SUBJECT: Request to Designate the Desjardins Canal, Dundas, Under Part IV of the Ontario Heritage Act (PED09314) (Ward 13)

RECOMMENDATION:

(a) That Council direct staff to carry out a Cultural Heritage Assessment of the Desjardins Canal, Dundas, 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 the Desjardins Canal, Dundas, in the Register of Property of Cultural Heritage Value or Interest, following consultation with the Hamilton Municipal Heritage Committee as per Recommendation (e) to Report PED09314 and the provisions of the Ontario Heritage Act, and that staff make appropriate amendments to the Register of Property of Cultural Heritage Value or Interest.

(c) That if the Desjardins Canal, Dundas, 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 2013, as per the attached Appendix “G” to Report PED09314.

(e) That Report PED09314 be forwarded to the Hamilton Municipal Heritage Committee for information and consultation prior to the Council approved inclusion of the Desjardins Canal, Dundas, in the Register of Property of Cultural Heritage Value or Interest.
EXECUTIVE SUMMARY:

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

The Hamilton Municipal Heritage Committee has requested that the property known as the Desjardins Canal, Dundas (see location map attached as Appendix “B” and photographs attached as Appendix “C”), and owned, in part, by the Royal Botanical Gardens and City of Hamilton, be subject to a cultural heritage assessment to determine whether the property is worthy of designation under Part IV of the Ontario Heritage Act. The property comprises an excavated canal bordered to the west by Canal Street and the east by its mouth into Cootes Paradise (owned by the City of Hamilton), and the remnants of the dredged channel and remaining piers from the eastern limit of the excavated canal to the high-level bridge (owned by the Royal Botanical Gardens).

Construction of the water-shipping route from Dundas to Hamilton Harbour started in 1804 through cleared marsh along the northern arch of Cootes Paradise, and through the gap now marked by the Valley Inn Bailey Bridge into Hamilton Harbour. Parts of this route are now filled in with the construction of Old Guelph Road, Highway 403, two railroad causeways, and associated embankments. Excavation for the canal took place from 1827 to 1837, and comprised the excavation of a channel from the westernmost portion of Cootes Paradise to a turning basin in Dundas, and another channel that cut through Burlington Heights (the Lake Iroquois Beach Ridge), thereby shortening the route from Coote’s Paradise to Hamilton Harbour, at the present location of the High Level Bridge. The excavation of a separate canal, known as the Burlington Canal, through the Burlington Beach (a Lake Iroquois sand bar) to Lake Ontario was completed in 1826, now the location of the Hamilton Lift Bridge below the Burlington Skyway.
The Desjardins Canal is not 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 satisfactorily meets 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 the Desjardins Canal, Dundas, to more accurately determine the property’s cultural heritage value and those attributes worthy of designation under Part IV of the Ontario Heritage Act. Staff is regarding this as a low priority within staff’s workplan. This further research and assessment work will provide Committee and Council with more precise 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 the Desjardins Canal, Dundas, 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:

The Desjardins Canal, Dundas

Planned and engineered by Peter Desjardins, an immigrant from France, the Desjardins Canal is a prominent and unique transportation route in Hamilton. Peter Desjardins settled in Hamilton and Dundas in 1805. In the early 1820’s, he petitioned for a piece of property along Spencer Creek in conjunction with a request to build a lock in order to dredge a channel through the marsh. Upon application and attainment of a charter to incorporate the canal in January 1826, plans commenced for construction of a channel to connect Dundas to the Great Lakes, and to serve as a water-borne centre for trade and exchange. The approval of the charter was conditional on a £10,000 budget allotted to the Town for capital projects; however, a $68,000 grant was provided to Desjardins by the Provincial Legislature to facilitate construction. Unfortunately, fiscal constraints meant that Desjardins had to finance much of the construction through the sale of shares. In September of 1827, Desjardins collapsed and died while collecting shares. Ten years later, on August 16, 1837, the canal finally opened.
Excavation took place between 1827 and 1837, at which time the final cost of the project surmounted the original budget, totalling $98,684 by the time the project was complete. At the end of its construction, the canal, measuring 2.74 metres (9 feet) in depth and 10.06 metres (33 feet) in width, consisted of a turning basin, a constructed channel (with one lock) of 5.92 kilometres (3.68 miles) in length, a dredged channel marked with piers through Cootes Paradise, a cut through the Iroquois Beach Ridge (Burlington Heights), and a number of resulting structures, including a road and rail bridge. The extension of the canal through the Iroquois Beach Ridge allowed for shortening of the route from Cootes Paradise to Hamilton Harbour.

