

Report to London Advisory Committee on Heritage

To: Chair and Members
London Advisory Committee on Heritage
From: Gregg Barrett, Director, City Planning and City Planner
Subject: Heritage Easement Agreement, 39 Carfrae Street
Date: Wednesday March 10, 2021

Recommendation

That, on the recommendation of the Director, City Planning and City Planner with the advice of the Heritage Planner:

- a) The attached draft Heritage Easement Agreement (Appendix “B”) between the Corporation of the City of London and the property owner of 39 Carfrae Street relating to the heritage designated property known as “Carfrae Cottage”, **BE APPROVED** substantially in the form attached and as approved by the City Solicitor; and
- b) the attached proposed by-law (Appendix “A”) **BE INTRODUCED** at the Municipal Council meeting to be held on April 13, 2021 to approve the Heritage Easement Agreement and authorize the Mayor and City Clerk to sign the agreement, pursuant to Section 37(1) of the *Ontario Heritage Act*.

Executive Summary

Carfrae Cottage, located at 39 Carfrae Street, is a significant cultural heritage resource. Following the death of the property owner, the estate trustees and the Heritage Planner discussed opportunities to strengthen the protection for Carfrae Cottage. A Heritage Easement Agreement is recommended for Carfrae Cottage to ensure its long-term protection and conservation. A Heritage Easement Agreement can offer clarity and specificity on the cultural heritage value and heritage attributes of a significant cultural heritage resource that shall be preserved. The estate trustees have reviewed and agreed to the Heritage Easement Agreement for Carfrae Cottage.

Linkage to the Corporate Strategic Plan

This recommendation supports the following 2019-2023 Strategic Plan area of focus:

- Strengthening Our Community:
 - Continuing to conserve London’s heritage properties and archaeological resources

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.

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.

1.3 Property 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 owned by several subsequent owners until it was purchased by Alan and Julia Beck in 1998.

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.

The property was the home of local heritage activist, Julia (1928-2012) and Dr. Alan (1928-2020) Beck from 1998 until their respective death. Julia significantly contributed to the conservation of heritage buildings in the London area, including the Ridout Restoration (435-451 Ridout Street North), the Red Antiquities Building (129-131 Wellington Street), and Carfrae Cottage. Carfrae Cottage was featured in a tour of Ontario Cottages accompanying an exhibition of the same topic at the London Regional Arts and Historical Museums (LRAHM, now Museum London) in 2000. In the tour programme, Julia Beck is fittingly noted as a “great friend of Ontario Cottages everywhere.”

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 in the *Provincial Policy Statement (2020)*, the *Ontario Heritage Act*, *The London Plan* and the *Official Plan (1989 as amended)*.

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.

2.1.2.1 Heritage Easement Agreement

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), ease 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/Official Plan

The London Plan is the new official plan for the City of London (Municipal Council adopted, approved by the Ministry of Municipal Affairs and Housing with modifications, and the majority of which is in force and effect). *The London Plan* policies under appeal to the Local Planning Appeal Tribunal (Appeal PL170100) and not in force and effect are indicated with an asterisk throughout this report. *The London Plan* policies under appeal are included in this report for informative purposes indicating the intent of Municipal Council but are not determinative for the purposes of this application.

The policies of *The London Plan* found in the Key Directions and Cultural Heritage chapter support the conservation of London's cultural heritage resources for future generations.

Policy 570_5 of *The London Plan* states:

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

Policy 583_ of *The London Plan* states,

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 featured deemed to have heritage value. Council may also consider the application of zoning that includes regulations to further protect the property.

3.0 Financial Impact/Considerations

None.

4.0 Key Issues and Considerations

4.1 Heritage Easement Agreement in London

There are eight properties in London which are protected through a heritage easement agreement. Four heritage easement agreements are held by the Ontario Heritage Trust (formerly the Ontario Heritage Foundation); four heritage easement agreements are held by the City of London.

Municipal Heritage Easement Agreements

- Chestnut Hill, 55 Centre Street
- 229-231 Dundas Street, London Mechanics' Institute
- Elsie Perrin Williams Memorial London Public Library and Art Gallery and Museum, 305 Queens Avenue
- Thornwood, 329 St. George Street and 335 St. George Street

Ontario Heritage Trust Heritage Easement Agreements

- London District Court House, 399 Ridout Street North
- Eldon House, 481 Ridout Street North
- Normal School, 165 Elmwood Avenue East
- London Psychiatric Hospital, 850 Highbury Avenue North

Heritage easement agreements can be an important tool in the protection of significant cultural heritage resources. Heritage easement agreements are commonly required as part of development applications for other municipalities including Kingston, Markham, Oakville, Toronto, and Brampton.

4.2 Requirements to Enter into a Heritage Easement Agreement

The purpose of a heritage easement agreement is for the conservation of a property of cultural heritage value or interest (Section 37(1), *Ontario Heritage Act*). A property must be of cultural heritage value or interest to enter into a heritage easement agreement, however there is no provincially mandated criteria for a municipality to enter into a heritage easement agreement. As demonstrated by its existing designation pursuant to Section 29 of the *Ontario Heritage Act*, Carfrae Cottage (39 Carfrae Street) is of significant cultural heritage value or interest.

