

Staff Report



To	City Council
Service Area	Infrastructure, Development and Enterprise Services
Date	Monday, April 11, 2022
Subject	Notice of Objection to Intention to Designate 919 York Road under section 29, Part IV of the Ontario Heritage Act

Recommendations

1. That the Notice of Objection to the intention to designate 919 York Road dated January 20, 2022 from Kevin Thompson of SmithValeriotte Law Firm LLP on behalf of the property owner (Brodie Limited) be received.
 2. That the designation by-law for 919 York Road be approved.
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Executive Summary

Purpose of Report

The purpose of this report is to advise Council of the property owner's notice of objection to the intention to designate 919 York Road and to bring the heritage designation by-law before Council for approval according to the provisions of section 29, Part IV of the Ontario Heritage Act.

Key Findings

A property may be designated under section 29, Part IV of the Ontario Heritage Act if it meets one or more of the criteria used to determine cultural heritage value or interest as set out in Ontario Regulation 9/06.

The heritage attributes of 919 York Road meet all three criteria used to determine cultural heritage value or interest as set out in Ontario Regulation 9/06 under the Ontario Heritage Act and therefore the property merits individual heritage designation under the Ontario Heritage Act.

Designation enables Council to review proposed alterations for the property, enforce heritage property standards and maintenance, and refuse demolition.

A notice of intention to designate 919 York Road was published and served on December 23, 2021. An objection to the intention to designate was received by the City Clerk on January 20, 2022 from Kevin Thompson of SmithValeriotte Law Firm LLP on behalf of the property owner (Brodie Limited).

According to section 29, subsections (6-8) of the Ontario Heritage Act, Council has until April 22 to decide whether to proceed with the designation and, if so, may pass a by-law. The proposed by-law is included in Attachment-3.

Financial Implications

Costs associated with notices and registration of by-laws are covered by the City's global advertising budget. Additional costs may be incurred if the designation by-law is appealed to the Ontario Land Tribunal.

Report

Following the [staff report](#) to Council on December 13, 2021, Council directed the City Clerk to publish and serve notice of intention to designate the property known municipally as 919 York Road pursuant to section 29, Part IV of the Ontario Heritage Act. The notice of intention to designate was published in the newspaper on December 23, 2021 (Attachment-1) and served on the property owner and the Ontario Heritage Trust on the same date.

The notice of intention to designate stated that any person may send a notice of objection to the proposed designation, before 4 p.m. on January 24, 2022. This notice must be sent to the City Clerk and must set out the reason for the objection and all relevant facts. If a notice of objection is received, Council 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 objection period. If Council decides not to withdraw its intention to designate, a heritage designation bylaw must be passed within 120 days after the date of publication of the notice of intention to designate. Council must publish a notice of passing of the designation bylaw which is followed by a 30-day appeal period when appeals of the bylaw may be given to the Ontario Land Tribunal for a hearing and decision.

Notice of Objection

A Notice of Objection to the intention to designate 919 York Road (Attachment-2) was received by the City Clerk on January 20, 2022 from Kevin Thompson of SmithValeriotte Law Firm LLP on behalf of the property owner (Brodie Limited).

In the notice of objection, the property owner's legal counsel stated that the owner is opposed to the proposed designation of the Matthews farmhouse building as "in its current state it is a significant and ongoing safety hazard" and "designation of the farmhouse will not save it, and there is a pressing public safety interest in having it demolished." The property owner has indicated that they are not opposed to the designation of the stone gate and the stone shed building described as heritage attributes of the subject property.

Staff Response to the Objection

The subject property has been listed as non-designated on the Municipal Register of Cultural Heritage Properties under section 27, Part IV of the Ontario Heritage Act since Council expanded the heritage register to include the Burcher Stokes Inventory in 2009. When Brodie Ltd. purchased the subject property in 2011 the subject property was already a listed heritage property with the Matthews farmhouse, the stone shed and the stone gate identified as built heritage resources in the heritage register record.

