

## Report to Community Advisory Committee on Planning

**To:** Chair and Members  
Community Advisory Committee on Planning

**From:** Kevin Edwards, RPP, MCIP  
Manager, Community Planning

**Subject:** Application pursuant to the Heritage Easement Agreement for  
39 Carfrae Street, Ward 11

**Date:** July 12, 2023

## Recommendation

Refusal of the application pursuant to the Heritage Easement Agreement for the replacement of the roof on the property at 39 Carfrae Street is recommended. A new application is encouraged to demonstrate that alternative roofing materials have been considered for the roof replacement.

## Executive Summary

The property at 39 Carfrae Street, Carfrae Cottage, is a very significant cultural heritage resource. The property is protected by a Heritage Easement Agreement, subject to Section 37, *Ontario Heritage Act*. There are only five properties in London that are protected by a Heritage Easement Agreement held by the City. The wood shingle roof of Carfrae Cottage is identified as a heritage attribute in the Heritage Easement Agreement. The Heritage Easement Agreement was disclosed prior to the purchase of the property by the present owner.

The property owner has applied to replace the wood (pine) shingle roof with an asphalt roof. As the wood shingle roof is protected in the Heritage Easement Agreement, approval from the City is required for its replacement. While staff recognize the need to replace the roof in a timely manner to ensure the overall conservation of Carfrae Cottage, staff are recommending refusal of this application as the proposed asphalt shingles fail to conserve the heritage attribute as identified in the Heritage Easement Agreement. Wood shingles are the most historically appropriate roof material for Carfrae Cottage.

Further, in the event that a roofing material is considered to not be a feasible option, alternative materials that achieve the appearance and aesthetic of the original material can be considered for replacement. Staff have requested that additional information with regards to alternative roof replacement materials be provided to inform the application. The application has not demonstrated that alternative materials have been considered, and thus refusal is recommended. A new application demonstrating alternative materials that have been considered is encouraged.

## Analysis

### 1.0 Background Information

#### 1.1 Property Location

The property at 39 Carfrae Street, known as Carfrae Cottage, is located on the south side of Carfrae Street between Ridout Street South and Carfrae Crescent (Appendix A).

#### 1.2 Cultural Heritage Status

The property at 39 Carfrae Street is designated pursuant to Part IV of the Ontario Heritage Act. By-law No. L.S.P.-2978-65 was passed in 1988. The property was designated for its “historical and architectural value” per the requirements of the *Ontario Heritage Act* at the time of designation.

In 2021, a Heritage Easement Agreement was entered into to protect the significant cultural heritage value of Carfrae Cottage. Heritage Easement Agreements provide the highest level of protection, pursuant to the *Ontario Heritage Act*, to protect significant cultural heritage resources. Agreement is required between the municipality and a property owner. The agreement is registered on the title of the property and remains applicable to the specific property if the property is sold.

Heritage easement agreements establish requirements for maintaining a property, or specific features or attributes of a property. Pursuant to Section 37(5) of the *Ontario Heritage Act*, in the event of a conflict between a heritage easement agreement and a heritage designating by-law, a heritage easement agreement will prevail.

### **1.3 Description**

In 1834, Robert Carfrae received a grant of 24 acres of land along the south branch of the Thames River off Wortley Road in Westminster Township in compensation for his assistance in the construction of the London District Court House (399 Ridout Street North). While he continued to reside north of the Thames River, Robert Carfrae and his family eventually moved to this plot of land. The existing house, Carfrae Cottage, was constructed in circa 1860.

Over time, portions of the property were sold. The Carfrae Cottage property remained in the ownership of the Carfrae family (and their descendants) until 1944. The property was owed by several subsequent owners until it was purchased by Alan and Julia Beck in 1998. Under the Beck's ownership, the property was the subject of restoration work to ensure that the cottage was conserved.

Carfrae Cottage is an early example of traditional Ontario Cottage architecture in both style and type. It demonstrates elements of the Gothic Revival architectural style with a high degree of craftsmanship that reflects the property's historical value.

### **1.4 Previous Reports Related to this Matter**

March 10, 2021, Report to London Advisory Committee on Heritage, Heritage Easement Agreement, 39 Carfrae Street: <https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=78271>.

## **2.0 Discussion and Considerations**

### **2.1 Legislative and Policy Framework**

Cultural heritage resources are to be conserved and impacts assessed as per the fundamental policies of the *Provincial Policy Statement (2020)*, the *Ontario Heritage Act*, and *The London Plan*.

