SUBJECT: Request to Designate 262 MacNab Street North, Hamilton, Under Part IV of the Ontario Heritage Act (PED09244) (Ward 2)

RECOMMENDATION:

(a) That Council direct staff to carry out a Cultural Heritage Assessment of 262 MacNab Street North, Hamilton, to determine whether the property is of cultural heritage value, and worthy of designation under Part IV of the Ontario Heritage Act.

(b) That Council include 262 MacNab Street North, Hamilton, in the Register of Property of Cultural Heritage Value or Interest following consultation with the Hamilton Municipal Heritage Committee, as per the provisions of the Ontario Heritage Act and Recommendation (e) to Report PED09244, and that staff make appropriate amendments to the Register of Property of Cultural Heritage Value or Interest.

(c) That if 262 MacNab Street North, Hamilton, is determined to be of cultural heritage value or interest, a Statement of Cultural Heritage Value and Description of Heritage Attributes be prepared by staff for Council’s consideration for designation under Part IV of the Ontario Heritage Act.

(d) That the Cultural Heritage Assessment work be assigned a low priority, and be added to staff’s workplan for completion in 2012, as per the attached Appendix “G” to Report PED09244.

(e) That Report PED09244 be forwarded to the Hamilton Municipal Heritage Committee for information and consultation prior to the Council approved inclusion of 262 MacNab Street North, Hamilton, in the Register of Property of Cultural Heritage Value or Interest.
EXECUTIVE SUMMARY:

Staff has received a request to designate 262 MacNab Street North, Hamilton, under Part IV of the Ontario Heritage Act (see Appendix “A”). Under the Council approved designation process (approved October 29, 2008, Report PED08211), the following report contains a preliminary evaluation of the subject property using the criteria contained in Ontario Regulation 9/06. This preliminary evaluation of the property provides the basis for a recommendation for continuing Cultural Heritage Assessment work, and for assigning a workplan priority for this assessment work.

The Owner has requested that the property located at 262 MacNab Street North, Hamilton (see location map attached as Appendix “B”, and photographs attached as Appendix “C”), be designated under Part IV of the Ontario Heritage Act. The two-and-a-half storey brick residence comprises one unit of a six unit terrace designed by James Balfour and constructed in 1879. Three units in this residential terrace are also designated under Part IV of the Ontario Heritage Act: 256-258 MacNab Street North (By-law 89-176), and 260 MacNab Street North (By-law 89-298).

The property is included in Hamilton’s Inventory of Buildings of Architectural and/or Historical Interest. A preliminary assessment of the property has been undertaken by staff using the criteria contained in Ontario Regulation 9/06. The property meets all three of the criteria and is considered to have design and physical value, historical and associative value, and contextual value.

Through this report, staff recommends that the Economic Development and Planning Committee and Council direct staff to carry out a Cultural Heritage Assessment of 262 MacNab Street North, Hamilton, to determine whether the property is of cultural heritage value and worthy of designation under Part IV of the Ontario Heritage Act as a low priority within staff’s workplan. This further research and assessment work will provide Committee and Council with adequate information upon which to base a decision regarding designation under the Ontario Heritage Act. The Hamilton Municipal Heritage Committee and the appropriate City departments will be consulted during the preparation of the Cultural Heritage Assessment and the staff report.
BACKGROUND:

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

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

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

A request to designate the property located at 262 MacNab Street North, Hamilton, under Part IV of the Ontario Heritage Act, has been received (see Appendix “A”). Under the Council-approved process for considering requests for designation, preliminary screening has been conducted (see Analysis section of this Report) referencing the criteria contained in Ontario Regulation 9/06 (see Appendix “E”) to determine if further Cultural Heritage Assessment work is warranted. This report also identifies a staff recommendation for the workplan priority of this further Cultural Heritage Assessment work within the context of a four- to five-year timeframe, as per the Council-approved designation process.

Work Program Priority

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

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

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

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

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

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

**ANALYSIS/RATIONALE:**

**262 MacNab Street North, Hamilton**

All six units of the residential terrace, which includes the subject property at 262 MacNab Street North, were designed by James Balfour, a noted Hamilton architect, and built in 1879. The brick construction, two-and-a-half storey gabled projecting bays and segmentally arched windows with ornate wooden bay, and tall paired windows bracketed by pilasters and separated between floors by bracketed cornices, appear to borrow from west and east coast American cities Italianate design (e.g. San Francisco), which is uncommon in Hamilton. The first two floors of this central bay are capped by a steep-pitched gable with similar but smaller windows, and decorated ‘gingerbread’ bargeboards, in a High Victorian Gothic style. A small, steep dormer tops the roof above the second and more modest bay, comprising the entry door on the ground floor, and a single one-over-one segmental arched brick window on the second level. The main floor porch roof and railing is not likely part of the original design.

The terrace was built for Henry J. Larkin, a local barrister and developer also responsible for construction of Treble Hall (originally Larkin Hall) in 1879, also designed by James Balfour. The Larkin family owned this six-row terrace until 1889, and was subdivided into individual units in 1949.