Dundas and its canal thrived as the most important centre for water-borne exchange at the “Head-of-the-Lake” until the early 1850’s, when the Great Western Railway (now CNR) proved unyielding competition. The installation of a new rail line that extended from Niagara to Windsor (with stops in Hamilton and London) provided more rapid transport of goods. On March 12, 1857, a train travelling from Toronto to Hamilton caused the low-level bridge over the Desjardins Canal to collapse from its weight. The train, holding 90 passengers, derailed and fell 18.29 metres (60 feet) through the ice below. Twenty passengers survived the crash; however, those that survived suffered severe injuries and hypothermia from the freezing water. The community descended to the site of the crash in attempt to save those remaining survivors, who were sent to a nearby house for medical attention. The accident, now known as the “Desjardins Canal Disaster”, was a significant event in the communities of Hamilton and Dundas.

Due to financial constraints, title of the canal was transferred to the Town of Dundas in 1877. A Committee was appointed by the Town in an effort to restore the canal back to its previous condition. The channel was dredged to the original planned depth of 2.74 metres (9 feet), tolls were revised, and advertisement was improved to promote the canal as the prominent exchange centre it once was. The efforts were to no avail, as the canal was eventually closed. In 1895, the rail line was further extended by the Toronto, Hamilton and Buffalo Railway (TH&B) to connect directly to Dundas through Dundas Street and onto Hatt Street, further accommodating the shipping and receiving of goods. Despite attempts by the Town to save the canal, the introduction of rail, in conjunction with fiscal constraints, ultimately led to the demise of water-borne trade via the Desjardins Canal, and eventually the decline of Dundas as the “Head-of-the-Lake”. The Desjardins Canal is recognized to have Provincial significance, and is celebrated by the Ontario Archaeology and Historic Sites Board with a commemorative plaque (see Appendix “C”- Page 7).

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

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

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**SUBJECT: Request to Designate the Desjardins Canal, Dundas, Under Part IV of the Ontario Heritage Act (PED09314) (Ward 13) - Page 5 of 9**
1. **Design value or physical value.**

   As the only canal in Hamilton, Desjardins Canal is a rare and unique example of a water-borne transportation route. Representative of a degree of technical achievement not seen in Hamilton before 1827, the canal property contains substantial remnants of the channel, traces of the turning basin, which has been filled and developed as park space, as well as a few remaining piers, marking the dredged channel, visible in Cootes Paradise in periods of low water. The channel exists at its original length; however, the extension through Cootes Paradise is not as easily visible due to deterioration of the piers that once marked the canal. The landscape originally created by the canal is an important community landmark, but is somewhat compromised by the lack of substantial canal related remains. The Desjardins Canal still represents a high degree of technical achievement in Hamilton. The Desjardins Canal is easily traced through the landscape, and forms a significant cultural heritage feature having design and physical value.

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

   Desjardins Canal, in association with the Burlington Canal, was the leading water-borne transportation route for local industry at the “Head-of-the-Lake”, until the introduction of rail transport in the 1850’s. The association between the canal and the growth and decline of Dundas as a commercial hub, in conjunction with the Desjardins Canal Disaster, is a significant aspect of local history. The canal also demonstrates the work and ideas of local businessman Peter Desjardins, who planned and designed the transportation route. The Canal has historical and associative value.

3. **Contextual value.**

   The Desjardins Canal remains in its original location and its context has remained substantially unchanged. Due to rapid decay, and in an effort to conserve this prominent landmark, the turning basin was converted into Centennial Park in 1967. This important landscape feature greatly contributes to the area character of Dundas as a community within Hamilton. The property at Desjardins Canal is visually and historically linked to its surroundings, and displays contextual value, with nearby Cootes Paradise contributing to this contextual value.

**Conclusion**

Staff concludes that the Desjardins Canal (Dundas) 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 the Desjardins Canal, Dundas, 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 two public authorities (Royal Botanical Gardens and the City of Hamilton) supportive of conservation initiatives, 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 2013, and would not displace any of the existing priorities (see Appendix “G”).

**ALTERNATIVES FOR CONSIDERATION:**

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

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

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial: None.

Staffing: None.

