

Daniel B. Artenosi
Partner
Direct 416-730-0320
Cell 416-669-4366
dartenosi@overlandllp.ca

Overland LLP
5255 Yonge St, Suite 1101
Toronto, ON M2N 6P4
Tel 416-730-0337
overlandllp.ca



October 31, 2024

John Kennedy
City Clerk
City of Peterborough
500 George Street North
Peterborough, ON K9H3R9

Dear Mr. Kennedy,

**RE: Notice of Intention to Designate 1400 Monaghan Road
Ontario Heritage Act, Section 29(5)
Notice of Objection by 2695867 Ontario Inc. (J&J Developments)**

We are the solicitors for 2695867 Ontario Inc. ("**J&J Developments**"), being the owner (the "**Owner**") of the property municipally known as 1400 Monaghan Road in the City of Peterborough (the "**Property**").

On October 1, 2024, the City of Peterborough (the "**City**") issued a Notice of Intention to Designate the Property under Part IV, Section 29 of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended (the "**Notice of Intention**"). We have reviewed the background reports leading to the Notice of Intention, notably the Heritage Designation Brief dated May 2024 prepared by Erik Hanson (the "**Heritage Designation Brief**").

On behalf of our client, we hereby object to the Notice of Intention pursuant to Section 29(5) of the *Ontario Heritage Act* (the "**Heritage Act**") (the "**Notice of Objection**").

Review of Heritage Designation Brief

There are numerous concerns with the purported basis for designation in the Heritage Designation Brief. A more detailed preliminary review and commentary of the Heritage Designation Brief prepared by ERA Architects dated October 31, 2024 is enclosed herewith (the "**ERA Review**"). In summary, the Heritage Designation Brief grossly overstates the tangential cultural heritage value exhibited on the Property. In particular, the existing structure exhibits modest value, certainly not to the level of significance to warrant designation under Part IV of the Ontario Heritage Act.

In addition to the qualitative concerns set out in the ERA Review, the process leading up to the Notice of Intention also warrants further scrutiny. The only "background" discussion of the Property is set out in the Report titled *Designation of 1400 Monaghan Road, Report PACAC24-006*, authored by Brad Appleby, Director, Planning, Development & Urban Design, dated May 7, 2024 (the "**Director of Planning Report**"). This discussion is entirely silent on what gave rise to Mr. Hanson's review of the Property. That being said, the Heritage Designation Brief itself states that it "*was prepared at request of PACAC.*"

As a general proposition, the process of designation does not typically originate at the request of a local heritage advisory committee. Rather, under Section 29 (2) of the Heritage Act, where a municipal council has appointed a municipal heritage committee, council shall "*consult with its municipal heritage committee*" before giving notice of intention to designate.

In the present case, the process of designation followed a highly iterative pre-application consultation (“**PAC**”) process that our client undertook with City Staff, including members of City Planning and Heritage amongst other City Divisions. Initial development concepts were evaluated and revised in direct response to City Staff’s comments, and the various policy objectives to be considered as part of Staff’s comprehensive assessment. Through this iterative process, our client and its project team were in the process of finalizing materials for submission to the City in support of planning applications to permit the redevelopment of the Property with a 6-storey residential building in keeping with the Property’s planned function in the Official Plan as specifically confirmed by City Planning Staff and further described below.

As advised, at no point during the PAC process was our client informed by Heritage Staff that the Property was being considered for designation, nor that the existing structure exhibited design features worthy of conservation. City Staff did not initiate the designation process in response to an impending development proposal or demolition permit. Rather, it was PACAC that commenced the designation process while the Owners worked with City Staff to refine a development proposal that implements key objectives of the City’s Strategic Plan. It is noteworthy that the Director of Planning Report does not itself put forth a qualitative opinion in support of designation; rather, the Report simply acts as a conduit for the Heritage Designation Brief that PACAC itself requested.

The decision to designate a property under Part IV of the Ontario Heritage Act is a permissive, discretionary exercise. That is to say, even where a property clearly meets the criteria for designation set out in Ontario Regulation 9/06, City Council retains the discretion to choose whether to proceed with designation. In such circumstances, the Heritage Act states that Council “*may*” (not “*shall*”) proceed with designation.

