

Staff Report



To	City Council
Service Area	Infrastructure, Development and Environment
Date	Tuesday, February 13, 2024
Subject	Notice of Objection to Intention to Designate 331 Clair Road East under Section 29, Part IV of the Ontario Heritage Act

Recommendation

1. That the Notice of Objection to the intention to designate 331 Clair Road East dated December 21, 2023 from Jennifer Meader of Turkstra Mazza Associates on behalf of the property owner (2488995 Ontario Ltd.) be received.
 2. That the designation by-law for 331 Clair Road East be approved.
-

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 331 Clair Road East 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 two or more of the criteria used to determine cultural heritage value or interest as set out in Ontario Regulation 9/06 (as amended by O. Reg. 569/22).

The heritage attributes of 331 Clair Road East meet four 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 331 Clair Road East was published on November 23, 2023. An objection to the intention to designate was received by the City Clerk on December 23, 2023, from Jennifer Meader of Tukstra Mazza Associates on behalf of the property owner (2488995 Ontario Ltd.).

According to section 29, subsections (6-8) of the Ontario Heritage Act, Council has until March 22, 2024, 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.

Strategic Plan Alignment

The key findings and recommendations of this report align with the 2024-2027 Strategic Plan action 6.1.4 to implement the Cultural Heritage Action Plan and conserve our cultural heritage resources.

Future Guelph Theme

City Building

Future Guelph Objectives

City Building: Improve housing supply

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 bylaw is appealed to the Ontario Land Tribunal.

Report

Following the staff report to Council on November 21, 2023, Council directed the City Clerk to publish and serve notice of intention to designate the property known municipally as 331 Clair Road East pursuant to section 29, Part IV of the Ontario Heritage Act. The notice of intention to designate was published in the newspaper on November 23, 2024 (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 December 23, 2023. 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 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. 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 (March 22, 2024). 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 331 Clair Road East (Attachment-2) was received by the City Clerk on December 23, 2023 from Jennifer Meader of Tukstra Mazza Associates on behalf of the property owner (2488995 Ontario Ltd.).

In the notice of objection, the property owner's legal counsel stated that the owner is opposed to the proposed designation of the Hanlon farmhouse building "on the basis that it has been working collaboratively with City staff with respect to the proposed ZBA in an effort to resolve all technical issues" and "City heritage staff have been generally supportive of relocation of the Farmhouse."

Staff Response to the Objection

The subject property is listed as non-designated on the Municipal Register of Cultural Heritage Properties under section 27, Part IV of the Ontario Heritage Act. The property was identified as one of Heritage Guelph's 2023 Designation Priorities at the [February 13, 2023 meeting](#) of Heritage Guelph.

Heritage staff have worked collaboratively with representatives of the property owner to designate the property under Section 29, Part IV of the Ontario Heritage Act, as recommended by the [Cultural Heritage Impact Assessment Report](#) prepared by MacNaughton Hermsen Britton Clarkson Planning Limited and dated May 2023, submitted as part of the complete Zoning Bylaw Amendment application. The Report recommends "that the property be designated under Part IV of the Ontario Heritage Act" to mitigate impacts to the Hanlon farmhouse.

Council approved the Zoning Bylaw Amendment for this property at the December 12, 2023 Council Planning Meeting. The conceptual site plan submitted in the Zoning Bylaw Amendment application specified the intent to conserve, relocate, and adaptively reuse the Hanlon Farmhouse as an amenity space for the proposed development. The [Cultural Heritage Impact Assessment Report](#), reviewed by Heritage Guelph at their October 10, 2023 meeting, concluded that relocation of the farmhouse would have a neutral impact to the cultural heritage value of the property. If designated, the relocation and conservation of the farmhouse would be considered through the heritage permit process which would include consultation with Heritage Guelph. The approval authority for a heritage permit to relocate the farmhouse, considered a major permit application, is the General Manager of Planning and Building Services through delegated authority.

