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**To:** Mayor and Members of Council

**From:** Ryan Windle, Director of Planning and Development Services and Faye Langmaid, Manager of Special Projects

**Date:** September 13, 2021

**File No.:** PLN34.5.2.13; HPA2021-001

**Re:** **Request to Repeal Designation By-law; 4478 Highway 35/115 Unfinished Business Item 11.1**

Staff understands the property owners intend to register to speak on this matter at the September 20<sup>th</sup> Council meeting. As such, staff recommend [Report PSD-040-21](#) and this communication be referred to the September 20 Council meeting.

At the June 28, 2021 Planning and Development Committee meeting, Committee endorsed the recommendations contained in PDS-040-21, which were to refuse the application to repeal the heritage designation [By-law 97-17](#) on 4478 Highway 35/115.

At the July 5, 2021 Council meeting, Council received a [Memo](#) from the Director of Planning and Development Services on this matter recommending that Item 7 of the Planning and Development Committee Minutes, Report [PDS-040-21](#) be deferred to the September 13, 2021 Joint Committee meeting. The recommendation for deferral was in response to the property owner's request for same to allow them to time to collect additional information and continue to correspond with staff and members of Council. Section 32(3) of the *Ontario Heritage Act* allows for the extension of time if mutually agreed upon by Council and the applicant to enable Council to make an informed decision on a repeal application.

Council also requested that (i) the matter be taken back to the Heritage Committee and (ii) information be gathered to better understand how other municipalities may have dealt with similar repeal requests.

The Heritage Committee convened for a summer meeting on July 20<sup>th</sup> to consider the 4478 Highway 35/115 designation repeal request and engage further with the property owners. The owners provided a presentation outlining how the property has been maintained in good condition and summarized the responses to date from insurance companies. It was understood the owners were continuing to work with an insurance broker to find suitable property insurance.

The Heritage Committee sympathized with the owner's situation and passed a motion to issue a letter in support of Council's July 5<sup>th</sup> resolution to regulating authorities and

legislators for property insurance and cultural heritage conservation to address this matter. The Heritage Committee considered the property owners have a legitimate complaint that insurance companies appear to be using heritage designation as a reason not to offer suitable property insurance. The Heritage Committee also acknowledged it does not deal with property insurance, but the conservation of local cultural heritage.

Ultimately, the Heritage Committee considered the matter in the context of its mandate to conserve Clarington's cultural heritage and maintained their Motion 21.28 from the June 15, 2021 meeting, recommending the heritage designation of 4478 Highway 35/115 be retained because the reasons for the heritage designation remain. Specifically, the Heritage Committee's 21.28 Motion recommended the following:

“That the CHC has reviewed the designation By-law 90-17 for 4478 Highway 35/115 and finds it to be still valid, and therefore recommends to Council that the property should remain designated.

However, the CHC also requests that in the event Council decides to approve the request to repeal the designation by-law for 4478 Highway 35/115, that the property remain on the Municipal Register as a non-designated property.”

In accordance with the Heritage Committee's direction, a letter in support of Council's resolution was sent out in August to relevant Federal and Provincial authorities, and Durham Region's local municipal heritage committee contacts (Attachment).

Requests to repeal heritage designations are serious and must be carefully considered. To better understand how other municipalities have considered similar requests for repealing a heritage designation, staff reached out to our heritage planning counterparts.

Generally, staff's review of repeal requests from other municipalities found that recommendations from municipal staff, municipal heritage committees, and reports from the Conservation Review Board appeals on such matters are based upon the cultural heritage value or interest held by the property, justifying the designation of the property under the *Ontario Heritage Act*. In other words, where the cultural heritage value or interest identified in the designation by-law is valid and intact, the recommendation from staff and municipal heritage committees has typically been to retain the designation by-law for the property.

Notwithstanding the above, there have been cases where municipal councils have considered non-heritage reasons to balance competing interests when deciding on an application to repeal a heritage designation by-law.

It is staff's understanding the property owners have undertaken efforts throughout the summer to secure suitable property insurance.

In the absence of information demonstrating the subject property has insufficient cultural heritage value or interest to warrant designation, Planning and Development Services staff supports the recommendations as outlined in Report PDS-040-21 that the designation on 4478 Highway 35/115 be retained.

Designated property owners play a valuable role as stewards of Clarington's significant cultural heritage resources for the benefit of the community's residents and visitors. In acknowledgement of this role, the Province provides municipalities with financial tools to help promote cultural heritage conservation and support designated property owners.

