



STAFF REPORT INFORMATION ONLY

Protection of Heritage Trees

Date:	October 2, 2013
To:	Parks and Environment Committee
From:	General Manager, Parks, Forestry and Recreation
Wards:	All
Reference Number:	P:\2013\Cluster A\PFR\PE23-102313-AFS#18319

SUMMARY

There are primarily two ways in which a tree in Ontario can achieve heritage status: through designation under Part IV or V of the *Ontario Heritage Act* (OHA) or through recognition by the Heritage Tree Program of Trees Ontario. There are 27 individual, publicly and privately owned trees, as well as four (4) groves and three (3) arboreal remnant forests in the City of Toronto that have heritage status or are of potential heritage significance. Eight (8) trees are recognized as heritage trees by Trees Ontario. Five (5) trees, plus the Maple Leaf Forever tree are designated under the Ontario Heritage Act.

After several years working with community members and staff in Urban Forestry, Heritage Preservation Services (HPS) developed some initial policy foundations for comments and feedback from the working group. However, other heritage policy matters were subsequently given priority over the advancement of the tree policy, causing its further development to be postponed. Heritage Preservation staff have, however, ensured that trees were also included in other policy development, including the recently adopted "*Heritage Conservation Districts in Toronto: Procedures, Policies and Terms of Reference*". This document requires that trees and their canopies are identified and protected where they contribute to the character of the heritage conservation district.

City of Toronto Municipal Code Chapter 658, Ravine and Natural Feature Protection and *Chapter 813, Trees*, protect trees city wide. These City by-laws also recognize and protect trees that have been designated by the OHA or that have been recognized by Trees Ontario. Information about trees that have heritage status or are of potential heritage significance, have been recorded in Urban Forestry's work management system to ensure that staff are aware of their particular significance. Urban Forestry has started to share the information with third parties and will continue to expand circulation and

update the list to a wider audience, including other utilities and stakeholders to ensure they are also aware that these trees are of special interest and must be protected.

Financial Impact

This report has no financial impact.

DECISION HISTORY

At its meeting of January 29, 2013, during consideration of item PE18.4, Toronto's Strategic Forest Management Plan, the Parks and Environment Committee requested that the General Manager of Parks, Forestry and Recreation report back to the Committee on what the City of Toronto is doing to protect designated trees by the Province of Ontario when it comes to utility companies either needing to prune or dig near trees; and if nothing is being done, to report on what the City can do to protect these trees, and also explain in this report how the City respects a heritage tree and what a heritage tree is.

PE18.4 Decision Advice and Other Information

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PE18.4>

COMMENTS

What is a Heritage Tree?

The term "heritage tree" has numerous meanings and has been defined in different jurisdictions or locales in many different ways. Professor Paul Aird of the University of Toronto, Faculty of Forestry, defined a heritage tree in *The Forestry Chronicle*, 2005, (a professional journal of the Canadian Institute of Forestry), as having one or more of the following characteristics.

- A notable specimen because of its size, form, shape, beauty, age, colour, rarity, genetic constitution, or other distinctive features.
- A living relic that displays evidence of cultural modification by Aboriginal or non-Aboriginal people, including strips of bark or knot-free wood removed, test hole cut to determine soundness, furrows cut to collect pitch or sap, or blazes to mark a trail.
- A prominent community landmark.
- A specimen associated with a historic person, place, event or period.
- A representative of a crop grown by ancestors and their successors that is at risk of disappearing from cultivation.
- A tree associated with local folklore, myths, legends, or traditions.

This definition of a heritage tree is generally accepted amongst heritage tree protection advocates; however, it is not consistent with, and does not take into account, the regulations mandated by the provincial government for the evaluation of cultural heritage value of properties, potentially including trees, to be protected under the Ontario Heritage Act.

There are currently two primary ways in which a tree in Ontario can achieve heritage status: through designation under Part IV or V of the *Ontario Heritage Act* (OHA) or through recognition by the Heritage Tree Program of Trees Ontario.

Toronto Municipal Code Chapter 658 Ravine and Natural Feature Protection, and *Chapter 813 Trees* define a heritage tree as one that is designated under the OHA or recognized by Trees Ontario.

Ontario Heritage Act Protection

The OHA enables City Council to protect heritage property by either listing or designating under Part IV or including properties within a heritage conservation district. Properties protected under the OHA are included on the heritage register (inventory of heritage properties). Protected properties are subject to permitting and heritage review by HPS, within the City Planning Division.

