



SUBJECT: Heritage response to Bill 23 - shortlist of designation candidates

TO: Community Planning, Regulation & Mobility Cttee.

FROM: Community Planning Department

Report Number: PL-35-23

Wards Affected: 1, 2 & 3

File Numbers: N/A

Date to Committee: October 31, 2023

Date to Council: November 14, 2023

Recommendation:

Direct the Director of Community Planning to retain a consultant to assess the eligibility of the following properties for potential heritage designation under Part IV of the Ontario Heritage Act, consult the Heritage Burlington Advisory Committee, and report back to Council with statements explaining the cultural heritage value or interest of qualifying properties prior to January 1, 2025:

1. 461 Elizabeth Street
2. 451 Elizabeth Street
3. 2137 Lakeshore Road
4. 472 Locust Street
5. 482 Elizabeth Street
6. 451 Nelson Avenue
7. 518 Hager Avenue
8. 562 Maple Avenue
9. 1406 Ontario Street
10. 1419 Ontario Street
11. 458 Elizabeth Street
12. 490 Elizabeth Street
13. 2464 Dundas Street
14. 2003 Lakeshore Road
15. 390 John Street
16. 2437 Dundas Street

17. 368 Brant Street
18. 550 Hurd Avenue
19. 2280 No. 2 Side Road
20. 6414 Walker's Line
21. 367 Torrance Street
22. 1433 Baldwin Street
23. 380 Brant Street; and

Approve an upset limit of \$125,000 for the study, funded from the Tax Rate Stabilization Reserve Fund; and

Direct the Director of Community Planning to assess the eligibility of the following properties for potential heritage designation under Part IV of the Ontario Heritage Act, consult the Heritage Burlington Advisory Committee, and report back to Council with statements explaining the cultural heritage value or interest of qualifying properties prior to January 1, 2025:

24. 400 Brant Street
25. 2066 Kilbride Street.

PURPOSE:

Vision to Focus Alignment:

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

Executive Summary:

Provincial Bill 23 amended the *Ontario Heritage Act* to take away the City's authority to list non-designated properties on the Heritage Register for more than two years. Any non-designated property that was on the Heritage Register on Jan. 1, 2023 when the legislation passed will be removed on Jan.1, 2025 and cannot be added back for five years. Over 200 properties face removal in 2025. This report presents a shortlist of the top 30 heritage designation candidates on the Burlington Municipal Heritage Register as determined by the Heritage Burlington Advisory Committee in collaboration with staff. The shortlist is diverse and includes landmarks like the Knox Presbyterian Church and Burlington Central High School); rare and unusual buildings like a former bank building at 2003 Lakeshore Road; exceptionally designed homes like the Laing Fisher House at 490 Elizabeth Street; and historic Burlington institutions like the former Public Library at 482 Elizabeth Street. The properties also range widely in age. The oldest was built in 1830 (2280 No. 2 Sideroad) and the youngest in 1947 (2003 Lakeshore Road).

Staff are recommending that 25 be studied for possible heritage designation. Five properties on Burlington Avenue are not recommended for individual study because they will be recommended for inclusion in a potential heritage conservation district (HCD) in the final report on the Downtown Burlington Heritage Study and Engagement Program in December.

Background and Discussion:

Bill 23 Impacts to Heritage Conservation in Burlington

The Province introduced Bill 23, the “*More Homes Built Faster Act, 2022*” on Oct. 25, 2022. It was passed by the Ontario Legislature and received royal assent on Nov. 28, 2022. The stated 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.

Bill 23 amended the *Ontario Heritage Act* to stipulate that the maximum amount of time a non-designated heritage property can remain on the Municipal Register of Cultural Heritage Resources (the “Heritage Register”) is two years. The change took effect on Jan. 1, 2023 and as a result of this legislative change, over 200 of Burlington’s heritage properties will be removed from the Heritage Register on January 1, 2025 unless they are designated before that time. On June 27, 2023 staff presented report [PL-34-23](#) “Heritage Response to Bill 23” to the Community Planning, Regulation & Mobility Committee, which included a list of strategic actions. The main action was to review the Heritage Register and prioritize a shortlist of key properties using criteria including visibility from the street, integrity, style and population density around the property. Council approved the strategic actions in the report at its July 11, 2023 Council meeting.

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 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. The comment period closed on Aug. 4, 2023.

At the time of preparation of this report, staff note that the proposed new Provincial Planning Statement has not come into force.

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.*”

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 the 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

Section 8.0 of the Burlington Official Plan (1997) (the “Burlington OP”) contains principles, objectives and policies for Cultural Heritage Resources. Principle 8.1 a) states:

Cultural heritage resources of significant cultural heritage value shall be identified and conserved.

Policy 8.3.4 a) states:

The designation of individual cultural heritage properties and cultural heritage landscapes under the provisions of The Ontario Heritage Act shall be pursued to implement the cultural heritage conservation objectives and policies of this Plan.

