressed through a conservation plan or heritage impact statement.
The Places to Grow Act (2005) provides the legal framework for provincial designation of a geographic area of the province as a growth plan area and the Growth Plan for the Greater Golden Horseshoe (2006), which addresses population growth, economic expansion, and the protection of valuable environmental and agricultural lands. Municipal Planning Act and Condominium Act decisions must conform to the Growth Plan and municipal Official Plans must be brought into conformity with it by June, 2009. The Growth Plan for the GGH outlines a vision and strategy for where and how the region should grow over the next 30 years. Given that the GGH comprises a broad array of unique cultural heritage features and sites, the Growth Plan states that these valuable assets must be wisely protected and managed as part of planning for future growth. Recognizing that there exists a variety of policy and planning initiatives, the Plan seeks to build on these by advocating “a culture of conservation”.

Section 4.2.4 of the Plan specifies that municipalities will develop a culture of conservation through the implementation of Official Plan policies and other strategies that support the conservation of cultural heritage and archaeological resources as built-up areas are intensified.

The Niagara Escarpment Planning and Development Act (1990) provides the key legislative directives for the protection and management of the Niagara Escarpment. The Act recognizes that not only is this a unique natural feature, but that it is also a setting and place for human settlement and activity. Section 8(a) specifically recognizes that the Niagara Escarpment Plan within the Niagara Escarpment Planning Area shall seek “to protect unique ecologic and historic areas”.

The Niagara Escarpment Plan (1994, 2005), with authority of the Niagara Escarpment Planning and Development Act (1990), is the principal provincial planning document for the Niagara Escarpment and supersedes many municipal policies within the Niagara Escarpment Plan Area. Its purpose is to provide for the maintenance of the Niagara Escarpment and adjacent land as a continuous natural environment, and to ensure that only appropriate, compatible development occurs within its boundaries. The City of Hamilton contains substantial lands within the Niagara Escarpment Plan Area. Many of the Plan’s policies are directed at the conservation of cultural heritage features. The Escarpment has played a major role in the development and history of the area and, consequent, it is important to conserve and manage those features of local, regional and provincial cultural heritage significance.

Part 2 of the Plan provides “Development Criteria” which determine how a proposed development should be carried out to minimize the impact on the Escarpment environment. The criteria contained in Section 2.12 aims “to inventory, interpret, evaluate, maintain, and conserve the cultural heritage features of the Niagara Escarpment Plan Area”.

The recommendations of this report would be in keeping with all of these provincial policies, expectations and directions.
Regional Official Plan and Local Official Plan Policies

The Official Plan for the former Regional Municipality of Hamilton-Wentworth contained a policy commitment to the preservation, maintenance and protection of significant heritage resources (Section 9.2) and provided the context for action at the local tier of government.

Town of Ancaster:

Subsection 2.5 - Heritage Conservation of the former Town of Ancaster Official Plan contains the goal to conserve the heritage of the Town (2.5.1). The stated objectives to fulfil this goal include the designation of individual properties of heritage value (2.5.1(ii)), with a policy that the municipality shall utilize the LACAC (now the Municipal Heritage Committee) to recommend properties worthy of designation. Additional policies supporting this initiative are found in Sub-section 2.1 - Environment where the Town commits to encourage, where possible, the preservation, conservation and rehabilitation of structures and lands having historical, archaeological, architectural or scenic interest.

Town of Dundas:

Sub-section 2.4 - Historic and Architectural Resources of the former Town of Dundas Official Plan contains the goal to preserve, restore and utilize the Town’s heritage resources. Policy 2.4.3.1 d) support the identification of buildings or sites worthy of preservation through individual designations under the Ontario Heritage Act, taking appropriate measures to publicize the historic elements of the Town, and educating the owners on the background of their buildings.

Town of Flamborough:

Sub-section E.2 - Heritage Preservation of the former Town of Flamborough Official Plan commits to the preservation of structures of historical or architectural importance. Accordingly, the Town, in consultation with the LACAC (now the Municipal Heritage Committee) may designate buildings of historic significance under the Ontario Heritage Act.

Township of Glanbrook:

Section A.10 - Heritage Conservation of the former Township of Glanbrook Official Plan has the goal to encourage the preservation, conservation and rehabilitation of buildings, structures, and/or lands of architectural, historical and/or archaeological value, with a policy of utilizing the LACAC (now the Municipal Heritage Committee) to identify buildings and areas of architectural and historical value and to recommend buildings and areas worthy of designation under the Ontario Heritage Act (G.17).
City of Hamilton:

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, with a policy of consulting with the LACAC (now Municipal Heritage Committee) to identify buildings worthy of preservation through designation under the provisions of the Ontario Heritage Act.

City of Stoney Creek:

Sub-section E.5 - Historic and Architectural Resources of the former City of Stoney Creek Official Plan has the objective to preserve, enhance, and/or rehabilitate, where feasible, those resources of historic and architectural merit and to promote the interest of the residents in the heritage of their City (5.1.1), with a policy that Council will consider historic and cultural resources in the review of any proposal for development and redevelopment, wherever possible, incorporating these resources into the overall design.

Draft New Cultural Heritage Official Plan Policies

Provincial policy and legislative changes have resulted in stronger requirements for the City to protect cultural heritage resources, and increased the City’s ability to do so. As such, the City's proposed new Cultural Heritage Official Plan policies are substantially different from those contained in the existing Official Plans. They are clearer, stronger, and more prescriptive in their protection of cultural heritage resources than the existing Official Plan cultural heritage policies.

The recommendations of this report would be consistent with the Official Plan policies of the former Regional Municipality of Hamilton-Wentworth, Town of Ancaster, Town of Dundas, Town of Flamborough, Township of Glanbrook, City of Hamilton, and City of Stoney Creek, as well as the draft new Cultural Heritage Official Plan Policies which all generally called for the identification, protection, preservation and rehabilitation of heritage resources.

RELEVANT CONSULTATION:

Legal - Legal staff has been consulted on the development of this report and has provided input as it relates to proposed designation and owner consent, as well as the legal opinion on Page 13 of this report.

LACAC (Municipal Heritage Committee) - The Municipal Heritage Committee has not been directly consulted on the preparation of this staff report as this report deals primarily with administrative and procedural issues together with the work program of staff. In all matters related to designation, the Act clearly prescribes the Committee’s role and responsibilities. The recommendations of this report do not change these in any way. By-law 06-338, enacted by Council and which sets out the mandate of the Municipal Heritage Committee (LACAC), is as follows:
(a) To advise and assist City staff and Council on all matters relating to the designation of property, the review of heritage permit applications and other cultural heritage conservation measures under Parts IV and V of the Ontario Heritage Act, R.S.O. 1990, c. 0.18, as amended;

(b) To advise and assist City staff and Council in the preparation, evaluation and maintenance of a list of properties and areas worthy of conservation;

(c) To advise and assist City staff and Council on any other matters relating to the conservation of listed properties or areas of cultural heritage value or interest;

(d) To advise City staff and Council on programs and activities to increase public awareness and knowledge of heritage conservation issues; and,

(e) To prepare, by the 31st day of January each year, an annual report of the previous year’s activities.

The proposed revision to the designation process and legal matters related to designation requests are considered to be administrative matters and not within the purview of the Municipal Heritage Committee (LACAC). Staff is recommending that this report be provided to the Municipal Heritage Committee for information.