Consultation with a municipal heritage committee, the London Advisory Committee on Heritage (LACH), is required before a municipality can enter into a heritage easement agreement with a property owner pursuant to Section 37(1) of the *Ontario Heritage Act*.

As demonstrated by Policy 570_5 and Policy 583_ of *The London Plan*, there are sufficient enabling policies for Municipal Council to enter into a heritage easement agreement.

4.3 Heritage Easement Agreement vs. Heritage Designating By-law

Heritage easement agreements provide the highest level of protection, pursuant to the *Ontario Heritage Act*, to protect significant cultural heritage resources for future generations. It is a legal document, like a heritage designating by-law, which is registered on the title of the property. A heritage easement agreement remains applicable to the specific property if the property is sold.

Where a heritage designation pursuant to Section 29 or Section 41 of the *Ontario Heritage Act* may be imposed on a property (with appeal opportunities availed to the property owner), the agreement between the municipality and property owner is required to enter into a heritage easement agreement. Heritage easement agreements, and decisions pursuant to heritage easement agreements, are not appealable to the Local Planning Appeal Tribunal (LPAT).

Of particular benefit for a significant cultural heritage resource with an old heritage designating by-law, like Carfrae Cottage, a heritage easement agreement can offer additional clarity or specificity on the heritage attributes of the property. While

anticipated to somewhat change following the proclamation of amendments to the *Ontario Heritage Act* in Bill 108, a heritage easement agreement can include photographs to help manage change.

Heritage easement agreements establish requirements for maintaining a property, or specific features or attributes of a property. In addition to the requirement to obtain approval from a municipality prior to making alterations to the property, like a heritage designated property, other requirements, such as insurance, can be included within a heritage easement agreement.

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.

4.1. Agreement with Property Owner

As noted, entering into a heritage easement agreement requires the agreement of the property owner and municipality.

Following the death of the property owner, the estate trustees and the Heritage Planner discussed opportunities to strengthen the protection for Carfrae Cottage. Different approaches, including the passage of a new heritage designating by-law, were considered. Information on heritage easement agreements was provided and discussed. A draft heritage easement agreement was reviewed by Legal Services. The estate trustees have reviewed and agreed to the Heritage Easement Agreement in Appendix B for Carfrae Cottage.

As the property is intended to be sold, the heritage easement agreement must be registered on title prior to the sale of the property.

Conclusion

Carfrae Cottage is a very significant cultural heritage resource. It is protected by its designation pursuant to Part IV of the *Ontario Heritage Act*; a heritage easement agreement offers a higher level of protection. A heritage easement agreement will help to ensure that Carfrae Cottage continues to be maintained in a manner befitting its cultural heritage value and ensures the conservation of its heritage attributes for future generations as a physical, tangible link to London's past.

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CC Sachit Tataavarti, Solicitor

Appendix A Authorizing By-law

Appendix B Heritage Easement Agreement – 39 Carfrae Street

Selected Bibliography

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Brock, Daniel. *Fragments from the Forks London, Ontario's Legacy*. 2011.

Bronson, L. N. "Looking over Western Ontario: Robert Carfrae." *London Free Press*. June 15, 1977.

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Lutman, John. *The South and the West of London: an Historical and Architectural Guide*. 1979.
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Shambrook, Francis. Unpublished notes on 39 Carfrae Street. October 4, 1987.
Tausky, Nancy. *Historical Sketch of London From Site to City*. 1993.

Appendix A

Bill No.
2021

By-law No.

A by-law to enact a Heritage Easement Agreements of the property at 39 Carfrae Street, pursuant to the provision of the *Ontario Heritage Act*

WHEREAS Section 5(3) of the *Municipal Act*, 2001, S. P. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

WHEREAS Section 9 of the *Municipal Act*, 2001, provides that a municipality has the capacity, rights, powers, and privileges of a natural person for the purposes of exercising its authority under that or any other Act;

AND WHEREAS the Owner is the registered owner of certain lands and premises situated in the City of London, in the County of Middlesex and Province of Ontario (hereinafter called the "Property" or "39 Carfrae Street"), being composed of LT 5, PL 451 (4th); London and known municipally as 39 Carfrae Street, London and designated to be of historic and architectural value by By-law No. L.S.P.-2978-65;

AND WHEREAS the purpose of the *Ontario Heritage Act*, R. S. O. 1990, c. O.18, is to support, encourage, and facilitate the conservation, protection, and preservation of the heritage of Ontario;

AND WHEREAS in accordance with Section 37(1) of the *Ontario Heritage Act*, R. S. O. 1990, c. O.18, the City is entitled to enter into agreements, covenants, and easements with owners of real property or interests therein, for the conservation, protection, and preservation of the heritage of Ontario;