Currently, Clarington offers a Heritage Incentive Grant program to assist designated property owners with the cost of repair and restoration projects associated with the designated heritage features. At the Planning and Development Committee meeting on June 18, 2021, Committee amended resolution #PD-208-21, relating to the subject designation repeal request, to add "That Staff report back on a 'Heritage Property Tax Relief Program' as allowed for by the *Ontario Heritage Act*". A report on this matter is scheduled for the September 13<sup>th</sup> Joint Committee meeting as a separate item.

Should you have questions Sarah Allin, Planner II, Faye Langmaid, Manager of Special Projects or I would be happy to respond.



Ryan Windle  
Director of Planning and Development Services

cc. Alfred Massardo and Liza Maw

Attachment: Letter sent to regulating agencies and legislators, August 16, 2021

August 16, 2021



The Honourable Doug Ford, M. P. P.  
Premier of Ontario  
Via Email: [premier@ontario.ca](mailto:premier@ontario.ca)

Dear Mr. Premier:

## **Re: Property Insurance Challenges for Designated Heritage Properties**

Recently, the Clarington Heritage Committee has been consulted on a request for the repeal of a heritage designation by-law. The basis of the repeal request is the property owner's difficulty obtaining property insurance for their designated heritage home.

The designation of a property is undertaken to conserve a property for the long-term and is based upon the cultural heritage value or interest in accordance with the *Ontario Heritage Act* and the criteria established by Ontario Regulation 9/06. Therefore, the Committee has considered the request to repeal the designation on this basis. However, the Committee is troubled by the ongoing property insurance challenges the property owner is experiencing.

At a meeting on July 20, 2021 the Clarington Heritage Committee passed Motion 21.34 to support Clarington Council's July 5, 2021 Resolution #PD-211-21 (enclosed), and to issue a letter outlining its concerns regarding the difficulties owners may face when insuring a designated heritage property and calling for action by senior levels of government.

The Province of Ontario identifies the conservation of features of significant and historical value as a matter of Provincial interest. The Province directs municipalities to conserve significant cultural heritage resources through the establishment of a Municipal Register and the designation of properties by By-law.

While the Insurance Bureau of Canada appears to recognize the value of preserving cultural heritage resources as part of Canada's history, there also appears to be misinformation and alignment issues between the requirements of the Ontario Heritage Act, and the regulations governing insurance providers and the policies and practices thereof. This is the case particularly relating to the replacement of designated homes and attributes with materials and craftsmanship of like kind and quality.

There is no requirement under the *Ontario Heritage Act* that would require the owner to rebuild or replicate the original heritage building or attribute in like kind and quality in the event of unpremeditated loss. However, we have come to understand that property insurance companies often cite this as a requirement, and a reason for either not

offering coverage of designated homes as a matter of practice, or offering coverage with premiums that are unfairly high relative to homes that are not designated.

In consideration of property insurance coverage for designated heritage homes and the most recent information provided to the Committee, it appears that the practices of insurance companies in Ontario are becoming problematic, which may result in hardship for property owners who act as stewards of our significant cultural heritage. Through contact and investigation with other municipalities, we understand they have heard of similar insurance situations/hardships.

The Clarington Heritage Committee requests that urgent action be taken by senior levels of government to align the regulations governing insurance providers with the requirements of the *Ontario Heritage Act* in order to see this issue addressed and support, rather than penalize, designated property owners in their role as stewards of Ontario's cultural history.

Your support in helping to resolve this issue in a timely manner, such that constituents who are currently paying higher rates to insure their homes or are having issues in finding an insurer willing to insure designated heritage properties, is appreciated.

Sincerely,

Vic Suppan  
Clarington Heritage Committee, Chair  
On behalf of the Clarington Heritage Committee

