SUBJECT: Request to Designate 167 Book Road East, Ancaster (Ward 12) (PED07218)

RECOMMENDATION:

(a) That staff be authorized and directed to carry out a Cultural Heritage Assessment of 167 Book Road East, Ancaster, to determine whether the property is of cultural heritage value and worthy of designation under Part IV of the Ontario Heritage Act, per Report PED07218.

(b) That if 167 Book Road East, Ancaster, is determined to be of cultural heritage value or interest, that staff prepares a Statement of Cultural Heritage Value and Description of Heritage Attributes for Council’s consideration for designation under Part IV of the Ontario Heritage Act, per Report PED07218.

EXECUTIVE SUMMARY:

At its meeting of June 28, 2007, the Hamilton LACAC (Municipal Heritage Committee) requested that the property located at 167 Book Road East, Ancaster, containing the two-storey, red-brick residence dating to 1831, be designated under Part IV of the Ontario Heritage Act as a property of cultural heritage value (see location map and photo attached as Appendices A and B). Accordingly, it was requested that staff prepare a report to Council seeking direction on the next steps in the process of designation. The Hamilton LACAC (Municipal Heritage Committee) is advising Council that staff should undertake a cultural heritage assessment of the property at this time.
There is no Council policy on third-party requests for designation. However, such requests are contemplated under the Ontario Heritage Act, and are supportable under recent case law. While it has been the general practice in the City of Hamilton for the owners’ support for designation, the consent of the owner is not required, and such consent has been ruled by the Courts to be inconsistent with the Ontario Heritage Act and its purpose.

**BACKGROUND:**

Typically, requests for designation are received from the owner and it has been general practice for staff to prepare a Cultural Heritage Assessment directly on the motion from the Hamilton LACAC (Municipal Heritage Committee) following their consideration of an owner's request. In this instance, as the request is from the Hamilton LACAC and not from the owner, staff is seeking this direction from Council prior to undertaking the Cultural Heritage Assessment. The property is owned by the Roman Catholic Diocese of Hamilton, which has advised in a letter to the Hamilton LACAC, that the Diocese will oppose any attempt to impose a heritage designation on the property (see Appendix C). The Diocese has also proposed that the Hamilton LACAC (Municipal Heritage Committee) purchase the steel coverings for doors and windows and that the City consider purchasing the building for $1.00 and moving the structure off-site.

It has been explained to the Diocese that Hamilton LACAC (Municipal Heritage Committee) does not possess funds for repair and maintenance purposes and this type of activity typically is the responsibility of the property owner. The matter of acquisition and building removal proposed by the Diocese is premature at this time and is not supportable from a heritage conservation management perspective. Indeed, successful property designation under the Ontario Heritage Act would enable the Diocese to access the City’s interest free Heritage Loans Program and those of other government programs.

A recent court decision (Divisional Court File No.: 189/03 - Tremblay v. Lakeshore (Town), 2003 CanLII 6354 (ON S.C.D.C.)) determined that Municipal Councils can consider and may enact designation By-laws even if the owner is not in support of that designation. In the case of Tremblay v. Lakeshore, a third-party (a group of concerned citizens) asked the Town of Lakeshore to designate a building under the Ontario Heritage Act. A number of Town Council meetings ensued, during which the Town refused to initiate designation. The Town took the position that it could not entertain a request without the consent of the owner. It was determined by the Ontario Superior Court of Justice that requiring the consent of the owner is not consistent with an overall reading of the Ontario Heritage Act or its purpose. Indeed, the Act contemplates notice to the owner, possible objections, and a hearing process. Accordingly, the Court ruled that “in requiring the consent of the owner as a pre-condition to designation, the Town placed an unreasonable obstacle on its own discretionary powers thereby fettering its discretion and aborting the process intended by the Act.”
Currently the Roman Catholic Diocese of Hamilton owns the 37.77 acre property which is located on the north side of Book Road East, west of Highway 6, east of Fiddler’s Green Road (Appendix A). The property contains the former Book House, which is currently vacant and has been subject to vandalism (Appendix B). In order to ensure the long-term preservation of this community heritage resource, the Hamilton LACAC (Municipal Heritage Committee) has requested that the City designate the building under Part IV of the Ontario Heritage Act.

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

Designation is typically guided by an objective and rigorous process resulting in a Cultural Heritage Assessment Report. The property at 167 Book Road East, Ancaster, would be assessed using both the City of Hamilton Criteria, and the Criteria for Determining Cultural Heritage Value or Interest, as defined in Ontario Regulation 9/06 of the Ontario Heritage Act. This process attempts to clearly identify those heritage values associated with a property. This report and associated By-laws would be prepared at this time if Council directs staff to do so.

Preliminary Assessment

A preliminary assessment of the 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.
ALTNERATIVES FOR CONSIDERATION:

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

Decline to Designate

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

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

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial - Not applicable.

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

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

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

POLICIES AFFECTING PROPOSAL:

Official Plan policies of the former Town of Ancaster support the conservation, protection and management of cultural heritage features, with the objective to identify sites of cultural heritage value, to designate properties, to encourage the owners of heritage properties to conserve heritage properties and to encourage the retention or inclusion of heritage property in new development. Considering designation of 167 Book Road East, Ancaster, will be in accordance with these policies.

RELEVANT CONSULTATION:

Pursuant to Subsection 29 (2) of the Ontario Heritage Act, Council is required to consult with its Municipal Heritage Committee respecting designation of property under Subsection (1). At its meeting of June 28, 2007, the Hamilton LACAC (Municipal Heritage Committee) recommended that the Council direct staff to undertake a cultural heritage assessment. If staff is directed to prepare the cultural heritage assessment, the recommendation and report will be considered by the Hamilton LACAC (Municipal Advisory Committee) before being presented to Council.

CITY STRATEGIC COMMITMENT:

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

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

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

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

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

Do the options you are recommending make Hamilton a City of choice for high performance public servants?
☑ Yes ☐ No
June 21, 2007

Ms. Anne Charlton  
Hamilton LACAC (Municipal Heritage Committee)  
c/o City Clerk's Office, 2nd Floor  
71 Main Street West  
Hamilton, ON

Attention: Ida Bedioui, Legislative Assistant

Re: Adam Book House – 167 Book Road East, Ancaster

I acknowledge receipt of your letter dated May 25, 2007 in respect to the above-noted residence. To date I have not received any confirmation that the structure has been vandalized nor that a fire had been set within the structure as suggested in your letter.

I understand that you propose referring the matter to the next LACAC (Municipal Heritage Committee) meeting on June 28 with a view of requesting Council to initiate the designation process under the Ontario Heritage Act.

Please be advised that the Diocese will oppose any attempt to impose a heritage designation on this residence. Any such designation will not compel the Diocese to take action to preserve the structure. The Diocese has requested the Heritage Committee to purchase the steel coverings for the doors and windows in order to secure the residence. To date, we have received no response to this invitation. If this structure is an important heritage resource in the City of Hamilton, as you submit, then the committee should be able to provide from its budget the necessary funds to cover this expense. Alternatively, the Diocese is prepared to offer to the City the opportunity to purchase the Adam Book house for the sum of $1.00, conditional on the City, at its own expense, dismantling and/or removing the house to a more suitable and secure location.

I await your response to this proposal.

Yours very truly,

THE ROMAN CATHOLIC DIOCESE OF HAMILTON

John J. O'Brien  
Business Administrator

jjo: mwd

cc: Mr. Terence A. Whelan, Q.C.