AND WHEREAS by Sections 37(2) and 37(3) of the *Ontario Heritage Act*, R. S. O. 1990, c. O.18, such covenants and easements may be entered into by the City, when registered in the property Land Registry Office against the real property affected by them, shall run with the real property and may, whether positive or negative in nature, be enforced by the City or its assignees against any subsequent owners of the real property even where the City owns no other lands which would be accommodated or benefitted by such covenants or easements;

AND WHEREAS the Owner and the City desire to conserve the cultural heritage value and interest of the Property as described hereto in a manner which will ensure its preservation for future generations;

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Heritage Easement Agreement on behalf of the City;

AND THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached as Schedule "A" to this By-law, being a heritage easement agreement related to 39 Carfrae Street, London, is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Agreement authorized and approved under Section 1 above, substantially in the form of agreement attached and to the satisfaction of the City Solicitor.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council April 13, 2021.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – April 13, 2021
Second Reading – April 13, 2021
Third Reading – April 13, 2021

Appendix B

THIS AGREEMENT made this XX day of XXXX 2021 between:
XXXX
(the "Owner")

and
the Corporation of the City of London
(the "City")

WHEREAS the Owner is the owner of certain lands and premises situated in the City of London in the County of Middlesex and Province of Ontario, and municipally known as 39 Carfrae Street (hereinafter called the "Property"), and more particularly described in Schedule "A" attached hereto and which there is a dwelling (hereinafter called the "Building");

AND WHEREAS one of the purposes of the *Ontario Heritage Act*, R. S. O., 1990, c. O.18, is to support, encourage, and facilitate the conservation, protection, and preservation of the heritage of Ontario;

AND WHEREAS by Subsection 37(1) of the *Ontario Heritage Act*, the City is entitled to enter into easements or covenants with owners of real property, or interests therein, for the conservation of property of cultural heritage value or interest;

AND WHEREAS in accordance with Subsection 37(1) of the *Ontario Heritage Act*, the City has passed by-law No. XXXX authorizing this Agreement, a copy of which is attached as Schedule "B" to this Agreement;

AND WHEREAS by Subsection 37(3) of the *Ontario Heritage Act*, such covenants and easements entered into by the City when registered in the proper Land Registry Office against the real property affected by them shall run with the real property and may, whether positive or negative in nature, be enforced by the City or its assignee against the owners or any subsequent owners of the real property, even where the City owns no other land which would be accommodated or benefitted by such covenants or easements;

AND WHEREAS the Owner and City desire to conserve the cultural heritage value or interest of the property set out in the "Cultural Heritage Value" attached as Schedule "C" and as may be depicted in the Photographs attached as Schedule "D" to this agreement;

AND WHEREAS to this end, the Owner and the City agree to enter into this heritage easement agreement (hereinafter called the "Agreement");

NOW THEREFORE THIS AGREEMENT WITNESSTH that in consideration of the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by the City to the Owner (the receipt of which is hereby acknowledged), other valuable considerations and the mutual covenants and restrictions hereinafter set forth, the Owner and the City agree to abide by the following covenants, easements, and restrictions which shall run with the Property forever.

1.0 Cultural Heritage Value or Interest

1.1 Statement of Cultural Heritage Value or Interest

The Owner and the City agree that for the purposes of this Agreement the Statement (hereinafter called the “Cultural Heritage Value or Interest”) attached as Schedule “C” to this Agreement sets out the reasons why the Property has been identified by the City as having cultural heritage value or interest:

1.2 Photographs Relevant to the Duties of the Owner

The Owner acknowledges that a set of dated photographs, hereinafter referred to collectively as “the Photographs” and attached as Schedule “D”, document the state of the Property as of the date of execution of this Agreement. The original photographs, dated February 12 and 26, 2021, will be kept on file at the City’s offices or such other locations as the City may determine, and may be examined at any time upon reasonable notice to the City. The Photographs generally depict certain heritage attribute of the appearance or the construction of the Building and Property and the Cultural Heritage Value or Interest and the Photographs shall be referred to in determining the duties of the Owner under this Agreement.

When alterations are made to the Building pursuant to paragraph 2.1 and/or 2.4, the Owner shall within ninety (90) days of completion of such alterations and at the Owner’s expense, provide to the City new photographs taken from the same vantage point and identifying the same features of the appearance or construction as the original photographs. Such photographs shall be dated and filed with the City. The City shall number the said photographs which shall supersede the original Photographs and all references in this Agreement to the Photographs shall be deemed to refer to such new replacement photographs.

2.0 Duties of Owner

2.1 Normal Repairs and Alterations

The Owner shall not, except as hereinafter set forth, without the prior written approval of the City, undertake or permit any demolition, construction, alteration, remodelling, or any other thing or act which would materially affect the attributes, features or the appearance or construction of the Building as set out in the Cultural Heritage Value or Interest and as may be depicted in the copies of the Photographs on file or drawings or other documents attached hereto. The approval required to be obtained from the City herein shall be deemed to have been given upon the failure of the City to respond in writing to a written request for it within ninety (90) days of receiving such request at its address as set out in paragraph 6.1 of this Agreement. If the approval of the City is given or deemed to be given under this paragraph, the Owner, in undertaking or permitting the construction, alteration, remodelling, or other thing or act so approved of, shall use materials approved by the City.

