



**SUBJECT: Eligibility of 795 Brant Street for Heritage Designation**

**TO: Mayor and Members of Council**

**FROM: Community Planning Department**

Report Number: PL-80-22

Wards Affected: 2

File Numbers: N/A

Date to Committee: December 6, 2022

Date to Council: December 13, 2022

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**Recommendation:**

State an intention to designate the property at 795 Brant Street under Part IV, Section 29 of the Ontario Heritage Act in accordance with the Heritage Evaluation of 795 Brant Street prepared by AECOM, dated November 23, 2022; and

Direct the Director of Community Planning to provide notice of Council's intention to designate 795 Brant Street, in accordance with section 29 (3) and 29 (4) of the Ontario Heritage Act; and

Direct the City Clerk to present the draft designation by-law to Council for approval within 120 days after the date of publication of the notice of intention to designate 795 Brant Street, provided there is no objection or withdrawal; and

Direct the City Clerk to take the necessary actions in the event of any objection to the notice of intention to designate pursuant to Part IV of the Ontario Heritage Act, sections 29 (5) and 29 (6).

**PURPOSE:**

The purpose of this report is to provide information, analysis and a recommendation regarding the eligibility of 795 Brant Street for heritage designation under section 29 of the *Ontario Heritage Act* (OHA) based on a Heritage Evaluation of 795 Brant Street by AECOM, dated November 23, 2022 (See Appendix A). The report also presents the Heritage Burlington Advisory Committee's recommendation about the property from their special meeting on November 22, 2022.

## **Vision to Focus Alignment:**

- Increase economic prosperity and community responsive city growth
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## **Background and Discussion:**

On October 21, 2021, Camarro Developments Inc. held a pre-application community meeting to gather public input on their proposal to redevelop 789-795 Brant Street with a 31-storey mixed-use building. The 2-storey heritage building at 795 Brant Street was not included in the proposal and would have to be demolished.

Heritage Burlington became aware of the pending development application and made the following motion at their March 9, 2022, meeting:

*Heritage Burlington recommends that the property at 795 Brant Street be added to the Municipal Register.*

The recommendation was based on a site visit and heritage assessment of the property by the “Evaluations Subcommittee” of Heritage Burlington (See Appendix B).

On June 21, 2022, City Council added 795 Brant Street to the Heritage Register and directed the Director of Community Planning to contact the owner about conserving portions of the building and to retain a consultant to complete a third-party heritage evaluation and statement of significance. The full wording of the motion is below:

*Direct the Director of Community Planning to add 795 Brant Street to the Municipal Heritage Register and provide notice to the owner of the property within 30 days, pursuant to section 27(5) of the Ontario Heritage Act, R.S.O. 1990, c. O.18; and*

*Authorize the City Clerk to take necessary action if there are any objections in accordance with Section 27(7) of the Ontario Heritage Act, R.S.O. 1990, Chapter 0.18; and*

*Direct the Director of Community Planning to contact the property owner to discuss the conservation of the original portions of the 2-storey masonry building on the property as part of a future development; and*

*Direct the Director of Community Planning to retain a qualified heritage consultant to complete a third-party heritage evaluation and a statement of significance of 795 Brant Street.*

In July 2022, staff met with the owner’s applicant team and recommended that the front portion of 795 Brant Street be incorporated into the development.

On September 21, 2022, the City received applications for an Official Plan and Zoning By-law Amendment for 789-795 Brant Street proposing the redevelopment of the property with a 31-storey mixed-use building containing 356 new residential units and 485 square metres of retail at grade. The heritage registered building is not depicted as part of the development, and the applicant has submitted a Heritage Impact Assessment by ATA Architects Inc., arguing that the building does not qualify for heritage designation.

The City has 90 days to issue a notice of intention to designate after it determines an Official Plan or Zoning By-law Amendment application is complete (See Section 29 (1.2) of the OHA). The determination as to whether or not an application is deemed complete is due 30 days after application submission. If the City does not issue the notice in 90 days after a determination of completeness, it loses the ability to designate the property. The deadline for the determination of completeness for these applications fell on October 21, 2022. Therefore, the City would lose its ability to heritage designate 795 Brant Street if the notice of intention to designate is not provided on or prior to January 19, 2023.

On November 8, 2022, the owner submitted a demolition clearance form to the Community Planning Department. The form is a screening tool submitted before a demolition permit, which identifies approval requirements from other departments and outside agencies. The demolition clearance form technically qualifies as a notice of intent to demolish and starts the 60-day notice period, which expires on January 8, 2023.

On November 8, 2022, City Council authorized the Director of Community Planning to convene a meeting of the Heritage Burlington Advisory Committee before November 29, 2022, to obtain their recommendation regarding the eligibility of 600 Brant Street and 795 Brant Street for heritage designation. City Council directed staff to report back to the December 13, 2022 City Council meeting with a recommendation concerning the eligibility of 795 Brant Street for heritage designation.