MHC has been consulted and has provided advice with respect to the three individual properties being considered in this report as follows:

167 Book Road East, Ancaster (the Book House)

Municipal Heritage Committee (LACAC) passed a motion (April 24, 2008) advising the following:

“It is recommended that staff be directed to carry out a cultural heritage assessment of 167 Book Road East, Ancaster, to determine whether the property is worthy of designation and further that if the property is determined to be of cultural heritage value or interest that staff prepare the Statement of Cultural Heritage Value and Description of the Heritage Attributes for consideration by the City of Hamilton LACAC (Municipal Heritage Committee) through its appropriate subcommittee.”

397 King Street West, Dundas (Dundas District High School)

At its meeting of May 24, 2007, the Hamilton LACAC (Municipal Heritage Committee) considered a 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 Municipal Heritage Committee before being presented to Council.
191 Barton Street East, Hamilton (the Smart Turner Building)

At its meeting of October 27, 2005, the Hamilton LACAC (Municipal Heritage Committee) recommended that Council designate the subject property and that staff be directed to take appropriate action in this regard.

This advice forms part of the recommendations provided in this report.

**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, archaeological and cultural heritage are supported and enhanced.

Designating heritage properties is a means of protecting that heritage, which strengthens a community's identity and distinctiveness.

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

Designating heritage properties encourages the rehabilitation and reuse of older buildings, therefore, preventing a drain on non-renewable resources and reducing materials directed to landfill sites.

Economic Well-Being is enhanced. ☑ Yes ☐ No
The economic base is diversified.

Designated heritage properties can be targeted for revitalization and rehabilitation, which often increases property values. Statistics show that designated properties can serve as economic generators for neighbourhoods and specifically for downtown cores.

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
The creation of a respectful, desirable and supportive workplace.

The designation and protection of the City's cultural heritage resources reveals Council's commitment to an ongoing program of heritage management.

:MS
Attachs. (8)
PROPOSED DESIGNATION PROCESS

Designation initiated

Preliminary Staff screening property meets one or more of three Ontario Heritage Act (OHA) criteria

(Yes)

Property moves forward

(No)

Property does not move forward and person/body that initiated request informed

Staff Report and Preliminary Screening To EDPC and Council for direction and prioritization

High Place on Current Year Work Plan

Medium Place on Work Plan in 2-3 Years

Low Place on Work Plan in 4-5 Years

Full cultural heritage assessment prepared (full screening with City criteria and OHA criteria)

Assessment reviewed by Inventory and Research Subcommittee of the Municipal Heritage Committee

MHC consider staff assessment

MHC provides advice to EDPC via Staff report and recommendation

Staff Report, Cultural Heritage Assessment, Draft By-law and Statement of Cultural Heritage Value forwarded to EDPC for consideration

Council makes a decision on the proposed designation

(Yes)

Proposed Designation approved Notice of Intent to Designate served and advertised

(No)

Proposed designation referred to Conservation Review Board (CRB)

CRB hearing and report

Council considers CRB report and recommendations

(No)

Notice of Withdrawal

(Yes)

Notice of Intent to Designate served and advertised Objection received within 30 days

Proposed designation referred to Conservation Review Board (CRB)

CRB hearing and report

Council considers CRB report and recommendations

(No)

Notice of Withdrawal

(Yes)

Designation by-law passed and registered on Title

Council
MHC
Owner
Third Party
Hamilton’s Cultural Heritage:

Guidelines on Processes and Procedures for Inventorying and Designating the City’s Cultural Heritage Properties

Introduction

The following guidelines are divided into two parts. Part 1 describes the process and procedures for inventorying cultural heritage properties in the City of Hamilton. Part 2 provides guidance on how the City will evaluate cultural heritage properties for designation under the *Ontario Heritage Act*, as well as for determining the "significance" of properties for consideration under other legislation.
Part 1: Process and Procedures for Inventorying Cultural Heritage Properties

1.1 The City of Hamilton’s Inventory of Buildings of Architectural and/or Historical Interest

The City’s heritage inventory is a simple and effective way of taking stock of the various types of heritage properties and features within the new City of Hamilton. The inventory is intended to list and identify all those buildings, structures, landscapes and other features (not including archaeological sites or areas of potential) that are considered to be of prospective or potential cultural heritage interest.

An inventory is considered to be the first and most important step in a planned conservation strategy. The compilation of an inventory does not entail elaborate evaluation procedures aside from establishing key criteria that establishes a division between the consideration of heritage and non-heritage properties.

Practice in other jurisdictions, both in Canada and elsewhere, suggests that “age” fulfills a critical criterion for heritage buildings, structures and landscapes. Specifically, features built more than 40 years ago are generally considered as potential heritage features. For the purposes of the City of Hamilton’s inventory a cut-off date of 1955 has been used to identify potential heritage properties of both architectural and/or historical interest. This age criterion will be reviewed again in 2010.

Age alone, however, should not preclude the inclusion of special structures that are deemed to be of architectural and historical value built since 1955. Buildings built after 1955 may be considered for inclusion on the inventory. These will likely include those structures that are considered to be of contemporary architectural interest or value.

Two other criteria that are to be used in determining potential heritage value or interest of properties for the built heritage inventory are:

- Architectural attributes; and,
- Historical associations.

Architectural attributes may include examples of vernacular building as well as polite architectural styles as defined in Ontario Architecture and in the Ontario Heritage Foundation’s manual Well Preserved. (See Appendix A)

Historical value may include associations with themes of historical human activity, and events, groups or people.
1.2 Inclusion of Heritage Properties in the Inventory

The new City inventory comprises all those heritage features previously identified by the former municipalities of the Town of Ancaster, Town of Dundas, Town of Flamborough, Township of Glanbrook, City of Hamilton and the City of Stoney Creek. There will also be new additions to the inventory as survey work continues over the coming years.

The inventory is not to be considered as a fixed or complete list. It is a dynamic entity that is constantly revised to reflect the changing environment. The inventory is reviewed and updated on a regular basis in order to include additional heritage features; add new information concerning cultural heritage already inventoried; and to note any features that may have been destroyed.

Property owners may request the City of Hamilton to include any properties considered to be of heritage interest by writing to:

Community Planning and Design Section, Planning Division, Planning and Economic Development Department, City of Hamilton, 77 James Street North, Suite 250, Hamilton, Ontario, L8R 2K3

Any request should be accompanied wherever possible with photographic or documentary evidence of the cultural heritage attributes of the property, e.g., historical photographs, drawings, etc.

Heritage features will be documented consistently and include base information on feature type, construction period, building materials, architecture and historical associations. Heritage features wherever possible will be assigned a feature type numerical code for ease of incorporation into a database.

Inclusion in the inventory may be initiated in a number of ways including:

- A request made by a property owner;
- At the request or direction of the Municipal Heritage Committee (MHC);
- At the request of a third party such as an amenity group, ratepayers organization, historical society, etc.; and,
- Listing following the carrying out of heritage inventory work by various authorities (the City of Hamilton, provincial ministries, conservation authorities, and others) as part of planning, environmental assessment or other heritage studies that formally identify cultural heritage.

