

City of Toronto Proposes to List 258 Midtown Commercial Main Street Properties in the Heritage Register

The City of Toronto is proposing to list 258 new properties in the City's Heritage Register. The properties are located in the area known as the *Midtown in Focus Planning Area* in and around the Yonge-Eglinton Secondary Plan Area (see Figure 1 to the right) along the commercial main streets of Bayview Avenue, Eglinton Avenue East and West, Mount Pleasant Road and Yonge Street.

A staff report dated August 10, 2017, *Inclusion on the City of Toronto's Heritage Register – Midtown in Focus – Phase 1: Main Street Properties*, is recommending that City Council list the properties in the Heritage Register. The Toronto Preservation Board, the local body dedicated to heritage matters in the City of Toronto, adopted staff's recommendations at its meeting on August 24, 2017. The recommendations will be brought forward to the Planning and Growth Management Committee. The next Planning and Growth Management Committee meeting is on **September 7, 2017 at 9:30 am**. It is anticipated that the Planning and Growth Management Committee recommendations will then go to City Council in October 2017.

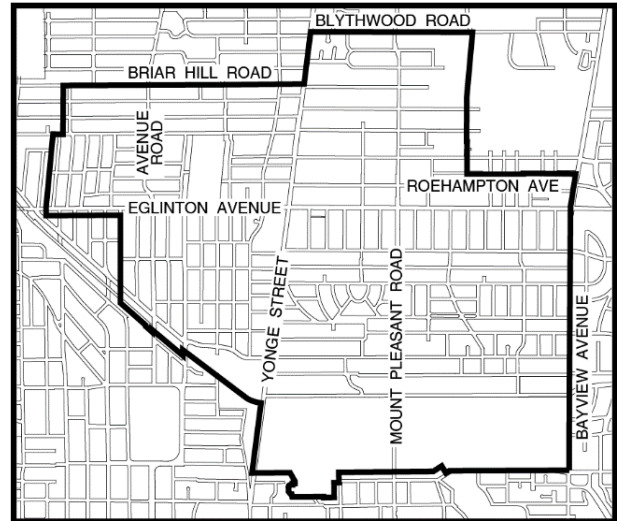


Figure 1: Yonge-Eglinton Secondary Plan Area
(Source: City of Toronto)

The proposal to list such a large number of properties in the Heritage Register at one time is unprecedented. It is part of the City of Toronto's initiative to achieve more timely listing of heritage properties in the City's Heritage Register when undertaking local area studies. The staff report indicates that staff will bring forward more heritage listing and designation reports in the fourth quarter of 2017 for additional properties in the *Midtown in Focus Planning Area* having potential heritage value.

WHAT DOES BEING "LISTED" IN THE HERITAGE REGISTER MEAN?

DESIGNATING VS LISTING OF HERITAGE PROPERTIES

The *Ontario Heritage Act (OHA)* requires municipalities to keep a register of properties that are of cultural heritage value or interest. The register:

- (i) shall include all properties that have been designated to be of cultural heritage value or interest ("Designated Properties") (s.27(1.1) of the OHA); and
- (ii) may include properties that have not been designated but are believed by municipal council to be of cultural heritage value or interest ("Listed Properties") (s.27(1.2) of the OHA).

For properties to become Designated Properties, they are required to meet specified criteria set out in regulations (Ontario Regulations 9/06 and 10/06) and are designated by municipal by-law or Minister's Order through processes set out in Part IV of the OHA (s.29 and s.34.5-34.6). The OHA provides a mechanism for filing objections to these designations, which objections will be considered by the Conservation Review Board.

In contrast, for properties to become Listed Properties, the OHA does not set out criteria; municipal council has discretion to list any properties it "believes" to be of cultural heritage value or interest. The process only involves consultation with the

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municipal heritage committee (which in this case, is the Toronto Preservation Board). There is no formal mechanism for objection or appeal of a listing of a property in the register. The Table below summarizes the difference between Designated Properties and Listed Properties under the OHA.

The 258 midtown properties would be Listed Properties, as they have not been designated by City by-law or Minister's Order. Although not a requirement under the OHA, the staff report has indicated that all 258 properties meet the provincial criteria for municipal designation found in Ontario Regulation 9/06.

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Table: Comparison of Designated Properties and Listed Properties under the OHA

	DESIGNATED PROPERTIES	LISTED PROPERTIES
Criteria for Designation or Listing	Must meet prescribed criteria set out in O. Reg. 9/06 for cultural heritage value or interest.	None specified: council has discretion for what it "believes" to be of cultural heritage value or interest.
Process for Designation or Listing	Multi-step process set out in s.29 of the OHA: including council consultation with municipal heritage committee, issuance of a notice of intention to designate, council decision to pass by-law.	Short process: council decision to list property after consultation with municipal heritage committee.
Right to Appeal/ Object to Designation or Listing	Any person may object within 30 days after publication date of notice of intention to designate property. The objection is referred to the Conservation Review Board, who holds a hearing on the matter.	No appeal/objection process
Alteration of Property	Requires council consent to application for alteration. Council may impose terms and conditions of consent.	Owner may proceed with standard building permit application to alter property. No limitations under the OHA.
Right to Appeal/ Object to Council Decision on Alteration	Owner may make application for Conservation Review Board hearing of Council's decision.	n/a
Demolition/ Removal of Building or Structure on Property	Requires council consent to application for demolition/removal. Council may impose terms and conditions of consent.	Owner to provide 60 days' notice to municipality of intention to demolish or remove building or structure on property.
Right to Appeal/ Object to Council Decision on Demolition/ Removal	Owner may appeal Council's decision to Ontario Municipal Board.	n/a

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IMPLICATIONS FOR LISTED PROPERTIES IN THE HERITAGE REGISTER - OHA

Under the OHA, different implications flow from whether a property is a Designated Property or a Listed Property. Any alteration, demolition, or removal of buildings or structures on Designated Properties requires municipal council's consent and is subject to the processes set out in the OHA, including rights of appeal to the Ontario Municipal Board or objections to the Conservation Review Board.

