



**SUBJECT: 795 Brant Street- Objection to Notice of Intent to Designate**

**TO: Mayor and Members of Council**

**FROM: Community Planning Department**

Report Number: PL-10-23

Wards Affected: 2

File Numbers: N/A

Date to Committee: N/A

Date to Council: January 24, 2023

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### **Recommendation:**

Decline the objection and affirm the decision to 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, consistent with the Council decision on December 13, 2022; and

Approve By-law 03-2023, attached as Appendix C of Community Planning Department Report PL-10-23, designating the existing building at 795 Brant Street, in accordance with Part IV, Section 29 of the Ontario Heritage Act.

### **PURPOSE:**

#### **Vision to Focus Alignment:**

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

The property at 795 Brant Street is occupied by a two-storey brick house constructed in 1854. The house has significant heritage value as demonstrated in Heritage Evaluation of 795 Brant Street prepared by AECOM, dated November 23, 2022 and acknowledged in the owner's Heritage Impact Statement by ATA Architects, dated September 2022. Based on the professional opinions of heritage consultants, on December 13, 2022, City

Council stated its intention to designate the property. On December 14, 2022, the City served notice of its intention to designate the property on the property owner. On December 15, 2022, the City published notice of intention to designate 795 Brant Street in a newspaper having general circulation within the municipality. These notices met the City's obligations under section 29 (3) & (4) of the *Ontario Heritage Act* (the "OHA"). On January 12, 2023, an agent for the owner of 795 Brant Street filed a notice of objection to the City's notice of intention to designate the property (See Attachment A- Notice of Objection from Weirfoulds LLP, dated January 12, 2023).

Under section 29(5) of the OHA, anyone may serve the Clerk with a notice of objection within 30 days of the publication of the Notice of Intention to designate. The notice of objection was received within the allotted time. According to section 29(6) of the OHA, once the objection has been served on the Clerk the Council of the municipality shall consider the objection and decide whether to withdraw the notice of intention to designate the property within 90 days after the end of the 30-day period.

### **Strategy/process**

Staff have reviewed the notice of objection dated January 12, 2023 and prepared by Weirfoulds LLP. The notice of objection is included as Attachment A to this report. The owner outlines eight reasons for their objection, which are quoted below with responses from staff:

- 1. The Statement of Cultural heritage value and Heritage Attributes attached to the Notice of Intention to Designate is inadequate, unsubstantiated, unclear and insufficient to meet Ontario Regulation 9/06.**

The letter does not provide any analysis to support this statement. Additionally, requirements for a statement of cultural Heritage value and heritage attributes (the "Statement of Significance") are not actually found in Ontario Regulation 9/06, but rather in sections 29 (1) (a) and 29 (4) of the OHA and in Ontario regulation 385/21 ("O.Reg 385/1"). OHA, 29 (1) (a) requires that a property being considered for designation meet prescribed criteria for determining cultural heritage value or interest under Ontario Regulation 9/06 ("O.Reg 9/06"), while 29 (4) requires that a municipality articulate which of these criteria are met in "a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property". O.Reg 385/1 further stipulates that the Statement of Significance must explain which criteria are met, how they are met and how the heritage attributes contribute to the cultural heritage value or interest of the property. When it issued its notice of intention to designate, the City provided a Statement of Significance that met all of these requirements (See Attachment B- 795 Brant Street Statement of Significance). The Statement of Significance clearly indicates which of the O.Reg 9/06 criteria that the City believes are met (Criteria 1i., ii.,

2i., ii., iii., and 3iii.) how each criterion is met, and substantiates with evidence from AECOM's 95-page Cultural Heritage Evaluation Report ("CHER"), which has numerous citations and over six pages of sources.

- 2. The "Cultural Heritage Evaluation Report dated November 2022 (Appendix "A" to the Staff Report) fails to identify any genuine heritage attributes that would make the Property worthy of designation.**

Again, no supporting analysis is provided for this statement. The test to determine the "genuineness" of a heritage attribute is that it contributes to the cultural heritage value or interest of the property (see O.Reg 385/21 3(1) and (3)). The City's Statement of Significance clearly connects all of the heritage attributes to a specific criterion or category of heritage value under O.Reg 9/06.

- 3. The Cultural Heritage Evaluation Report fails to provide a clear analysis of the impact of the intrusive building alterations and modifications, and the unknown state of the bricks that have been entirely painted over.**

The CHER contains a thorough architectural description of the building under section 3.4 of the report, indicating the consultant's awareness and understanding of alterations to the building over time.