The City of Hamilton MHC will formally, i.e., by resolution, nominate properties to the Inventory from time to time as it deems appropriate.
On a semi-annual or annual basis, depending on the numbers of heritage features newly inventoried in any year, these properties will be formally presented to Council for formal adoption.

### 1.3 Importance of a Heritage Inventory

The inventory is a first step and the basic building block of a properly managed municipal conservation strategy.

The importance of a cultural heritage inventory cannot be underestimated. An inventory assists in informed decision making, enhances educational initiatives and promotes knowledge and awareness of the special characteristics of a community. An inventory provides an essential base for informed management of a municipality's immovable cultural heritage.

### 1.4 Meaning of “Cultural Heritage Value or Interest”

Prior to the passing of Bill 179 in 2002 the former City of Hamilton had formally established the Inventory of Buildings of Architectural and/or Historical Interest. The inventory was formally recognized in a number of management and planning activities including the former municipality's Official Plan. This name continued in use by the amalgamated municipality and incorporated all municipally inventoried properties as of 2001.

The Inventory primarily contained a listing of “buildings” that exhibited architectural or historical attributes. For the purposes of continuity the new inventory will also contain heritage features whose cultural heritage value resides primarily in their architectural and/or historical interest.

“Buildings” of architectural and/or historical interest for the purposes of the City's inventory comprise a variety of features and include a wide array of structural types such as dwellings, churches, town halls, mills, lighthouses, railway stations and bridges. These forms of built heritage incorporate not only classically designed public buildings and residential structures but also more modest reminders of the past including farmsteads, worker's housing and simple manufactories. Such features usually incorporate a diversity of architectural and stylistic variations, varied construction techniques and building materials, as well as an array of historical associations with people, places, events or activities.

Built heritage resources are found throughout the new City in urban, suburban and rural areas. These features are considered to be of cultural heritage value to the community in which they are located, and frequently, in a wider context, of value to the region, the province or the nation.
1.5 Effects of Listing in the Inventory

Listing in the inventory provides consistent and objective information about the heritage attributes of a property. Listing is a conservation management tool that neither affects property values nor restricts the use or enjoyment of property. There is no legal encumbrance that follows from inclusion in the inventory.

1.6 Cultural Heritage Landscapes

Section 2.4 outlines the process for the identification and evaluation of cultural heritage landscapes. Cultural heritage landscapes will be identified and included in the Inventory of Buildings of Architectural and/or Historical Interest on an interim basis until such time that the inventory is re-organized to recognize “cultural heritage properties” and its various components.
Part 2: A Framework for Evaluating the Cultural Heritage Value or Interest of Property for Designation under Part IV of the *Ontario Heritage Act*

2.1 Introduction

The following evaluation criteria seek to provide a consistent means of examining and determining the cultural heritage value or interest of real property. They will be used by staff and the City of Hamilton’s Municipal Heritage Committee (formerly the Local Architectural Conservation Advisory Committee or LACAC) in determining whether to designate property under the *Ontario Heritage Act*.

It is anticipated that properties to be designated must have one or more demonstrated attributes of cultural heritage value or interest. The greater the number of attributes the more likely it is that a property will be of significant or considerable cultural heritage value.

These criteria recognize the housekeeping changes made to the *Ontario Heritage Act*, as per the *Government Efficiency Act, 2002*. Municipalities are enabled to designate those properties of cultural heritage value and to identify those heritage attributes that account for the property’s cultural heritage value or interest.

In keeping with contemporary heritage conservation and management practice these are considered to be those properties that have cultural heritage value expressed in the following forms:

- Archaeological sites and areas
- Built heritage features, and,
- Cultural heritage landscapes.

These categories follow the direction and guidance in the Provincial Policy Statement issued pursuant to the *Ontario Planning Act*. No guidance is yet provided under the *Ontario Heritage Act*.

2.2 Archaeology

Introduction

The designation of archaeological sites under the *Ontario Heritage Act* (OHA) has traditionally been at the discretion of the Provincial Government, until the recent amendments to the OHA under the *Government Efficiency Act, 2002*. 
Among other effects, these changes extend this capacity to municipalities, hence the process herein of defining the City of Hamilton criteria for OHA designation of archaeological sites.

**Hamilton Archaeology**

The City of Hamilton has approximately 735 archaeological sites currently (2001) registered by archaeologists on the Ontario Archaeological Sites Database, maintained by the Ontario Ministry of Culture (OMoC). Numerous other sites are known to exist, but are not as yet registered on the OASD. Further, a large number of unknown sites exist, but have not yet been identified. Many of these sites, whether registered or not, are too small to warrant significant investigation, other than to establish and map their presence and general nature.

The registration of known sites by licensed archaeologists under the OHA serves to record the sites’ presence, cultural affiliation, and status. Sites, which have been fully excavated and, therefore, exist only in the form of excavation records, removed artifacts and reports, remain registered.

The overall pattern in the data is that the highest density of registered sites occurs in areas that have been the focus of survey, whether driven by development proposals and Planning Act requirements or academic research.

**Archaeological Work**

Archaeology is by its nature a destructive discipline. Sites are identified through survey, arising from some form of soil disturbance, which informs the archaeologist that a site or sites are present. Apart from establishing a site presence and some broad ideas of site boundaries and cultural horizons, however, the nature of a site is largely unknown until excavation activities take place.

Archaeology is a destructive discipline: the difference between the archaeological excavation of a site and its undocumented removal by construction activities lies in the records retained and reported on by the archaeologists. The knowledge of the archaeological site persists, however, and while it may be absent, the former presence indicates that the area in which it occurs is one of archaeological potential, if the landscape remains relatively intact.

Soil disturbance can take many forms, and has varied effects on the archaeological resource. Much of archaeology in Ontario occurs in the topsoil horizon, with some extending into the subsoil, which affects its visibility and sensitivity to disturbance.

Most of the archaeology in Hamilton has been identified as a result of over a hundred years of agricultural activities, namely tilling the soil. While cultivation
disturbs sites, it does so with only moderate loss of site information. More intensive forms of agricultural, such as tree or sod farms, have a more substantial and deleterious effect. Soil disturbances such as grade alteration or compaction essentially obliterate archaeological resources.

**Archaeologists**

Terrestrial and aquatic archaeology in Ontario is administered through the OMoC, while some authority has been downloaded to municipalities. In addition to maintaining the site registry, OMoC is responsible for licensing archaeologists: only licensed archaeologists are permitted to carry out archaeological fieldwork (Section 4.48.1), or alter archaeological sites through the removal or relocation of artifacts or any other physical evidence of past human use or activity, from the site (Section 4.48.2).

While recognizing this, much archaeological work has been conducted in the past by unlicensed archaeologists. This group falls into two categories: avocational or lay archaeologists and “pothunters”. Avocational archaeologists typically work in association with licensed archaeologists or the OMoC. Pothunters tend to avoid working with archaeologists or the Ministry and are known to loot sites for artifacts, either to add to collections or sell on the open market. Such activities are illegal under the OHA.

**Designation of Archaeological Sites**

As with other types of cultural heritage resources, “designation” is one of many conservation tools that a municipality may use to wisely manage its cultural heritage. With respect to archaeological sites, there are a number of unique aspects arising from the designation of archaeological sites. The protection of archaeological sites or areas of archaeological potential is possible through designation, and is also a means by which to flag such properties for closer scrutiny through the development application process. The amended components of Part VI of the OHA also provide stronger and more appropriate means by which the resource can be protected.