Designation of the Hanlon Farmhouse at 331 Clair Road East aligns with the City of Guelph's Official Plan policies, including:

- Official Plan 2.2.2 (c): Enhance the visual identity of the city through protecting and celebrating the City's cultural heritage resources (page 8)
- Official Plan 4.8 (h): To identify, designate and conserve built heritage resources and cultural heritage landscapes in accordance with Part IV of the Ontario Heritage Act (page 86)
- Official Plan 4.8.5 (6): Built heritage resources and cultural heritage landscapes that have been listed in the Heritage Register shall be considered for conservation in development applications initiated under the Planning Act, unless the applicant demonstrates to Council in consultation with Heritage Guelph, through a Cultural Heritage Resource Impact Assessment, Scoped Cultural Heritage Resource Impact Assessment or Cultural Heritage Review, that the built heritage resource or cultural heritage landscape is not of cultural heritage value or interest and, therefore, does not meet the criteria for designation under the Ontario Heritage Act (page 91)
- Official Plan 4.8.5 (7): Where a non-designated built heritage resource or cultural heritage landscape is listed in the Heritage Register, the City may require, as a condition of approval of a development application under the Planning Act, a building permit, a partial demolition or change of use, that the proponent enter into agreements to conserve and/or permit to be designated, by the City, in consultation with Heritage Guelph, the built heritage resource or cultural heritage landscape (page 91)

Staff maintain the opinion, that has been supported by Heritage Guelph and the applicant's Heritage Consultant, that the Hanlon Farmhouse at 331 Clair Road East has significant cultural heritage value and its heritage attributes should be protected by designation under Part IV of the Ontario Heritage Act. Should Council withdraw the Notice of Intention to Designate, the City will not be able to refuse demolition of the house should an application be received on or after January 1, 2025, as the property will be removed from the Municipal Register of Cultural Heritage Properties in accordance with the changes to the Ontario Heritage Act effected by Bill 23.

Council Consideration of Objection

The Ontario Heritage Act, Part IV, Section 29, Subsections 5 – 8 outline the process for objecting to the notice of intention to designate.

Subsection (5) states that an objection setting out the reasons for objections and all relevant facts, may be served to the clerk of a municipality within 30 days of publication of the notice of intention to designate. 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 March 22, 2024.

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 (5-8) Council has until March 22, 2024 to decide whether to proceed with the designation and, if so, would need to pass a designation by-law before March 22, 2024.

If Council approves the heritage designation by-law, a notice of passing of the bylaw 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.

Consultations and Engagement

At the [June 12, 2023 meeting](#) of Heritage Guelph, the Committee [passed the following motion](#):

That the comments provided by Heritage Guelph members on the '331 Clair Rd E: Cultural Heritage Evaluation Report' be provided to staff and Council for their consideration.

At the [October 10, 2023 meeting](#) of Heritage Guelph, the Committee [passed the following motion](#):

That Heritage Guelph supports the heritage attributes identified for 331 Clair Road East as outlined in the staff report dated October 10, 2023; and

That Heritage Guelph recommends that City Council give notice of its intention to designate 331 Clair Road East pursuant to Part IV, Section 29 of the Ontario Heritage Act

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.

Recommendation

Staff recommend that Council continue with its intention to designate 331 Clair Road East and issue the proposed heritage designation By-law Number (2024) – 20893 (seen in Attachment-3) for 331 Clair Road East 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 bylaw is appealed to the Ontario Land Tribunal.

Attachments

Attachment-1 Notice of Intention to Designate

Attachment-2 Objection to Intention to Designate

Attachment-3 By-law Number (2024) – 20893

Attachment-4 331 Clair Road East: Notice of Intention to Designate Staff Report

Attachment-5 331 Clair Road East: Notice of Objection Staff Presentation

Departmental Approval

Melissa Aldunate, MCIP, RPP, Manager of Policy Planning

Report Author

Jack Mallon, Heritage Planner I, Policy Planning

This report was approved by:

Krista Walkey, RPP

General Manager

Infrastructure, Development and Environment

226 820 5615 x 2395

krista.walkey@guelph.ca

This report was recommended by:

Jayne Holmes, P. Eng., PMP
Deputy Chief Administrative Officer
Infrastructure, Development and Environment
519-822-1260 extension 2248
jayne.holmes@guelph.ca