

Council Report

Report Number:	ED2023-043
Meeting Date:	August 29, 2023
Title:	Objection to the Proposed Heritage Designation of 1011 Portage Road, Geographic Township of Eldon (Sir William Mackenzie Estate Cultural Heritage Landscape)
Description:	Objection to the proposed designation of 1011 Portage Road under Part IV of the Ontario Heritage Act
Author and Title:	Emily Turner, Economic Development Officer – Heritage Planning

Recommendations:

That Report ED2023-043, **Objection to the Proposed Heritage Designation of 1011 Portage Road, Geographic Township of Eldon (Sir William Mackenzie Estate Cultural Heritage Landscape)**, 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 Committee of the Whole Meeting of May 9, 2023, Council received a recommendation from the Kawartha Lakes Municipal Heritage Committee to designate the property known municipally as 1011 Portage Road, Geographic Township of Eldon under Part IV of the Ontario Heritage Act. The property is currently listed on the City's Heritage Register and contains the former Sir William Mackenzie Estate, the home of railway magnate and Kirkfield native Sir William Mackenzie. The property has a substantial amount of cultural heritage value at a local level, but also at both a provincial and national level due to Mackenzie's significance in the development of the transcontinental railway and localized mass transit. Mackenzie was recognized in 1976 as a Person of National Significance under the Historic Sites and Monuments Act by the Historic Sites and Monuments Board of Canada and 1011 Portage Road is the property associated with that federal designation. Although originally used for residential purposes, the property is currently commercially zoned and has been used as an inn and events venue for the past several decades. A heritage evaluation report outlining the cultural heritage value of the property under Ontario Regulation 9/06 was prepared for the property and is attached as Appendix A of this report.

The proposed designation of the property was precipitated due to amendments made to the Ontario Heritage Act under Bill 23, the More Homes Built Faster Act (2022). These amendments now require municipalities to designate listed properties or remove them from the Register within two years of the amendments coming into effect. Practically, this means that, in order for municipalities to provide heritage protection to its cultural heritage resources as is required by provincial land use planning policy, they must be designated under Part IV of the Act. The amendments came into effect on January 1, 2023.

Upon reviewing the staff report and Municipal Heritage Committee recommendation, Council adopted the following resolution:

CW2023-158

Moved By Councillor Yeo

Seconded By Councillor Warren

That Report ED2023-018, **Proposed Heritage Designation of 1011 Portage Road, Geographic Township of Eldon**, be received;

That the Municipal Heritage Committee's recommendation to designate 1011 Portage Road under Part IV of the Ontario Heritage Act as being of cultural heritage value or interest be endorsed;

That staff be authorized to proceed with the process to designate the subject property under Part IV of the Ontario Heritage Act, including the preparation and circulation of a Notice of Intention to Designate, and preparation of the designating by-law;

That a designating by-law be brought forward to Council at the next Regular Council Meeting following the end of the notice period; and

That this recommendation be brought forward to Council for consideration at the next Regular Council Meeting.

Carried

This resolution was approved at the Council meeting of May 23, 2023 and the appropriate notices issued to the property owner on May 29, 2023. A public notice appeared in Kawartha Lakes This Week on June 1, 2023, as is required under the Act.

Under subsections 29(5) and (6) of the Act, any person may object to the designation of the property within thirty days of the publication of the notice of intention to designate in the newspaper by serving the Clerk a notice of objection, including any information relevant to their rationale for objection. Once an objection is received, it must be reviewed by Council, with a recommendation from the Municipal Heritage Committee, within ninety days of the end of the objection period. Council may, at that time, choose either to withdraw the notice of intention to designate or proceed to pass a by-law designating the property. The by-law must be passed within 120 days of the publication of the notice of intention to designate. Should any person object to the passage of the by-law, they may appeal the designation to the Ontario Land Tribunal.

The deadline for receiving objections to the proposed designation of 1011 Portage Road was June 30, 2023. An objection was received from one of the property owners on June 30, although staff had spoken to and corresponded with both property owners

extensively throughout June 2023. The property owner outlined a number of reasons for objection which are discussed more fully below. The property owner has requested that the full letter of objection not be published as part of the public agenda package as it contains a significant amount of personal and identifying information. Staff are not supportive of the objection due to the high level of cultural heritage value of this property at both a local and national level.