#### **2.1.1 Provincial Policy Statement**

Heritage Conservation is a matter of provincial interest (Section 2.d, *Planning Act*). The *Provincial Policy Statement (2020)* promotes the wise use and management of cultural heritage resources and directs that "significant built heritage resources and significant cultural heritage landscapes shall be conserved" (Policy 2.6.1, *Provincial Policy Statement 2020*).

"Significant" is defined in the *Provincial Policy Statement (2020)* as, "resources that have been determined to have cultural heritage value or interest." Further, "processes and criteria for determining cultural heritage value or interest are established by the Province under the authority of the *Ontario Heritage Act*."

Additionally, "conserved" means, "the identification, protection, management and use of built heritage resources, cultural heritage landscapes and archaeological resources in a manner that ensures their cultural heritage value or interest is retained."

### **2.1.2 Ontario Heritage Act**

The *Ontario Heritage Act* enables municipalities to protect properties of cultural heritage value or interest. Properties of cultural heritage value can be protected individually, pursuant to Section 29 of the *Ontario Heritage Act*, or where groups of properties have cultural heritage value together, pursuant to Section 41 of the *Ontario Heritage Act* as a Heritage Conservation District (HCD). Designations pursuant to the Ontario Heritage Act are based on real property, not just buildings.

The *Ontario Heritage Act* also enables other tools to protect and conserve cultural heritage resources, including Heritage Easement Agreements.

Section 37 of the *Ontario Heritage Act* states,

*37(1) Despite subsection 36(1), after consultation with its municipal heritage committee, if one is established, the council of a municipality may pass by-laws providing for the entering into of easements or covenants with owners of real property or interests in real property, for the conservation of property of cultural heritage value or interest. 2002, c. 18, Sched. F, s. 2 (19).*

*(2) Any easement or covenant entered into by a council of a municipality may be registered, against the real property affected, in the proper land registry office. R. S. O. 1990, c. O. 18, s. 37 (2).*

*(3) Where an easement or covenant is registered against real property under subsection (2), the easement or covenant shall run with the real property and the council of the municipality may enforce such easement or covenant, whether positive or negative in nature, against the owner or any subsequent owners of the real property, and the council of the municipality may enforce such easement or covenant even where it owns no other land which would be accommodated or benefitted by such easement or covenant. R. S.O. 1990, c. O. 18, s. 37 (3).*

*(4) Any assignment or covenant entered into by the council of the municipality under subsection (2) may be assigned to any person and such easement or covenant shall continue to run with the real property and the assignee may enforce the easement or covenant as if it were the council of the municipality and it owned no other land which would be accommodated or benefitted by such easement or covenant. R. S.O. 1990, c. O. 18, s. 37 (4).*

*(5) Where there is conflict between an easement or covenant entered into by a council of a municipality under subsection (1) and section 33 or 34, the easement or covenant shall prevail. R. S.O. 1990, c. O. 18, s. 37 (5).*

### **2.1.3 The London Plan**

The Cultural Heritage chapter of *The London Plan* recognizes that our cultural heritage resources define our City's unique identity and contribute to its continuing prosperity. It notes, "The quality and diversity of these resources are important in distinguishing London from other cities and make London a place that is more attractive for people to visit, live or invest in."

*554\_2 In all of the planning and development we do, and the initiatives we take as a municipality we will: conserve London's cultural heritage resources so they can be passed on to our future generations.*

*570\_5 For the purposes of cultural heritage protection and conservation, City Council may adopt a number of specific strategies and programs including: Heritage easements.*

*583\_ To ensure a greater degree of protection to designated properties of cultural heritage value or interest, City Council may enter into agreements with property owners or may attempt to secure conservation easements in order to protect those features deemed to have heritage value. Council may also consider the application of zoning that includes regulations to further protect the property.*

587\_ *Where a property of cultural heritage value or interest is designated under Part IV of the Ontario Heritage Act, no alteration, removal or demolition shall be undertaken that would adversely affect the reasons for designation except in accordance with the Ontario Heritage Act.*

589\_ *- A property owner may apply to alter the cultural heritage attributes of a property designated under the Ontario Heritage Act. The City may, pursuant to the Act, issue a permit to alter the structure. In consultation with the London Advisory Committee on Heritage, the municipality may delegate approvals for such permits to an authority.*

### **3.0 Financial Impact/Considerations**

None.

### **4.0 Key Issues and Considerations**

#### **4.1. Application**

Carfrae Cottage is a very significant cultural heritage resource. The property is designated pursuant to the *Ontario Heritage Act*, and is also subject to a Heritage Easement Agreement registered on title in 2021 prior to being put up for sale. The Heritage Easement Agreement was disclosed to potential purchasers and was in place when the current owner purchased the property.