On November 22, 2022, the Heritage Burlington Advisory Committee met and considered the eligibility of 795 Brant Street for heritage designation.

## **Strategy/process**

### Heritage Designation Process

Under Part IV of the OHA, the City can designate a property using a municipal bylaw provided that the property meets prescribed criteria for determining whether a property is of cultural heritage value or interest. There are nine prescribed criteria found in [Ontario Regulation 9/06](#) and organized into three categories of heritage value:

1. Design/physical value;
2. Historical/associative value; and
3. Contextual value.

If the property meets at least one of the criteria, a statement is prepared defining the property's heritage value, its character-defining heritage attributes and how each attribute contributes to the cultural heritage value or interest of the property. The municipal heritage committee must be consulted before Council can issue a "notice of intention to designate", which is served on the owner and published in a newspaper. A municipality's intention to designate is subject to appeal by a property owner. However, this notice voids any permit to alter or demolish the property, until the matter is appropriately resolved.

Once the designation process is completed, the owner must receive Council permission to demolish their building or alter the property's heritage attributes. Through the Delegated Authority By-law (By-law 07-2022, Schedule C), Council has delegated to Community Planning staff the authority to approve heritage permits for alterations. Only Council may refuse a heritage permit for alteration or decide if it should be demolished or removed.

#### Eligibility of 795 Brant Street for Heritage Designation

The heritage consultant evaluating 795 Brant Street reviewed it against all nine possible designation criteria under all three categories of heritage value (See pages 54-59, Appendix A). The consultant concluded that the property met six out of nine criteria required for heritage designation:

#### **The Property has Design or physical value because it:**

- i. Is a rare, unique, representative, or early example of a style, type, expression, material or construction method.**
  - The structure at 795 Brant Street is an early example of a brick-built vernacular Georgian style two-storey house.
  - The building retains its form, scale, massing and fenestration of the front façade. It has a symmetrical three-bay façade expressive of the Georgian style. Other characteristics of the style include the gable ended roof with chimneys, transom window above the door and flat or jack-arched rectangular windows. The house was made with brick manufactured on the property.
  
- ii. Displays a high degree of craftsmanship or artistic merit**
  - The house located at 795 Brant Street was constructed by a master builder, James Cushie Bent, and brickmaker and mason, Jabez Bent, and therefore displays a high degree of craftsmanship for its era as a substantial brick structure. In particular, the original 53-acre property with this house included a brickyard, and the house would have been made from the hand-made

bricks manufactured on-site. The brick is laid on the façade in Flemish bond which took a skilled bricklayer, such as Jabez Bent, to execute.

**The property has Historical or Associative Value because it:**

- i. Has direct associations with a theme, event, belief, person, activity, organization, or institution that is significant to a community**
  - 795 Brant Street has historical value with direct associations with a theme and persons (James Cushie Bent, Jabez Bent, Frederick Bray, William Ghent) who are significant to the community of Burlington.
  - Despite the changes to the property over the last century, 795 Brant Street.
  - is a physical reminder of the significant role that the Bent, Bray, Ghent, and Harmon families made in Burlington's early industries of building and market gardening.
  - The property is associated with its builder Jabez Bent, a brick mason, who ran a brickyard on the 53-acre property. He earned a sterling reputation as a craftsman in the community. His brother James Cushie Bent, was a master builder with an aptitude for joinery. Both Bent brothers contributed to the development of Burlington and built several notable structures, including the Queen's Hotel located at 400 Brant Street.
  - In 1859, Jabez Bent sold the 53-acre property containing the two-storey brick house to Frederick Bray, a farmer and small fruit grower who resided there until 1896. William Ghent, a third generation descendent of the Ghent family, purchased the 53-acre property from Frederick Bray in 1896. After that, Ghent continued operating the fruit farm established by Bray on the property. Under William Ghent, the agricultural output of the 53-acre property, of what became known as "Maple Lodge", was substantial, and it featured extensive orchards. The farm at 795 Brant Street contributed significantly to the nineteenth century market garden industry in Burlington.
  
- ii. Yields or has the potential to yield information that contributes to an understanding of a community or culture.**
  - The history of the property at 795 Brant Street yields information about the lives of the masons, builders, and the farmers of market gardens who played a significant role in the development of Burlington.
  - The property at 795 Brant Street played a significant role in the City of Burlington's brickmaking and market garden industries.

**iii. Demonstrates or reflects the work or ideas of an architect, artist, builder, designer, or theorist who is significant to a community.**

- Between 1854-1855, the brothers Jabez and James Cushie Bent constructed the original two-storey Georgian style brick house on a 53-acre parcel of land containing 795 Brant Street which is a demonstration of their work in the community of Burlington. Jabez Bent, a brickmaker and mason and his brother, James Cushie Bent, a master builder, often collaborated and constructed buildings that remain standing in 2022, including two houses: 247 Malvern Road (moved from 466 Elizabeth Street) and 3265-3269 North Service Road, one hotel at 400 Brant Street (now The Queen's Head Pub), and a brick wall for the Union Burying Ground, all of which are remain extant in Burlington. Ultimately, the house at 795 Brant Street reflects the ideas of the Bent brothers, who brought from England a deep knowledge of their respective trades, which they used to assist in building up the local community during a pivotal time of development.