Policy 8.3.4 b) states:

The “Reason for Designation” statement shall outline the heritage attributes that define the heritage value of the cultural heritage resource.

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.

At the time of preparation of this report, staff note that no determination has been made as to the appeal status of the relevant sections of Burlington Official Plan, 2020.

Strategy/process/risk

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](#) (O. Reg. 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 two 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.

Criteria and Methodology for Determining Shortlist of Heritage Designation Candidates

Consistent with the strategic actions Council approved in July, staff and the Heritage Burlington Advisory Committee (“HBAC”) created a spreadsheet of all non-designated heritage properties on the Heritage Register and evaluated them using the following criteria:

- **Architectural Style** (Classical revival, Victorian, Vernacular...etc)
- **Property Type** (Place of worship, institutional, house...etc)
- **Visibility From Street** (Highly Visible / Partly Visible / Not Visible)
- **Integrity** (Minor Alterations / Moderate Alterations / Major Alterations)
- **# Households within 400 metres** (a five-minute walk)
- **Potential # of O. Reg. 9/06 Criteria Met** (1-9) (Minimum two required to be met)

HBAC was instrumental in assisting staff in these evaluations with various members completing over 200 evaluations in four categories.

Exclusions

To narrow down the field of potential heritage designation candidates. Staff and HBAC eliminated some properties from consideration. Properties that had been demolished were identified and excluded. Cemeteries were excluded since they are provincially regulated and cannot be closed or altered without meeting extremely strict criteria. Properties that were in the queue for heritage designation were eliminated, as were properties that were not visible from the street, had major, irreversible alterations or if they were not believed to meet at least two heritage designation criteria.

Architectural Style & Property Type

Staff used an equity lens to assign scores to a property’s type and architectural style. Under-represented property types and architectural styles received high scores, while common property types received lower scores. The top three most common types of non-designated heritage properties were:

1. Houses (58.5%)
2. Commercial Buildings (19%)
3. Farmhouses (7%)

The rarest three property types were infrastructure, mixed-use and multi-residential properties.

The top five identifiable architectural styles in the city were:

1. Victorian (15%)- c. 1850-1880
2. Gothic (14%)- c. 1850-1880
3. Vernacular (13%) c. 1900-1920
4. Edwardian (9.4%) c. 1900-1920
5. Classical Revival (7.1%) c. 1800-1830, 1900-1920

The rarest architectural styles were those represented by only one property on the Heritage Register, including Art Moderne, California bungalow, Dutch Colonial and four-square houses. There were also 34 properties (16%) that did not fit neatly into a style category and were classified as “unknown”.

Visibility from the Street

Properties were also classified according to visibility from the street. Properties that were not visible from any public vantage point were eliminated from further consideration, while properties that were partly visible were given a lower score than highly visible properties. Below are examples of properties in each category:

Left to right: Highly visible, partly visible, not visible



Properties left to right: 447-449 Locust Street, 2373 Dundas Street, 6103 Guelph Line

Integrity

The integrity evaluation criterion was based on how physically altered a property had been. Properties with major alterations were eliminated from consideration, while properties with moderate alterations were given a lower score than properties with minor alterations. Below are examples of properties in each category:

Left to right: Minor Alterations / Moderate Alterations / Major Alterations



Left to right: 6006 Guelph Line, 470 Maple Street, 2357 Lakeshore Road*

**2357 Lakeshore Road was originally a one-storey cottage, which was mostly demolished. The remaining walls and roof trusses were absorbed into the new two-storey building currently on the property.*

Households within 400 metres (a five-minute walk)

Heritage conservation is a public benefit, so the exercise prioritized those properties that are accessible by the largest number of residents. Using GIS (Geographic Information System) mapping, staff drew a 400 metre buffer or five-minute walking radius around individual properties and then generated a list of the total number of owner and renter households surrounding them using the public notification tool. Properties with a large number of households within a five-minute walking radius received higher scores.

Potential # of O. Reg. 9/06 Criteria Met (1-9) (Minimum 2 required to be met)

This criterion was a simple yes/no test of whether staff believed the property had potential to meet at least two of the nine criteria for heritage designation under Ontario Regulation 9/06. Because a detailed evaluation could not be undertaken, very few properties were excluded. If the property was well maintained and fit a recognizable style and was visible from the street, it was deemed to meet criteria #1 and #7:

- The property has design value or physical value because it is a rare, unique, representative or early example of a style, type, expression, material or construction method; and
- The property has contextual value because it is important in defining, maintaining or supporting the character of an area.

The 25 Candidates

A shortlist of 30 heritage designation candidates was agreed upon by staff and HBAC based on the total of the equally weighted scores for each of the criteria above. Staff are recommending that 25 be considered for heritage designation. Five properties on Burlington Avenue are not recommended for individual study because they will be

recommended for inclusion in a heritage conservation district (HCD) in the final report on the Downtown Burlington Heritage Study and Engagement Program in December.