Properties that demonstrate cultural heritage value are protected by listing or designation under the OHA which allows City Council to manage change to those properties in order to conserve the integrity of their heritage values and attributes.

The OHA prescribes regulated criteria for the determination of cultural heritage value under Regulation 9/06, which must be applied to assess which properties qualify for designation under the legislation. The City of Toronto also applies these criteria to properties being considered for listing under the OHA. Within the Regulation, there are three main criteria and a "property" (resource) must meet at least one. The property must possess:

1. Design or physical value
2. Historical or associative value
3. Contextual value

There are additional descriptors associated with each of the main criteria. If a property meets the criteria for designation under the OHA, it may be listed by Council or designated by by-law, which identifies the specific heritage value and attributes of the property. Listed and designated heritage properties are included on the Heritage Register and the designating by-law is registered on title for designated properties. In Toronto this process is administered by HPS of the City Planning Division.

There are few trees in Toronto that have been designated under the OHA. Four (4) black walnuts and one (1) sugar maple on the Falcon Inn site in Scarborough, and the Maple

Leaf Forever maple tree in Leslieville. All these trees had been designated prior to revisions to the OHA in 2005 and the introduction of Regulation 9/06.

There are a number of challenges involved in designating individual trees under the OHA in the City of Toronto. Following the 2005 revisions to the OHA, the province passed, Ontario Regulation 9/06, containing mandatory criteria for how heritage properties should be evaluated. These criteria (design or physical value, historical or associative value, and contextual value) are worded for application to built structures and are not well suited to evaluating trees or other natural features that have the potential to demonstrate cultural heritage value.

An additional policy obstacle includes the potential for multiple property parcels to be designated for an individual heritage tree. The tree crown, roots and even the trunk may encompass multiple properties and the retention of the heritage values can involve including multiple land parcels for full protection. With potential heritage designation including private property, there is the potential for a challenge from the affected adjacent landowner(s). Additionally, as trees are living things with limited lifespan, they will eventually die, resulting in the disappearance of the heritage value. Staff have considered drafting alternate criteria for the purpose of protecting heritage trees; however, the ability of the City to implement alternate criteria is not clear at this time.

The listing and designation of heritage trees under the OHA will also require permitting processes for the alteration and removal of trees, under the legislation. To this end, additional policy challenges exist in developing protocols for the review of alterations and removals, the nature of allowable alterations and if certain actions should be subject to permits. *Standards and Guidelines for the Conservation of Historic Places in Canada*, which was adopted by Council, does not address the best practices for the conservation of trees as individual heritage resources. Ongoing work with HPS, Urban Forestry and Trees Ontario may be necessary in order to create a protocol and guidelines for the conservation of heritage trees that is consistent with accepted heritage conservation practice.

Trees Ontario Recognition

Trees Ontario, a not-for-profit organization that encourages and supports tree planting initiatives in Ontario, has developed a Heritage Tree Program. The Ontario Urban Forest Council (OUFC) has produced a toolkit that allows interested parties to evaluate individual trees scoring them against various criteria and nominating them for heritage status. Factors such as tree species, species rarity, tree size, tree age relative to human activity, tree form and structure, tree condition, expected longevity and historical and cultural significance are utilized in the evaluation. Groups or individuals utilize the criteria to identify and nominate trees for the Trees Ontario program. The Trees Ontario process for recognition does not result in the heritage recognition being attached to a particular land parcel description or being registered on title. If accepted by Trees Ontario, the tree will be included in their list, a plaque would be produced and it would be identified on a map of recognized heritage trees in Ontario. Presently, there are eight (8) individual trees in Toronto that are recognized by Trees Ontario.

It is important to note that the criteria for recognition of a heritage tree by Trees Ontario does not satisfy the regulated criteria prescribed by the provincial government for the protection of properties under the OHA, which are applied by staff in Heritage Preservation Services.

Injury or Removal of Heritage Trees

In the summer of 2011, a private oak tree on Jane Street, recognized as a heritage tree by Trees Ontario, was aggressively pruned by a utility company to provide clearance from their overhead plant. Since pruning to clear wires is a common practice by some utility companies, HPS staff collaborated with Urban Forestry to update a list of trees across the city that have heritage status or are of potential heritage significance. This information was provided to the utility company with instructions that these trees in particular are to be treated with special care.