On May 15, 2023, the City received an application from the owner's legal representation seeking approval for the replacement of the wood shake roof on the Carfrae Cottage with an asphalt shingle roof. The application was attached to the letter, which together are shown in Appendix B. It is understood that the current roof is leaking, has been temporarily repaired, and will require replacement to conserve the cultural heritage value of the property.

The roof is protected as a heritage attribute within the heritage designating by-law and the Heritage Easement Agreement for Carfrae Cottage. Within the heritage designating by-law, the roof is identified simply as the "hipped roof". The materiality of the roof is identified within the Heritage Easement Agreement, where it is described as the "Hipped roof, clad in wood shingles."

A review of historic Fire Insurance Plan mapping (1912 r. 1915) indicates that the original roofing material likely consisted of wood shingles. In the mid-20<sup>th</sup> century, the roof material was replaced with asphalt shingles. In 2001, the previous owners of the property advised the City that they would be undertaking various restoration activities including the installation of a new wood (pine) shingle roof. The wood shingle roof was installed based on a restoration approach, as the historically appropriate roofing material for Carfrae Cottage.

Under the terms of the Heritage Easement Agreement, the City has 90 days to respond in writing to a written request for an alteration. Thus, City Council must make a determination on the written request by August 13, 2023 or the written application will be automatically approved without conditions. To meet the required timeline, staff need to make a recommendation prior to consultation with CACP on July 15, 2023, and consideration by PEC on July 17, 2023 and Municipal Council on July 25, 2023.

#### **4.2 Application Review**

When reviewing an application proposing conservation or replacement options for roofing materials, staff often receive a report or recommendation from a roofing contractor experienced in the installation, maintenance, and/or replacement of historic roofing material. While replacement in-kind is preferred, it is recognized that the sourcing and installing of replacement in kind of certain roofing materials can be cost prohibitive.

Where an in-kind replacement appears unfeasible, staff work with applicants to identify

suitable replacement alternatives that are consistent with best practices for heritage conservation. Consistent with best practices, alternative materials are considered that are visually similar to the original material with respect to colour, texture and detail. For example, in previous applications City staff have supported various applications for replacement of slate roofs with alternative materials including metal or composite roofing products that effectively simulate the appearance and texture of slate roof.

For this application, one quote from a Toronto-based roofing company was submitted with a total cost of \$114,622.00 (plus HST) to remove the existing roofing material and install an in-kind new cedar roof. In previous applications for other heritage designated properties, replacement costs for wood roofing have been significantly less in comparison. Staff have requested additional quotes to ensure that estimates for replacement of the wood roof have been sufficiently considered before determining this material option to be not feasible. These have not been provided.

A quote from a local roofing company was also submitted that identified a cost of \$23,131.10 to replace the heritage attribute with an asphalt shingle roof.

To advance the process, staff requested that alternative materials be considered, such as composite roofing material that are visually similar to the colour, texture and detail of the roof at 39 Carfrae Street. Staff have observed promising applications of alternative composite roofing products within London and elsewhere within Ontario which are preferable to asphalt shingles as a replacement material. To date, staff have not received information or quotes demonstrating that alternative materials were investigated.

The City acknowledges that the existing roof is beyond its lifecycle and needs replacement. While staff are supportive of a roof replacement that considers alternative material that seek to replicate or mimic the material and aesthetic qualities of the existing wood roof protected through the heritage easement, the submission fails to consider such alternative materials. As such, staff are unable to proceed with a positive recommendation for approval of this application.

Staff encourage the applicant to submit an application that demonstrates all options have been considered including replacement in kind, and replacement with alternative materials.

## Conclusion

The property at 39 Carfrae Street is a very significant cultural heritage resource designated pursuant to Part IV of the *Ontario Heritage Act* and protected by a Heritage Easement Agreement. The proposed application seeks approval to replace the existing wood roof, protected by the Heritage Easement Agreement with an asphalt shingle roof. The proposed asphalt shingle roof is not preferable to wood, and it has not been demonstrated that composite alternative products have been considered.

Staff have not received information regarding the consideration of composite alternative products to recommend approval of this application. As a result, the application seeking approval for the roof replacement with an asphalt shingle roof should not be approved.

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### Appendices

Appendix A	Property Location
Appendix B	Images
Appendix C	Heritage Easement Agreement
Appendix D	Application

**Sources**

Corporation of the City of London. *2023-2027 Strategic Plan*.

