



Council Report

Report Number:	ED2022-026
Meeting Date:	August 23, 2022
Title:	Notification of Owners Prior to the Heritage Designation of Property
Description:	Requirements for owner notifications prior to designating property under Part IV of the Ontario Heritage Act
Author and Title:	Emily Turner, Economic Development Officer – Heritage Planning

Recommendation:

That Report ED2022-026, **Notification of Owners Prior to the Heritage Designation of Property**, be received for information.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

The City of Kawartha Lakes designates properties under Part IV of the Ontario Heritage Act. Properties are recommended for designation by their owners, members of the public, local organizations, the Municipal Heritage Committee, Council or staff. Properties proposed for designation are reviewed by the Municipal Heritage Committee, as required by subsection 29(2) of the Ontario Heritage Act, and their recommendation is brought forward to Council under the cover of a staff report.

At the Council Meeting of August 10, 2021, staff presented Council with a resolution to designate the property known municipally as 100 Front Street East in Bobcaygeon. The proposed designation was at the request of the local community which was concerned as the owner of the property had indicated a desire to demolish it. The property had previously been proposed to Council for listing on the City's Heritage Register, but Council had chosen not to list the property at the request of the owner. The property, which is still extant, is significant because it is the oldest surviving residential property on the Rokeby townsite and in its association with Winnette Boyd, the grandson of lumber baron Mossom Boyd and a celebrated Canadian aeronautical engineer in his own right. The property fulfills the criteria for designation under Ontario Regulation 9/06 and further information on the property and its cultural heritage value was presented in the staff report and accompanying heritage evaluation report.

The Ontario Heritage Act does not require owner consent to designate a property. The purpose of the Act in the designation of individual property is to balance the interests of the public and the community, with the ability of the owner to object to a proposed heritage designation. Similarly, in 2003, an Ontario Divisional Court held in the case of Tremblay vs. Lakeshore (Town) that requiring an owner's consent for the designation of property was not consistent with the intent of the Act, indicating that a Council of a municipality should consider a request for designation whether or not an owner supports it. As a result, CKL staff chose to bring forward the designation without seeking consent from the owner and was not in contact with the owner of the property prior to Council considering the property. Staff chose not to reach out to the property owner prior to the report coming forward to Council as there was a possibility that the property owner would seek a demolition permit and demolish the property prior to Council receiving the report which would not allow Council to appropriately consider the designation.

Council chose not to designate the property at that time and passed the following resolutions over concerns regarding the notification of the property owner:

CR2021-367

Moved By Councillor Yeo

Seconded By Councillor Seymour-Fagan

That Report ED2021-029, **Proposed Heritage Designation of 100 Front Street East, Bobcaygeon**, be received.

Carried

CR2021-368

Moved By Councillor Seymour-Fagan

Seconded By Councillor Ashmore

That Staff investigate and report back to Council on the legality of notification before a heritage designation is brought before Council.

Carried

This report addresses that direction.

Rationale:

There are generally four paths for a property to become designated in Kawartha Lakes and each of these have different interactions with an owner:

- Request for designation by a property owner: This is the most common way a property is nominated for designation in Kawartha Lakes. The property is identified by the owner who reaches out to City staff to request that their property be designated under Part IV of the Ontario Heritage Act. Staff and the Municipal Heritage Committee work actively with the property owner throughout the process.
- Identification of property by staff or the Municipal Heritage Committee: Staff and/or members of the Municipal Heritage Committee occasionally identify properties with significant cultural heritage value and actively pursue the designation of these properties. In this case, staff contact the property owner to discuss the potential designation prior to proceeding with a heritage evaluation and report to Council. The property owner is involved in the process throughout.
- Planning Act applications: Properties can be designated as a condition of approval for Planning Act applications. In this case, the designation forms part of the planning approvals process and staff work with the property owner through the designation process in parallel to Planning Act processes.

- Designation to prevent demolition: The Ontario Heritage Act allows municipal councils to designate properties to prevent them from being demolished and the issuance of a notice of intention to designate can make void a demolition permit issued under the Building Code Act. In this scenario, interactions between the property owners and staff may vary depending on the situation, whether or not the property is listed, and the urgency of preventing a demolition from occurring. This is the only situation where the owner of a property may not be notified prior to a designation being considered by Council.

The proposed designation of a property to prevent demolition is not a common occurrence, but would be the only scenario where the owner of a property may not be notified in advance of Council receiving a staff report and heritage evaluation report recommending designation. All three other routes to designation involve significant contact and discussion between the City and the owner of the subject property. The situation at 100 Front Street East was a unique scenario that rarely occurs in Kawartha Lakes because the property was not listed on the City's Heritage Register and the community raised significant concerns over what they believed was an imminent demolition of the property. Had the property owner been notified prior to Council receiving the report, it was possible that the owner may have sought and received a demolition permit and demolished the property before Council was able to consider the staff recommendation. As a result, staff chose not to reach out to the owner prior to bringing a report forward to Council.

There are no notification requirements prior to Council considering a designation under the Ontario Heritage Act. The statutory notification requirements only apply to after Council has made a decision regarding a designation request and issues a notice of intention to designate under subsection 29(1.1) of the Act. Council may direct staff to provide notification prior to a designation being considered should it wish to do so, with the understanding that most designations already involved extensive consultation with the owners and that, for properties that are not listed on the City's Heritage Register, notification of the owner in advance may result in a property being demolished prior to Council being able to make a decision regarding designation. However, it is recommended that staff be able to bring properties forward to Council without notifying owners in advance, which is allowed under the Act, in order to address situations where the demolition of a structure may be imminent. This allows Council to fully exercise its decision-making powers under the Act in order to prevent a building from being demolished where it is warranted. In this situation, an owner of a property would be notified after Council's decision and would retain the ability to object to the designation under the processes outlined by subsections 29(5) and 29(11) which allow appeal to Council and the Ontario Land Tribunal.

The best solution to prevent property owners from being excluded from the designation process while still allowing for Council to consider designations as required under the Ontario Heritage Act is to actively list properties on the City's Heritage Register. By listing properties, Council ensures that the City does not receive designation requests such as the one received from the community for 100 Front Street East as there would be no ambiguity regarding an owner receiving and quickly executing a demolition permit for the property. Listing properties ensures that any proposal to demolish a historic structure is fully transparent and includes extensive dialogue between Council, the property owner, staff, the Municipal Heritage Committee and the community within the timeline outlined under the Ontario Heritage Act.

Other Alternatives Considered:

There are no recommended alternatives.

Alignment to Strategic Priorities

The designation of property under Part IV of the Ontario Heritage Act aligns with the strategic priority of An Exceptional Quality of Life by supporting and promoting arts, culture, and heritage.

Consistent policies and procedures regarding heritage properties supports the guiding principle of Open and Transparent by ensuring that the City stays consistent in its approach to all properties and providing appropriate information to property owners and the public.

Financial/Operation Impacts:

There are no financial or operational impacts as a result of the recommendations of this report.

Consultations:

N/A

Attachments:

N/A

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Department Head: Richard Holy, Director of Development Services