



## Planning and Development Services

**Prepared for** Council-in-Committee  
**Agenda Date** August 8, 2022

**Report No.** PDS-58 -2022  
**File No.** 130103

### Subject

**INTENT TO DESIGNATE – 1 BURNS PLACE**

### Resolutions

- THAT** Council approves the designation of 1 Burns Place as outlined in this report, for architectural, historical and contextual attributes and reasons, under Part IV of the *Ontario Heritage Act*, pursuant to the recommendation of the Museum and Cultural Heritage Advisory Committee, and further
- THAT** Council directs staff to prepare a Designation By-law and provide Notice of Intention to Designate in accordance with the *Ontario Heritage Act*.

### Relation to Council's 2018-2022 Corporate Strategic Plan

**Priority:** Managed Growth through Responsibility, Stewardship and Preservation

### List of Stakeholders

The Corporation of the Town of Fort Erie  
Residents of the Town of Fort Erie  
Municipal Heritage Standing Committee/Museum and Cultural Heritage Advisory Committee  
Owner of 1 Burns Place

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### **Purpose of Report**

The purpose of this report is to provide Council with the Museum and Cultural Heritage Advisory Committee (MCHAC) recommendation to designate 1 Burns Place under Part IV of the *Ontario Heritage Act*, as significant from an architectural, contextual and historical perspective, as well as provide background associated with the Committee's recommendation.

### **Background**

The Municipal Heritage Standing Committee (MHSC) was established by Council in 2012. The role of the MHSC is to:

- Identify and maintain an ongoing inventory of properties which have been designated by Council under the *Ontario Heritage Act*;
- Identify and maintain an ongoing inventory of non-designated properties which may be considered for designation;
- Make recommendations to Council, through Staff, as to properties which in the opinion of the Committee, are considered to be of cultural heritage value or interest for their architectural, contextual and/or historical value or interest under the *Ontario Heritage Act* and should be designated;
- Make recommendations to Council, through Staff, as to properties which in the opinion of the Committee, should be added to the Municipal Registry as non-designated properties which it believes to be of cultural heritage value or interest for their architectural, contextual and/or historical value or interest under the *Ontario Heritage Act* and should be considered for designation in the future; and
- Make recommendations to Council, through Staff, as to criteria for the evaluation of properties of cultural heritage value or interest for their architectural, contextual and/or historical value or interest.
- Motions of the Municipal Heritage Standing Committee are ratified by the Museum and Cultural Heritage Committee, who then present the recommendation to Council.

In order for a building, structure or landscape to be designated under the *Ontario Heritage Act*, it must pass through the "Six Key Steps to Designating an Individual Property" under Section 29 of the *Ontario Heritage Act*. These include:

1. Identifying the property as a candidate for designation
2. Researching and evaluating the property
3. Serving Notice of Intention to Designate, with an opportunity for objection
4. Passing and registering the Designation By-law
5. Listing the property on the municipal register
6. Listing on the provincial register

The identification of candidate properties can occur in several different ways:

- Owner initiated – the owner contacts the Committee and/or Staff to request their property be considered for designation
- Committee initiated with owner consent – the Committee identifies a property it believes should be designated and obtains the owners support/consent
- Committee initiated without owner consent – the Committee identifies a property it believes should be designated but the owner does not provide support or consent and the designation may occur against their wishes.

As a 'standing committee' of the Museum and Cultural Heritage Advisory Committee (MCHAC), the MHSC can pass motions for consideration by the MCHAC. Through its ratification of such motions, the MCHAC makes such recommendations to Council.

### Impact of Designation

The designation of a building, structure or landscape under Part IV of the *Ontario Heritage Act* can have a number of impacts specifically related to proposed alterations or demolition:

- Alterations are permitted under Section 33 of the Ontario Heritage Act through application to Council for the proposed work. In general, this should be a cooperative process, where a property owner applies for the proposed work and receives advice and guidance from the Municipal Heritage Standing Committee (MHSC) and/or municipal staff. Council makes the final decision on heritage permit applications.
- As of April 2005, designation under the Ontario Heritage Act gives Council the power to prevent the demolition of a building or structure on a heritage property pursuant to Section 34. If the owner of a designated property wishes to demolish or remove a building or structure, the owner must obtain written consent from Council.
- Property designation can also have a benefit to the owner in the form of financial support via Heritage Tax Rebates.
- Staff are also drafting a Designated Heritage Property Grant, that if approved, will provide financial assistance for the maintenance of designated heritage attributes.

As noted earlier, in order for a building, structure or landscape to be designated under the *Ontario Heritage Act*, it must be assessed with respect to general criteria as provided for in the Act and O. Reg 9/06. The presence of such criteria may warrant designation.