For Listed Properties, the OHA provides that:

27(3) If property included in the register under subsection (1.2) has not been designated under section 29, the owner of the property shall not demolish or remove a building or structure on the property or permit the demolition or removal of the building or structure unless the owner gives the council of the municipality at least 60 days notice in writing of the owner's intention to demolish or remove the building or structure or to permit the demolition or removal of the building or structure.

By requiring a 60 day written notice of an intention to remove or demolish a building included in the heritage register, the OHA provides a municipality with time to take steps to protect buildings or structures on Listed Properties from demolition or removal. The 60 day notice has the effect of temporarily precluding the issuance of any demolition or removal permit that might otherwise be legally available to an owner for 60 days.

During this 60 day period, a municipality could proceed with the process for designating individual properties under s.29 of Part IV of the OHA. According to s.30(1) of the OHA, once a "notice of intention to designate" a property has been given in accordance with s.29, then any building or demolition permit that was issued prior to the giving of the notice of intention to designate is "void as of the day the notice of intention is given". The municipality need not complete the designation process to head off the permit.

During this 60 day period, a municipality could also proceed with the process for designating a Heritage Conservation District under Part V of the OHA.

IMPLICATIONS FOR LISTED PROPERTIES IN THE HERITAGE REGISTER - OFFICIAL PLAN POLICIES

Although the OHA makes a distinction between Designated Properties and Listed Properties, many of the heritage conservation policies contained in the City of Toronto Official Plan apply to all properties in the Heritage Register, irrespective of whether they are Designated Properties or Listed Properties.

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COMING SOON

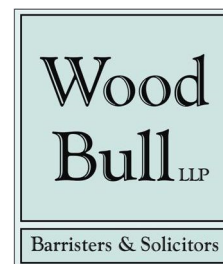
ONTARIO HERITAGE ACT: A SOURCEBOOK

In mid-September 2017, Wood Bull LLP will be launching a publicly available on-line resource, **Ontario Heritage Act: A Sourcebook**, for heritage professionals, lawyers, planners, architects, municipal heritage committee members, municipal council members, and members of the public.

The Sourcebook will provide annotations of each subsection of the *Ontario Heritage Act* and will include:

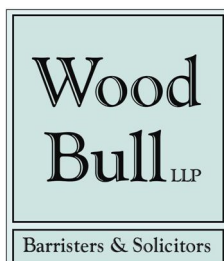
- flow charts of the different heritage processes
- legislative history
- related statutes and regulations
- case law
- commentary from Wood Bull LLP

Please check back at our website www.woodbull.ca in mid-September. Stay tuned for an announcement in the near future.



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Wood Bull LLP is a law firm that focuses on municipal, planning and development law and approvals, including environmental approvals and development charges, from both the private sector and public sector perspective.

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Specifically, the following policies will be relevant to the new Listed Properties:

3.1.5.4 Properties on the Heritage Register will be conserved and maintained consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada, as revised from time to time and as adopted by Council.

3.1.5.5 Proposed alterations, development, and/or public works on or adjacent to, a property on the Heritage Register will ensure that the integrity of the heritage property's cultural heritage value and attributes will be retained, prior to work commencing on the property and to the satisfaction of the City. Where a Heritage Impact Assessment is required in Schedule 3 of the Official Plan, it will describe and assess the potential impacts and mitigation strategies for the proposed alteration, development or public work.

The policy implications in regard to a Listed Property, particularly where redevelopment of the property is being proposed either on the Listed Property or adjacent to a Listed Property, can be significant.

WHAT CAN BE DONE:

If you have concerns with the listing of any of the 258 properties in the Heritage Register, you can make written submissions or request to speak at the Planning & Growth Management Committee by emailing pgmc@toronto.ca. If you require assistance in regard to this listing process, please contact Sharmini Mahadevan (416-203-7345 / smahadevan@woodbull.ca) or Johanna Shapira (416-203-7631 / jshapira@woodbull.ca).

This **Wood Bulletin** is intended to provide general information, updates and commentary, and should not be relied upon as legal advice. For more information, please feel free to contact any of the lawyers, planners or our main office line at 416-203-7160.

RELEVANT WEBSITE LINKS**City of Toronto:**

- Toronto Preservation Board Agenda and Staff Report: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PB25.8%20>
- Planning and Growth Management Committee Agenda (agenda not posted yet at time of **Wood Bulletin** publication): <http://app.toronto.ca/tmmis/decisionBodyProfile.do?function=doPrepare&meetingId=11890#Meeting-2017.PG22>
- Toronto Heritage Register: <https://www1.toronto.ca/wps/portal/contentonly?vgnextoid=cfc20621f3161410VgnVCM10000071d60f89RCRD&vgnextchannel=104752cc66061410VgnVCM10000071d60f89RCRD>

Legislation and Regulations:

- Ontario Heritage Act: <https://www.ontario.ca/laws/statute/90o18>
- O. Reg. 09/06 Criteria for Determining Cultural Heritage Value or Interest: <https://www.ontario.ca/laws/regulation/060009>

Wood Bull:

- Wood Bull Blogs, on topics of planning and development law and practice, including heritage matters: www.woodbull.ca/blog