



**SUBJECT: Heritage Response to Bill 23**

**TO: Community Planning, Regulation & Mobility Cttee.**

**FROM: Community Planning Department**

Report Number: PL-34-23

Wards Affected: All

File Numbers: N/A

Date to Committee: June 27, 2023

Date to Council: July 11, 2023

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### **Recommendation:**

Endorse the proposed strategic actions outlined in community planning department report PL-34-23 to respond to the Bill 23 changes to the Ontario Heritage Act; and

Endorse the Engagement and Communication Plan as outlined in community planning department report PL-34-23, which includes consulting with all non-designated heritage property owners on the proposed strategic actions outlined in this report; and

Direct the Director of Community Planning to explore funding options to retain external consulting assistance to review and complete cultural heritage evaluation reports for a prioritized list of properties currently on the City's Cultural Heritage Register.

### **PURPOSE:**

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

- Increase economic prosperity and community responsive city growth
- Building more citizen engagement, community health and culture

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### **Executive Summary:**

Bill 23 amended the *Ontario Heritage Act* in ways that have significant impacts on heritage planning in Burlington. Under the amended legislation, Burlington can no longer

indefinitely list properties on the Heritage Register as a form of interim protection and monitoring. Any non-designated property that was on the Heritage Register on January 1, 2023 when the legislation passed will be removed on January 1, 2025 and cannot be added back for five years, unless the municipality decides to designate the property prior to January 1, 2025. This last change impacts approximately 200 properties on the City's Heritage Register and is considered to have the greatest impact of all Bill 23 changes. In response, Staff are recommending a series of strategic actions aimed at improving the City's incentives to attract voluntary designations, while simultaneously assessing and prioritizing properties on the City's Heritage Register in an effort to identify a number of heritage designation candidates that can be reviewed and prioritized for possible heritage designation.

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## **Background and Discussion:**

### **Bill 23 Impacts to Heritage Conservation in Burlington**

The province introduced Bill 23, the "*More Homes Built Faster Act, 2022*" on October 25, 2022. It was passed by the Ontario Legislature and received royal assent on Nov. 28, 2022. The goal of the legislation is to facilitate the construction of 1.5 million new homes in Ontario by 2031. The omnibus bill amended multiple statutes including the *Planning Act*, *Ontario Heritage Act*, *Development Charges Act*, *Conservation Authorities Act*, *Ontario Land Tribunals Act* and others.

Changes to the *Ontario Heritage Act* ("OHA") are listed below according to the level of impact to the City of Burlington.

#### High Impact:

- Non-designated properties will be automatically removed from the Burlington Municipal Cultural Heritage Register (the "Heritage Register") within two years of the *More Homes Built Faster Act* coming into force unless the City passes a notice of intention to designate (Deadline: January 1, 2025). Any property removed from the Heritage Register cannot be added back for five years.

#### Moderate Impact:

- To be listed on the Heritage Register, a property must meet at least one out of nine prescribed criteria under Ontario Regulation 9/06. The prescribed criteria are the same used to determine if a property is eligible for designation. This change is not retroactive.
- To designate an area as a heritage conservation district ("HCD"), a municipality must demonstrate that at least 25 per cent of the properties in the area satisfy two out of nine criteria under Ontario Regulation 9/06. The criteria are virtually the

same as the those used to evaluate a property for individual designation or inclusion on the Heritage Register. Although the City has no active HCD studies underway, the ongoing Downtown Cultural Heritage Landscapes Study (now called the Downtown Heritage Study and Engagement Program) includes four study areas that could be recommended for an HCD study.

- Properties that are not already listed on the Register when an application for a Zoning Bylaw Amendment (ZBA), Official Plan Amendment (OPA) or Subdivision Approval is deemed complete cannot be heritage designated.
- Non-designated properties are required to be automatically removed from the Heritage Register if a municipality withdraws a notice of intention to designate, does not pass a designation bylaw in time or repeals a designation bylaw.