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

The Owner’s consent is not a prerequisite for designation of a property under the Ontario Heritage Act. The role of the Owner in a property designation was considered in *Tremblay v. Lakeshore (Town)*, a 2003 Divisional Court decision where a group of parishioners successfully challenged, by means of judicial review, the Council of Lakeshore’s decision not to designate a church. The court found that the interests of the public, community, and the Owner must all be considered when a Council decides whether or not to designate a property. Further, the court found that the Council of Lakeshore had made the Owner’s consent a condition of designation, effectively pre-empting any consideration of either the public interest or the community interest. In doing so, the Council actually fettered its discretion to make the designation decision, acting contrary to the Ontario Heritage Act.
Accordingly, a Council may decide, after considering all of the circumstances in regard to the particular property before it - including the staff report, the Cultural Heritage Assessment, the Municipal Heritage Committee recommendation, and any other relevant submissions such as an Owner’s objections - that it is in the public interest and/or community interest to conserve a property, despite objections by the Owner.

In accordance with the designation process approved by Council on October 29, 2008, the purpose of this report is to provide staff with initial direction to complete further research and evaluation of the property for a later decision by Council. At this stage of the designation process, the Owner(s) of the property has not been consulted, and Council does not yet have before it information with respect to the Owner’s, public’s, or community’s interests. If staff is directed to proceed, Council will be able to make an appropriate decision on designation at a subsequent stage in the designation process when it has before it a staff report, the Cultural 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 policy applies:

Section 2.4 - *Historic and Architectural Resources* of the former Town of Dundas Official Plan promotes the preservation, restoration, or appropriate re-use of historic and architecturally significant landmarks, buildings, and districts through the Town.

**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. 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(s) 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(s) 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 due diligence is consistent with several of the Focus Areas, such as promoting effective inter-governmental relations, demonstrating a commitment to established policies and goals, protecting public health and safety, conserving resources, and managing the built environment in a sustainable manner.

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

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

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.

:BW
Attachs. (7)
(b) Buildings and Landscapes of Concern

(i) Federal Building, 150 Main Street West (L) – M. Adkins
   No updates.

(ii) 2 Hatt Street, Dundas (L) – F. Thorp-Neufeld
   Frances Thorp-Neufeld advised that the owners of the building were delighted with the recognition they received from the Heritage Awards and the Year End Report and felt that they have been rewarded for their investment.

   (Thorp-Neufeld/Charlton)
   That 2 Hatt Street, Dundas be removed from Buildings and Landscapes of Concern list.
   CARRIED

(iii) Dundas Post Office, Dundas (L) – F. Thorp-Neufeld
   Frances Thorp-Neufeld indicated she has spoken to the area MP who indicated that the Federal Government will probably declare the Post Office as surplus property by 2010 and she is currently working with staff to have the building designated.

   (Thorp-Neufeld/Adkins)
   That the Desjardins Canal be added to the Buildings and Landscapes of Concern list.
   CARRIED

(Thorp-Neufeld/Adkins)
That staff be requested to carry out a cultural heritage assessment of the Desjardins Canal, Dundas to determine whether the property is worthy of designation and present their recommendations to the Economic Development and Planning Committee for consideration.
   CARRIED

(Adkins/Bratina)
That Heritage staff be requested to prepare a cultural assessment of the East End Reservoir to determine whether the property is worthy of designation and present their recommendations to the Economic Development and Planning Committee for consideration.
   CARRIED
Desjardins Canal- 1903 Imperial Atlas of Wentworth County Map, J.M. Tyrrell

Desjardins Canal- Department of Militia and Defense Topographic Map 1909
Desjardins Canal – Aerial View from High Level Bridge looking west to Dundas

Desjardins Canal – View from Olympic Drive looking east towards Cootes Paradise
Desjardins Canal – View from Olympic Drive looking east towards Dundas

Desjardins Canal – View from High Level Bridge over the Canal Cut through the Iroquois Beach Ridge
Desjardins Canal – View from turning basin looking west towards High Level Bridge

Centennial Park, what was originally the turning basin of the Desjardins Canal
Centennial Park, what was originally the turning basin of the Desjardins Canal

THE DESJARDINS CANAL

In pioneer days waterways provided the essential means of transportation. Dundas, located at the head of navigation on Lake Ontario and the eastern terminus of the Governor's Road, was thus in a favoured position. However, in 1823 the government authorized the construction of a canal for larger vessels through Burlington sand-bar. Since its completion would make the shallow approach through Cootes Paradise marsh inadequate, Pierre Desjardins, an enterprising settler from France, formed a company in 1826 to build a canal there. Opened in 1837 it contributed greatly to the development of this region until the completion of the Great Western Railway in 1853, when the Desjardins Canal gradually fell into disuse.

Erected by the Ontario Archaeological and Historic Sites Board

Desjardins Canal Commemorative Plaque from the Ontario Archaeology and Historic Sites Board
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>28-May-09</td>
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