As a discretionary exercise that affects a planning matter, the decision to designate requires a consideration and balancing of various policy objectives. In addition to the qualitative assessment by ERA Architects which raises obvious concerns with the assessment contained in the Heritage Designation Brief, we note the following additional salient points:

- The existing structure is in a state of significant disrepair, and it is uninhabitable without basic amenities such as heating, running water or a kitchen. The structure is filled with exposed asbestos, mold and rotting subfloor as a result of the previous owner’s neglect.
- The Property is designated *Neighbourhood* on Schedule A (Urban Structure) and *Residential* on Schedule B (Land Use) in the City of Peterborough Official Plan (the “**Official Plan**”).
- The following uses, amongst others, are permitted in the *Residential* designation:
 - Mid-rise residential uses;
 - Communal housing, which may include special needs housing; and,
 - Additional residential units.
- The Property has excellent access to public transit, being adjacent to an existing bus station, and within 200 metres of Charlotte Street, which runs multiple bus routes to Downtown Peterborough.
- In this geographic context, the Official Plan directly supports the development of new mid-rise residential developments up to a maximum height of 6 storeys.

The background materials in support of PACAC's recommendation to designate the Property are silent on any of these considerations affecting the Property, despite the highly iterative PAC review that had been undertaken by City Staff.

The contemporary approach to heritage designation is rooted in a values-based model, which focuses on the values and meanings that make a place significant, rather than just preserving its physical fabric. In undertaking a values-based assessment, the decision maker should not extract the heritage identification component from the overarching policy framework that includes, but is not limited to, the importance of conserving significant cultural heritage resources. This model is entrenched in the Provincial Planning Statement, which requires a comprehensive review and balancing of the various key provincial policy objectives.

The Reasons for Designation set out in the Notice of Intention identify the purported values worthy of designation, including the proposition that "1400 Monaghan Road has cultural heritage value or interest as a unique example of a residence for an affluent owner executed in a blend of the Spanish Colonial and Georgian Revival styles in Peterborough."

With respect, it is fundamentally inconsistent with the Provincial Planning Statement to prioritize the purported value of the existing structure as "*a unique example of a residence for an affluent owner*" in the face of a housing crisis that demands a greater number and variety of more affordable housing units, particularly in obvious locations that support gentle intensification.

Should you require any further information in support of this Notice of Objection, please advise the undersigned and Rowan Barron (at rbarron@overlandllp.ca or 647-678-7727).

Yours truly,

Overland LLP



Per: Daniel B. Arsenosi
Partner

Encl.



MEMO

Project:	1400 Monaghan Road, Peterborough		
Project #:	22-067	Memo #:	1
To:	Daniel Artenosi, Overland LLP		
From:	ERA Architects Inc.	Date:	October 31, 2024
Subject:	1400 Monaghan NOID Review	Total Pages:	7

At the request of Overland LLP, ERA Architects (“ERA”) has been engaged to conduct a review of the Notice of Intention to Designate (“NOID”) for the property at 1400 Monaghan Road (“the Site”), adopted by Peterborough City Council and dated October 1, 2024.

We understand that the NOID was prepared on the basis of an evaluation by City Staff, conducted on the recommendation of the Peterborough Architectural Conservation Advisory Committee (“PACAC”). The evaluation employs the prescribed Criteria for Determining Cultural Heritage Value or Interest found in the Ontario Regulation 9/06 (“the O. Reg. 9/06 criteria”, or “the criteria”) made under the *Ontario Heritage Act* (“OHA”).

ERA has reviewed the NOID, and its supporting O. Reg. 9/06 evaluation found in City Staff’s September 16, 2024 designation report to the General Committee (“Report IPGPL24-027”). We have also conducted research and analysis to inform our own conclusions on the Site’s cultural heritage value.

ERA’s assessment concludes that the Site is not a strong candidate for designation under Part IV of the OHA. Further, our assessment comes to different conclusions than the NOID and its accompanying report in response to several of the O. Reg. 9/06 criteria, and in the case of a few criteria, it is our view that the analysis applies too low a threshold to rationalize the Site’s designation. This memo provides an overview of our review and findings.

The O. Reg. 9/06 Criteria: Overview

O. Reg. 9/06 provides nine threshold questions to assess properties for candidacy for designation. They are generally organized under three types of value:

- **Design / Physical:** Where the property is outstanding as a physical object;
- **Historical / Associative:** Where the property is outstanding because it is associated with important actors, events, themes, designers etc. in the community’s history, and where it provides evidence or conveys information about those associations;
- **Contextual:** Where the property contributes to a valued character / identity of the physical environment in its surrounding area, beyond the boundaries of its own property.

