



REPORT

TO: Mayor Lawlor and Members of Council

FROM: Laura Loney, Manager of Heritage Planning

DATE: August 16, 2024

REPORT NO.: PD-2024-053

SUBJECT: Objection to a Notice of Intention to Designate under Part IV, Section 29 of the OHA – 49 Eastern Avenue

RECOMMENDATION:

THAT Report No. PD-2024-053 dated August 16, 2024 regarding Objection to a Notice of Intention to Designate under Part IV, Section 29 of the OHA – 49 Eastern Avenue be received;

AND FURTHER THAT Council decline the requests to withdraw the Notice of Intention to Designate for the property at 49 Eastern Avenue as attached in Appendix C and F;

AND FURTHER THAT the By-law to designate the subject property at 49 Eastern Avenue, as attached in Appendix E, be passed;

AND FURTHER THAT, in the event that this matter is appealed to the Ontario Land Tribunal, Council authorize staff to engage legal counsel as required and to attend any hearings in opposition to the appeal.

KEY POINTS:

The following are key points for consideration with respect to this report:

- On May 27, 2024, Council adopted staff's recommendations to issue a Notice of Intention to Designate (NOID) for the property at 49 Eastern Avenue through Report PD-2024-030.
- A NOID for the property was issued by staff on June 6, 2024; Notice of Objection to the NOID was received by staff on July 5, 2024 (Appendix C) stating the owner's objection to the designation process.

- Although the NOID directed the owner and public to the staff report including the list of identified heritage attributes for the subject property, the Owner identified its lack of inclusion in the NOID itself as one of the reasons for objection. The NOID was re-issued by staff, inclusive of the full list of identified heritage attributes, on July 11, 2024, to resolve this issue.
- A second Notice of Objection to the NOID was received by staff on August 12, 2024 in response to the re-issued NOID (Appendix F).
- Council has 90 days from the end of a 30-day NOID period to decide whether to withdraw the NOID or to pass a by-law to designate the subject property. Staff are following the original NOID timeline for the purposes of clarity, and as such a decision is required by Council on this matter before October 4, 2024.
- Staff have reviewed the reasons for objection to the NOID and are of the opinion that the designation should move forward as previously determined by Council.
- Staff recommend that Council pass the By-law to designate the subject property in accordance with the draft by-law in Appendix E, ensuring consistency with the adoption of Report PD-2024-030 and the Town's intention to designate the property at 49 Eastern Avenue.

BACKGROUND AND DISCUSSION:

The property was listed on the Town's Heritage Register during Phase 3 of the Town's Heritage Register process (2016) and was identified as a rare surviving example in Acton of a Late Victorian industrial vernacular building, associated with Thomas Maxted and the Beardmore Tannery, and is identified as a landmark (Appendix D). In 2024, the property at 49 Eastern Avenue was researched and evaluated by staff as part of the Town Council-approved Heritage Register prioritization strategy to respond to *Bill 23, More Homes, Built Faster Act, 2022*¹. This research and evaluation process gave staff a more fulsome understanding of the property's cultural heritage value.

On March 6, 2024, the current property owners were sent a designation information package with a covering letter from staff, identifying that this work was being undertaken and encouraging them to contact staff to discuss further. An additional notice was delivered via courier on April 4, 2024, advising the owners that the Research and Evaluation Report for the subject property would be reviewed at the April 17, 2024, meeting of Heritage Halton Hills.

Heritage Halton Hills reviewed the final Research & Evaluation Report (Appendix B) for the property at its meeting of April 17, 2024, and recommended that the property be designated. On May 6, 2024, Council considered Report PD-2024-030 entitled "Intention to Designate under Part IV, Section 29 of the Ontario Heritage Act – 49 Eastern Avenue" (Appendix A) and adopted staff's recommendations to issue a Notice

¹ Bill 23 stipulates that municipalities have a two-year window to determine whether properties on the Heritage Register warrant designation under the Ontario Heritage Act. If not so designated after two years, properties must be removed from the Heritage Register.

of Intention to Designate the property; this decision was ratified at the following Council meeting of May 27, 2024.

Notice of Intention to Designate (NOID) was provided to the owner and publicly through the Town's website on June 6, 2024, indicating that any person had 30 days from the date of notice to serve written notice of objection to the proposed designation.