The designation of existing sites may serve as a flag, which could result in unauthorized excavation, inferring some potential responsibility of the City of Hamilton to protect such sites. However, sites of sufficient significance to warrant designation are likely already well known to the pothunter population. In turn, the fact that many registered sites have already been fully excavated, primarily as part of the development process, does play a factor in the designation process and goals (i.e. inferring the recognition of a site no longer present).
While there is no official Ministry policy on the municipal designation of archaeological sites, the existence of provincially designated archaeological sites suggests that the recognition of such significant resources is warranted. The criteria below are to be used either as “stand-alone” criteria for the evaluation of archaeological sites and areas of archaeological potential suitable for designation or are to be used in conjunction with other criteria in the designation of heritage properties, such as heritage buildings and cultural heritage landscapes.

**Determination of Significance**

1. **Cultural Definition:** is the site used to define a cultural complex or horizon at the local or regional scale?

Select archaeological sites are used to define specific cultural complexes or horizons, to which similar sites are compared for closeness of fit and relative position in cultural chronology and site function. Their identification as type-sites is typically achieved through academic discourse, for example the Princess Point site in Cootes Paradise.

2. **Temporal Integrity:** does the site represent one or more readily distinguished cultural horizons, or a multi-component mixture of poorly-defined occupations?

Archaeological sites are frequently re-occupied over a long period of time by different cultural groups. While soil stratification may separate these sequences and provide valuable information, agricultural and other activities can cause admixture of these separate components, resulting in a loss of information.

3. **Site Size:** is the site a large or high-density occupation, or a small, low-intensity occupation?

A higher level of importance tends to be placed on larger archaeological sites, as they generally represent larger or more frequent/long-term occupations. They also tend to yield more diagnostic material objects or settlement patterns, and so can be better defined chronologically and culturally, but can likewise be less clearly defined. Smaller sites can also yield diagnostic artifacts, and are typically the predominant site size of earlier Native and Euro-Canadian occupations, and may be subject to lower degrees of stratigraphic mixture.

4. **Site Type:** is the site of a distinctive and well-defined type, with respect to its function or the activities carried out at the site?

Sites range in nature from highly specialized to generalized, with a related range of interpretability: sites where many activities occur can make it hard to differentiate these activities, such as a pioneer farmstead. Sites where limited activities took place tend to show more identifiable patterns, like point
manufacturing sites. While both end of this continuum represent similarly important parts of their inhabitants’ lifeways, information may be more readily derived from those of lower complexity.

5. **Site Integrity: is the site largely intact?**

Sites that remain primarily intact retain significant levels of data, while degree of impact closely correlates with the extent of data-loss, particularly when all or some of the site has been impacted or removed through excavation, mitigation or other activities.

6. **Historical Association: does the site represent the archaeological remnants of a significant historical event, person, or group?**

The direct association of an archaeological site with a historical event, person, family or group can have a bearing on the significance of an archaeological site, depending on the significance to the community, province or nation of the event or person(s) involved. The nature of the association, such as transitory or long-term, also has a bearing on whether this association is of little or considerable significance.

7. **Setting: what is the integrity of the context surrounding the site?**

Sites do not exist independently, but rather are embedded (at varying scales) within the landscape encompassing them. As such, some semblance of the physiography (cultural heritage landscape) and relevant built culture concurrent to the site’s occupation can provide an important context to the information derived from the site.

8. **Socio-political value: is there significant public value vested in the site?**

Real or perceived social or political value may be imparted to an archaeological site for various reasons by the public as a whole, or subsets of stakeholders and interest groups. Regardless of the origin of the value(s) ascribed the site, perception and expediency may play a large role in its identification as a significant feature.

9. **Uniqueness: is this a unique archaeological site?**

While all sites are by their nature unique, some are more so than others by nature of their distinctive type, role or character, which identifies them as “one-of-a-kind” within a specified frame of reference. The recognition of a site having such a unique nature as to warrant this distinction essentially refers to the information value implicit in such an identification. As a result, this will largely be the result of professional discourse.
10. Rarity: is this a rare archaeological site?

Rarity may be a measure of cultural affiliation, site type, function, location, artifact assemblage, and age, to mention some potential elements. This can take two forms: either because they occurred only very rarely as a site type originally, or because only a small number remain extant owing to destruction of the original set of sites. In both cases, the rarity of these sites warrants their identification as a result of their information value regarding such a limited resource. Evaluation of the distinct nature of such sites will largely originate through professional discourse.

11. Human Remains: are there identified or probable burials on the site?

Human remains can be encountered in a variety of circumstances, including within an archaeological site. Depending on the context, these can take the form of an approved cemetery, unapproved cemetery, unapproved Aboriginal Peoples cemetery, or irregular burial site. Regardless of the specific circumstance, burials carry a high cultural value in and of themselves. In addition, their significance can be evaluated as a sub-set of archaeological sites in complement with the standard cemetery management process. Native and pioneer cemeteries in particular can be assessed in reference to other archaeological sites and communities, as well as specific persons and events.

12. Archaeological Potential: is the area of substantially high potential?

The archaeological potential of a property is determined through an evaluation of a variety of factors. These include proximity to physiographic features, known archaeological sites, historic features, and degrees of landscape alteration/disturbance. If a property is identified as having very high potential, designation may be warranted prior to field survey, or further impact.

2.3 Built Heritage

Introduction

For the past 25 years Part IV of the Ontario Heritage Act primarily concerned itself with the designation and hence protection and management of buildings of architectural or historic value or merit. The Ontario Heritage Act now enables municipalities to designate property, i.e., real property including buildings and structures. This may now include not only buildings but also plantings, landscaping elements and archaeological features (see preceding Section 2.2). As with archaeological evaluation the criteria below are to be used either as “stand-alone” or are to be used in conjunction with other criteria in the designation of heritage properties.
Historical Associations

1. **Thematic**: how well does the feature or property illustrate a historical theme that is representative of significant patterns of history in the context of the community, province or nation?

   The criterion evaluates the resource in the context of broad themes of community history. In assessing a resource, the evaluation should relate its importance specifically and with some precision to relevant themes usually of some duration, such as agricultural settlement, village or town development, recreational activities, suburbanization and industrial growth.

2. **Event**: is the property associated with a specific event that has made a significant contribution to the community, province or nation?

   This criterion evaluates the resource with respect to its direct association with events, (i.e., the event took place in the building or on the property). The significance of the event must be clearly and consistently evaluated by examining the impact the event had on future activities, duration and scale of the event and the number of people involved. Battles, natural disasters and scientific discoveries are frequently recognized under this criterion.

3. **Person and/or Group**: is the feature associated with the life or activities of a person or group that has made a significant contribution to the community, province or nation?

   This criterion evaluates the feature with respect to its direct association with a person or group, (i.e., ownership, use or occupancy of the resource). The significance of the person or group must be clearly described such as the impact on future activities, duration and scale of influence and number and range of people affected, e.g., the Calder or Book family in Ancaster. Public buildings such as post offices or courthouses though frequented by many important persons will seldom merit recognition under this criterion.

Architecture and Design

4. **Architectural merit**: what is the architectural value of the resource?