2.2 Insurance

The Owner shall at all times during the currency of this Agreement keep the Building insured against normal perils that are coverable by fire and extended coverage insurance in an amount equal to the replacement cost of the Building. Upon execution of this agreement, the Owner shall deliver to the City a letter or certificate, in a form and from an insurance company, agent, or broker acceptable to the City, which letter or certificate shall state as follows:

“This will confirm that (name of insurer) has insured to the Owner a valid insurance policy which insures the Building against normal perils that are coverable by fire and extended coverage insurance in an amount equal to the replacement cost of the Building.”

The Owner further agrees to provide written evidence of the renewal of such policy at least three (3) weeks prior to the expiration date of the policy, in a form satisfactory to the City. If the Owner fails to so insure the Building, or in any such insurance on the Building is cancelled, the City may effect such insurance as the City deems necessary and any sum paid in so doing shall forthwith be paid by the Owner to the City, or if not

shall be a debt due and owing to the City and recoverable from the Owner by action in a court of law. All proceeds receivable by the Owner under any fire and extended coverage insurance policy or policies on the Building shall, on the written demand and in accordance with the requirements of the City, be applied to replacement, rebuilding, restoration, or repair of the Building to the fullest extent possible having regard for the Cultural Heritage Value or Interest, the particular nature of the Building and the cost of such work.

2.3 Damage or Destruction

The Owner shall notify the City of any damage or destruction to the Building within ten (10) days of such damage or destruction occurring. In the event that the Building is damaged or destroyed and the replacement, rebuild, restoration, or repair of it is impractical because of the financial costs involved, or because of the particular nature of the Building, the Owner shall, in writing within forty (40) days of the giving by the Owner of such notice of such damage or destruction, request written approval by the City to demolish the Building, in accordance with paragraph 2.1. If the approval of the City is given or deemed to be given, the Owner shall be entitled to retain any proceeds from the insurance hereinbefore mentioned and to demolish the building.

2.4 Reconstruction by Owner

If the Owner has not requested the approval to demolish referred to in paragraph 2.3 or if the City does not give the approval to demolish referred to in paragraph 2.3, the Owner shall replace, rebuilding, restore, or repair the Building so as to effect the complete restoration of the Building. Before the commencement of such work, the Owner shall submit all plans and specifications for the replacement, rebuilding, restoration, or repair of the Building to the City for its written approval within one hundred and thirty-five (135) days of the damage or destruction occurring to the Building. A refusal by the City to approve any plans and specifications may be based upon choice of materials, appearance, architectural style, or any other grounds and grounds including, but not limited to, purely aesthetic grounds, and the determination of the City shall be final. The Owner shall not commence or cause restorative work to be commenced before receiving the written approval of the City of the plans and specifications for it, and such restorative work shall be performed upon such terms and conditions as the City may stipulate. Such approval shall be deemed to have been received upon failure of the City to respond in writing to a written request for it within ninety (90) days of receipt of such request by the City. The Owner shall cause all replacement, rebuilding, restoration, and repair work on the Building to be commenced within thirty (30) of the approval by the City of the plans and specifications for it and to be completed within nine (9) months of commencement, or as soon as possible thereafter if factors beyond their control prevent completion within the said nine (9) months, and the Owner shall cause all such work to conform to the plans and specifications approved of and terms and conditions stipulated by the City.

2.5 Failure of the Owner to Reconstruct

In the event that a request to demolish is not submitted or is refused pursuant to the provision of paragraph 2.3 and the Owner fails to submit plans and specifications pursuant to paragraph 2.4 which are acceptable to the City within one hundred and thirty-five (135) days of the damage or destruction occurring to the Building, the City may prepare its own set of plans and specifications. The Owner shall have thirty (30) days from receiving a copy of such plans and specifications to notify the City in writing that they intend to replace, rebuild, restore, or repair the Building in accordance with those plans and specifications.

If the Owner does not so notify the City within the said thirty (30) days, the City may enter onto the property and proceed with replacing, rebuilding, restoring, or repairing the building so as to effect the complete restoration of the building. The Owner shall reimburse the City for all expenses incurred by the City in carrying out such work.

2.6 Maintenance of the Building

The Owner shall at all time maintain the Building in as good and as sound of a state of repair as a prudent owner would normally do so, so that no deterioration in the

Building's condition and appearance shall take place, including, without limiting the generality of the foregoing, taking all reasonable measures to secure and protect the Building from vandalism, fire, and damage from inclement weather.

2.7 Signs, Etc.

The Owner shall not erect or permit the erection on the Building of any signs, awnings, television aerials, or other objects of similar nature without the prior written approval of the City provided, however, the approval of the City shall not be unreasonably withheld, having regard to the Owner's use of the Building, the Cultural Heritage Value or Interest, and the Photographs.

