



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	January 16, 2024
SUBJECT/REPORT NO:	Notice of Objection to the Notice of Intention to Designate 54 Hess Street South, Hamilton, under Part IV of the <i>Ontario Heritage Act</i> (PED24002) (Ward 2)
WARD(S) AFFECTED:	Ward 2
PREPARED BY:	Meg Oldfield (905) 546-2424 Ext. 7163 Alissa Golden (905) 546-2423 Ext. 1202
SUBMITTED BY:	Shannon McKie Acting Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That the Notice of Objection to the Notice of Intention to Designate 54 Hess Street South, Hamilton, under Part IV of the *Ontario Heritage Act*, attached as Appendix “A” to Report PED24002, be received;
- (b) That Council does not withdraw the Notice of Intention to Designate 54 Hess Street South, Hamilton, under Part IV of the *Ontario Heritage Act*;
- (c) That the draft By-law to designate 54 and 56 Hess Street South, Hamilton under Part IV of the *Ontario Heritage Act*, attached as Appendix “B” to Report PED24002, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

EXECUTIVE SUMMARY

This Report notifies Council of the objection from the owner of 54 Hess Street South, Hamilton, to the Notice of Intention to Designate the property and recommends that Council proceed with enacting the by-law to designate both 54 and 56 Hess Street South, Hamilton, under Part IV of the *Ontario Heritage Act*.

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On October 26, 2023, the City Clerk received an objection to the Notice of Intention to Designate 54 and 56 Hess Street South, Hamilton from legal counsel representing the owners of 54 Hess Street South, the northern half of the two-and-one-half storey semi-detached stone Second Empire style building constructed circa 1852 (see photographs attached as Appendix “C” to Report PED24002). No objections were received regarding the designation of 56 Hess Street South.

Under Section 29(6) of the *Ontario Heritage Act*, any objections must be considered by Council, who may choose whether or not to withdraw its Notice of Intention to Designate. The objection, attached as Appendix “A” to Report PED24002, does not dispute the heritage value of 54 Hess Street South and is instead based on the physical condition of the building. Therefore, staff recommend that Council receive the Notice of Objection and reaffirm its decision to designate the property by enacting the draft By-law to designate 54 and 56 Hess Street South, attached as Appendix “B” to Report PED24002.

Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: Under Section 29(5) of the *Ontario Heritage Act*, a person who objects to a proposed designation shall, within thirty days after the date of publication of the notice of intention, serve on the clerk of the municipality a notice of objection setting out the reason for the objection and all relevant facts.

Under Section 29(6) of the Act, 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. Section 29(7) requires that a notice of withdrawal be issued should Council decide to withdraw the Notice of Intention to Designate the property in response to the objection. Section 29(8) of the Act requires Council to pass a by-law within 120 days from the date of the Notice of Intention to Designate. Once a designation by-law has been passed, any further objection would be heard before the Ontario Land Tribunal.

Designation under Part IV of the *Ontario Heritage Act* allows municipalities to recognize a property’s cultural heritage value or interest, and to conserve and manage the property through the Heritage Permit process enabled under Sections 33 (alterations) and 34 (demolition or removal) of the Act.

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Where alterations to designated properties are contemplated, a property owner is required to apply for, obtain, and comply with a Heritage Permit, for any alteration that “is likely to affect the property’s heritage attributes, as set out in the description of the property’s heritage attributes in the by-law” (Sub-section 33(1)).

BACKGROUND

On October 11, 2023, Council approved the recommendation to issue a Notice of Intention to Designate the properties located at 54 and 56 Hess Street South, Hamilton, comprised of a semi-detached two-and-one-half storey stone Second Empire style building constructed circa 1852, in accordance with Part IV of the *Ontario Heritage Act* (see Report PED23218, Hamilton Municipal Heritage Committee Report 23-009 and Planning Committee Report 23-016).

The Notice of Intention to Designate was published in the Hamilton Spectator on October 13, 2023 and served on the registered owners of 54 and 56 Hess Street South and the Ontario Heritage Trust. On October 26, 2023, the City Clerk received a Notice of Objection from legal counsel representing the registered owners of 54 Hess Street South, Hamilton. No further Notices of Objection were received for 54 or 56 Hess Street South and the legislated objection period ended on November 13, 2023.