   This criterion serves to measure the architectural merit of a particular structure. The evaluation should assess whether the structure is a notable, rare, unique, early example or typical example of an architectural style, building type or construction techniques. Structures that are of particular merit because of the excellence and artistic value of the design, composition, craftsmanship and details should be identified whether or not they fall easily into a particular stylistic category (i.e., vernacular architecture).
5. **Functional merit: what is the functional quality of the resource?**

This criterion measures the functional merit of the structure apart from its aesthetic considerations. It takes into account the use or effectiveness of materials and method of construction. The criterion is also intended to provide a means of giving value to utilitarian structures, engineering works and industrial features that may not necessarily possess a strict “architectural” value.

The evaluation should note whether the structure is a notable, rare, unique, typical or early example of a particular material or method of construction.

6. **Designer: what is the significance of this structure as an illustration of the work of an important designer?**

This criterion evaluates the importance of the building in a designer's career. “Designer” may include architects, builders or engineers, either in private and public practice, or as individuals or professional firms. The evaluation will have to account for or describe whether or not a designer is important in terms of the impact that the person had on trends in building and activities in the community, province or nation before evaluating the importance of the specific structure in the designer’s career. Comparisons should focus on surviving examples of the designer's work.

**Integrity**

7. **Location integrity: is the structure in its original location?**

The integrity of a resource relies in part on its relationship to its original site of construction. Original sites or locations of structures are benchmarks in the past physical, social, economic and cultural development of any area. The continued presence of heritage structures often contributes to a strong sense of place. Those features that have been moved from their original sites are considered to be of lesser cultural heritage value.

8. **Built integrity: is the structure and its components parts all there?**

The integrity of a resource may affect the evaluation of the built heritage feature particularly where there have been either:

adverse alterations, such as the loss of significant or noteworthy building elements;

or

unsympathetic additions, that obscure or detract from original building fabric.
Properties that remain intact or that have been systematically and sensitively added to over a number of decades (such as farmhouses) are considered to have greater value than those that have experienced detrimental effects. Building ruins may warrant special consideration where there are other important cultural heritage values, e.g., “The Hermitage”, Ancaster.

Environmental Context

9. Landmark: is it a visually conspicuous feature in the area?

This criterion addresses the physical importance of a structure to its community. The key physical characteristic of landmarks is their singularity, some aspect that is unique or memorable in its context. Significant landmarks can have a clear form, contrast with their background or have prominent locations. Landmarks are often used by people as reference points, markers or guides for moving or directing others through an area.

10. Character: what is the influence of the structure on the present character of the area?

This criterion measures the influence of the resource on its surroundings. The character of the immediate area must be established before the site's contribution can be assessed. (In the case of complexes, “area” may be defined as the complex itself, e.g., hospital, university, industrial plant). Areas can convey a sense of cohesion through the similarity and/or dissimilarity of their details. Cohesion can be established by examining such things as scale, height, proportion, siting, building materials, colours and relationships to other structures and spaces.

11. Setting: what is the integrity of the historical relationship between the structure and its immediate surroundings?

This criterion examines the degree to which the immediate environment enhances the structures physical value or prominence. It assesses the importance of the site in maintaining familiar edges, districts, paths, nodes and landmarks that assist in movement and orientation. Structures or sites may exhibit historic linkages such as those between a church and cemetery or a commercial block and service alleys. Other examples are original settings that provide the context for successive replacement of bridges at the same location or traditional relationships such as those between a station and hotel located next to a rail line.

Social Value

12. Public perception: is the property or feature regarded as important within its area?
This criterion measures the symbolic importance of a structure within its area to people within the community. “Community” should not solely reflect the heritage community but the views of people generally. Examination of tourist brochures, newspaper articles, postcards, souvenirs or community logos for the identification of a site as a prominent symbolic focal point is sometimes useful.

2.4 Cultural Heritage Landscapes

Introduction

Prior to defining evaluation criteria, it is worthwhile to enumerate several general principles for understanding cultural heritage landscapes. The Provincial Policy Statement issued under the Planning Act states in 2.6, Cultural Heritage and Archaeology that:

*Significant built heritage resources and significant cultural heritage landscapes shall be conserved.*

“Cultural heritage landscape” is specifically defined to mean:

>a defined geographical area of heritage significance which has been modified by human activities and is valued by a community. It involves a grouping(s) of individual heritage features such as structures, spaces, archaeological sites, and natural elements, which together form a significant type of heritage form, distinctive from that of its constituent elements or parts. Examples may include, but are not limited to, heritage conservation districts designated under the Ontario Heritage Act; and villages, parks, gardens, battlefields, mainstreets and neighbourhoods, cemeteries, trailways and industrial complexes of cultural heritage value.*

In addition, “significant” is defined to mean:

>in regard to cultural heritage and archaeology, resources, that are valued for the important contribution they make to our understanding of the history of a place, an event, or a people.”

These formal quasi-legislative definitions are important in defining the scope and limitations of what constitutes a significant cultural heritage landscape. The word “culture” or “cultural” is used here and in the context of the policy statement to differentiate between those environmental features that are considered to originate in “nature” and have “natural” forms or attributes. The use of the word culture in this context should not be misconstrued to indicate a refined or developed understanding of the arts or civilization.
Typically cultural heritage landscapes comprise many items or objects that have been made or modified by human hands. Importantly, cultural heritage landscapes reflect human activity (including both the intended and accidental results of development, conservation and/or abandonment) and thus all landscape artifacts reflect “culture” in some way, shape or form. Accordingly, for the purposes of understanding a cultural landscape, most components of the landscape are usually equally important in giving some insight into the culture or historical past of an area (fields, farmsteads, treelines, woodlots, mill ponds, raceways, manufactories, etc.). Present landscapes that are inherited from the past typically represent the aspirations, value, technology and so on of previous generations. Many present-day cultural heritage landscapes are relics of a former age. Small towns and rural hamlets, for instance, often represent nineteenth century rural lifeways that are no longer being built.

In order to understand the cultural heritage significance of a landscape, it is important to understand not only the physiographic setting of an area but importantly the broader historical context of change. The role of technology and communications is particularly important at any given time as these often provided the physical artifacts or means available to permit change to occur within the landscape.

In the evaluation of cultural landscapes for the purpose of heritage conservation, the establishment of criteria is essentially concerned with attempting to identify those landscapes that have particular meaning, value or importance and consequently require some form of active conservation management including informed municipal decision making through the designation process. Traditionally, “landscapes” have tended to be evaluated on the basis of some measure of scenic merit, particularly those considered to be views of “nature”, free from the effects of noticeable human activity. In identifying cultural heritage landscapes there is less a concern for assigning value based solely on scenic attributes. Attributes that address historical associations and social value are also equally important. The following criteria provide a broader base for evaluation.

**Applying the Evaluation Criteria**

The evaluation framework for cultural heritage landscapes is a set of criteria to be used in the assessment of cultural heritage landscapes throughout the City of Hamilton. These criteria are based on established precedents for the evaluation of heritage resources. It is anticipated that this framework will be applied to a broad range of landscapes in a consistent and systematic manner. It may be utilized either on a long-term basis as part of continuing survey and assessment work or on an issue oriented case-by-case manner. The evaluation criteria are also to serve the purposes of determining cultural heritage value or interest for the purposes of designation under the *Ontario Heritage Act*. 
The criteria recognize the value and merit of all types of cultural heritage landscapes. If at any time it is proposed to undertake a comparative evaluation amongst many landscapes such comparative analysis should be used only to compare like or similar landscapes. An industrial landscape, for example must be assessed through comparison with other industrial landscapes, not with a townscape or rural landscape.