The shortlist of 30 heritage designation candidates is attached in Appendix A. The full list of eligible non-designated properties is attached as Appendix C.

Options Considered

Most of the shortlisted properties are in Ward 2 because it is the most densely populated ward. Despite the over-representation of Ward 2 properties, staff and HBAC recommend the current list because it prioritizes the protection of properties that will be seen and appreciated by the largest number of Burlington residents.

An alternative approach is a shortlist of heritage designation candidate properties by ward. A ward-based shortlist is included under Appendix B. There are no candidates from Ward 5 at all because there were only two non-designated properties in that ward. One was a cemetery, and one was invisible from the street, so they were not included. The advantage of the ward-based approach is that properties from five out of six wards are included for study and the conservation effort is distributed equally over the whole City. A disadvantage is that some properties included are not very visible from the street and have few surrounding neighbours. They are unlikely to be seen and appreciated regularly by many people.

Financial Matters:

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. Staff believe studying 25 properties is feasible. Staff have research and reasons for designation statements for at least two properties, which would leave 23 to be studied by a heritage consultant. Based on the figures above, the cost to have a consultant study 23 properties for possible designation is \$115,000 and 1,380 hours of work (9 months).

Staff would recommend that \$125,000 be allocated to this exercise to cover the study and any public and private meetings the consultant is asked to attend.

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

The average total amount of a heritage tax rebate is approximately \$2,500 (city, region and boards), with 46 applicants per year, representing approximately 55% of all designated property owners. The city's portion of the cost is approximately \$1,100 per applicant. If the City designated 25 additional properties in 2024, staff estimate that the total added cost would range from \$33,000 per year if 55% of new owners participated to

\$63,000 per year if all applicants applied, with the city portion ranging from \$15,000 to \$28,000 respectively.

Ontario Land Tribunal Appeals

If the City designates up to 25 properties under Part IV of the Ontario Heritage Act as recommended in this report, the owners of the designated properties will have the right to appeal the designations to the Ontario Land Tribunal. Staff would attempt to negotiate settlements of such appeals for consideration by Council, but should any proceed to a contested hearing, the City would be required to incur additional costs associated with defending the designations at the Tribunal.

Source of Funding

If Council is supportive of the recommended approach as outlined in this report, it is recommended that Council direct staff to fund this one-time work from a previous heritage related commitment of \$125,000 in the Tax Rate Stabilization Reserve Fund 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. The old funding commitment was dedicated to implementing the recommendations of the 2012 New Approach to Heritage report but has not been utilized since 2014.

Funding to study properties for Part IV designation is traditionally funded from the Policy Initiatives Reserve Fund; however, this Reserve Fund has insufficient balance to support this project. An increased provision to this reserve fund has been included in the 2024 Financial Needs and Multi-Year Forecast to improve financial sustainability.

As well, in future budgets consideration of additional operating funds may be required for the heritage rebate program if the program expands.

Other Resource Impacts

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

Climate Implications

Not applicable.

Engagement Matters:

The shortlist of 30 properties was discussed by the Heritage Burlington Advisory Committee (HBAC) at their Sept. 13, 2023 meeting, where they made the following motion:

Heritage Burlington recommends that Council endorse the proposed shortlist of 30 properties in the heritage planner presentation dated September 13, 2023 and recommend Council direct staff to have them studied for potential designation prior to January 25, 2025.

HBAC believed that the Burlington Avenue properties should also be individually studied for designation.

HBAC also met on October 17, 2023 to discuss funding options for the Bill 23 study and made the following recommendation:

Heritage Burlington Advisory Committee recommends that Council direct staff to reallocate unused heritage commitments from the Tax Rate Stabilization Reserve Fund to work activities necessary to protect non-designated heritage properties on the Register while complying with the changes to the Ontario Heritage Act caused by Bill 23.

Staff sent notices to all owners of non-designated heritage properties on the Heritage Register to notify them of the date this report would be discussed at the Community Planning Regulation & Mobility Committee. In the notice, staff detailed the City's incentives programs, explained the shortlist methodology and explained how owners could submit opinions.

Conclusion:

Bill 23 will result in the removal of over 200 non-designated heritage properties from the Heritage Register on Jan. 1, 2025 unless the City takes action. Because it is not possible to study all 200+ properties, staff worked with the HBAC to develop a shortlist of 30 properties that are good candidates for designation, and which are regularly seen and appreciated by numerous residents. Staff recommend that Council authorize retaining a heritage consultant to study 23 out of 25 properties for an upset limit of \$125,000. Staff will study two properties and the remaining five on Burlington Avenue will be included in a future HCD study area.

Respectfully submitted,

John O'Reilly, MCIP, RPP, CAHP
Supervisor of Site Plan Review
(905) 335-7777 ext. 7427

Appendices:

- A. Recommended List of Heritage Designation Candidates
- B. Alternative Ward-Based list of Heritage Designation Candidates
- C. Full Ranked List of Eligible Non-designated Properties

Notifications:

Not applicable

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.