2.8 No Act of Waste

The Owner shall not commit or permit any act of waste on the Property. In particular, the Owner shall not, except with the prior written approval of the City:

- (a) Grant any easement or right-of-way which would adversely affect the easement hereby granted;
- (b) Allow the dumping of soil, rubbish, ashes, garbage, waste, or other unsightly, hazardous, or offensive materials of any type or description;
- (c) Except for the maintenance of existing improvements, allow any changes in the general appearance or topography of the lands that would negatively affect the Building or its Cultural Heritage Value or Interest, including and without limiting the generality of the foregoing, the construction of drainage ditches, transmission towers and lines, and other similar undertakings, as well as the excavation, dredging, or removal of loam, gravel, soil, rock, sand, or other materials;
- (d) Allow any activities, actions, or uses detrimental or adverse to water conservation, erosion control, and soil conservation;
- (e) Allow the planting of trees, shrubs, or other vegetation which would cause any damage or a real likelihood of damage to the Building or otherwise negatively affect it or its Cultural Heritage Value or Interest; and,
- (f) Erect or remove or permit the erection or removal of any building, fence, or structure of any type whatsoever on the Property provided, however, that the approval of the City shall not be unreasonably withheld if such erection or removal would not cause any damage or a real likelihood of damage to the Building or otherwise negatively affect it or its Cultural Heritage Value or Interest.

2.9 Breach of Owner's Obligations

If the City, in its sole discretion, is of the opinion that the Owner has neglected or refused to perform any of their obligations set out in this agreement, the City may, in addition to any of its other legal or equitable remedies, serve on the Owner a notice setting out particulars of the breach and of the City's estimated maximum costs of remedying the breach. The Owner shall have thirty (30) days from receipt of such notice to remedy the breach or make arrangements satisfactory to the City for remedying the breach.

If within those thirty (30) days the Owner has not remedied the breach or made arrangements satisfactory to the City for remedying the breach, or if the Owner does not carry out the said arrangements within a reasonable period of time, of which the City shall be the sole and final judge, the City may enter upon the Property and may carry out the Owner's obligations and the Owner shall reimburse the City for all expenses incurred thereby. Such expenses incurred by the City shall, until paid to it by the Owner, be a debt owed to the City and may be enforced by any remedy authorized or permitted by this Agreement or by law, and no such remedy shall be exclusive of or dependent on any other remedy.

2.10 Waiver

The failure of the City at any time to require performance by the Owner of any obligations under this Agreement shall in no way affect its right thereafter to enforce

such obligations, nor shall the waiver by the City of the performance of any obligations hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time.

2.11 Extension of Time

Time shall be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both the Owner and the City, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

2.12 Emergencies

Notwithstanding the provisions of paragraph 2.1, it is understood and agreed that the Owner may undertake such temporary measures in respect of the Building as are:

- (a) In keeping with the intentions of this Agreement;
- (b) Consistent with the conservation of the Building; and,
- (c) Reasonably necessary to deal with an emergency which puts the security or integrity of the Building or occupants of the Building at risk of damage.

Provided that the *Building Code Act, 1992*, S. O. 1992, c. 23, as amended, or re-enacted from time to time is complied with and, where time permits, the City's Heritage Planner is consulted.

3.0 Use of Property

The Owner expressly reserves for itself, its representatives, heirs, successors, and assigns the right to continue the use of the Property for all purposes not inconsistent with this Agreement.

4.0 Inspection by City

The City or its representatives shall be permitted at all reasonable times to enter upon and inspect the Property and the Building upon prior written notice to the Owner of at least twenty-four (24) hours.

5.0 Notice of Easement

5.1 Plaque

The Owner agrees to allow the City to erect a plaque on the Building or Property, in a tasteful manner and at the City's expense, indicating that the City holds a conservation easement on the Property.

5.2 Publicity

The Owner agrees to allow the City to publicise the existence of the easement.

6.0 Notice

6.1 Address of Parties

Any notices to be given under this Agreement shall be delivered to the parties at their respective addresses. The respective addresses of the parties for such purposes presently are as follows:

Owner

39 Carfrae Street
London, Ontario
N6C 1G1

City

The Corporation of the City of London
300 Dufferin Avenue
P.O. Box 5035
London, Ontario
N6A 4L9

The parties agree to notify each other immediately, in writing, of any changes of address from those set out above.

6.2 Method of Notice

Any notices, certificates or other communications and deliveries required by this Agreement or desired to be given to or made by any party shall be in writing and may be delivered personally, made by mailing the same in a sealed envelope, by registered mail, postage prepaid, return receipt requested, addressed to each part at the address set forth in 6.1 or such other address as the parties shall designate by notice, given in accordance herewith. Personal delivery shall be effective on the day of delivery and delivery by mail shall be effective five (5) days after mailing.

7.0 Indemnity

7.1 No work, act, matter or thing done or omitted to be done by the City, its officers, employees or agents or Municipal Council, pursuant to or in connection with this Agreement, shall give rise to any action, claim, counter-claim or demand by the Owner, or the Owner's heirs, executors, administrators, successors or assigns, for damages or compensation of any kind because of such work, act, matter or thing done or omitted to be done by the City, its officers, employees or agents or Municipal Council, pursuant to or in connection with this Agreement.