The intent in applying the criteria is not to categorize or differentiate amongst different types of landscape based upon quality. In using and applying the criteria it is important that particular types of cultural heritage landscapes are each valued for their inherent character and are consistently evaluated and compared with similar or the same types.

**Evaluation Criteria for Cultural Heritage Landscapes**

**Historical Associations**

1. **Themes:** how well does the cultural heritage landscape illustrate one or more historical themes representative of cultural processes in the development and/or use of land in the context of the community, province or nation?

This criterion evaluates the cultural landscape in the context of the broad themes of the City’s history. In assessing the landscape, the evaluation should relate the landscape specifically to those themes, sub-themes and material heritage features, e.g., ports/industrial areas and cottage and resort communities.

2. **Event:** is the cultural landscape associated with a specific event that has made a significant contribution to the community, province or nation?

This criterion evaluates the cultural landscape’s direct association with an event, i.e., the event took place in the area. The significance of the event must be evaluated by explicit description and research such as the impact event had on future activities, the duration and scale of the event and the number of people involved. Battle sites and areas of natural disasters are recognized under this criterion.

3. **Person and/or Group:** is the cultural landscape associated with the life or activities of a person, group, organization or institution that has made a significant contribution to the community, province or nation?

This criterion evaluates the cultural landscape’s direct association with a person or group, i.e., ownership, use or development of the cultural landscape. The significance of the person or group must be considered in the context of impact, scale and duration of activities. Cultural landscapes resulting from resource based activities such as forestry, mining or quarrying, etc. may be identified with
a particular corporate group. Conversely, individuals may play a pivotal role in the development of cultural landscapes such as a town site, industrial operation or resort complex.

**Scenic Amenity**

4. **Sense of place: does the cultural heritage landscape provide the observer(s) with a strong sense of position or place?**

This criterion evaluates the sensory impact to an observer either viewing the cultural heritage landscape from within or from an exterior viewpoint. Such landscapes are recognizable as having a common, identifying character derived from buildings, structures, spaces and/or natural landscape elements, such as urban centres, ports, villages and cottage communities.

5. **Serial Vision: does the cultural heritage landscape provide the observer(s) with opportunities for serial vision along paths of pedestrian or vehicular movement?**

This criterion measures the visual impact to an observer travelling through the cultural landscape. Sidewalks or streets in urban areas and roads or water routes in rural or beach areas often provide an observer with a series of views of the landscape beyond or anticipated to arrive within view. Such serial vision may be observed at a small scale in an urban area, moving from residential street to commercial area; or at a larger scale from urban to rural.

6. **Material Content: is the cultural heritage landscape visually satisfying or pleasing to the observer(s) in terms of colour, texture, style and scale?**

This criterion attempts to evaluate the visual impact to an observer of the content of the cultural landscape in terms of its overall design and appearance, however formally or informally, consciously or unconsciously planned. Material content assesses whether the landscape is pleasing to look at regardless of historical completeness.

**Integrity**

7. **Integrity: is it all there?**

The evaluation of the integrity of a cultural heritage landscape seeks to identify the degree to which adverse changes have occurred. Landscapes that have suffered severe alterations, such as the removal of character defining heritage features and the introduction of intrusive contemporary features, may be weaker in overall material content, serial vision and the resultant sense of place that it provides.
Design

8. Design: has the landscape been purposefully designed or planned?

This criterion applies only to those landscapes that have been formally or purposefully designed or planned and includes examples such as “planned” communities, public parks, cemeteries, institutional grounds and the gardens of residences. Typically, they are scarce in comparison to evolving or relict landscapes. This criterion evaluates the importance of the landscape in the designer’s career. “Designer” may include surveyors, architects, or landscape architects, both private and public, either as individuals or as professional firms. The evaluation assesses whether or not a designer is important in terms of the impact on trends in landscape design before evaluating the importance of the specific landscape in the designer’s career. Comparisons should focus on surviving examples of the designer’s work.

Social Value

9. Public perception: is the landscape regarded as having importance within the City?

This criterion measures the importance of the landscape as a cultural symbol. Examination of advertisements of the day, popular tourism literature and artifacts, public interviews and local contacts usually reveal potential landscapes of value.
## Appendix A

Ontario Architecture: A guide to styles and building terms 1784 to the Present, John Blumenson, Fitzhenry & Whiteside, 1990

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<tr>
<td>4. Classic Revival</td>
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<tr>
<td>5. Gothic Revival</td>
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<td>6. Italian Villa</td>
<td>(1830-1900)</td>
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<td>7. Italianate</td>
<td>(1850-1900)</td>
</tr>
<tr>
<td>8. Octagon</td>
<td>(1850-1880)</td>
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<tr>
<td>9. Romanesque Revival</td>
<td>(1850-1910)</td>
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<tr>
<td>10. Second Empire</td>
<td>(1860-1900)</td>
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<tr>
<td>11. Renaissance Revival</td>
<td>(1870-1910)</td>
</tr>
<tr>
<td>12. Queen Anne</td>
<td>(1880-1910)</td>
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<tr>
<td>13. Chateau</td>
<td>(1880-1940)</td>
</tr>
<tr>
<td>14. Beaux-Arts Classicism</td>
<td>(1900-1945)</td>
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<tr>
<td>15. Neo-Gothic</td>
<td>(1900-1945)</td>
</tr>
<tr>
<td>16. Colonial Revivals</td>
<td>(1900-present)</td>
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<td>17. Period Revivals</td>
<td>(1900-present)</td>
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<tr>
<td>18. Edwardian Classicism</td>
<td>(1900-1930)</td>
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<tr>
<td>20. Prairie</td>
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<tr>
<td>21. Art Deco</td>
<td>(1925-1940)</td>
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<td>22. Art Moderne</td>
<td>(1930-1945)</td>
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<td>23. International</td>
<td>(1930-1965)</td>
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<td>24. Victory Housing</td>
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<td>25. '50's Contempo</td>
<td>(1945-1965)</td>
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<td>27. Post-Modern</td>
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A catalogue of styles

<table>
<thead>
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<th>Style</th>
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<td>Octagon</td>
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<td>Second Empire</td>
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<td>Stick Style/Carpenter Gothic</td>
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<td>Queen Anne</td>
<td>(1880-1910s)</td>
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<td>Richardsonian Romanesque</td>
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<td>Chateauesque</td>
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<tr>
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<td>(1880s-1030s)</td>
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<td>Colonial/Georgian revival</td>
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<td>Mission/Spanish Revival</td>
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Requests to Designate Properties under Part IV of the **Ontario Heritage Act:**
Priorities

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<th>Year</th>
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<td>2009</td>
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<td>654 Garth Street, Hamilton (Chedoke House)</td>
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<td>2010</td>
<td>91 John Street South, Hamilton</td>
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<td>2010</td>
<td>9300 Airport Road, Mount Hope (RCAF 447)</td>
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<td>2011</td>
<td>1062 Golf Club Road, Binbrook (Woodburn)</td>
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<td>2011</td>
<td>Gage Park, Hamilton</td>
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<td>2011</td>
<td>Gore Park, Hamilton</td>
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<td>2012</td>
<td>Tisdale House, Ancaster</td>
<td>16-Aug-01</td>
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</table>
STATEMENT OF CULTURAL HERITAGE VALUE AND DESCRIPTION OF HERITAGE ATTRIBUTES

Statement of Cultural Heritage Value

191 Barton Street East, containing the former Smart-Turner Building, possesses cultural heritage value expressed in its historical associations with the industrial growth of the City of Hamilton. The Smart-Turner Machine Company, a prominent manufacturer in the City, occupied the building for more than 90 years, starting at the turn of the twentieth century. The subject building, built 1876-77 as a malthouse, is a notable example of Victorian industrial vernacular stone architecture and it remains in its original location on Barton Street East providing insight into the physical and economic development of that area of the City. The building is a landmark on the streetscape and retains its original architectural configuration of a one and one-half storey stone building with gambrel roof and dormer windows. The property has potential archaeological value related to both the former industrial remnants and pre-contact settlement activity.