An up to date list of designated, recognized, and potential heritage trees, groves and arboreal remnant forests will be shared with all the utility companies and other City divisions to ensure that parties that conduct work in and around trees are aware of the significance of these trees and that any work around them must be conducted judiciously.

The OHA allows for fines for the unauthorized demolition, removal or alteration of a heritage property. It may be possible that these provisions could be extended to trees that are currently designated under the OHA, or designated in the future. There is currently no schedule of fines; however, HPS may recommend fines where appropriate in conjunction with any enforcement under the OHA. Illegal demolition or removal of a property designated under Part IV is subject to fines of up to \$1,000,000 and up to one year in prison, while unauthorized alteration may be fined up to \$50,000.

What the City of Toronto is doing to Protect Heritage Trees

The heritage tree issue at the City of Toronto dates back to 2001 when a number of members of the Ontario Urban Forest Council (OUFC) first met to identify potential heritage trees in Toronto. At that time, provisions of the OHA did not allow for individual trees to be designated as heritage resources in Ontario.

In 2002, a working group was formed which included City staff from Urban Forestry and HPS, members of the OUFC and members of the public. They met to determine criteria and develop a process to designate individual trees.

By 2006, as noted previously, changes to the OHA potentially allowed for individual trees to be considered for designation as heritage resources; however, Regulation 9/06 under the OHA, was also introduced at this time and did not effectively address trees as potential heritage properties. The OUFC produced its toolkit to assess and quantitatively score individual trees in order to nominate them for consideration for designation under

the Act, whereas the criteria for the determination of cultural heritage value are a qualitative assessment built on a value based management philosophy.

Staff work to date has high-lighted many policy obstacles to designate a tree under the OHA, where tree roots or canopy spread may result in the designation of several properties for the purpose of designating a single tree. Notwithstanding the policy concerns, HPS staff ensured trees were successfully included in the recently adopted "*Heritage Conservation Districts in Toronto: Procedures, Policies and Terms of Reference*," which sets out how Heritage Conservation Districts should be created and what should be included in them. This requires that trees and tree canopies are identified and protected in neighbourhoods where they contribute to the character of a heritage conservation district. Further, HPS staff is confident that further policy refinements may allow trees to be included on the inventory of heritage properties in the future and have committed to continuing to work on a tree designation policy as resources allow.

There are 27 individual, publicly and privately owned trees, as well as four (4) groves and three (3) arboreal remnant forests in the City of Toronto that have heritage status or are of potential heritage significance. Information about these trees has been recorded within Urban Forestry's work management system to ensure staff are aware of the significance of these trees.

As noted previously, the City's tree by-laws *Toronto Municipal Code Chapter 658 Ravine and Natural Feature Protection*, and *Chapter 813 Trees* define a heritage tree as one that is designated under the OHA or recognized by Trees Ontario. The by-laws include provisions for added protection of heritage trees identified either through designation or recognition.

- Chapter 658 indicates that a permit to injure or destroy a heritage tree can only be authorized by City Council.
- Chapter 813 indicates that a permit shall not be issued for a heritage tree, or if in the opinion of the General Manager a tree should be recommended for designation as a heritage tree.

Notwithstanding the above, all of the City's tree by-laws indicate that the General Manager is authorized to issue a permit for injury or destruction of trees should the injury or destruction be required by a decision of the Ontario Municipal Board (OMB), City Council or a final and binding decision of Committee of Adjustment. It should be noted that these City of Toronto tree by-laws offer the same protection to a heritage tree as would designation under the OHA, as City Council and OMB decisions can result in the demolition of existing designated heritage property. The Committee of Adjustment, however, does not possess the authority to allow the demolition or removal of a heritage property under the OHA. Further, all decisions of Council to authorize the demolition or removal of a heritage property under the OHA are appealable to the OMB.

In the meantime, the City's tree protection by-laws provide heritage and potential heritage trees with protection against indiscriminate injury or removal.

Looking Forward

Designation of heritage trees under the OHA is a complex and lengthy process, made more challenging by the associated Regulation. Resources within HPS are limited; however, they are committed to working on the tree designation policy as resources permit. City of Toronto tree by-laws recognize trees that have been designated under the OHA or have been recognized by Trees Ontario. Urban Forestry will continue to work to educate utility companies, other City divisions, and the public at large of the importance of these natural heritage resources.

This report has been reviewed by Heritage Preservation Services.

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SIGNATURE

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