7.2 The Owner agrees to indemnify and forever save harmless the City, its officers employees, and agents and Municipal Council, from any claim, suit, demand, action, costs or causes of action against the City by any other party, arising out of or in connection with this Agreement or any work, act, matter or thing done or omitted to be done by the City, its officers, employees or agents or Municipal Council pursuant to or in connection with this Agreement.

8.0 Entire Agreement

Except as set out herein, this written Agreement embodies the entire agreement of the parties regarding the matters dealt with herein, and no understandings or agreements, verbal or otherwise, exist between the parties except as herein expressly set out.

9.0 Severability

The Owner and the City agree that all covenants, easements, and restrictions contained in this Agreement shall be severable, and that should any covenant, easement, or restriction in this Agreement be declared invalid or unenforceable, the remaining covenants, easements, and restrictions shall not terminate thereby.

10.0 Binding on Successors

10.1 The covenants, easements, and restrictions set out in this Agreement shall run with the Property and shall enure to the benefit and be binding upon the parties and their respective heirs, executors, administrators, successors, and assigns as the case may be, in accordance with Section 37 of the *Ontario Heritage Act*, as amended. "Owner" wherever used in this Agreement, is intended and shall be construed to include such subsequent owners, successors and assigns.

10.2 Without in any way affecting or intending to affect the binding nature of the covenants, easements and restrictions herein contained, in any and every conveyance, sale, charge, mortgage, lease, assignment, license, disposition or other dealing whatsoever with the Property and any part thereof, the Owner shall deliver to every grantee, transferee, buyer, mortgagee, lessee, assignee, licensee or other interested person thereunder written notice of this Agreement and obtain from every such party thereof a covenant to observe, perform and comply with the covenants, easements and restrictions herein contained.

10.3 The Owner shall notify the City within ten (10) days of divesting themselves of any legal or beneficial interest in the Property or the Building.

11.0 Termination

Notwithstanding any other provision of this Agreement, this Agreement shall terminate and all covenants, easements and restrictions contained herein shall be released immediately upon the City providing approval to demolish the Building pursuant to paragraph 2.3.

12.0 General

12.1 The Owner hereby agrees to procure and provide to the City any postponement agreements which the City Solicitor considers necessary to ensure that this Agreement shall have a priority over any other any other interests in the Property.

12.2 The headings in the body of this Agreement form no part of the Agreement but shall be deemed to be inserted for the convenience of reference only.

12.3 This Agreement shall be construed with all changes in number and gender as may be required by the context.

12.4 This Agreement shall be governed in accordance with the laws of the Province of Ontario.

12.5 The following schedule attached hereto shall be deemed to form a part of this Agreement:

- (a) Schedule "A" - Legal Description of the Lands
- (b) Schedule "B" – Authorizing By-Law
- (c) Schedule "C" - Cultural Heritage Value or Interest
- (d) Schedule "D" – Photographs

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals attested by their respective proper signing officers in that behalf duly authorized.

SCHEDULE "A" – Legal Description of the Property

Legal Description: LOT 5, PLAN 451(4th); LONDON

PIN: 08374-0082 (LT)

LRO No.: 33 (Middlesex County)

Municipal Address: 39 Carfrae Street, London, Ontario

SCHEDULE "B" – Authorizing By-law
Copy of Authorizing By-law to be inserted

SCHEDULE “C” – Cultural Heritage Value or Interest

Description

The property at 39 Carfrae Street, the Building known as Carfrae Cottage, is located on the south side of Carfrae Street between Ridout Street South and Carfrae Crescent. Carfrae Street is the first street south of the South Branch of the Thames River, with views of the river from the property’s doorstep. The rear of the property fronts Ardaven Place.

The property is located in the former Westminster Township, now City of London. The property is in the Old South neighbourhood.

Statement of Cultural Heritage Value or Interest

Carfrae Cottage property, 39 Carfrae Street, is of significant cultural heritage value or interest for its physical or design values, its historical and associative values, and its contextual values.

Built circa 1860, Carfrae Cottage is an early example of traditional Ontario Cottage architecture in both style and type. The Ontario Cottage type is demonstrated in the well proportioned, balanced composition of the building with its central doorway flanked by evenly spaced windows, a wood shingle hipped roof accented by a gable dormer over the front doorway. The classic simplicity of the three-bay design is a type that is replicated throughout southern Ontario but well executed at Carfrae Cottage. Carfrae Cottage demonstrates elements of the Gothic Revival architectural style, in a modest and subdued way reflecting its context and period, particularly in the window labels, pierced decorative bargeboard, and primitive pointed attic window. These elements demonstrate a high degree of craftsmanship reflective of the property’s historical or associative values.

Carfrae Cottage was built by Robert Carfrae (1804-1881), who was born in Leith, Scotland and trained as a carpenter. He came to London from Toronto (York) in 1827 to help build the old London District (Middlesex County) Court House. In 1834, Robert Carfrae received a grant of 24 acres on the east side of Wortley Road, which included much of the area of present Carfrae Street and Carfrae Crescent, from the Crown. At the time of his death, Robert Carfrae was the oldest inhabitant of London and had become quite prosperous through land speculation. The property went to his wife, Sara, who lived there until her death in 1902. Although the size of the property was much reduced, the house remained with the family descendants until 1944. The property has direct associations with Robert Carfrae, who is significant to the early building and development of London. The property also demonstrates the work of Robert Carfrae, a builder, who is significant to London through his role in the construction of the Court House.