On July 5, staff received Notice of Objection to the NOID for the subject property from the owner's legal representatives via email (Appendix C). Although the NOID had directed the owner and public to the staff report including the list of identified heritage attributes for the subject property, the Owner identified its lack of inclusion in the body of the NOID as one of the reasons for objection. The NOID was therefore re-issued by staff, inclusive of the full list of identified heritage attributes, on July 11, 2024, to address this component of the objection.

On August 12, staff received a second Notice of Objection in response to the re-issued NOID.

Ontario Heritage Act Requirements

Section 29(6) of the *Ontario Heritage Act* indicates that "If a notice of objection has been served under subsection (5), the council of the municipality shall consider the objection and make a decision whether or not to withdraw the notice of intention to designate the property within 90 days after the end of the 30-day period under subsection (5). 2019, c. 9, Sched. 11, s. 7 (6)."

Summary of Identified Issues & Response to Letter of Objection

The Notices of Objection received for the NOID (Appendices C and F) include four reasons for objection.

The issues identified by the Owner and staff's responses are identified below:

1. The NOIDs Fail to Comply with the OHA

Owner Position:

Section 29(4) of the *OHA* requires a NOID to include a description of the heritage attributes of the property along with a statement explaining the cultural heritage value or interest of the property. The NOID included the statement of significance and directed the owner and public to the staff report including the list of identified heritage attributes for the subject property. The Owner identified its lack of inclusion in the NOID itself as one of the reasons for objection.

In response to the second NOID, the Owner maintains that a re-issued NOID is without legal authority.

Staff Response:

Staff felt that a direct link to the staff report and inclusion of a description of the property's cultural heritage value was sufficient to satisfy the requirements of the OHA. However, in order to address this component of the objection, the NOID was re-issued on July 11, 2024, inclusive of the full list of heritage attributes in the body of the notice.

2. The Town has Failed to Properly Justify the Proposed Designation

Owner Position:

The Owner asserts that the potential for the property to be removed from the Heritage Register because of changes to the OHA through Bill 23 (now amended through Bill 200) is not sufficient reason to designate the property. Additionally, the Owner asserts that the fact that a property *may* satisfy criteria for designation does not warrant designation in and of itself.

Staff Response:

Rationale for Designation

Bill 23, the More Homes Built Faster Act, 2022 was introduced on October 25, 2022, bringing forward legislative changes including requirement for the removal of listed properties from the Heritage Register after a period of 2 years from their listing, or from January 1, 2023, with municipalities being prohibited from re-listing those removed properties for a period of five years. In response, Council adopted a Heritage Strategy in March 2023 through report PD-2023-010 to prioritize the Town's listed properties and research and evaluate those for potential designation under the OHA.

Subsequent to Council's adoption of Report PD-2024-030 recommending designation for the subject property, the Province introduced Bill 200 (the *Homeowner Protection Act*), which received Royal Assent on June 6, 2024. Included in this legislation was an extension of the 2-year timeline prescribed by Bill 23, giving municipalities until January 1, 2027, to either issue a NOID for a listed property or to remove it from the Heritage Register.

Should Council withdraw the NOID for the subject property, the OHA requires the municipality to remove it from the Heritage Register, thereby removing the 60-day notice requirement for a demolition permit application. This creates a significant risk for the subject property long-term and would not be consistent

with the Town's policy framework in conserving significant cultural heritage resources.

3. The Statement of Cultural Heritage Value or Interest and the Description of the Heritage Attributes of the Property are Inappropriate

Owner Position:

The Owner argues that the Research and Evaluation Report does not acknowledge significant alterations to the industrial building and that the building elements themselves do not display a high degree of craftsmanship. The Owner also challenges staff's conclusions of the property demonstrating the work or ideas of an architect, artist, builder, designer, or theorist who is significant to a community, and staff's conclusions that the existing building is important in defining the character of the area while it is an isolated remnant of the former industrial landscape.

The second Notice of Objection received from the Owner outlines their issues with staff's description of the property's historical and associative value (George Beardmore, Thomas Maxted, the evolution of the railway, and its history as a tourist destination and commercial outlet. The Owner also identifies their issues with several identified heritage attributes, including interior and exterior.

