



City of
Peterborough

To: Members of the Peterborough Architectural Conservation Advisory Committee (PACAC)

From: Erik Hanson, Heritage Resources Coordinator

Meeting Date: May 2, 2019

Subject: Report PACAC19-033
Removal of Properties from the Heritage Register

Purpose

A report to recommend that the PACAC provide an opinion to Council regarding the removal of properties from the Heritage Register.

Recommendation

That the Peterborough Architectural Conservation Advisory Committee approve the recommendation outlined in Report PACAC19-033, dated May 2, 2019 of the Heritage Resources Coordinator, as follows:

That the PACAC provide its opinion to Council, regarding the removal of the following properties: 714 Cumberland Avenue; 493 Bethune Street and 546 Aylmer Street, currently listed on the City's Heritage Register, pursuant to Section 27(1.3) of the **Ontario Heritage Act R.S.O. 1990**.

Budget and Financial Implications

There are no budgetary or financial implications associated with the recommendation.

Background

City Council, at its meeting of April 8, 2019, received Report CSACH19-005 providing an update on the process for removal of properties listed on the Heritage Register. That report responded to concerns by Council that there were properties listed on the

Heritage Register against the wishes of the owners. The report outlined the requirements under the **Ontario Heritage Act (OHA)** for removing listed properties which, under Section 27(1.3), requires Council to seek the opinion of its Municipal Heritage Committee (PACAC). Pursuant to this requirement, at the April 8, 2019 meeting, Council passed the following motion:

That staff be directed to seek the opinion of PACAC on removing 714 Cumberland Avenue and 493 Bethune Street from the list of registered heritage properties and report back to Council.

At its meeting of April 23, 2019 City Council amended its initial motion to include 546 Aylmer Street as well.

Section 27(1.2) of the **OHA** allows a municipal Council to include on its Heritage Register properties that are not designated but that the Council believes to be of cultural heritage value or interest. This process is known as listing. The only information required by the **OHA** for listing a property is, “a description of the property that is sufficient to readily ascertain the property.” Furthermore, there is no obligation by the municipality under the **OHA** to inform or consult with owners of properties prior to listing. Peterborough, however, has consistently provided a comprehensive description of the heritage values of each property to be listed, and has mailed a notice to owners which includes a clear explanation of the listing process.

Listing of properties on the Heritage Register does not place any legal restrictions on a property although it does require an owner to provide the municipality sixty days notice of their intention to seek a demolition permit and provide Council with any information it may require relating to the property. Sixty days is enough time for an opinion regarding designation of the property to be received by Council from the heritage committee, as required by the **OHA**. Council may then choose to pursue designation of the property or de-list it and allow demolition. Listing of properties on the Register is not a required first step in designation of properties; it is a mechanism for providing Council the time to give consideration to providing protection if it is warranted. If a property is removed from the Register, and assuming all other applicable law has been met, a demolition permit can be issued within 72 hours of application for the permit.

The **OHA** does not provide a requirement for notification of, or objection to, listing because, even though Council may choose to designate a listed property if it is threatened, there is no legal encumbrance placed on the property by listing alone. When Council chooses to seek designation, an act that will encumber a property with restrictions regarding alteration and demolition, there are legal avenues under the **OHA** for an owner to object.

The failure of Council to pursue designation of a property without the owner’s consent has been successfully challenged in court. In Tremblay vs Lakeshore, an Ontario Divisional Court held that by not pursuing designation of a heritage property because the Town of Lakeshore, Ontario did not have the owner’s consent, it had removed the ability of the owner to object under the **OHA** and have that objection heard by the Conservation Review Board, a provincial body that adjudicates disputes over

designation. The committee may wish to give consideration as to whether, by extension, removal of a listed property from the Heritage Register at an owner's request, also removes the capacity of Council to protect the community's heritage by not providing a timeframe for careful review and protection of the property through designation.

Submitted by,

Erik Hanson
Heritage Resources Coordinator

Emily Turner
Heritage Researcher

Contact Name:

Erik Hanson
Heritage Resources Coordinator
Phone: 705-742-7777 Ext. 1489
Toll Free: 1-855-738-3755
Fax: 705-748-8824
E-Mail: ehanson@peterborough.ca