According to Official Plan Policy 4.8.1 (6) built heritage resources are to be maintained with appropriate care and maintenance that conserves their heritage attributes in accordance with prescribed federal and provincial standards and

guidelines such as Parks Canada's Standards and Guidelines for the Conservation of Historic Places in Canada.

The Property Standards Order has previously been issued on the subject property. The owner has stated that their architect has concluded that "the cost to make the building structurally safe far exceeds the value". Staff recommend that in this situation, that loss of monetary or property value should be considered with the potential loss of cultural heritage value.

It is understood that major repairs and replacement of number of architectural elements would be necessary to rehabilitate the farmhouse for a practical future use. Staff maintain the opinion that it may be possible that the existing (original) fieldstone walls may be retained and repaired in order to support a reconstructed hip roof form, dormers and chimney. This possibility needs to be assessed by a structural engineer that is member of the Canadian Association of Heritage Professionals and has expertise in the conservation of traditional masonry structures and 19th century building techniques.

Staff maintain the opinion, that has been supported by Heritage Guelph, that the Matthews farmhouse at 919 York Road has significant cultural heritage value and its heritage attributes should be protected by designation under the Ontario Heritage Act.

Council Consideration of Objection

In June 2019, the More Homes, More Choice Act, 2019 (Bill 108) received Royal Assent. Schedule 11 of this Act included amendments to the Ontario Heritage Act which included amendments to the listing and designation processes. The Bill 108 Amendments to the Ontario Heritage Act came into force on July 1, 2021.

Subsection (6) of section 29, Part IV is a new provision in the Ontario Heritage Act which was added through Bill 108. Subsection (6) states that if a notice of objection has been served, Council shall consider the objection and decide whether or not to withdraw the notice of intention to designate the property within 90 days after the end of the 30-day objection period. In this case Council must decide whether to advance or withdraw its intention to designate before April 24, 2022.

Subsections (7) and (8) of section 29, Part IV are also new provisions in the Ontario Heritage Act added through Bill 108. Subsection (7) states that if Council decides to withdraw the notice of intention to designate the property after considering the objection, they shall withdraw the notice by causing a notice of withdrawal. Subsection (8) states that if Council decides not to withdraw the notice of intention to designate the property, Council may pass a by-law designating the property. The by-law must be passed within 120 days after the date of publication of the notice of intention to designate.

In summary according to section 29, subsections (6-8) Council has until April 24 to decide whether to proceed with the designation and, if so, would need to pass a designation by-law before April 24, 2022.

If Council approves the heritage designation by-law, a notice of passing of the by-law is required to be published in the newspaper and served on the property owner and the Ontario Heritage Trust. Any person who objects to the by-law may appeal to the Ontario Land Tribunal by giving the Tribunal and the City Clerk, within 30 days after the date of publication of the notice of the by-law passing, a notice of

appeal setting out the objection to the by-law and the reasons in support of the objection. The Tribunal shall hold a hearing and make a final decision on the matter.

Recommendation

Staff recommend that Council continue with its intention to designate 919 York Road and that proposed heritage designation By-law Number (2022) – 20689 (seen in Attachment-3) for 919 York Road in order to meet the prescribed deadlines of the legislation.

Financial Implications

Costs associated with notices and registration of by-laws are covered the City's global advertising budget. Additional costs may be incurred if the designation by-law is appealed to the Ontario Land Tribunal.

Consultations

Heritage Guelph has been advised of the notice of objection from the property owner and that staff are recommending that Council pursue a designation by-law.

Strategic Plan Alignment

Priority

Building our Future

Direction

Continue to build strong, vibrant, safe and healthy communities that foster resilience in the people who live here

Alignment

The conservation of cultural heritage resources is aligned with building and maintaining vibrant and resilient communities

Attachments

Attachment-1 Notice of Intention to Designate - 919 York Road (December 23 2021)

Attachment-2 Notice of Objection to Designation of 919 York Road (January 20 2022)

Attachment-3 Proposed By-law Number (2022) - 20689

Departmental Approval

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