Carfrae Cottage was preserved under the stewardship of Julia (1928-2012) and Alan (1928-2020) Beck during their ownership of the property from 1998 until 2021. As one of the earliest extant buildings in the area, Carfrae Cottage is important in defining the character of the area. The original land grant to Robert Carfrae provide the namesake of Carfrae Street, Carfrae Crescent, and Carfrae Park - East which demonstrate the historical links of the property to its surroundings. As an early building, it differs from nearby and adjacent structures in material, form, style and siting on the property which distinguishes the heritage character of the property.

Heritage attributes which contribute to the cultural heritage value or interest of the property at 39 Carfrae Street, Carfrae Cottage are:

- The form, scale, and massing of the one-and-a-half storey cottage building
- The location of the building on the property, contrasting to adjacent properties and emphasizing the setback of the north façade from Carfrae Street
- Rectangular in footprint of the dwelling with a rear kitchen wing or ell
- Rubble stone foundation
- Hipped roof, clad in wood shingles

- Sloped, painted wood soffit of the roof
- Pair of reconstructed chimneys with parged finish; one on the east slope and one on the west slope of the roof with a symmetrical, balanced composition
- Traditional stucco parging (cementitious smooth textured exterior 'stucco' finish) over double brick wall construction
- On the north façade,
 - Symmetrical arrangement of the front (north) façade, with a central doorway flanked by two windows
 - Single leaf, painted wood door with two long panels (which is believed to be original to the house), set in a rectangular opening with rectangular sidelights to both sides, a panelled dado below, and a rectangular transom. The sidelights and transom feature stained glass in repetitive geometric patterns with coloured and textured glass. The doorway is recessed in the façade with a plain reveal. The door opening is framed by pilasters with a Gothic point, with entablature supporting the architectural framework of the doorway
 - The simple form of the painted wood porch over the front doorway, which fails to detract from the original structure, with a cedar shingle gable roof, supported by a plain frieze and boxed piers with simple capital and base details
 - The porch base is clad in stone and connects to a concrete path which leads to the sidewalk of Carfrae Street and is flanked to both sides by lawn/garden and parallel to the single width driveway along the westerly property line
 - The painted wood double hung front (north) façade windows with six-over-six glazing pattern, which is duplicated in the matching painted storm windows and adapted with the louvered shutter detail in the top lites of the storm window
 - The louvered painted wood shutters of the front (north) façade windows
 - The painted wood labels over the front (north) façade windows and wood sills
 - Central gable dormer on the front (north) façade with a primitive Gothic pointed wood window with matching storm window
 - Decorative wood bargeboard on the central gable dormer
 - The Scotch thistle, affixed at the top of the gable, was reputedly placed there by Archie McCulloch, property owner of Carfrae Cottage (1944-1972), who received it from Queen Elizabeth during WWII along with other officers at Castle Mey, Scotland
- On the west façade
 - The painted wood French doors and painted wood storm doors in the northerly opening which retains its cast sill as an indication of the former verandah of Carfrae Cottage. The doorway has a keystone in the parging
 - The painted wood six-over-six shingle hung window with storm windows that replicate the six-over-six fenestration. The window opening has a keystone in the parging and a wood sill
- On the south (rear) façade
 - The two twelve-over-twelve painted wood windows with storm windows which replicate the twelve-over-twelve fenestration and wooden sills
 - Doorway, with wood door and storm door
 - The kitchen wing with two-over-two painted wood window and storm window
 - Awning over the kitchen doorway, a later but sympathetic addition
 - Painted wood kitchen door, with nine lights and X-pattern panelling below and painted wood storm door
 - Shed style dormer with painted battens over an exterior parged finish, and a pair of window openings

- Six-over-six painted wood window on the south façade of the kitchen ell with a matching wood storm window and wood sill
- On the east façade
 - The undivided hung painted wood kitchen window and matching storm window with wood sill
 - The bathroom window with patterned glass in the lower lite and clear glass in the upper lite of the hung window with a storm window and wood sill
 - Six-over-six painted wood window with matching storm windows and a wood sill that has been clad with aluminum
 - Six-over-six double hung painted wood window with matching storm window and wood sill
- On the interior,
 - The plan of the Centre hallway, “east parlour”, and “west” parlour”
 - The Centre hallway, accessed via the front doorway, with painted wood baseboards, painted wood casing, and crown moulding
 - The “east parlour” with the original fireplace mantle and tile surround, painted wood baseboard, painted wood window and door casings, and painted wood panelling below the windows
 - The “west parlour” with sympathetic fireplace mantle and tile surround, painted wood baseboard, painted wood window and door casings, and painted wood panelling below the windows
- Paint colour is not regulated.