Property Standards and Building Safety

On August 10, 2023, Building staff issued an Order to Comply for 54 Hess Street South to address the unsafe condition of the vacant building, which required the owner to take immediate action to make the building safe and for the owner to commission a professional engineers report on the structural integrity of the stone foundation, exterior walls, chimneys, supporting structure interior and exterior floor and wall systems and the remaining roofing and structure. A professional engineer’s letter dated August 25, 2023, was received by the Building Division that indicated that there was a high probability that the building could collapse onto the adjacent sidewalk and traffic lanes and recommended that it be demolished.

Given the heritage value and pending recommendation to designate the subject properties, Building staff engaged a professional engineer with demonstrated experience with historic masonry structures from Category 36 – Heritage Architectural and Engineering, of the City’s Professional and Consultant Services Roster, to conduct a peer review of the structural integrity of the building. The owner of 54 Hess Street South granted access to the City-retained professional engineer on August 30, 2023, who determined, in their professional opinion, that the building could be made safe and address the Order to Comply without demolition.

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On September 1, 2023, Building staff issued an Order to Comply for 54 Hess Street South to address the unsafe condition of the building, requiring the owner to take action to make the building safe by September 15, 2023. As part of this Order to Comply, safety fencing was erected to prevent access to northside of the building and adjacent sidewalk, one lane of traffic on Main Street West was closed and jersey barriers and fencing were installed to protect against debris, the northwest and northeast chimneys were removed to the soffit line, and the front entrance slab was shored (see photographs attached as Appendix “C” to Report PED24002).

On November 10, 2023, Licensing and By-law Services staff served a Property Standards Order requiring the owner of 54 Hess Street South to address remaining concerns regarding the state of the roof, north wall and eastern bay window, in an attempt to prevent further deterioration of the significant built heritage resource through water infiltration and freeze-thaw cycles of the upcoming winter. The City received a Notice of Appeal of the Property Standards Order on November 20, 2023.

On December 6, 2023, Cultural Heritage Planning Staff notified the owners of 54 Hess Street South and their legal counsel of the timing of this Report and Council’s consideration of their Notice of Objection to the designation.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Recommendations of this Report are consistent with Provincial and Municipal legislation, policy and direction, including:

- Ensuring significant built heritage resources are conserved (*Provincial Policy Statement*, 2020, Sub-section 2.6.1);
- Designating properties of cultural heritage value under Part IV of the *Ontario Heritage Act* (Urban Hamilton Official Plan, Section B.3.4.2.3);
- Encourage the rehabilitation, renovation and restoration of built heritage resources so that they remain in active use (Urban Hamilton Official Plan, Section B.3.4.1.5); and,
- Use all relevant provincial legislation and all related plans and strategies to appropriately manage, conserve and protect Hamilton’s cultural heritage resources (Urban Hamilton Official Plan, Section B.3.4.2.1(i)).

RELEVANT CONSULTATION

External

- Property Owners and their legal counsel.

Internal

- Planning and Economic Development Department, Building Division, Building Inspections;
- Planning and Economic Development Department, Licensing and By-law Services Division, Municipal Law Enforcement; and,
- Corporate Services Department, Legal and Risk Management Division, Legal Services.

In addition, Planning staff have emailed the Ward Councillor (Councillor C. Kroetsch) for Ward 2 and provided an overview of the Notice of Objection to designate 54 Hess Street South and the recommendations of this Report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The intent of municipal designation, under Part IV of the *Ontario Heritage Act*, is to enable a process for the management and conservation of significant cultural heritage resources. Once a property is designated, the municipality can manage change to a property through the Heritage Permit process to ensure that the significant features of the property are maintained.

Notice of Objection for 54 Hess Street South

The Notice of Objection letter dated October 26, 2023, received from the legal counsel of the owners of 54 Hess Street South, attached as Appendix “A” to Report PED24002, states that Council erred in its decision to designate the property as they believe it does not possess the requisite qualities under Section 29 of the *Ontario Heritage Act* to warrant designation. Additionally, the letter notes the physical deterioration of the building, indicating that the consulting engineer for the owner advised that the building should be demolished due to its physical deterioration. The letter cites the consulting engineer’s advice that there is a high probability that the building could collapse on the adjacent sidewalk and traffic lanes due to the rapid deterioration of the structure elements of the building, including bulging of the exterior walls, possibly caused by vibration impacts. Documentation from the consulting engineer was not attached to the objection letter but has been provided separately to the City’s Building Division as part of the Order to Comply process and reviewed by Cultural Heritage Planning staff.