The O. Reg. 9/06 criteria consist of three questions per each of the above categories, for a total of nine criteria.



Between 2005-2022, properties that were assessed to meet **one or more** of the O. Reg. 9/06 criteria were candidates for designation under the OHA. As of January 1, 2023, a “property may be designated under section 29 of the Act if it meets **two or more of the criteria** for determining whether it is of cultural heritage value or interest...” (emphasis added).

In the sections that follow, we review some examples of the places where our analysis of the Site under the O. Reg. 9/06 criteria diverges with that of the NOID and its accompanying Report IPGPL24-027

Criterion 1: The property has design value or physical value because it is a rare, unique, representative or early example of a style, type, expression, material or construction method.

The O. Reg. 9/06 evaluation in Report IPGPL24-027 says:

1400 Monaghan Road is a locally unique and well executed example of the Georgian Revival style blended with the Spanish Colonial Revival style. The classic Georgian Revival form and details are expressed through many of the characteristics of the Spanish Colonial Revival style.

The report expands on this, saying the Martin House on the Site is “unique to Peterborough as a very well executed blending of two revival styles, Georgian and Spanish”.

Our understanding of Criterion 1 is that it asks whether the Property is a “rare, unique, representative or early example of **a style**” (emphasis added). It is extremely common for buildings to feature a combination of stylistic elements typical of their era of construction - particularly in cases of builder/contractor-designed buildings. These common buildings fail, in our view, to rise to the architectural style test in Criterion 1, which is designed to conserve buildings that exemplify **a particular** architectural style.

Based on our experience, the Martin House is a fairly typical example of Georgian Revival construction, common to builder Henry T. Hickey’s many works throughout the neighbourhood, including the houses at 627 Gilmour Street and 612 Homewood Avenue. Hickey built the Martin House in a Georgian Revival style, like these other houses, and added a few minor details common to Spanish Revival architecture (which in Ontario generally reflects a mix of the Spanish Colonial and Mission styles): upper-storey stucco cladding, brick quoined window surrounds, an open eave overhang, three arched windows in the dormer, and a Spanish tile roof.

The building does not reflect several key elements of the Spanish Revival style, which much rarer than Georgian Revival in Canada. These would include a very low-pitched roof, a curved gable / dormer / roof parapet, and prominent arches above doors or principal windows. Furthermore, the Spanish tile roof (the most apparent attribute of the Spanish Revival influence here) has since been removed, reducing the building’s integrity and ability to convey any potential value under this criterion. Similarly, the building’s chamfered rafter tails have since been removed. It is not good practice to designate or identify attributes on the basis of elements that no longer exist.

In our view, the Martin House can thus not be considered “a very well executed blending of two revival styles, Georgian and Spanish”. Rather, it is a typical contractor-designed Georgian Revival house with some minor Spanish Revival elements, just like the neighbouring houses at 627 Gilmour St (with its two arched windows and arched gable dormer) and 631 Gilmour St (with an arched gable dormer). In our view, the house and lot’s comparatively large scale does not make it a unique or better-executed example of the style.



The Henry T. Hickey-built houses at 627 Gilmour St (left) and 631 Gilmour St (right) both reflect a combination of Georgian and Spanish Revival elements (ERA, 2024).

Criterion 2: The property has design value or physical value because it displays a high degree of craftsmanship or artistic merit.

The Site’s O. Reg. 9/06 evaluation says:

The property displays a high degree of craftsmanship and artistic merit in both its interior and exterior architectural features which are executed to a high standard of quality.

Unlike some of the O. Reg. 9/06 criteria, Criterion 2 imposes a high threshold: the building needs to have been constructed with a high degree of craftsmanship or artistic merit.

The Ontario Heritage Tool Kit: Evaluating Heritage Properties booklet, 2021 (which provides the Province of Ontario’s guidance on interpreting the O. Reg. 9/06) provides the following guidance for the interpretation of Criterion 2:

*The property satisfies this criterion if it currently demonstrates or presents craftsmanship or artistic merit in a **greater than normal quality** or at an intensity **well above an industry standard** (emphasis added).*

This means that, in the case of craftsmanship, it must be notably distinct from the typical levels of craftsmanship common to its era. In the case of artistic merit, the building, or one or more of its component parts, should effectively rise to the level of a piece of art.

