

# THE RISKS OF SCALING UP OTTAWA'S HERITAGE REGISTER

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Over the past several years, many Ottawa property owners have received notice that their properties have been listed in the register of the city's Heritage Inventory Project. This project, pursued under the Ontario Heritage Act ("OHA"), is intended to identify and better protect Ottawa's historic buildings. In 2018, the City of Ottawa issued an unprecedented number of notices, totaling over 1,700 as of May, 2018, with the list yet to be finalized.<sup>[1]</sup>

The speedy evaluation of individual neighbourhoods for buildings of purported heritage interest has shocked residents and owners alike. More than 10% of the properties in Old Ottawa East and South were added to the heritage register when the neighbourhoods were canvassed in 2016.<sup>[2]</sup> This trend has only increased in subsequent years as more areas of the City have been canvassed. Many owners have been surprised that their buildings, some lacking any obvious historical value, have been added to the list. Although the listings appear random, there are standards to which the City must adhere. Any property listed must be of interest according to the Heritage Inventory Project's design test and the neighbourhood heritage statement attributes.

The list has not been limited to homes; commercial buildings have been proposed to be added, including office buildings, as have places of worship, and a variety of other forms of use.

Despite the commonly held assumption, being added to the register does **not** indicate designation as a heritage building. Rather, it serves to identify a building of heritage interest, for which the City would like a chance to consider its heritage value before it is demolished.

# The Purpose of the Register

Section 27 (1.2) of the OHA allows municipalities to keep a register of properties not designated Heritage buildings, but which they believe to potentially be of cultural heritage value or interest.<sup>[3]</sup>

The register may include property ... that the council of the municipality believes to be of cultural heritage value or interest.

The purpose of this section is to address a common problem faced in protecting heritage buildings across the province: buildings being demolished and replaced before they can be assessed for their heritage value.<sup>[4]</sup> Through the creation of a register, the City argues that it can better ensure buildings are not lost before being identified or formally recognized in the long heritage designation process. For example, in the event a building of interest was slated for demolition, City planners would have 60 days to assess a building to determine if it warrants protection. This is contrasted with the 20 days typically required pursuant to the Building Code Act for a decision to be made on a demolition permit. The City can quickly canvas neighbourhoods, identifying buildings which may be of cultural value or interest and rely on the 60 day notification period to determine if the building should be saved when the risk of demolition arises.

For mass numbers of heritage properties protecting the look and feel of a community, Heritage Conservation Districts are another tool available under the OHA. We argue that due to the degree that entire neighborhoods are being added to the register, this would be better addressed through the checks and balances and public process associated with Heritage Conservation Districts as contemplated under Part V of the OHA. The authors further note that if a Heritage Conservation District was created with a study or plan that predates 2005, the District itself may not be enforceable at law, as a result of a recent Ontario Municipal Board decision.

## **Full heritage designation under Part IV of the *Ontario Heritage Act***

In the event a property on the Heritage Register is slated to become demolished, the City will determine if it should be fully designated under Part IV of the OHA and protected from development. Part IV of the OHA<sup>[5]</sup> gives municipalities the right to designate properties for heritage protection if the properties meet certain conditions. In Ottawa a property can meet this designation if it exhibits design, physical, historical, associative, or contextual

value<sup>[6]</sup>. If heritage status is approved by the City, homeowners will then require approval from the City of Ottawa in order to demolish the property or to obtain a building permit on the property for any alterations that could affect the property's cultural heritage value.<sup>[7]</sup>

## Will being listed on the Register affect your property?

As the City continues to list buildings in more areas of Ottawa, citizens have been increasingly concerned that listing could reduce their autonomy over their homes or buildings and could cause their property values to plummet.<sup>[8]</sup> The City has been trying to alleviate these fears with assurances that being placed on the register does not indicate the first step in heritage designation nor does it impose any of the major burdens on the homeowner normally associated with heritage status.<sup>[9]</sup>

In reality, the register imposes only one duty, a mandate that the City be provided written notice 60 days prior to demolishing the building. Homeowners on the register are not mandated to contact the City for any other reasons and can renovate, alter, and even put an addition onto the house with no oversight.

Despite this, the uncertainty associated with being designated and the possibility of heritage designation being imposed at a later date could still have a very real effect on property values.

Being added to the registry also adds a very real possibility of constraint on future development prospects. The potential of the property being designated as a heritage property provides an uncertainty that would be engrained in any development proposal.

## What should you do if you receive a notice?

If notice is received to add your property to the heritage register, and you believe that your property may not in fact have heritage value, it is possible to obtain assistance that rebuts the City's argument that a property should be added to the register. This evidence is best put forward by a heritage planner or architect. Further, legal advice is recommended to develop a strategy to deal with this possibility.

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[1] Ottawa, Online Information Circular "Individual Designation" online: <<https://ottawa.ca/en/city-hall/planning-and-development/heritage-conservation/individual-designation#individual-designation-under-part-iv-ontario-heritage-act>>

[2] Kieran Delamont, "City looks to add 11% of Old Ottawa East and South properties to heritage register", (August 21,

2017), Ottawa Business Journal online: <<http://www.obj.ca/article/city-looks-add-11-old-ottawa-east-and-south-heritage-register>>.

[3] Ontario Heritage Act, RSO 1990, at s 27(1.2).

[4] Michael McClelland, "A better way to protect Toronto's heritage buildings" (April 3, 2017), The Star online: <<https://www.thestar.com/opinion/commentary/2017/04/03/a-better-way-to-protect-torontos-heritage-buildings.html>>.

[5] Supra, note 3 at Part IV.

[6] Ottawa, Application Form, "Heritage designation under Part IV of the Ontario Heritage Act" online: <[https://ottawa.ca/online\\_services/forms/city\\_hall/heritagedesignation\\_en.pdf](https://ottawa.ca/online_services/forms/city_hall/heritagedesignation_en.pdf)>

[7] Ottawa, Online Information Circular "Changes to Heritage Properties" online: <<https://ottawa.ca/en/city-hall/planning-and-development/heritage-conservation/changes-heritage-properties>>

[8] Jon Willing, "Landowners don't buy city's sell job on heritage registry" (July 13, 2017), The Ottawa Citizen online: <<https://ottawacitizen.com/news/local-news/landowners-dont-buy-citys-sell-job-on-heritage-registry>>.

[9] Ibid.

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