#### Low Impact:

- A municipality's Heritage Register must be accessible on the municipality's website.
- The owner of a non-designated heritage property on the Heritage Register may object to their inclusion, regardless of when the property was added.
- To qualify for heritage designation, a property must meet at least two out of nine prescribed criteria under Ontario Regulation 9/06, whereas previously a property only needed to meet one.
- Heritage Conservation District bylaws can be amended or repealed.

Other changes to the Act relate to provincial heritage properties and do not impact Burlington.

### **Policy Context**

#### The Draft New Provincial Planning Statement, 2023

This report has been prepared based on the current in-force Provincial Policy Statement, 2020 (the "PPS, 2020") and A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 ("A Place to Grow"). However, on April 6, 2023, the Province released the draft Provincial Planning Statement, which combines both documents and alters provincial policies about cultural heritage. According to the Province, the purpose of the combined document is to streamline the province-wide land use planning policy framework to help it meet the target of constructing 1.5 million new homes by 2031. The new combined document does not include the cultural heritage policies from A Place to Grow and alters a key cultural heritage policy from the PPS, 2020. Whereas the existing policy directs municipalities to conserve "*significant built heritage resources*", which is defined to include non-designated or designated properties, the new document directs municipalities to conserve only "*protected heritage properties*", defined to exclude non-designated properties. *Protected heritage properties* refers to properties designated

under Part IV or Part V of the OHA, subject to a heritage easement, located in a heritage conservation district or those designated as provincially, federally or globally significant. While a municipality can still list a property on the Heritage Register for two years without designating, the Province is no longer directing municipalities to conserve them. The change narrows the scope of a municipality's heritage conservation obligations to focus on designated properties.

The proposed Provincial Planning Statement was released through ERO posting no. 019-6813 for public feedback. Comments are due by August 4, 2023.

#### Provincial Policy Statement, 2020 (the "PPS, 2020")

Until the Provincial Planning Statement is approved, the Provincial Policy Statement, 2020 (PPS) continues to be the foundational policy document for land use planning in Ontario, which all other planning documents must be consistent with.

Section 2.6 of the PPS addresses cultural heritage. Policy 2.6.1 states "Significant built heritage resources and significant cultural heritage landscapes shall be conserved". Built heritage resources are defined as "*a building...that contributes to a property's cultural heritage value or interest as identified by a community*" and which "*may be included on local, provincial, federal and/or international registers.*"

The PPS, 2020 also requires planning authorities to consider and mitigate impacts on cultural heritage resources prior to approving development or site alteration on lands adjacent to those protected resources (2.6.3).

#### Growth Plan for the Greater Golden Horseshoe (2020)

The provincial Growth Plan for the Greater Golden Horseshoe was issued under the *Places to Grow Act 2005*, and builds on the policy foundation of the PPS by providing more specific direction. Planning decisions in Burlington are required to conform to the plan. Section 4.2.7 of plan directs that cultural heritage resources, including cultural heritage landscapes, be conserved to foster a sense of place and benefit communities, particularly in strategic growth areas.

#### City of Burlington Official Plan (1997) Policies

A component of the heritage response to Bill 23 is a review and update of all current Official Plan heritage policies under Part II, section 8. Some may need to be revised to reflect Bill 23's recent OHA amendments. For example, policies throughout section 8 refer to the conservation of *cultural heritage resources*, defined as follows:

**Cultural Heritage Resource** – A building, structure, monument, natural feature (including those that have been modified by humans, such as parks, gardens, rows of trees, etc.), an archaeological and historical site, or remains, either individually

or in groups, which is considered to be of architectural and/or historical significance.

The phrase “considered to be of architectural and/or historical significance” should likely be revised, since the amended OHA now requires municipalities to complete a criteria-based evaluation before giving a property formal heritage status. Before Bill 23, Council could add a property to the Heritage Register if it “believed” the property to be of cultural heritage value or interest, but Council must now establish that the property meets at least one of the prescribed criteria in O.Reg 9/06. This will require a level of analysis equivalent to a part IV designation before Bill 23.

Policies about the purpose of the Heritage Register will need to be updated. Section 8.3.4- Heritage Conservation Designation, should reference the increased designation threshold and criteria-based evaluation prescribed in O.Reg 9/06. Despite the above changes, many policies continue to apply and will not change.