Neither the NOID nor its accompanying Report IPGPL24-027 currently demonstrate how the Martin House reflects any higher than normal craftsmanship or artistic merit, both of which are noted in the proposed designation.

Some ways that buildings might reflect a high degree of craftsmanship would be in hand-carved interior wood detailing (e.g. wood window surrounds, wood panelling, balustrades), in hand-carved terra cotta carvings, or in notably careful or atypical construction methods (e.g. wood joinery, Flemish-bond brickwork).

Some ways that buildings might reflect a high degree of artistic merit would be in the exceptional architectural composition of buildings and landscape features. Canada’s greatest architectural landmarks would generally be considered to meet the test for artistic merit.

The Martin House, on Site, is a typical, builder-designed house that reflects mass-produced, made-to-order interior and exterior elements - including interior woodwork applied with glue. These elements are found all throughout Peterborough's Old West End, in Henry T. Hickey houses and others.

It should be noted that it is possible for a municipality to have no examples of properties that meet this high threshold. However, an easy threshold test for the application of Criterion 2 within Peterborough's local context would be, at minimum, to begin with custom-built, *architect-designed* residences, for example those at 404 Belmont Ave (designed by architects Sproatt & Rolph), 499 Homewood Ave (designed by architect William Blackwell), and 487 Hunter St W (designed by architect S. B. Coon). It would be exceedingly rare for a

contractor-built residence to rise to the level of high craftsmanship or artistic merit, and again, there is no information in the Site's NOID or accompanying report to demonstrate how the Martin House meets this threshold.



An example of high craftsmanship can be found in the custom-designed, exquisitely-undertaken interior wood detailing at the York Club, 134 St. George St, in Toronto (ERA).

Criterion 4: The property has historical value or associative value because it has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community.

The Site's O. Reg. 9/06 evaluation says:

The subject property has direct association with prominent Peterborough businessman, Herbert S. Martin, co-founder of the Martin-Hewitt Container Company. Martin was a leader in the development of corrugated containers including the development of patented machinery. The company was specifically located in Peterborough to provide containers to local industries like the Quaker Oats Company which were adapting their packaging processes to meet new merchandising methods.

As noted in the Ontario Heritage Tool Kit: Evaluating Heritage Properties booklet, 2021, Criterion 4 offers a two-part test:

- 1. The association is direct - whether the property exemplifies or has strong evidence of its connection to a theme, event, belief, person, activity, organization or institution. For example, the property may be a product of, or was influenced, or was the site of - an event, theme, belief, activity or organization.*
- 2. It is significant to the community - because a theme, event, belief, person, activity, organization or institution has made a strong, noticeable or influential contribution to the evolution or pattern of settlement and development in the community.*

Candidate properties must meet **both** these tests to meet this criterion.



In our view, the Site fails to meet both tests. To start, the property must “exemplify or have strong evidence of its connection” to Herbert Samuel Martin. This means that there should be physical evidence of Martin’s residence on the Site; this type of physical evidence would typically form the heritage attributes of the Site’s designation on this basis. Based on our site assessment conducted on October 18, 2024, it is our understanding that no such physical evidence exists.

More importantly, the NOID notes that Herbert Samuel Martin is a person significant to a community. It expands by saying that he was a prominent Peterborough businessman, and that his company (the Martin-Hewitt Container Company) was a leader in its industry, and a key business in Peterborough.

Peterborough is a city with well-documented industrial and manufacturing heritage, exemplified by the historical presence of prominent, well-known businesses including Canadian General Electric, the Quaker Oats Company, the Peterborough Lock Company, the Peterborough Canoe Company, and others. These companies undeniably shaped the evolution and pattern of settlement / development of the community. As a result, they occupy a space in the public consciousness in Peterborough today, and a record of their presence and prominence in Peterborough exists throughout traditional published sources and on the internet (e.g. Wikipedia pages, articles in the Peterborough Examiner on key moments in Peterborough’s history, history blogs). They are significant to the community.

In contrast, based on our historical review, the Martin-Hewitt Container Company was a relatively small-scale business that originated in Toronto, and eventually shifted to Peterborough, driven by business opportunity. This is a typical story common to all kinds of private businesses throughout history. The company’s decision to co-locate with companies like Quaker Oats to provide them with containers does not make it key to the facilitation and growth of those more significant businesses; it simply reflects a good business decision by a typical entrepreneur.

There is no evidence that the Martin-Hewitt Container Company occupies any space in the public consciousness in Peterborough. This was a company active in Peterborough for 24 years at the very end of Peterborough’s significant industrial period, from 1929 until it was acquired in 1953. It is not a company name with which locals are familiar today, and the only place it exists on the internet is in reference to the proposed designation of the Site at 1400 Monaghan Road.

In our view, the fact that Herbert Samuel Martin existed as a professional and a businessperson in Peterborough does not make him, or his company significant to the community, nor does the Site exemplify or have strong evidence of his connection. Our assessment finds that the Site does not meet the two-part test in Criterion 4.

Criterion 5: The property has historical value or associative value because it yields, or has potential to yield, information that contributes to an understanding of a community or culture.

Under Criterion 5, the Site’s O. Reg. 9/06 evaluation says:

The property has the potential to yield additional information regarding the development of Peterborough’s affluent West End in the early twentieth century, a time when residential design was adapting to reflect profound societal and technological changes.

Under Criterion 8, the O. Reg. 9/06 evaluation expands on this idea:



*The property is physically, functionally and historically linked to its surroundings as a cornerstone of the West End neighbourhood landscape and **as an example of an affluent residence** well designed in the prevalent architectural styles of the day (emphasis added).*

Setting aside the decision to designate a place as an example of how affluent people lived (which could be critiqued as a matter of equity in heritage conservation), it is our sense that the NOID's evaluation under Criterion 5 imposes too low a threshold to demonstrate the property's candidacy for designation.

Our understanding of the rationale is that the Martin House, via its simplified massing, lower building foundation, electrical lighting, indoor plumbing and prominent attached garage, conveys an understanding of the ways upper-middle-class residential design was adapting to the modernizing technological and social trends of the early 20th century, including the rise of the automobile, and the reduced use of domestic staff.

It is not clear to us how the Martin House provides a better representation of these trends than any other larger-scale houses in the Old West End (or beyond) built in the 1920s - 30s. Every house of this era would reflect the lowered foundations, simplified massing, electrical lighting and indoor plumbing found at the Martin House. Meanwhile, the Old West End is replete with prominent and highly-visible integrated or attached garages, including on the Henry T. Hickey houses at 612 Charlotte St, 210 Geraldine Ave, 633 Gilmour St, 615, 619 and 623 Homewood Ave, and 608 Walkerfield Ave.



The large-scale Henry T. Hickey-built houses at 623 Homewood Ave (left) and 633 Gilmour St (right) both include prominently visible attached / integrated garages. They both exemplify the shift toward automobile use in the early 20th century (Google Streetview).

In our view, the Martin House is not such a significant representation of technological and social change in the early 20th century that would merit designation above any of its neighbours that exemplify all the same elements and attributes.

Concluding Thoughts on the O. Reg. 9/06 Evaluation: 1400 Monaghan Rd as a Contextual Contributor

Based on our assessment, as presented above, it is ERA's view that the building on Site is not so exceptional or outstanding that it should be elevated to individual designation status under Part IV of the OHA for any design/physical or historical/associative value.



ERA Architects Inc.
#600-625 Church St
Toronto ON, M4Y 2G1

The NOID and accompanying report include a rationale that the Site is a contributor to the character of the Old West End, as a broader contextual area. Further, that its design and construction by local contractor Henry T. Hickey reflects its place in the neighbourhood, as one of roughly 50 Hickey houses of similar design in the vicinity.

If the City of Peterborough wishes to pursue designation of the Old West End and its component parts as a Heritage Conservation District (“HCD”), where all houses of comparable contextual value are protected, it could do so in accordance with the provisions of Part V of the OHA.

The *Avenues and the Neighbourhood HCD* already proactively conserves the zone south of Charlotte St, between Park St N and Monaghan Rd. While City documents through the 2010s suggested that the rest of the Old West End might continue to be studied for HCD status, we have found no evidence of Council proceeding with such plans.

In cases where properties are assessed to be candidates for individual designation only because they carry contextual value (as opposed to being outstanding heritage resources in their own right), decision-makers must consider a balance of objectives to determine whether such resources are so significant that they merit individual protection in perpetuity via Part IV designation.

We appreciate the opportunity to review this NOID, and we thank you for your consideration of our review.

Sincerely,

A handwritten signature in black ink, appearing to read 'Emma Abramowicz', written in a cursive style.

Emma Abramowicz
Senior Project Manager, ERA