Description of Heritage Attributes

All elevations and the roof, including all facades, entranceways and window openings, together with the stone construction material and the building features of the former Smart-Turner building, specifically:

South (Front) Elevation
• Rubble stone façade and all window and door openings
• Cut stone window and door lintels and sills
• Gambrel roof with dormer windows

East (Side) Elevation
• Exterior wall

West (Side) Elevation
• Exterior stone wall and window openings

South (Rear) Elevation
• Exterior stone wall and window and door openings
• Gambrel roof with dormer windows

The lands, which have high archaeological potential, specifically:

• Buried soil-horizons
• Buried historical remnants
CITY OF HAMILTON

NOTICE OF INTENTION TO DESIGNATE

191 Barton Street East, City of Hamilton

IN THE MATTER OF THE ONTARIO HERITAGE ACT and the property in the City of Hamilton known municipally as 191 Barton Street East

NOTICE IS HEREBY GIVEN that the City of Hamilton intends to designate this property as being a property of cultural heritage value.

Statement of Cultural Heritage Value

191 Barton Street East, containing the former Smart-Turner Building, possesses cultural heritage value expressed in its historical associations with the industrial growth of the City of Hamilton. The Smart-Turner Machine Company, a prominent manufacturer in the City, occupied the building for more than 90 years, starting at the turn of the twentieth century. The former Smart-Turner Building, built 1876-77 as a malthouse, is of cultural heritage value as a notable example of Victorian industrial vernacular stone architecture and it remains in its original location on Barton Street East providing insight into the physical and economic development of that area of the City. The building is a landmark on the streetscape and retains its original architectural configuration of a one and one-half storey stone building with gambrel roof and dormer windows. The property has potential archaeological value related to both the former industrial remnants and pre-contact settlement activity.

Description of Heritage Attributes

All elevations and the roof, including all facades, entranceways and window openings; together with the stone construction material and the building features of the former Smart-Turner Building and the lands, which have high archaeological potential.

The complete description of heritage attributes may be viewed in the Office of the City Clerk, City of Hamilton, 77 James Street North, Suite 220, during regular business hours.
Any person may, within 30-days after the date of publication of this Notice, serve written notice of his or her objection to the proposed designation together with a statement for the objection and all relevant facts.

Dated at Hamilton, this ______ day of ______, 2008.

K. Christenson
City Clerk
Hamilton, Ontario
CURRENT DESIGNATION PROCESS

- Designation initiated
  - Preliminary Staff screening
    - property meets one or more of three Ontario Heritage Act (OHA) criteria
      - (Yes)
      - (No) Property does not move forward and person/body that initiated designation informed
  - Municipal Heritage Committee (MHC) input/advice
  - Full cultural heritage assessment prepared by staff
    - (full screening with City criteria and OHA criteria)
  - Assessment reviewed by
    - Inventory and Research Subcommittee (IRS)
      - of the Municipal Heritage Committee (MHC)
  - MHC considers staff assessment and IRS advice
  - MHC provides advice to EDPC via staff report and recommendation
  - Staff Report, Cultural Heritage Assessment,
    - Draft By-law and Statement of Cultural Heritage Value considered by EDPC
  - Council makes a decision on the proposed designation
    - (Yes) Proposed Designation approved Notice of Intent to Designate served and advertised
      - (Yes) Objection received within 30 days
        - Proposed designation referred to Conservation Review Board (CRB)
          - CRB hearing and report
            - Council considers CRB report and recommendations
              - (Yes) Notice of Withdrawal
              - (No) Designation not pursued
        - (No) Designation not pursued
  - No objection after 30 days
    - (Yes) Designation by-law passed and registered on Title

Council
MHC
Owner
Third Party
## Properties Designated Under Part IV of the Ontario Heritage Act 2001-2008

<table>
<thead>
<tr>
<th>No.</th>
<th>Property Address</th>
<th>MHC direction OR (Date of Request)</th>
<th>MHC approval</th>
<th>Report Number</th>
<th>Council Approval</th>
<th>Notice of Intent Publication Date</th>
<th>Date of Passing of By-law</th>
<th>By-law No.</th>
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<tbody>
<tr>
<td>1</td>
<td>17 Augusta, Hamilton (Lo Presti)</td>
<td>10-Jul-00</td>
<td>8-Sep-00</td>
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<td>2-Mar-01</td>
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<td>2</td>
<td>14 Mary Street, Hamilton (Century/Lyric Theatre)</td>
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<td>16-May-01</td>
<td>PDC001116</td>
<td>10-Jul-01</td>
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<td>3</td>
<td>The Cellar, Mohawk College</td>
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<td>6-May-02</td>
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<td>4</td>
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<td>335 Lima Court, Ancaster</td>
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<td>21-Nov-02</td>
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<td>758 Old Hwy 8, St. Albans-the-Martyr, Rockton</td>
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<td>20-Dec-01</td>
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<td>1049 Kirkwall, Westfield Heritage Village, Flamborough</td>
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ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
BETWEEN:

DAVID TREMBLAY, PAUL CHAUVIN, ANDRÉ CHÉNIER, ROGER ST. PIERRE
and PAUL TRÉPANIER

Applicants

- and -

THE CORPORATION OF THE TOWN OF LAKESHORE and KIRK DORAN,
Directeur de la Construction pour The Corporation of the Town of Lakeshore

Respondents

- and -

THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE DIOCESE OF LONDON IN ONTARIO

Intervenor

HEARD: May 7, 2003

Benotto S.J.
Introduction

[1] There is a small church in the village of St. Joachim near Windsor. It is an important symbol of the spiritual and cultural life of the local French-speaking community. The Roman Catholic Diocese of London wishes to demolish the Church. The parishioners are seeking to "save" it and formed an organization “SOS Eglises.” This group asked the Town of Lakeshore to designate the building under the Ontario Heritage Act. A number of Town Council meetings ensued during which the Town refused the designation. The Town took the position that it could not entertain a request without the consent of the Diocese (which owned the property). A demolition permit was issued. The demolition has been stayed pending this hearing. The Applicants seek an order from this court referring the matter back to the Town for consideration of the issue of heritage designation.