1. The property has design value or physical value because it:
  - a) Is a rare, unique representative or early example of a style, type, expression, material or construction method; or
  - b) Displays a high degree of craftsmanship or artistic merit; or
  - c) Demonstrates a high degree of technical or scientific achievement.
2. The property has historical value or associative value because it:

- a) Has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community; or
  - b) Yields, or has the potential to yield, information that contributes to an understanding of a community or culture; or
  - c) Demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
3. The property has contextual value because it:
- a) Is important in defining, maintaining or supporting the character of an area; or
  - b) Is physically, functionally, visually or historically linked to its surroundings; or
  - c) Is a landmark.

### Appeals

The decision of Council to designate a property may be appealed to the Ontario Land Tribunal (OLT). Once the “Intent to Designate” is determined by Council, there is a 30-day appeal period where objections can be filed with the Clerk. Such an appeal is referred to the OLT, that makes a final and binding decision on the designation.

### **Analysis**

The property known municipally as 1 Burns Place is situated in Bridgeburg as shown in **Appendix “1”**. It is surrounded by single family, detached housing on both the south and east side. The site is accessed via Burns Place running north-south. The house is deeply set back from Burns Place and the Niagara Parkway. The property has been identified by the MHSC as having architectural, contextual and historical value and interest.

The property was listed on the Fort Erie Municipal Register of Properties of Cultural Heritage Value and Interest in 2011 pursuant to Report [CDS-53-2011](#). The listing of the property was not appealed by the property owner of that time. In June of 2018, MHSC met to consider the designation of 1 Burns Place according to its Heritage Property Evaluation process. In its evaluation, the Committee used the three criteria as set out in the Heritage Act and O. Reg 9/06. The Heritage Property Evaluation scored 1 Burns Place at 279. A score of 75 or more is considered of major significance and importance, and worthy of designation. The evaluation criteria and scoring for 1 Burns Place is attached as **Appendix “2”**.

It is noted that the delay between the evaluation in 2018 and attempts to contact the property owner in 2020/2021 relate to other committee and staff priorities. Committee activities were also suspended for a period in 2020 and 2021 due to COVID 19.

Subsequent to the evaluation, the former Senior Community Planner mailed two letters to the property owner regarding potential heritage designation, in May 2020 and

November 2021 (**Appendix “3”**). No reply was received prior to this staff’s departure in November 2021.

The property owner’s lawyer sent two letters to the Town dated April 6 and April 7, 2022 attached as **Appendix “4”**. The letters indicate that the property owner is not supportive of designation.

At its meeting of June 15, 2022, the MHSC passed the following motion:

*That the Museum and Cultural Heritage Advisory Committee recommends the designation of 1 Burns Place, Fort Erie for architectural, historical and contextual attributes and reasons, under Part IV of the Ontario Heritage Act.*

Subsequently, the Museum and Cultural Heritage Advisory Committee (MCHAC) ratified this MSHC motion at its June 15, 2022 meeting, and made the following recommendation to Council:

*That the Museum and Cultural Heritage Advisory Committee recommends the designation of 1 Burns Place, Fort Erie for architectural, historical and contextual attributes and reasons, under Part IV of the Ontario Heritage Act.*

#### Reasons for Designation

The house has significant design value. It is representative of the Regency style of architecture (1820-1860), with the craftsmanship displayed in the construction of the house being indicative of this design philosophy. It is estimated to be built between 1832 and 1836. This style is rare, notable and unique to Fort Erie.

The MSHC, through its research, has identified that the original tract of land where 1 Burns Place now sits was deeded to John Powell, Captain of the 3<sup>rd</sup> Lincoln Militia in 1796. In 1832 his son William Powell sold his land to Reverend John Anderson, the first minister of St. Paul’s Anglican Church, Fort Erie. Reverend Anderson came to Waterloo as a missionary priest in 1828. On January 16, 1836, a Parsonage was erected (on this site) at Waterloo (now known as Fort Erie) and was designated as the first Parsonage within the Township of Bertie. On the same date Reverend John Anderson was confirmed as rector by the Lord Bishop of the Diocese of Quebec. He stayed as rector from 1836 to 1849.

Reverend Anderson also provided services at St Paul’s Church for the 600 men of the 24<sup>th</sup> Regiment-Incorporated Militia and the 2<sup>nd</sup> Lincoln Militia garrison stationed at Fort Erie under the command of Colonel James Kerby. At her death in 1893 his widow Helen Yule Anderson donated the property to St. Paul’s Church.

The property was purchased by Sir Harry Oakes in the 1920s. Harry Oakes was born in Sangerville, Maine on December 23, 1874. Harry was well educated and in 1912 became a very rich man with the discovery of an iron ore mine and a gold mine near Kirkland Lake. This became the second largest gold mine in North America.

By 1921, Harry Oakes was a multi-millionaire and throughout his life gave generously to the communities in which he and his family lived. Sir Harry Oakes made a lasting contribution to Fort Erie with the donation of land and money to develop Oakes Park – the Town’s premier baseball facility named in his honour. The house was used as a clubhouse to Rio Vista Golf Course for several years.