The objection was received by the Kawartha Lakes Municipal Heritage Committee at its meeting of August 3, 2023. The Committee reviewed the objection as passed the following motion:

KLMHC2023-097

Moved By W. Peel

Seconded By I. McKechnie

That Report KLMHC2023-054, **Objection to the Proposed Heritage Designation of 1011 Portage Road, Geographic Township of Eldon**, be received;

That the objection not be supported and a by-law passed to designate the property; and

That this recommendation be forwarded to Council for approval.

Carried

This report addresses that recommendation, which is supported by staff.

Rationale:

Neither staff nor the Municipal Heritage Committee are supportive of the objection by the property owner because of the significant cultural heritage value of the property as identified through evaluation under Ontario Regulation 9/06. The subject property contains the Sir William Mackenzie Estate, including the estate house and grounds. The house was constructed in 1888 as the Kirkfield property for Mackenzie and his family and the grounds developed over the next several decades, and later modified by the Sisters of St. Joseph when the house was used as a school. A statement of significance for the property as required by the Act, which summarizes the property's cultural heritage value and reasons for designation, can be found below.

1011 Portage Road Statement of Significance

Design and Physical Value

1011 Portage Road has design and physical value as a representative example of a late nineteenth century estate in Kawartha Lakes. Developed for railway builder and Kirkfield native Sir William Mackenzie and his family, the property includes a large Queen Anne style house with distinctive bay and gable forms, that is representative of the employment of this style in larger homes of the period, as well as a range of landscape features constructed in the period after 1888. It is one of only a few extant late nineteenth century estate houses in Kawartha Lakes and, along with the prominent house, retains a wide array of extant landscape features on the property including the perimeter wall, the grove of Norway spruce and the former gatehouse building. Taken together, these elements form a cohesive cultural heritage landscape which demonstrate the stylistic considerations of a late nineteenth century country estate.

Historical and Associative Value

1011 Portage Road has historical and associative value for its direct historical associations with Sir William Mackenzie for whom the estate was originally constructed. Mackenzie, who was born in Kirkfield, grew into one of the key players in the expansion of railways in Canada in the second half of the nineteenth century, including the development of the transcontinental railway. Despite his successes on the national stage, Mackenzie remained connected to Kirkfield and chose to build his country estate in the village in 1888. In 1976, Mackenzie was recognized as a person of national historic significance by the Historic Sites and Monuments Board of Canada. The plaque associated with this designation is located on the subject property, recognizing Mackenzie's connection to his country estate and hometown.

Contextual Value

1011 Portage Road has contextual value as a local and regional landmark. Its role as the former Mackenzie Estate and the current home of the Sir William Mackenzie Inn make it a recognized and well known location in both Kirkfield and the wider region. Further, the property is a contributing feature to the historic hamlet landscape of Kirkfield which includes a wide array of late nineteenth and twentieth century historic structures. The subject property supports and maintains the historic hamlet character of the area and also is historically linked to its surroundings, both as part of the wider redevelopment of Kirkfield in the late nineteenth century, but also through direct connections with a range of other businesses directly related to the Mackenzies.

While any person may object to the designation of a property and request Council reconsider a designation, the Ontario Heritage Act does not require consent from or

consultation with an owner of a property for designation to occur. 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. As discussed more fully below, provincial policy requires municipalities to conserve their significant heritage resources because of the community benefit from the preservation of historic properties.

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 the designation of a property that fulfils the criteria outlined under Ontario Regulation 9/06 whether or not an owner supports it. Effectively, consideration for designation should be based solely on whether or not a property fulfils the criteria for heritage designation (Ontario Regulation 9/06) and can be considered a significant cultural heritage resource. Council may not request or require consent from a property owner to designate a property, but may consider an objection if the objection convincingly demonstrates that the property does not fulfil the criteria under Ontario Regulation 9/06. By extension, the person objecting to the designation must demonstrate that the property does not have cultural heritage value for the objection to be considered valid.

In their objection, the property owner outlined a number of reasons for objecting to the designation. These, and further explanation by staff, are outlined below:

- **The property has undergone significant alterations since it was originally constructed through the various phases of its occupancy:** The vast majority of heritage properties have undergone changes since they were originally constructed and these changes provide context to the evolving historic fabric of these properties. In relation to the Mackenzie property many of the changes made to the house were undertaken when it was owned by the Sisters of St. Joseph and operated as a convent school. These changes speak to this period of its occupancy and are relevant to its historic value. The house retains its key features which provide it with architectural value as outlined in the appended heritage evaluation report. This rationale for objection does not impact or diminish the identified cultural heritage value of the property under Ontario Regulation 9/06.
- **The house has limited association with Sir William Mackenzie because he did not live there permanently and only for a limited time:** As with most wealthy men in the late nineteenth and early twentieth century, Mackenzie maintained a number of properties in Toronto, Kirkfield and on Balsam Lake and

also travelled frequently in Canada and abroad. While Mackenzie spent a substantial amount of time at his Toronto and Balsam Lake properties, the Kirkfield estate was a prominent location in his life and was used extensively for his family, and also for entertaining, playing host to a range of prominent Canadians around the turn of the century, including politicians, businessmen and cultural figures. Mackenzie's extensive use of the house is well documented. The Kirkfield house is the property recognized by the Historic Sites and Monuments Board as the property associated with the National Historic Person designation and is the only one of Mackenzie's primary residential properties still extant. The association with Mackenzie is significant and well-established. This rationale for objection does not impact or diminish the identified cultural heritage value of the property under Ontario Regulation 9/06.

- **There is little chance of the property being redeveloped because it is not located in a settlement area and Kirkfield is not a desirable area for development:** While the majority of future new development in Kawartha Lakes will take place in the City's urban settlement areas, development outside of urban areas will generally be directed to hamlet areas, including Kirkfield. The subject property, which is comprised of approximately twelve acres, is located entirely within the hamlet settlement boundaries and the property has the potential for redevelopment fulfilling the policies outlined for hamlet areas in the City of Kawartha Lakes Official Plan (2012). Although the current owners are not intending on redeveloping the property at this time, the property is, at present, a potential candidate for redevelopment within the Kirkfield hamlet boundary due to both its size and location. This rationale for objection is not relevant to the cultural heritage value of the property and should not be considered as part of a review of the designation.
- **The property is a residential property and should not be a priority for designation:** Although this property was originally constructed as a private residence, it is not currently used in that capacity. This property is commercially zoned under the Township of Eldon Zoning By-law and historically been used as the Sir William Mackenzie Inn. Both current and past owners have operated this property as a business. This rationale for objection is not relevant to the cultural heritage value of the property and should not be considered as part of a review of the designation.
- **The property is costly to maintain and the owners believe that heritage designation would result in increased cost for maintenance, insurance and alterations. The property owners are not intending to do any major**

changes so do not believe they need to be regulated: The intention of heritage designation is to regulate changes in historic properties to ensure that their cultural heritage value is protected and preserved for community benefit. Significant costs are likely to be incurred in relation to the maintenance of this property because of its size and complexity, as opposed to any heritage status. In addition, the City offers grants through its Million Dollar Makeover program to assist property owners with maintaining and restoring their heritage property. Insurance costs should not rise as a result of heritage designation, as per guidance issued by the Insurance Bureau of Canada. This rationale for objection is not relevant to the cultural heritage value of the property and should not be considered as part of a review of the designation.

- **The property owners are concerned that designating the property will increase vandalism and trespassing on the property and people showing up uninvited:** This is a concern that predates the designation as the owners have noted to staff that they have had issues surrounding this in the past, likely due to the historic nature and landmark status of the property in Kirkfield. The City does not promote or condone trespassing on private property. There is no indication, either provincially or from local property owners that designation increasing trespassing or other crimes related to a property. This rationale for objection is not relevant to the cultural heritage value of the property and should not be considered as part of a review of the designation.

This objection does not convincingly demonstrate that the property does not fulfil the criteria established under Ontario Regulation 9/06 and staff are recommending that Council pass a designating by-law for this property in order to provide the property with protection and to fulfil the City's obligations under provincial and local land use planning policy, as outlined below. The property owner may object to the passage of this by-law and such an objection would be heard by the Ontario Land Tribunal.

Should Council choose to withdraw the notice of intention to designate, the property will be left with no statutory heritage protection. Although the property, through Sir William Mackenzie, is recognized through federal designation, federal recognition does not confer any statutory protection and the property owner would be able to demolish the house with no restrictions. Under the amendments to the Ontario Heritage Act made by Bill 23 which came into effect on January 1, the impact of a withdrawal of intention to designate on a property is as follows:

- The property is automatically removed from the Heritage Register.
- The City may not include the property on the Heritage Register for five years.

- Should an application under the Planning Act be received for this property, the City may not designate the property to prevent demolition or request studies, such as a heritage impact assessment, to gauge the impact of the proposed development on the heritage property or request mitigating measures, as it will not be designated or included on the Register.

While the owner has stated that, at this time, they do not intend to develop or sell the property, the property is a prime site for redevelopment and the potential for the historic house and surrounding estate to be removed from the village is high. The withdrawal of the intention to designate from the property would leave the City with no tools to ensure that the property remains in situ and as one of the core defining heritage features of Kirkfield and unable to fulfil its obligations related to the preservation of heritage properties under provincial and local land use planning policy.

The withdrawal of the notice of intention to designate for the property would also being opposition to provincial and local heritage policies. Section 2.6 of the Provincial Policy Statement (2020) and Section 4.2.7. of the Growth Plan for the Greater Golden Horseshoe (2019) both require municipalities to protect and conserve properties with local, provincial and national heritage value through the mechanisms available through land use planning legislation and policy, including the designation of property under Part IV of the Act. The Growth Plan, in particular, notes that the intention of heritage preservation and its associated policies is “to foster a sense of place and benefit communities”. The City of Kawartha Lakes Official Plan (2012) also requires the City to identify, protect and conserve properties with significant cultural heritage value or interest in the municipality through the tools available to it, including designation under Part IV of the Act. Similarly, with the enactment of Bill 23, municipalities received explicit direction from the province to review their Heritage Registers and designate properties of cultural heritage value and the withdrawal of the notice of intention to designate would be in direct opposition to that provincial directive. Given that this property has been identified federally by the Historic Site and Monuments Board of Canada, a withdrawal would also place the City in opposition to federal heritage policy and recognition.

Other Alternatives Considered:

Council may choose to withdraw the notice of intention to designate, although this would not be consistent with local and provincial land use planning policy. Should the Council choose this course of action, it could make the following motion:

That Report ED2023-043, **Objection to the Proposed Heritage Designation of 1011 Portage Road, Geographic Township of Eldon (Sir William Mackenzie Estate Cultural Heritage Landscape)**, be received; and

That a notice of withdrawal be issued in relation to the proposed designation of 1011 Portage Road, Geographic Township of Eldon.

Staff are not supportive of this recommendation as it both leaves a significant heritage resource in Kawartha Lakes with no statutory protection and is in direct opposition to provincial and local heritage policy and the provincial direction in relation to listed properties as enacted through Bill 23, particularly given the national significance of the property.

Alignment to Strategic Priorities

The designation of property under Part IV of the Ontario Heritage Act supports the following goals from the Council adopted Strategic Plan:

- A Vibrant and Growing Economy
- An Exceptional Quality of Life

The identification and protection of heritage assets in the community through designation promotes and exceptional quality of life by supporting and promoting arts, culture and heritage within the municipality. Designation provides long term protection and management for key heritage resources in the municipality and recognizes their importance to the community.

The protection of heritage resources in the municipality also assists in the growth of the local economy in general by identifying, protecting, and celebrating places where people want to live, work and visit. It encourages investment in local communities by ensuring and promoting attractive places for residents and businesses to be. It also has a direct impact on developing local tourism through the preservation of sites and landscapes that people want to visit.

Financial/Operation Impacts:

There will be costs associated with the provision of public notice and for the registration of the designation by-law associated with this application which are included in the 2023 Heritage Planning budget.

It is possible that there will be any additional legal fees if the owner decides to escalate their appeal to the Ontario Land Tribunal.

Consultations:

Property Owner
Municipal Heritage Committee

Attachments:

Appendix A – Heritage Evaluation Report: 1011 Portage Road



Adobe Acrobat
Document

Department Head email: rholy@kawarthalakes.ca

Department Head: Richard Holy, Director of Development Services