Peter Vogel  
Clarington Heritage Committee, Vice-chair

Encl. Clarington Council's July 6, 2021 Resolution #PD-211-21

### Interested Parties

- The Honourable Doug Ford, M.P.P.  
Premier of Ontario Via Email: [premier@ontario.ca](mailto:premier@ontario.ca)
- The Honourable Erin O'Toole, M. P., Durham - [Erin.OToole@parl.gc.ca](mailto:Erin.OToole@parl.gc.ca)
- The Honourable Philip Lawrence, M. P., Northumberland-Peterborough South - [Philip.Lawrence@parl.gc.ca](mailto:Philip.Lawrence@parl.gc.ca)
- The Honourable Peter Bethlenfalvy, M.P.P., Minister of Finance, - [Minister.fin@ontario.ca](mailto:Minister.fin@ontario.ca)
- The Honourable Lisa MacLeod, M.P.P., Minister of Heritage, Sport, Tourism and Culture Industries – [Minister.MacLeod@ontario.ca](mailto:Minister.MacLeod@ontario.ca)
- The Honourable Lindsey Park, M.P.P., Durham - [lindsey.park@pc.ola.org](mailto:lindsey.park@pc.ola.org)
- The Honourable David Piccini, M.P.P., Northumberland-Peterborough South - [david.piccini@pc.ola.org](mailto:david.piccini@pc.ola.org)
- Association of Municipalities of Ontario (AMO) - [amo@amo.on.ca](mailto:amo@amo.on.ca)
- Insurance Bureau of Canada
- Ontario Heritage Trust
- Financial Services Regulatory Authority
- Federal Office of the Superintendent of Financial Institutions
- Durham Region Heritage Committees
- Mayor and Members of Clarington Council

# Clarington

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July 6, 2021

The Honourable Doug Ford, M.P.P.  
Premier of Ontario  
Via Email: [premier@ontario.ca](mailto:premier@ontario.ca)

Dear Premier:

**Re:** Insurance Issues for Designated Properties

**File Number:** PG.25.06

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At a meeting held on July 5, 2021, the Council of the Municipality of Clarington approved the following Resolution #PD-211-21:

Whereas the Province of Ontario identifies the conservation of features of significant cultural and historical value as a matter of Provincial interest, and Provincial policy directs municipalities to conserve significant cultural heritage resources;

And Whereas the Ontario Heritage Act governs the processes by which cultural heritage resources are protected for the long-term, requires municipalities to maintain a Municipal Register, and empowers municipalities to designate by by-law properties having cultural heritage value or interest to fulfill the intent of the Province's mandate;

And Whereas the Insurance Bureau of Canada recognizes the value of owning and preserving cultural heritage resources as part of Canada's history;

And Whereas there appears to be misalignment and misconception between the requirements of designated heritage property owners under the Ontario Heritage Act, regulations governing insurance providers, and the policies and practices thereof as they relate to the replacement cost of designated heritage homes with materials and craftsmanship of like kind and quality;

And Whereas this potential misalignment or misconception of such replacement requirements by insurance providers creates a situation where some homeowners of designated heritage properties have indicated they have difficulty obtaining suitable property insurance coverage at a reasonable cost in order to continue as stewards of our communities' significant cultural heritage resources, which often are private residences;

And Whereas the Insurance Bureau of Canada and the Minister of Finance through the Financial Services Regulatory Authority of Ontario administers rules and regulations governing property insurance matters;

Now therefore be it resolved:


That the Municipality of Clarington requests the Minister of Heritage, Tourism, Sport, and Cultural Industries to engage in meaningful dialogue with the Minister of Finance and the Insurance Bureau of Canada to initiate a review to address and ensure alignment between the requirements of the Ontario Heritage Act, the regulations governing insurance providers, and the policies and practices thereof, in order to better support, rather than penalize, owners of designated heritage properties, who act as stewards of the Province's significant cultural heritage resources throughout communities across Ontario; and

That as a part of the Province's actions to address this matter, municipal heritage committees be invited to engage as stakeholders; and

That a copy of this resolution be forwarded to the Honourable Doug Ford, Premier of Ontario, Lindsey Park, MPP (Durham), David Piccini, MPP (Northumberland-Peterborough South); and

That a copy of this resolution be forwarded to the Association of Municipalities of Ontario.

Yours sincerely,

  
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John Paul Newman  
Deputy Clerk

JPN/cm

c: See Attached List of Interested Parties  
R. Windle, Director of Planning and Development Services

### Interested Parties

The Honourable Peter Bethlenfalvy, M.P.P., Minister of Finance, -  
[Minister.fin@ontario.ca](mailto:Minister.fin@ontario.ca)

The Honourable Lisa MacLeod, M.P.P., Minister of Heritage, Sport, Tourism and  
Culture Industries – [Minister.MacLeod@ontario.ca](mailto:Minister.MacLeod@ontario.ca)

The Honourable Lindsey Park, M.P.P., Durham - [lindsey.park@pc.ola.org](mailto:lindsey.park@pc.ola.org)

The Honourable David Piccini, M.P.P., Northumberland-Peterborough South -  
[david.piccini@pc.ola.org](mailto:david.piccini@pc.ola.org)

Association of Municipalities of Ontario (AMO) - [amo@amo.on.ca](mailto:amo@amo.on.ca)

Insurance Bureau of Canada

Ontario Heritage Trust