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

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

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

   The six-unit residential terrace that includes 262 MacNab Street North was designed by James Balfour, a prominent architect responsible for numerous notable buildings in Hamilton, including Treble (formerly Larkin) Hall, Ravenscliffe Castle, Tuckett Mansion (now the Scottish Rite), and Erskine Presbyterian
Church, as well as Alma College in London. The building appears to represent a unique style and displays a high degree of craftsmanship, and is considered to have design and physical value.

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

The six-unit residential terrace that includes 262 MacNab Street North was designed by James Balfour, a prominent architect. The terrace was constructed for Henry J. Larkin, a noted local barrister and developer also responsible for construction of Larkin (now Treble) Hall, and owned by the family until 1889. The property at 262 MacNab Street North appears to have direct association with a person significant to the community (Larkin), and associations that demonstrate the work of a designer (Balfour) significant to the community. The property is considered to have historical and associative value.

3. **Contextual value.**

262 MacNab Street North remains in its original location, and its context within the six-unit residential terrace has remained substantially unchanged. The unit and the contextual terrace maintain and support the nineteenth-century residential character of this street and neighbourhood, and are physically and historically linked to its surroundings. The property is considered to have contextual value.

**Conclusion**

Staff concludes that the property located at 262 MacNab Street North, Hamilton, is of cultural heritage interest, sufficient for the property to warrant further research and assessment for purposes of possible designation under the *Ontario Heritage Act*.

**Work Program Priority**

Staff recommends that further research and cultural heritage assessment work for 262 MacNab Street North, Hamilton, be assigned a low priority within the staff work program. Staff recommends that this work is a low priority because the property is currently owned by an individual supportive of local built heritage, not subject to any significant pressure for alteration or loss, is actively occupied and maintained, and will not substantially deteriorate or face immediate threats without the protection of the *Ontario Heritage Act*. No enquiries have been made for funding contingent on designation, and other designation requests are of higher priority for these reasons.

The assignment of a low priority to the subject designation request would place the research and preparation of a Cultural Heritage Assessment on the staff work program for 2012, and would not displace any of the existing priorities (see Appendices “F” and “G”).
ALTERNATIVES FOR CONSIDERATION:

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

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

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: None.

Staffing: None.

Legal: The City’s legal counsel was consulted in the preparation of the original staff report regarding the new designation process (Report PED08211). Planning staff has prepared the following review of the legal implications of the recommendations of this report in consultation with legal counsel:

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

Accordingly, a Council may decide, after considering all of the circumstances in regard to the particular property before it - including the staff report, the Cultural Heritage Assessment, the Municipal Heritage Committee recommendation, and any other relevant submissions such as an owner’s objections - that it is in the public interest and/or community interest to conserve a property, despite objections by the Owner.
SUBJECT: Request to Designate 262 MacNab Street North, Hamilton, Under Part IV of the Ontario Heritage Act (PED09244) (Ward 2) - Page 7 of 8

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

POLICIES AFFECTING PROPOSAL:

The following policies apply:

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

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

RELEVANT CONSULTATION:

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

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

CITY STRATEGIC COMMITMENT:

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

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

Community Well-Being is enhanced. ☑ Yes ☐ No
Arts, culture, archaeological, and cultural heritage are supported and enhanced.

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

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Cultural heritage resources are conserved, contributing to Hamilton’s environmental amenities.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Designation may provide access to local, provincial, and federal funding. Cultural heritage resources may provide opportunities for cultural heritage tourism and education.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No
Cultural heritage resources are conserved and enhanced, resulting in strengthened community identity.

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes ☐ No
This initiative demonstrates the City’s commitment to implementing Council approved cultural heritage Official Plan policies, process, and the Corporate Strategic Plan.

:JPM
Attachs. (7)
DEC 18/08

Dear Art French:
(Chair of LACAC)

Please accept this letter as a request to designate:
262 MacNab St. North, Hamilton.

As the legal owner, I would be honored to add this property as the 4th designation to the MacNab Terrace, built by James Balfour.

As the other 3 designations, the reasons for designation would only be for the façade.

Thanking you in advance,
Robin McKee
83 Leinster Ave. S.
905-544-9559 Hamilton L8M 3A4
DESIGNATION PROCESS

Designation initiated

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

  - Yes: 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
    - Property placed in register after consultation with MHC
    - 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 considers 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

  - No: Property does not move forward and person/body that initiated request informed

- Council
- MHC
- Owner
- Third Party

- No: Denial. Request does not move forward

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: Designation by-law passed and registered on Title

Council Approved on October 29, 2008
Ontario Heritage Act

ONTARIO REGULATION 9/06

CRITERIA FOR DETERMINING CULTURAL HERITAGE VALUE OR INTEREST

Criteria

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

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

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

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

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

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<td>71 Claremont Drive, Hamilton</td>
<td>28-May-09</td>
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<td>2009</td>
<td>167 Book Road, Ancaster</td>
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