- 4. The Cultural Heritage Evaluation Report recognizes that "the Subject Property" is not considered a rare or unique Georgian house in the City of Burlington.**

Rarity is only one of four possible reasons a property could meet criterion 1i. of O.Reg 9/06. AECOM's CHER states on page 45 that even though there are other Georgian style homes in Burlington, the property meets criterion 1i. because it is an early example of a Georgian style brick house built in the City of Burlington. The report states that "Among the comparative examples built in the mid-nineteenth century, the house at 795 Brant Street is the earliest Georgian style house that is constructed of brick in the city. Other early examples of Georgian houses in the City of Burlington were constructed of wood or stone. The house on the Subject Property is also the oldest house on Brant Street, and it is one of three heritage properties in the city left in Burlington associated with the nineteenth century market industry." It is worth noting that although the City's consultant did not find the building to be rare, the owner's Heritage Impact Statement by ATA Architects Inc. states on page 85 that "the building was built around the 1850s and is considered a rare built form in Ontario due to its early construction date".

- 5. The Property was previously listed on the Heritage Register but was removed in 2015 when the City approved the demolition of the building on the Property to facilitate redevelopment of the Property. This decision was made based on an opinion letter and report from a heritage professional, and there are no further changes to the property that would support a different conclusion at this time.**

Council's July 15, 2015 motion did not include an opinion on the property's cultural heritage value and only addressed the matters of demolition and redevelopment. The text of the motion is below:

*“Approve the request to demolish the “Maple Lodge” or “William Ghent House” or the “Bray-Ghent Farmhouse” on 795 Brant Street to facilitate redevelopment of the subject property. (PB-64-15)”*

- 6. The building has been the subject of intrusive building alterations to such a degree that they have harmed the heritage integrity of the structure.**

The CHER acknowledged alterations to the building, however concluded that many of the alterations to the original 1854 building were reversible. Key heritage attributes such as the gabled, Georgian style scale, form and massing and the original, symmetrical fenestration on the front elevation are still intact.

- 7. The building itself is of standard construction methods of the time and does not demonstrate a high degree of technical or scientific achievement.**

The CHER does not state that the building demonstrates a high degree of technical or scientific achievement, which is criterion 1iii. Instead, the report states that building meets criteria 1ii. and demonstrates a high degree of craftsmanship. To substantiate this, the CHER notes that the front elevation of the building exhibits “Flemish bond brickwork, a “decorative bond which was built to form a pleasing pattern with regularity. Flemish bond required skill to execute—skills that Jabez Bent possessed as a mason and bricklayer (Loth, 2020)”. Likewise, the windows are headed with voussoirs, a type of angled brick requiring skill to construct.

- 8. The building does not have a significant visual or physical connection to the surrounding area and does not have a contextual value (sic).**

The Statement of Significance finds that the property has contextual value for its location at the front property line at the intersection of two major streets. Further evidence is

consistent community interest. The building was prominently featured in the 1973 Centennial documentary “The Eyes of Memory”. It was the subject of heritage reports in 1995, news features, and is one of only three heritage properties (1134 Plains Road East, 2021 Blairholm Avenue, 736 King Road) currently within the City of Burlington that were nineteenth century fruit farms of early settlers that produced goods for the market garden industry. It is the last visibly historic building on this section of Brant Street.

## **Options Considered**

### Option 1- Decline the objection, affirm Council’s decision to designate the property and approve the designation by-law (Recommended)

According to both 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. The letter of objection does not introduce any new evidence to support a withdrawal of the notice of intention to designate.

### Option 2- Accept the objection and withdraw the notice of intention to designate (Not recommended)

Council could choose this option if it is convinced by the letter of objection that the building is ineligible for heritage designation or to maximize the developable area of the property. Staff do not recommend this option because multiple consultant studies have found that the heritage property meets the criteria for heritage designation. The letter of objection has not refuted any of the study findings.

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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 Contingency Reserve Fund.

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## **Conclusion:**

Two separate consultant reports prepared by the City of Burlington and the applicant have concluded that 795 Brant Street meets the criteria for heritage designation under O.Reg 9/06. The letter of objection submitted by the owner on January 12, 2023 has not provided any new evidence refuting the findings of either report. Staff recommend that Council affirm its December 13, 2022 decision to designate 795 Brant Street and authorize the City solicitor to introduce the by-law at Council.

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Respectfully submitted,

John O'Reilly, MCIP, RPP  
Planner II- Heritage  
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## **Appendices:**

- A. Notice of Objection from Weirfoulds LLP, dated January 12, 2023 (PL-10-23)
- B. 795 Brant Street Statement of Significance (PL-10-23)
- C. 795 Brant Street Draft Designation By-law 03-23 (PL-10-23)

## **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.