SCHEDULE "D" – Photographs
Photographs



Image 1: Photograph of Carfrae Cottage in 1988 at the time of its designation pursuant to Section 29 of the Ontario Heritage Act.



Image 2: Photograph of Carfrae Cottage on July 21, 2015.



Image 3: View of the property at 39 Carfrae Street, looking south to the front (north) facade of Carfrae Cottage.



Image 4: View of Carfrae Cottage, looking southeast from the northwest corner of the property at 39 Carfrae Street.



Image 5: View to the east of the property at 39 Carfrae Street, showing the properties at 41 Carfrae Street and 43 Carfrae Street.



Image 6: View to the west of the property at 39 Carfrae Street, showing the property at 35 Carfrae Street.



Image 7: Photograph showing an example of the rubble stone foundation construction of Carfrae Cottage, as seen in the basement.



Image 8: Photograph of the west chimney, as seen from Carfrae Street.



Image 9: Photograph of the east chimney, as seen from Carfrae Street.



Image 10: Photograph showing the sloped, painted wood soffit of the roofline.



Image 11: Photograph, showing a representative example, of the traditional stucco parging (cementitious smooth textured exterior 'stucco' finish) over the double brick construction of Carfrae Cottage.



Image 12: Photograph showing the front doorway with single leaf, painted wood door with two long panels (which is believed to be original to the house), set in a rectangular opening with rectangular sidelights to both sides, a panelled dado below, and a rectangular transom. The sidelights and transom feature stained glass in repetitive geometric patterns with coloured and textured glass. The doorway is recessed in the façade with a plain reveal. The door opening is framed by pilasters with a Gothic point, with entablature supporting the architectural framework of the doorway.



Image 13: Detail photograph showing the entablature of the doorway with Gothic pointed pilaster, as well as a detail of the stained glass transom.



Image 14: Photograph showing the simple form of the painted wood porch over the front doorway, which fails to detract from the original structure, with a cedar shingle gable roof, supported by a plain frieze and boxed piers with simple capital and base details.



Image 15: Photograph showing the existing condition of the porch base.



Image 16: View showing the easterly window, storm window, shutters, sill, and label on the front (north) façade of Carfrae Cottage.



Image 17: Photograph showing the westerly front window, storm window, wood shutters, label, and sill of the front (north) façade of Carfrae Cottage.



Image 18: View of the central gable dormer on the front (north) facade of Carfrae Cottage with a primitive Gothic pointed wood window and matching storm window. The decorative wood bargeboard of the central gable dormer is also shown, as well as the Scotch thistle.



Image 19: View of the west and south facades of Carfrae Cottage, and showing the driveway along the westerly property boundary.



Image 20: Photograph of the painted wood French doors and painted wood storm doors in the northerly opening of the west façade, which retains its cast sill as an indication of the former verandah of Carfrae Cottage. The doorway has a keystone in the parging.



Image 21: Photograph of the painted wood six-over-six shingle hung wood window with storm windows that replicate the six-over-six fenestration. The window opening has a keystone in the parging and a wood sill.



Image 22: View showing the south facade of Carfrae Cottage as well as the kitchen wing.



Image 23: Photograph showing the two twelve-over-twelve painted wood windows with storm windows and wooden sills on the south façade of Carfrae Cottage.



Image 24: Photograph showing the doorway, with door and storm door, on the south façade of Carfrae Cottage leading into the dining room.



Image 25: Photograph showing the two-over-two painted wood window and storm window in the kitchen wing.



Image 26: Photograph showing the awning over the kitchen doorway as well as the painted storm door.



Image 27: Photograph showing the painted wood kitchen door, with nine lites and X-pattern panelling below.



Image 28: Photograph of the shed roof dormer on the south façade of Carfrae Cottage.



Image 29: Photograph of the six-over-six painted wood window on the south façade of the kitchen wing with a matching wood storm window and wood sill.



Image 30: View of the south façade of Carfrae Cottage, as seen from the rear (southerly) property boundary along Ardaven Place.



Image 31: Showing the junction of the kitchen wing and the house along the easterly façade of Carfrae Cottage.



Image 32: Photograph of the bathroom window on the east façade with patterned glass in the lower lite and clear glass in the upper lite of the hung window with a storm window and wood sill.



Image 33: Photograph of the six-over-six painted wood window with matching storm windows and an aluminum-clad sill.



Image 34: Photograph of the six-over-six double hung painted window with matching storm window and wood sill on the east façade.



Image 35: Photograph showing the Centre hall, looking towards the front doorway of Carfrae Cottage. Note the baseboards, casing, and crown moulding.



Image 36: Photograph showing the Centre hall, looking south towards the rear of Carfrae Cottage.



Image 37: Photograph showing the fireplace mantle and tile surround of the "east parlour."



Image 38: Photograph showing an example of the baseboards and casing of the "east parlour".



Image 39: Photograph showing the fireplace mantle and tile surround of the "west parlour."



Image 40: Photograph showing the French Doors in the "west parlour" of Carfrae Cottage. See Image 20 for exterior view of the French Doors.