### Official Plan (2020) Policies

The City’s new Official Plan (OP, 2020) was adopted by Council on April 26, 2018 and approved by Halton Region on Nov. 30, 2020, but is largely under appeal. Cultural heritage policies are found under section 3.5 and many are carried over from OP, 1997. A component of the heritage response to Bill 23 is to update definitions and policies to reflect changes in Bill 23.

### **Strategy/process/risk**

The City’s heritage response to Bill 23 focuses mainly on the highest impact change from Bill 23, which is the possible removal of approximately 200 non-designated heritage properties from the Heritage Register and the loss of any protections associated with such on January 1, 2025, for a minimum period of five (5) years. To address moderate impact changes, staff propose that the City improve its heritage incentive program and explore zoning and other incentives to encourage voluntary conservation of character properties during the development process. Changes classified as low impact are ones that staff believe will not impact heritage outcomes in Burlington and are not addressed in this strategy.

### **Guiding Principles and Strategic Actions**

After consulting the Heritage Burlington Advisory Committee, staff recommend eight strategic actions to complete prior to January 1, 2025 to incentivize voluntary heritage designations and achieve permanent protection for a shortlist of high value non-designated heritage properties. In preparing the strategy, staff were guided by four principles. The guiding principles and strategic actions are summarized below:

### Guiding Principles

1. **Make lemonade out of lemons.** Bill 23 gives the City the opportunity to focus its attention on permanently protecting the most rare, exceptional, well preserved, historically significant and publicly visible heritage properties.
2. **The sky is not falling.** Just because a property is removed from the Heritage Register does not mean it will be demolished. Some properties, like cemeteries, are at little or no risk of redevelopment. Any property that is removed from the Heritage Register will become eligible for inclusion again in 2030.
3. **Honey over vinegar.** Messaging to property owners and developers should focus on incentives.
4. **Work smarter not harder.** Use already completed research to speed up work on designations (LACAC files, Downtown Cultural Heritage Landscape Study conclusions, etc....)

### Strategic Actions

1. Develop Heritage Response Plan (February-July 2023)
  - a) Management review (✓)
  - b) Heritage Burlington Advisory Committee review (April 12, 2023) (✓)
  - c) Calculate financial impacts- Work with finance staff to calculate current cost of tax rebate program, estimate cost of expanding program by 23-40 properties based on existing participation rates (55% of owners of designated heritage properties currently participate in Heritage Tax Rebate Program) Financial impact of new designations. (✓)
  - d) Review by Council (June 27 CPRM, July 11 Council)
2. Evaluate Heritage Register, Generate Shortlist (March- August 2023)
  - a) Compile existing research, determine how many non-designated properties have already been researched and have statements of significance (April 2023) (✓)
  - b) Prioritize a shortlist of key properties from the Heritage Register using criteria including visibility from the street, integrity, style and population density around the property, as outlined further below in the 'Prioritizing Non-designated properties for Part V Designation' section (April- August 2023)
3. Improve Heritage Incentives (June-September 2023)
  - a) Survey grant recipients who have accessed the grant program to find out the most significant concerns with the program. Call or email owners directly to maximize responses. (June - July 2023)
  - b) Review improvements and explore new incentives with HBAC (August 2023)
  - c) Report to CPRM, Council (September 2023)

4. Communications (September- January, 2024)
  - a) Complete outreach to registered owners including an explanation of Bill 23, the City's response and a list of the City's incentive programs to encourage voluntary designations (September 2023)
  - b) Public consultation events (October- November 2023)
  - c) Report to CPRM/Council on feedback (January 2024)
  
5. Study Shortlisted Properties (November 2023- December 2024)
  - a) Retain consultant to study designation candidates (November 2023- October 2024)
  - b) Report to CPRM and Council (Every 4 months, starting March 2024)
  
6. Voluntary Designations (January-September 2024)
  - a) Research any properties whose owners are willing to voluntarily designate, inclusive of publicly owned properties (January-June 2024)
  - b) Review designations with Heritage Burlington Advisory Committee (June 2024)
  - c) Report to CPRM, Council (September 2024)
  