Staff Response:

Staff have reviewed the Owner's identified issues in the application of Ontario Regulation 9/06 and are of the opinion that the evaluation undertaken remains appropriate. Staff's Research and Evaluation Report (Appendix B) for the subject property references several alterations that have taken place within the existing building and notes that, despite its alterations, it is an extremely significant cultural heritage resource. This is also reflected through staff's notes that modified openings throughout the building have not been identified as heritage attributes of the subject property.

The Owner has identified concerns with several of the relationships and historical associations for which the subject property has been identified. Additionally, they have identified concerns with the description of the identified heritage attributes within staff's report.

Staff remain confident in the research and evaluation work that has been undertaken for the subject property and no changes are recommended to the Statement of Significance or identified heritage attributes for the subject property.

4. The Town has Failed to Balance the Proposed Designation with Other Provincial and Municipal Planning Policy Objectives

Owner Position:

The Owner comments that the staff report is silent on policy objectives outside of heritage objectives and that it does not consider potential impacts to future development applications for the property, including the inclusion of heritage attributes such as “scale, form and massing” and interior attributes.

Staff Response:

As part of the Town’s approved Heritage Strategy, the Owner has been provided with an information package regarding designations, and several opportunities to contact Staff to discuss any concerns regarding development. To date, communication from the Owner on this file has been limited to the Owner’s agent contacting staff following Council’s adoption of Report PD-2024-030 to confirm next steps, as well as the Notice of Objection received on July 5, 2024, received via the Owner’s legal counsel.

Since the implementation of this strategy, Staff have continued to outline the implications of designation with property owners and have noted that designation does not prevent an owner in making changes to the property. While the heritage attributes identified for the subject property include characteristics such as its physical scale, form, and massing as well as interior features, it is not uncommon for identified attributes to be altered, or even removed, as part of a development application in order to achieve multiple goals and objectives for a site, including intensification. Designation will allow staff, and the Town, input where identified heritage attributes may be impacted as part of a development application for the subject property. Changes and alterations to designated properties, as with any property over its lifetime, are expected as part of their continued and evolving use over time.

In April 2021, the Owner attended Pre-Consultation for a proposed 16-storey, 208-unit condominium on the site. Staff provided pre-consultation notes following this meeting identifying what would be required as part of a complete application, including a Heritage Impact Assessment, and if warranted through the application of Ontario Regulation 9/06 criteria, the property would be recommended for designation. The Owner did not submit a formal application following this meeting and did not contact Heritage Staff to discuss any concerns regarding these comments.

In light of the above, staff remain of the opinion that the property at 49 Eastern Avenue warrants designation under the *Ontario Heritage Act* to ensure its long-term conservation as one of the Town's unique and valuable cultural heritage resources. Staff continue to work with designated property owners to manage change while demonstrating a continued commitment to balancing conservation with the necessary evolution of their properties and remain available to do so with the Owner of the subject property.

Should Council adopt staff's recommendations in line with Report PD-2024-030, the By-law for the subject property as presented in Appendix E should be passed to designate the property at 49 Eastern Avenue.

Any person who objects to the by-law has 30 days from the date of the notice given for the passage of this by-law to appeal to the Ontario Land Tribunal. Should no objection be received, the by-law will come into force and be registered on title for the subject property.

STRATEGIC PLAN ALIGNMENT:

This report identifies natural areas and heritage as one of the Town's Strategic priorities.

RELATIONSHIP TO CLIMATE CHANGE:

This report is administrative in nature and does not directly impact or address climate change and the Town's Net Zero target.

PUBLIC ENGAGEMENT:

Public Engagement was not needed as this report is administrative in nature.

INTERNAL CONSULTATION:

Heritage Halton Hills was consulted in the preparation of this report. The objection has also been discussed with legal counsel (Thomson Rogers – David Germain).

FINANCIAL IMPLICATIONS:

This report is administrative in nature and does not have any financial implications.

However, should Council adopt staff's recommendations and pass a by-law to designate the property under Part IV, Section 29 of the *Ontario Heritage Act*, and should an objection to the by-law be received within 30 days after the date of publication of that

notice, this objection would result in a hearing at the Ontario Land Tribunal which would have associated financial implications in terms of legal support.

Reviewed and approved by,

John Linhardt, Commissioner of Planning & Development

Chris Mills, Chief Administrative Officer