Corporation of the City of London. Property file.

Corporation of the City of London. *Register of Cultural Heritage Resources*. 2022.

Corporation of the City of London. *The London Plan*. 2022 (consolidated).

# Appendix A – Property Location

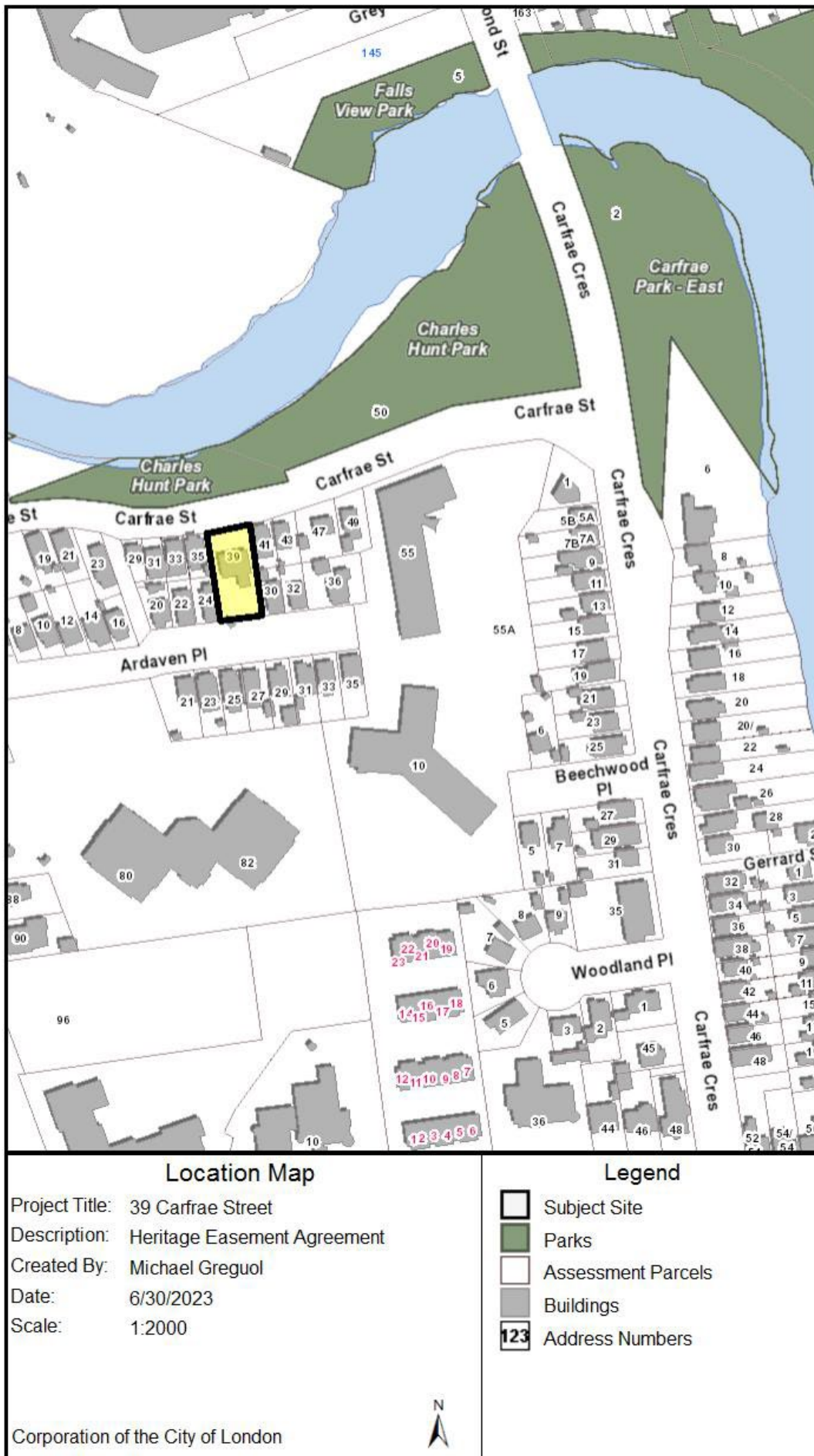


Figure 1: Location Map showing the property located at 39 Carfrae Street.