Staff Comments on Objection

Staff determined that 54 and 56 Hess Street South meet six of the nine criteria contained in *Ontario Regulation 9/06*, as amended by *Ontario Regulation 569/22*, and are therefore worthy of designation under Part IV of the *Ontario Heritage Act* (see Report PED23218). While the objection letter states that the owners of 54 Hess Street

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South believe the property does not possess sufficient heritage value, the objection does not specifically dispute any of the criteria or provide any documentation to support this claim.

The objection appears to be primarily based around the deteriorated state of the vacant building. The immediate safety concerns for the building were addressed by the most recent Order to Comply from the Building staff, and the continued deterioration of the building is intended to be addressed by the Property Standards Order recently issued by Municipal Law Enforcement staff. Further, designation is proposed for both 54 and 56 Hess Street South, which are comprised of a semi-detached stone building, and 56 Hess Street South is an occupied building with no identified safety concerns.

Should Council reaffirm its decision to designate the properties and enact the designation by-law, any future appeals of the designation by-law would be heard by the Ontario Land Tribunal. The Ontario Land Tribunal considers a number of matters, such as the proposed designation of a property as having cultural heritage value or interest, however, according to the Ontario Land Tribunal Appeal Guide:

“The OLT does not hear matters on costs of physical maintenance, repairs, or any proposed work related to the actual condition of the property (or structure), as these are outside the scope of the evaluation of cultural heritage value or interest.”

Therefore, any concerns regarding the cost of physical repairs to the building are not relevant to the objection of whether the property is worthy of designation under the *Ontario Heritage Act*. However, it is important to note that designated properties are eligible for financial incentives, such as development charge exemption for adaptive reuse within the building envelope, as well as grant and loan programs. The Hamilton Heritage Property Grant Program is intended to provide financial assistance in the form of a grant for structural / stability work required to: conserve and restore heritage features of properties used for commercial, institutional, industrial or multi-residential purposes; the conservation and restoration of heritage features of properties; and for heritage studies/reports/assessments for properties that are designated under the *Ontario Heritage Act*.

Therefore, staff recommend that the notice of objection to the designation of 54 Hess Street South, attached as Appendix “A” to Report PED24002, be received, that Council not withdraw its Notice of Intention to Designate, and that the draft by-law to designate 54 and 56 Hess Street South, attached as Appendix “B” to Report PED24002, be enacted.

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ALTERNATIVES FOR CONSIDERATION

Under Section 29 (6) of the *Ontario Heritage Act*, City Council may decide whether or not to withdraw the Notice of Intention to Designate the property.

Notice of Withdrawal

Notices of Intention to Designate were served on both 54 and 56 Hess Street South and the proposed Statement of Cultural Heritage Value or Interest and Description of Heritage Attributes attached as Appendix “B” to Report PED24002 would protect both 54 and 56 Hess Street South, a semi-detached stone structure. If Council decides to withdraw its Notice of Intention to Designate 54 Hess Street South, staff recommend that the notices for both 54 and 56 Hess Street South be withdrawn as they are interconnected. By withdrawing the Notice of Intention to Designate, a Notice of Withdrawal would be served, and the municipality would be unable to provide long-term, legal protection to these significant cultural heritage resources (designation provides protection against inappropriate alterations and demolition) and would not fulfil the expectations established by existing municipal and provincial policies.

Without designation, the properties would not be eligible for the City’s financial incentives for heritage properties, including development charge exemption and grant and loan programs.

Designation alone does not restrict the legal use of property, prohibit alterations and additions, nor does it restrict the sale of a property, or been demonstrated to affect its resale value. However, designation does allow the municipality to manage change to the heritage attributes of a property through the Heritage Permit process.

Staff does not consider withdrawing the Notice of Intention to Designate either of the properties to be an appropriate conservation alternative.

APPENDICES AND SCHEDULES ATTACHED

- Appendix “A” to PED24002 – Notice of Objection to the Notice of Intention to Designate 54 Hess Street South, Hamilton, dated October 26, 2023
- Appendix “B” to PED24002 – Draft By-law to Designate 54 and 56 Hess Street South, Hamilton under Part IV of the *Ontario Heritage Act*
- Appendix “C” to PED24002 – Photographs of 54 Hess Street South, Hamilton, taken November 14, 2023

MO/AG/sd