7. Improve Heritage Processes (September 2023- September 2024)
  - a) Review heritage permit processes. (September 2023 – January 2024)
  - b) Explore mechanisms (ie. [Community Improvement Plan](#), conditional zoning (under s. 34(16)) to create a heritage incentives program that can provide eligible pre-1945 or "heritage character" properties with additional development opportunities to encourage them to keep their heritage/character assets. See [City of Calgary for example](#). (September 2023- September 2024)
  
8. Amend Official Plan (See report PL-45-23)
  - a) Review Official Plan, 2020 and Official Plan, 1997

### **Prioritizing Non-designated properties for Part V Designation**

Staff and the Heritage Burlington Advisory Committee ("HBAC") are currently reviewing all properties on the Heritage Register against the following set of prioritization criteria to generate a shortlist of heritage designation candidates.

- **Property type-** Properties are being classified by type (house, commercial, cemetery etc...) to assess how rare or commonplace they are compared to other types.
- **Architectural style-** Properties are being classified by type (house, commercial, cemetery etc...) to assess how rare or commonplace the style is compared to other types.
- **Visibility from the public right-of-way-** The most publicly visible heritage properties should be prioritized for designation to maximize public benefit.

- **Building condition (alterations)-** Although building condition is not a prescribed criteria under O.Reg 9/06, alterations can be difficult to reverse and impact a property's ability to authentically represent its time period. Therefore, properties are being assessed for how well preserved they are.
- **Population density within 800m-** Population density is being used to estimate the number of people who are likely to regularly see and appreciate a heritage property. Properties in more densely populated areas should be prioritized for protection.
- **Estimated number of 9/06 criteria met-** A property must now meet at least two criteria to be designated. A shortlist of heritage designation candidates should include only those properties that are highly likely to meet this test. It should be possible to estimate the number of criteria met through visual analysis and a review of the City's extensive collection of historical information summaries prepared by the former Local Architectural Conservation Advisory Committee (now HBAC).
- **Associations to Communities or Historical Figures-** A property can be significant because it is associated with a theme, event, belief, person, activity, organization, or institution that is significant to a community, or because it yields information about a community. Properties will be reviewed for associations to communities or historical figures that were especially important or unique in Burlington's history.

In general, properties that are rare or exceptional, well preserved, highly visible and regularly seen by many residents will be prioritized for designation.

There is a risk that some residents will dispute the criteria and the different weighting that are placed on them to arrive at a shortlist. However, this is inevitable with any set of criteria. Staff and HBAC believe that these criteria are intended to reveal properties whose conservation delivers the most public benefit.

### **Options Considered**

1. Take no action to study non-designated heritage properties on the Heritage Register (Not recommended)

Although the City's Official Plan policies will need to be reviewed for consistency with the amended OHA, Bill 23 does not require the City to study any of its non-designated heritage properties for potential heritage designation. However, there are many non-designated heritage properties in Burlington that are landmarks, which are significant to the community. For example, the City's Heritage Register includes eleven significant churches, five schools and Burlington's oldest home the Stewart-Spence house built in 1832. Without permanent protection, some non-designated properties could be demolished during the period from 2025-2030 when they would be delisted.



2. Study only publicly owned properties or properties where owners are willing to voluntarily designate their properties (Not recommended)

The City could choose to study only publicly owned properties or those whose owners consent to designation. The risk of this approach is that it is not comprehensive or systematic and many significant properties would be overlooked.

3. Endorse the proposed strategic actions in report PL-34-23 (Recommended)

Staff and HBAC are proposing a comprehensive response to Bill 23 in which the City would complete a thorough evaluation of the cultural heritage resources on its Heritage Register and prioritize a shortlist for permanent protection. While there is a risk of multiple property owners opposing this exercise, this approach is believed to be the most consistent with the City's Official Plan policies and the PPS, 2020.

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## **Financial Matters:**

### **Total Financial Impact**

#### Cost of Part IV Evaluations

The total financial impact of the City's response to Bill 23 will vary depending on how large of a shortlist is selected for study. A Cultural Heritage Resource Assessment for an individual property costs an average of \$5,000 and approximately 60 hours of work. Studying 200 properties would not be feasible, since would cost an estimated \$1,000,000 and 12,000 hours of work (365 weeks or 6.5 years).

For financial planning purposes, staff estimate that a shortlist of 20 properties representing approximately 10% of the total number of Heritage Register properties is more feasible. The estimated cost to study 20 properties for part IV designation is approximately \$100,000 excluding extra costs for public consultation that the City might want to include in a Request for Proposal. Staff would recommend that \$120,000 be allocated to this exercise. When a shortlist is finished, staff will report back to Council.

#### Cost of increased number of applicants to Heritage Property Tax Rebate Program

The average amount of a heritage tax rebate is \$2,547.86, with approximately 43 applicants per year, representing 55% of all designated property owners. If the City designated 20 additional properties in 2024, staff estimate that the added cost to the City

would range from \$28,000 per year if 55% of new owners participated to \$51,000 per year if all applicants applied.

### Ontario Land Tribunal Appeals

If the City chooses to heritage designate up to 20 properties, the owners will have the right to appeal the designations to the Ontario Land Tribunal. Defending the designations would require the City to retain its heritage consultant to appear before the tribunal, as well as incurring additional legal costs for the City.

### **Source of Funding**

If Council is supportive of the recommended approach as outlined in this report, it is recommended that Council direct staff to explore funding options to retain external consulting assistance to review and complete cultural heritage evaluation reports for a prioritized list of properties currently on the City's Cultural Heritage Register.

### **Other Resource Impacts**

The proposed Bill 23 strategy will require take significant staff time and resources between now and January 1, 2025.

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### **Climate Implications**

Not applicable.

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### **Engagement Matters:**

The strategy as outlined in this report was reviewed and recommended for approval by the Heritage Burlington Advisory Committee at their April 12, 2023 meeting.

### **Engagement and Communication Plan with Property Owners**

Even with a consultative, incentives-first communication strategy, there are risks to the proposed consultation strategy of engaging all 200 non-designated heritage property owners. Contacting all 200 owners may create a mistaken perception that every property is being considered for heritage designation, creating a backlash. In reality, staff are only proposing to study a small number of the total for potential designation, with the remaining properties being removed entirely from the Heritage Register for a minimum of five years. An alternative engagement strategy would engage only shortlisted properties starting in

fall 2023; however, this is not recommended because staff believe it is less transparent and minimizes the potential number of voluntary designations the City could achieve.

Regardless of approach, there will be some opposition to designation. Some owners may oppose heritage designation do not want any additional restrictions on how they can alter their properties. The designation process can also be difficult for owners to navigate. The City's powers under the OHA are strong. Municipalities are not required to obtain consent or consult with a property owner before they heritage designate a property. Owners are also not entitled to any compensation for a heritage designation. This balances the interests of property owners with the public interest of the community in ensuring their heritage is preserved, but it can also create a sense that the City is unfairly targeting a property owner and making their private property into a public asset. Although owners can object to a designation and ultimately appeal the designation to the Ontario Land Tribunal, an appeal is time consuming. It can be expensive for an owner to hire an expert witness to present opposing evidence.

To mitigate this risk, staff are proposing to work with the City's Communications Team and send correspondence to every owner of a non-designated heritage property a year ahead of a study being completed. The letters will explain the approach, as outlined in this report, and emphasize the generous incentives the City has in place to support owners of designated heritage properties, including the popular heritage tax rebate program, which offers owners of residential properties 40% of their property taxes back each year. Staff are also proposing in-person consultation events in fall 2023 to obtain feedback and report to Council ahead of any final reporting or recommendations. It has also been suggested that the City could also obtain testimonials from owners of designated properties who have positive experiences with the City's heritage program and show these to non-designated heritage property owners.

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## **Conclusion:**

Bill 23 has numerous implications for the practice of heritage planning in Burlington. In addition to increasing the threshold to give a property heritage status, it sets a deadline of January 1, 2025 for municipalities to designate significant non-designated heritage properties or else they will be removed from the Heritage Register for a minimum of five years. Staff recommend a series of strategic actions aimed at improving the City's incentives and generating a shortlist of heritage designation candidates that can be prioritized for study.

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Respectfully submitted,

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**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.