The home has been a local landmark since its construction, as the largest estate property in the north end of Fort Erie. It is well known throughout the Town because of this fact and also the high profile of several owners. It stands alone in the area as a significant structure unique in style to the current neighborhood. Its strong relationship to the early days of Bridgeburg/Fort Erie is clear, as it is connected with the early religious history of the area.

#### Consultation

The initial “Intent to Designate – 1 Burns Place” report to Council was scheduled for the Council meeting on July 11, 2022. The owner, by way of his agent, was informed of the pending report and his right to appear as a delegation. Prior to this meeting a letter was received from the owner’s solicitor requesting that the process of designation be halted, the report to Council should be postponed and requested a meeting with the MHSC.

Staff agreed to postpone the report to Council to facilitate a meeting between the owner and the MHSC. A meeting date was confirmed and documentation prepared by the MHSC in justification of the designation was provided to the owner’s solicitor, save and except the MHSC meeting minutes and report to Council that had not yet been made public. The owner’s solicitor cancelled the meeting and offered alternative dates, in mid August, that could not be accommodated by the committee. Town staff and the MHSC were prepared to meet with the owner’s solicitor to review the proposed designation prior to the August 8, 2022 Council meeting.

Town staff consulted with its legal representative for heritage matters, to confirm the Town’s legislated obligations relative to consultation. The Town’s legal representative subsequently summarised the Town’s obligations to the owner, in a letter attached as **Appendix “5”**.

#### Designation Process

If Council recommends moving forward with the designation of 1 Burns Place, Staff will prepare the “Notice of Intent to Designate” to be published in the local newspaper and to serve on the property owner and the Ontario Heritage Trust. If no objections are received within 30 days of the notice being circulated, Staff will bring forward the designating by-law for Council’s approval. Once the by-law has been passed, a Notice of Designation is published in the local newspaper and provided to the property owner and the Ontario Heritage Trust and the property is listed on the municipal and provincial registers.

As noted earlier in the report, if there is an objection during the 30-day appeal period, the objection is referred to the Ontario Land Tribunal, that schedules a hearing and makes a final and binding decision on the designation.

### **Financial/Staffing and AODA Implications**

The MHSC has the mandate to advise Council on matters pertaining to heritage importance, particularly regarding the designation of properties under the *Ontario Heritage Act*. The former Neighbourhood Planner/Urban Designer was the staff liaison for the Committee.

The property is privately owned and therefore could be considered under the Town's Heritage Tax Rebate Program which provides a 40% tax rebate based on the first \$500,00.00 of the assessed value, in addition to Regional and educational rebates.

As noted earlier, staff are finalising a Designated Heritage Grant program for Council consideration. This grant funding would be available to designated properties, for the ongoing maintenance of heritage attributes.

### **Polices Affecting the Proposal**

In accordance with the Town's Official Plan, the Town will actively promote cultural heritage and conservation in all applicable municipal activities in recognition of the non-renewable nature of cultural heritage resources, as well as the contribution they make to the character, civic pride, tourism potential, economic benefits and historical appreciation of the community.

Further, Council may consult with the MHSC in matters relating to the conservation of built heritage within the Town of Fort Erie. The MHSC may identify through the ongoing inventory, or on a case-by-case basis, properties of architectural and historical interest and recommend to Council on those heritage properties considered worth of designation under Parts IV and V of the *Ontario Heritage Act*.

### **Comments from Relevant Departments/Community and Corporate Partners**

As noted early in this report, the MHSC passed a motion relative to a recommendation to designate 1 Burns Place. This motion was then ratified by the MCHAC as a recommendation to Council. This report, and its attachments, summarise communication with the property owners' lawyer. For reference purposes, the Committee Meeting Minutes (MHSC and MCHAC) have been attached as **Appendix "6"** to this report. The minutes have not been approved by the Committee or Council, as the Committee's next meeting is in September 2022.

### **Communicating Results**

Staff have informed the Owner's solicitor of the MCHAC recommendation to Council and that the Report will be considered at the August 8, 2022 Council in Committee meeting.

If approved, a Notice of the Intention to Designate will be provided to 2175725 Ontario Inc. (the Owner) in accordance with Section 29(1) of the *Ontario Heritage Act* and the Ontario Heritage Trust, and placed in the Fort Erie Post, as required under Section 29(3) of the *Ontario Heritage Act*.

### **Alternatives**

As the Owner has expressed his objection to the designation of 1 Burns Place, Council may choose to decline the MHSC recommendation to designate.

### **Attachments**

**Appendix "1"**- Location Map

**Appendix "2"**- Significance, Criteria & Property Evaluation

**Appendix "3"**- Letters Mailed to Owner from Committee

**Appendix "4"**- Letters from the Owner's Solicitor

**Appendix "5"** - Letter from Town's legal representative

**Appendix "6"**- MHSC & MCHAC Meeting Minutes