Background

[2] The French community in the Windsor area was established over 300 years ago. It is fragile and struggles to survive in a predominately Anglophone environment. For this community, the Church is a powerful source of identity and strength. L’Eglise St. Joachim was built by the parishioners’ forefathers 120 years ago, with little money and much co-operative work. Once built, it became the centre of the French community.

[3] In 1996, the Roman Catholic Diocese of London implemented a plan called “clustering.” L’Eglise St. Joachim was consolidated with two other parishes. A “Cluster Advisory Board” was formed. The Cluster Advisory Board decided to present three options to the parishioners of the consolidated churches to determine how to best meet the needs of the new Faith Community. The three options given were as follows: 1. Renovate all three church buildings; 2. Renovate only Annonciation as it is the largest, and dispose of the other two existing lands and buildings; and, 3. Build a new parish complex which would involve disposing of the three existing lands and buildings.

1 “Save Our Sanctuaries”
An architect was retained to do a report on the condition of L’Eglise St. Joachim. Because of its state of repair, it was closed in April 2000 and has never been reopened. Meetings were held to discuss the fate of the Church. In September, a vote was held whereby 65% of the people who voted (1/2 of the active parishioners of the new parish group) voted to construct a new parish complex. After this vote, the Applicants formed SOS.

The Town Council

On April 24, 2001, the Applicants asked Town Council to designate L’Eglise St. Joachim pursuant to the Ontario Heritage Act. At that meeting, representatives of the Diocese advised that the decision to close the Church was final, that a new church would be built and that the Diocese was willing to sell the building.

On May 7, 2001, the Town planner outlined matters of heritage concerns. The Town passed a resolution authorizing her to invite a Provincial Conservation Planner to another meeting to appoint a Local Architectural Conservation Advisory Committee (“LACAC”). This process continued in September and October 2001 and again in February 2002.

At the Lakeshore Council meeting held March 12, 2002, David Tremblay, supported by other members of SOS also in attendance at the meeting, again requested that the St. Joachim Church be designated under the Ontario Heritage Act. Council refused to designate the Church over the objections of the owner and passed a resolution to require the owner to consent to the application for designation under the Ontario Heritage Act. The Town passed the following resolution:

“That a request for heritage designation of a property be made directly to the Council of the Town of Lakeshore. Such a request must include the following:

a) this request be made by the owner of the property.”
The Applicants say that the Council had no authority to impose this condition on the application.

In the summer of 2002, the Diocese sold the Church and made demolition a condition of sale. A demolition permit was issued on October 2002 but stayed pending this application.

**Standard of Review**

The Respondents argue that the standard of review is patent unreasonableness.²

The Applicants suggest indirectly that issues of law are involved which make the standard of review correctness. The issues of law are the failure of the Town to consider the constitutional protection of the French-speaking minority and the resolution to require the owner’s consent which was *ultra vires* its authority.

For the reasons articulated in paragraph 25 of these reasons, I conclude that the applicable standard of review of is “patent unreasonableness.”

**Analysis**

The *Ontario Heritage Act*, proclaimed in 1975, was Ontario’s response to a world-wide effort at preserving for future generations works which have acquired cultural significance.³

The *Ontario Heritage Act* gives municipalities the power to designate properties within a municipality to be of historic or architectural value or interest. For the purpose of exercising that power, the Act provides that municipalities may appoint a local architectural conservation advisory committee to advise the Council on matters relating to the Act.

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² *Nanaimo (City) v. Rascal Trucking Ltd.* [2000] SCR 342
[15] The purpose of the Act is to provide for the conservation, protection and preservation of the heritage of Ontario. In order to protect the heritage of Ontario, municipalities have been given the power to designate the properties of their choice and thus to suspend certain private property rights. Those provisions of the Act must be applied in such a way as to ensure the attainment of the legislature’s objectives.

[16] Designation of a property is a procedurally simple process. If a municipal council intends to designate a property it must consult with its advisory committee, if it has one; it must give notice as prescribed; and, if no objection is filed within 30 days of the notice, the municipal council passes a by-law designating the property. If an objection is filed the matter is referred to the Conservation Review Board for a hearing. The Conservation Review Board holds a hearing and makes recommendations back to the municipal council which then makes its final decision without a further hearing. If a building is designated historical, the Town can only prohibit demolition for 180 days after which it must repeal the designation by-law.

[17] Ironically, therefore, the designation of a building as a heritage site does not prevent the demolition of the site by the owner once 180 days have passed. This is why the Town takes the position that the owner must apply or consent.

[18] The decision to designate a property is clearly discretionary. However, there are limits on the exercise of discretion where fundamental constitutional and societal interests are at stake. That discretion must be exercised “within the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society and the principles of the Charter” (emphasis added).

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4 *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 at 855
[19] These underlying principles include those articulated in the Montfort case, namely, a respect for and protection of the French-speaking minority in Ontario and the linguistic duality as a fundamental principle of Canadian society.

[20] The Applicants argue that the Town failed to take into account the Montfort principles in refusing to designate L’Eglise St. Joachim under the Act.

[21] The Town takes the position that it did apply the unwritten constitutional provisions in its decision. It claims to have been conscious of the concerns of the French minority.

[22] In my opinion, this case is to be determined on traditional administrative law principles rather than the constitutional analysis. The latter issue is not really before us, as the entire process was aborted by the Town’s decision to impose a condition on the application for heritage designation. Thus, a consideration of the “Montfort” principles is not engaged. The decision is flawed and must be set aside on administrative law principles.

[23] Requiring the consent of the owner is not consistent with an overall reading of the Act or its purpose. Indeed, the Act contemplates notice to the owner, possible objections, and a hearing process.

[24] The object of the Act is the conservation and protection of the heritage of Ontario. This may interfere with individual property rights. Accordingly, 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.

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5 Lalonde v. Ontario (2001) 56 OR 577
6 Padfield v. Minister of Agriculture and Food [1968] A.C. 997 at p. 1030
7 St. Peter’s Evangelical Lutheran Church (Ottawa) v. Ottawa [1982] 2 RCS 616
[25] The action of the Town did not breach a constitutional right and thus, there was no loss of jurisdiction. Our standard of review is as follows: “The standard of review upon which Courts may entertain a review of intra viras municipal action should be one of patent unreasonableness.”8

[26] The Town imposed a condition contrary to the intent of the legislation. By imposing a condition on the application that was not provided for at law, the Town aborted the decision-making process. The owner’s consent is not a pre-condition. Indeed, one can think of a variety of situations where the owner would not want the heritage designation.

[27] The Town argues that Council’s resolution was reasonable in light of the entire context of the Act: namely, that the owner can ultimately demolish the building notwithstanding the previous designation. However, reading the Act as a whole discloses an assumption that the owner may not consent. Moreover, the very purpose of the Act must be to balance the interests of the public, community and the owner. This balancing would not be necessary if the owner’s consent were a precondition.

[28] It was both unreasonable and patently unreasonable to impose this condition. The application for judicial review is therefore allowed, and the matter is referred back to Town Council for re-consideration in accordance with the foregoing.

[29] If parties cannot agree on costs, they may exchange and file brief written submissions within 30 days.

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Benotto S.J.

I agree: __________________________
Blair R.S.J.

8 Nanaimo (City) v. Rascal Trucking Ltd. [2000] SCR 342
I agree: ___________________________ Beaulieu J.

Released: