

Council Report

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| Report Number: | ED2023-050 |
| Meeting Date: | October 24, 2023 |
| Title: | Objection to the Proposed Heritage Designation of 11 John Street, Town of Lindsay (Queen Victoria Public School) |
| Description: | Objection to the proposed designation of 11 John Street under Part IV of the Ontario Heritage Act |
| Author and Title: | Emily Turner, Economic Development Officer – Heritage Planning |

Recommendations:

That Report ED2023-050, **Objection to the Proposed Heritage Designation of 11 John Street, Town of Lindsay (Queen Victoria Public School)**, be received for information; and

That the necessary designation By-Law be brought forward to Council for consideration.

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 June 6, 2023, Council received a recommendation from the Kawartha Lakes Municipal Heritage Committee to designate the property known municipally as 11 John Street in the Town of Lindsay under Part IV of the Ontario Heritage Act. The property is currently listed on the City's Heritage Register and contains the Queen Victoria Public School. Queen Victoria Public School is owned by Trillium Lakelands District School Board (TLDSB) and is an operating elementary school. The school was constructed between 1893 and 1894 and is an important example of an Edwardian public school in Lindsay. It has a high degree of cultural heritage value in its continuing role as a local school and important public space in Lindsay. A heritage evaluation report outlining the cultural heritage value of the property under Ontario Regulation 9/06 was prepared for the property and a summary statement of significance can be found below. The property was brought forward as part of a wider analysis of historic schools in Kawartha Lakes. Four other historic schools, also owned by TLDSB, were also brought forward for designation at this time: Central Senior Public School (242 Kent Street West, Lindsay), King Albert Public School (49 Glenelg Street West, Lindsay), Alexandra Public School (65 Sussex Street North, Lindsay), and Woodville Elementary School (109 Nappadale Street, Woodville).

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. As the City has more listed buildings than it has resources to evaluate and designate, staff have worked with the Municipal Heritage Committee to prioritize buildings for designation based on criteria presented to Council in March 2023. These criteria prioritize buildings with a high potential for development, commercial buildings, institutional buildings and key local landmarks. The five school properties were

prioritized for designation because of their importance as historic public buildings and community spaces in their neighbourhoods, as well as the potential for the future redevelopment of these sites as the Board evaluates its assets in relation to enrollment trends and demographic changes occurring in the City.

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

CW2023-199

Moved By Deputy Mayor Richardson

Seconded By Councillor Joyce

That Report ED2023-024, **Proposed Heritage Designation of 11 John Street, Town of Lindsay (Queen Victoria Public School)**, be received;

That the Municipal Heritage Committee's recommendation to designate 11 John Street 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 ratified at the Council meeting of June 20, 2023 and the appropriate notices issued to the property owner on July 4, 2023. A public notice appeared in Kawartha Lakes This Week on July 6, 2023, as is required under the Act.

Under subsections 29(5)-(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 11 John Street was August 4, 2023. An objection was received from TLDSB on August 1, 2023. The objection outlined a number of reasons for objection which are discussed more fully below. The letter of objection is attached to this report as Appendix A. The Board objected to the proposed designations of all four schools in Lindsay, but did not object to the designation of Woodville Elementary School. The designation by-law (By-law 2023-144) for Woodville Elementary School was passed at the Council meeting of August 29, 2023 and a notice of designation was served on the Board. No correspondence has been received from the Board in relation to the Woodville property.

The objection was received by the Kawartha Lakes Municipal Heritage Committee at its meeting of October 4, 2023. The Committee reviewed the objection as passed the following motion:

KLMHC2023-121

Moved By I. McKechnie

Seconded By J. Hartman

That Report KLMHC2023-071, **Objection to the Proposed Heritage Designation of 11 John Street, Town of Lindsay**, 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 or 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 and its high potential for redevelopment in the future. The subject property contains Queen Victoria Public School, which was originally known as the East Ward School. The school was constructed in between 1893 and 1894 as a replacement for an older school serving

Lindsay's East Ward and has been expanded throughout the twentieth century. It continued to operate as an elementary school serve junior kindergarten to grade 6 students. The property has a high level of value to the local community as its longstanding elementary school and an important public building in the East Ward of Lindsay. 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. The full heritage evaluation report for the property is attached to this report as Appendix B.

11 John Street Statement of Significance

Design and Physical Value

11 John Street, also known as Queen Victoria Public School, has cultural heritage value as Lindsay's oldest operating school building. The building, which was constructed 1893 as a replacement for an older public school building serving the East Ward of Lindsay, demonstrates the transition occurring the late nineteenth century from Victorian to Beaux-Arts architecture in school buildings. The original section of the school includes features such as its jerkinhead roof, large sash windows with concrete lug sills, and brick coursing and cornices which show the shift from Victorian to Beaux Arts through an increased use of Classically-inspired design elements and massing. The building, when it was originally constructed, also contained a Smead-Dowd heating and ventilation system which was developed around the same period as the school was constructed and was, at the time, the premier system for heating and ventilation in public buildings. The system demonstrates the technical achievements in heating and ventilation systems occurring in the late nineteenth century and is the earliest known use of this system in Lindsay.

Historical and Associative Value

11 John Street has historical and associative value in its role as a local public school serving the historic East Ward of Lindsay. Opening in early 1894, the school was constructed as the first new elementary school forming part of a general upgrade of education facilities in Lindsay that began in the late nineteenth century and continued into the early twentieth century related to the expansion of the education system and growth in public school pupils. It yields information regarding the development of education in Lindsay throughout the late nineteenth and early twentieth century in Lindsay as a long-standing public elementary school in the community, serving the suburban East Ward of the town.

Contextual Value

11 John Street has cultural heritage value as part of the historic landscape of Lindsay's historic East Ward which includes a substantial collection of late nineteenth and early twentieth century architecture. The area is primarily residential and the school contributes to its suburban character as the neighbourhood school which was constructed at around the same time as a substantial portion of the surrounding houses. The property is also a local landmark as a long-standing public school in Lindsay and the main institutional structure in Lindsay's historic East Ward.

Assessment of the Objection

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.

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

- **The designation would limit the ability of the Board to cost effectively bring the school up to AODA compliance:** There is no data to support the designation of property with the inability to bring a building into Accessibility for Ontarians with Disabilities Act (AODA) compliance or increased costs to do so. While Ontario Regulation 191/11 under the AODA allows for exceptions to

standards for public buildings if AODA compliance would negatively impact its heritage values, the City has historically been supportive of full AODA compliance in heritage buildings, including its own, and has demonstrated how accessible features can be integrated into these spaces. The staff position on accessibility in heritage buildings is that AODA compliance should be fully supported through the heritage permitting process. There is no rationale for the Board not be able to take the same approach as the City in addressing accessibility concerns in its historic assets.

- **The designation would limit the ability of the Board to dispose of the facility to either another public body or private sector because of restrictions on making changes to the exterior and footprint of the building:** There is no data to support the correlation between the designation of property with the disposal of public buildings. Most studies undertaken in relation to the sales of designated buildings find no correlation between designation and property sales, but these have primarily focused on residential and commercial properties. The unique nature of this, and similar historic school properties in Kawartha Lakes, means that designation would likely have a limited impact on its disposal, given the range of other factors that would impact the reuse of this site for a non-educational use. The City position regarding adaptive reuse of heritage properties is that adaptive reuse is an appropriate approach for under-utilized heritage assets and that designation is the best way to both support adaptive reuse and ensure that community interests regarding heritage value are included in these discussions. Support for the adaptive reuse of building may include making changes to the exterior or footprint of the building, through the heritage permitting process, and designation does not preclude making alterations to the structure to support alternative functions.

As the Board does not address the cultural heritage value of the property at all through its objection, 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 the objection be received and a recommendation be made to proceed with passing a designating by-law for this property. The property owner may object to the passage of this by-law and such an objection would be heard by the Ontario Land Tribunal.

Staff reached out to discuss the proposed designations of the subject property and other four school properties with the Board, through the Director of Education, prior to their initial presentation to Council in June 2023. At that time, the Board indicated that

they were not opposed to the designations but would like to discuss the matter with staff further to fully understand the impacts on their operations. Staff reached out to schedule meetings with the Board to discuss their impacts and any additional concerns the Board might have but the Board chose not to participate in these discussions. Since receiving the objections, staff have reached out to the Board to discuss their objections and next steps. The Board has not engaged in these discussions.

Should Council choose to withdraw the notice of intention to designate, the property will be left with no statutory heritage protection. Under the amendments to the Ontario Heritage Act made by Bill 23 which came into effect on January 1, 2023, 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 school is currently operating as an elementary school, the property is a prime site for redevelopment within the Lindsay settlement area and the potential for the school to be removed from the community in future is high. The development pressures and potential for the closure of the school are outlined more fully below. 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 as an important public building in Lindsay 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 be contrary 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 Ontario Heritage 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 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.

Local Schools and Development Context

In addition to their identified cultural heritage value, the rationale for prioritizing the four school properties in Lindsay, including the subject property, is specific to their potential for closure and redevelopment. The Board's Long Term Accommodation Plan (LTAP) for 2022-2028 provides information on student enrolment, community demographics and future accommodations, as well as information on facility condition and renewal needs. This document is publically available on the Board's website. The data presented in the report indicates that there is high potential for the subject property to close and be disposed of in future as the Board reviews the use of its assets.

While addressing trends and facility needs within the board as a whole, there is specific information in the LTAP in relation to current and long term trends in elementary school enrollment in Lindsay which will inform the Board's future decision making process. There are two key trends which will impact the future of the school buildings in Lindsay, both historic and newer. The first is with regard to enrollment. The report recognizes that the demographics of Lindsay are changing, specifically with regard to the new development occurring in the northwest portion of the town, which may require modifications of school boundaries or the construction of new facilities to serve the school-aged population. These demographic changes have already impacted school enrollment, with the enrollment for Alexandra Public School, King Albert Public School and Queen Victoria Public School at 65% of available capacity or lower, which is considered low in the report; the capacity of Central Senior School is around 68%, although its enrollment trends are unique as Lindsay's only senior elementary school. In comparison, Leslie Frost Public School and Parkview Public School have enrollment around 107% and 87%, respectively, reflecting the growth of newer subdivisions in these areas; these two schools were constructed in 1954 and 1960 respective and are not being considered, nor are they eligible, for heritage designation.

The second trend identified by the LTAP is facility condition. Specifically, the report identifies Alexandra Public School, Queen Victoria Public School, and King Albert Public School as having the need for substantial five-year renewal needs. The Facility

Condition Index data, which identifies the repair and renewal costs in comparison with the cost of rebuilding, notes that Lindsay's historic schools do require substantial investment. The FCI of these schools, as well as projected total 5-year renewal needs and comparison to Lindsay's two newer elementary schools, has been summarized from the LTAP below:

| School | Total 5-Year Renewal Needs (\$) | Facility Condition Index (FCI) | FCI Category |
|--------------------------------------|--|---|---------------------|
| Alexandra | 2,379,691 | 41% | Poor |
| Central Senior | 1,759,292 | 19% | Fair |
| King Albert | 2,785,443 | 48% | Poor |
| Leslie Frost | 2,882,896 | 29% | Fair |
| Parkview | 4,054,599 | 47% | Poor |
| Queen Victoria (Subject property) | 3,849,950 | 67% | Critical |

These figures date from 2021 and have likely changed since the report was authored, although they still give a snapshot of the condition of Lindsay's schools. As demonstrated in the data, age is not necessarily an indicator of FCI, nor of total renewal costs, although facility maintenance can be more challenging with an older structure, whether it is designated or not. However, combined with lower enrollment, a higher FCI provides a more compelling case for reviewing the long term viability of a school, which the LTAP explicitly recognizes.

At present, there is a provincial moratorium on Pupil Accommodation Reviews (PAR), the engagement process that is required by the province for school boards to undertake when considering school closures or consolidations. This moratorium has been in place since 2017 and there is no indication from the provincial government as to when it will be lifted, although there has been a call from both the public and Catholic school boards to lift the moratorium to help address various challenges with regard to infrastructure maintenance and upgrades, as well as changing demographic patterns and enrollment throughout the province. However, given the information provided by the Board through the LTAP, it must be assumed that Alexandra Public School, Queen Victoria Public School, and King Albert Public School have a high possibility of closure when the PAR moratorium is lifted. It is also possible that Central Senior School will be closed, as the Board looks to realign its boundaries and make the most use of its available resources, although this appears less imminent from the data presented in the LTAP. The objection letter received also support this potential as they recognize that the schools may be best suited to disposal to the private sector. The City has no control

over the closure of these schools, should they occur at some point in the future. Any school closures must go through the PAR process and will be public processes that take into consideration a range of factors relevant to the mandate of the Board to provide quality education to its students and engage in good fiscal and resource management of its assets. If the Board decides to close one or all of these schools through a PAR process, there will have to be considerations in relation to the disposal and future use of these sites.

The disposal of these sites will be guided by recently passed legislation, Bill 98, also known as the Better Schools and Student Outcomes Act (2023). This legislation, which received Royal Assent in June 2023, makes substantial changes to the disposal of surplus school sites, particularly with regard to provincial control over their future use. The Act gives the Ministry of Education significantly more control over the disposition of sites and gives power to the provincial government to set regulations with regard to how school properties are disposed of, to whom they are offered, and future use. This substantially shifts the ability of local communities to have a say in the disposition of school properties in their communities when they are declared surplus to the Board's needs. In particular, it means that local municipalities no longer have first right of refusal on school sites.

Within the context of the Board's future planning and the current provincial legislation, the proposed designation of this property will allow the City to provide additional control and input on the future development of the site, and allow staff and Council additional tools to assess the most appropriate way forward for a key public building and large site within Lindsay. Designation of the property will allow the City to:

- Support adaptive reuse of the property through cultural heritage policies under the Provincial Policy Statement and legislative requirements under the Ontario Heritage Act;
- Request a Heritage Impact Assessment to gauge the impact of proposed future development on the cultural heritage value of the site and its community value as a public building;
- Provide development control through a Heritage Easement Agreement;
- Enact architectural design guidelines for future development on the site;
- Prevent demolition or removal of the existing school or set conditions in relation to its demolition or removal; or
- Pass by-laws under Section 36 of the Ontario Heritage Act for the acquisition, through purchase, lease or expropriation, for the purpose of preserving the property and for municipal interests.

In short, the designation of the property would assist in Council's ability to make the best use decision for the property in relation to both existing and future needs within the community and its cultural heritage value. The designation would not prevent the City from issuing a demolition permit for the property, should Council, in consultation with the Municipal Heritage Committee, deem it the best path forward and most appropriate solution for the site. It would, however, allow Council additional input into the future use of a community asset and provide enhanced local control. Staff are of the opinion that the designation of the property is the best path to long term support for the potential adaptive reuse of the site that balances the need to find alternative and best fit uses for non-operational school sites with the protection of historic community assets.

Other Alternatives Considered:

Council may choose to withdraw the notice of intention to designate. Should the Council choose this course of action, it could make the following motion:

That Report ED2023-050, **Objection to the Proposed Heritage Designation of 11 John Street, Town of Lindsay (Queen Victoria Public School)**, be received; and

That a notice of withdrawal be issued in relation to the proposed designation of 11 John Street, Town of Lindsay.

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. The withdrawal of heritage protection on the property will not allow the City to have input regarding its conservation or architectural design should a Planning Act application be received for the property in future.

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 additional legal fees if the Board decides to escalate their appeal to the Ontario Land Tribunal.

Consultations:

Trillium Lakelands District School Board
Municipal Heritage Committee

Attachments:

Appendix A – Notice of Objection



Adobe Acrobat
Document

Appendix B – Heritage Evaluation Report: 11 John Street



Adobe Acrobat
Document

Department Head email: rholy@kawarthalakes.ca

Department Head: Richard Holy, Director of Development Services