Appendix B – Images

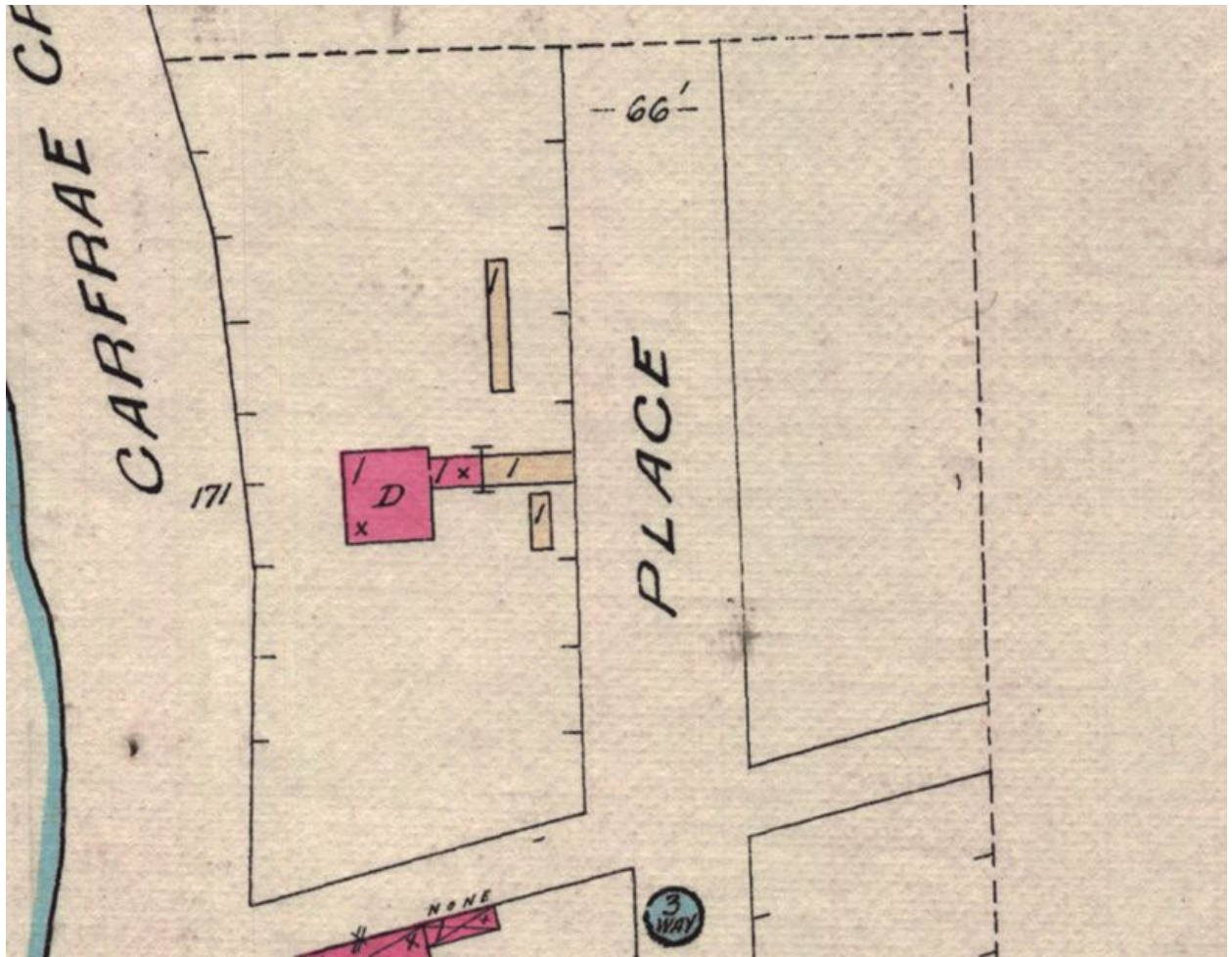


Image 1: Excerpt from 1912 rev. 1915 Fire Insurance Plan showing the dwelling at 39 Carfrae Street. Note, the "X" shown in the corner of the dwelling denotes a "shingle" roof suggesting that in 1915, a wood shingle roof was in use.



Image 2: Excerpt from 1912 rev. 1922 Fire Insurance Plan showing the dwelling at 39 Carfrae Street. Note, the "X" shown in the corner of the dwelling denotes a "shingle" roof suggesting that in 1922, a wood shingle roof was in use.





Image 3: Photograph showing the Carfrae Cottage at 39 Carfrae Street.



Image 4: Photograph showing the Carfrae Cottage at 39 Carfrae Street.

## **Appendix C – Heritage Easement Agreement**

Heritage Easement Agree [attached separately].

## **Appendix D – Application**

Application pursuant to the Heritage Easement Agreement [attached separately].