**The property has *contextual value* because it:**

**i. Is a landmark.**

- Although the house is screened by a variety of vegetation, it is seen by the community as a landmark at the corner of Brant and Prospect Streets, based on the community's interest outlined in the 1973 documentary "*The Eyes of Memory*", heritage reports since 1995 and the local newspaper, the Burlington Gazette. 795 Brant Street is one of three heritage properties currently within the City of Burlington that were nineteenth century fruit farms of early settlers that produced goods for the market garden industry.

The owner's heritage consultant ATA Architects Inc. prepared a Heritage Impact Statement ("HIS") (See Appendix C), for the property. The HIS states that the property meets four of nine possible criteria for heritage designation. On page 6 of the HIS, the consultant states that they proposed that the development should retain the original 1854 house facing Brant Street, however this recommendation was rejected. Page 85 states "*the building was built around the 1850s and is considered a rare built form in Ontario due to its early construction date*".

Despite multiple acknowledgements of the property's importance, the report suggests that the property should not be designated based on a rating system assessing how much heritage value the property has under each criteria using a scale of "None" to "Excellent". This ratings system is not found in the *Ontario Heritage Act* or in Ontario Regulation 9/06.

## **Options Considered**

### Option 1- State a Notice of Intention to Designate the Property (Recommended)

According to heritage consultants hired by the City and the owner, 795 Brant Street meets the test for heritage designation under section 29 (1) of the *Ontario Heritage Act*. It can feasibly be incorporated into the proposed development. Protection of the property is consistent with provincial policy directing that municipalities shall conserve significant built heritage resources (Provincial Policy Statement, 2020, policy 2.6.1) and Official Plan principles and policies respecting heritage conservation. Notably, Part II, Section 8.1( a) of the current in-force Official Plan states that: “cultural heritage resources of significant cultural heritage value shall be identified, and conserved.” Part II, Section 8.4.1 (a) of the Official Plan states: “all development shall consider cultural heritage resources and wherever feasible, incorporate these resources into any development plans in a way that conserves the character-defining elements of the cultural heritage resource.”

### Option 2- Do not pursue heritage designation and remove property from the Heritage Register (Not Recommended)

Council could choose this option if it believes the building is too altered to be eligible for heritage designation or to facilitate the development, as proposed through the submitted development applications at 795 Brant Street. Staff do not recommend this option because multiple consultant studies have found that the heritage property meets the criteria for heritage designation despite its alterations. Provincial policy and the City’s Official Plan each contain policy direction and objectives supporting the conservation of significant built heritage resources like 795 Brant Street. In staff’s view, the heritage building can be incorporated into the development while leaving a significant portion of the site available for development and intensification.

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## **Financial Matters:**

### **Total Financial Impact**

If the City chooses to heritage designate the property, the owner will have the right to appeal the designation to the Ontario Land Tribunal. Defending the designation would require the City to retain its heritage consultant AECOM to appear before the tribunal, creating additional costs for the City.

### **Source of Funding**

Funding for a consultant to appear at the Ontario Land Tribunal would be drawn from the City's Operating Budget.

### **Other Resource Impacts**

Not applicable.

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### **Climate Implications**

Not applicable.

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### **Engagement Matters:**

The Heritage Burlington Advisory Committee considered the matter at their special meeting of November 22, 2022. Their motion is below:

*Whereas 795 Brant Street meets the criteria for determining cultural heritage value or interest under Ontario Regulation 9/06, the Heritage Burlington Advisory Committee recommends that City Council proceed to designate the property under section 29 of the Ontario Heritage Act*

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### **Conclusion:**

According to the City's heritage consultant AECOM and the owner's heritage consultant ATA Architects Inc., 795 Brant Street meets the test for heritage designation under section 29 (1) of the *Ontario Heritage Act*. The Provincial Policy Statement, 2020 and the City's Official Plan, 1997 each contain policies obligating the City to conserve cultural heritage resources of significant cultural heritage value. Based on the findings of the consultant teams and the applicable heritage conservation policies, staff recommend that Council state an intention to heritage designate 795 Brant Street.

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Respectfully submitted,

John O'Reilly, MCIP, RPP  
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**Appendices:**

- A. Heritage Evaluation of 795 Brant Street by AECOM, dated November 23, 2022.
- B. Heritage Evaluation of 795 Brant Street by Heritage Burlington Advisory Committee, dated March 2022
- C. 795 Brant Street Heritage Impact Statement by ATA Architects Inc. dated September 2022

**Notifications:**

Mr. Kyle Camarro  
Brant Investment Holdings Inc.

**Report Approval:**

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.