



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

TO: Committee of the Whole

FROM: Community Planning Department

Report Number: PL-14-24

Wards Affected: All

Date to Committee: February 5, 2024

Date to Council: February 13, 2024

Recommendation:

Confirm support for the shortlist of designation candidates proposed in community planning department report PL-35-23.

PURPOSE:

This report presents a summary of meetings that staff held with Councillors to discuss refinements and changes to a shortlist of 25 heritage properties recommended for study for possible heritage designation in 2024. The shortlist was originally presented at the Oct. 31 Community Planning, Regulation and Mobility Committee meeting, but councillors were concerned that a risk assessment had not been performed on each property and other properties may be at higher risk of demolition or redevelopment. Staff are seeking Council's direction to allow the assessment of the heritage properties to commence, as staff will need to report back to Council with statements explaining the cultural heritage value or interest of qualifying properties in Q4 2024, prior to the legislated removal of all properties from the City's Heritage Register on Jan. 1, 2025.

Vision to Focus Alignment:

- Increase economic prosperity and community responsive city growth

Background and Discussion:

Provincial Bill 23 amended the *Ontario Heritage Act* to take away the City's authority to list non-designated properties on the Municipal Cultural Heritage Register (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 from the Heritage Register in 2025.

At the Oct. 31, 2023 Community Planning Regulation and Mobility Committee meeting, Council considered report [PL-35-23](#), in which staff presented a shortlist of 25 properties that the Heritage Burlington Advisory Committee and staff believed should be prioritized for review to assess their eligibility for potential heritage designation in 2024. The shortlist was developed based on a scoring system using the following criteria:

- **Rarity of Architectural Style** (Classical revival, Victorian, Vernacular...etc)
- **Rarity of 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)

After considering the list and the criteria, Council was concerned that “risk” had not been factored in and some of the properties on the shortlist were at low-risk redevelopment and other high-risk candidates should be substituted. Council amended the staff recommendation and passed the following motion at the Nov. 14, 2023 City Council meeting directing staff to consult with councillors about risk mitigation and report back in Q1 of 2024:

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; and

Direct the Director of Community Planning to report back to Community Planning, Regulation, and Mobility Committee in Q1 2024 with any amendments to the above list of properties as a result of consultation with Council members on risk mitigation.

To fulfil the motion, staff contacted the Mayor and all members of Council for an optional one-on-one consultation with staff. Five councillors responded and meetings were scheduled with each one:

- Ward 1 - Councillor Kelvin Galbraith

- Ward 2 - Councillor Lisa Kearns
- Ward 3 - Councillor Rory Nisan
- Ward 5 - Councillor Paul Sharman
- Ward 6 - Councillor Angelo Bentivegna

Strategy/process/risk

Key messages from staff's consultation with Council are summarized below:

Removal of 2137 Lakeshore Road- The Sewage Pumping Station Recommended

There was consensus that the City-owned pumping station at 2137 Lakeshore Rd. should not be studied for heritage designation in 2024 due to the low-risk of demolition and redevelopment.

Removal of 451 Elizabeth Street- The Iron Duke Recommended

One councillor proposed that 451 Elizabeth St. is at low risk of redevelopment because it is owned by the Navy League of Canada. This organization is a registered charity that works with the Department of National Defence and supports the Royal Canadian Sea Cadets program. The building is in active use and there are no indications of a change in use in future.

Support for Conservation of 1433 Baldwin Street- Burlington Central High School

Two councillors supported conserving the 1922 portion of Burlington Central High School facing Baldwin Street and prioritizing the property for study in 2024. Councillors also recommended staff take a consultative approach to designation and maintain a collaborative working relationship with the school board.

Removal of Residential properties at low-risk of redevelopment Recommended

Councillor Kearns (Ward 2) proposed that the following residential properties should be removed from the shortlist based on her knowledge of the owner's future intentions and their recent investments in the property:

- 1406 Ontario Street
- 1419 Ontario Street
- 451 Nelson Avenue
- 460 Burlington Avenue (Not on shortlist for individual designation)

Support for Addition of 5726 Cedar Springs Road- The Dakota Schoolhouse to the List

Councillor Nisan (Ward 3) supported the inclusion of the Dakota Schoolhouse on the shortlist because it is the last remnant of the Dakota Mill.

Removal of Active Churches Recommended

Two councillors believed that churches with active congregations were at low-risk of redevelopment and should be removed. The following churches fit this criterion:

- 461 Elizabeth Street (Knox Presbyterian Church)
- 472 Locust Street (L'Eglise St Philippe Originally Calvary Baptist Church)
- 2464 Dundas Street (St. John's Anglican Church)
- 2066 Kilbride Street (The Kilbride United Church)*

**Kilbride United Church is supportive of designation and is actively working on preparing a statement of significance for their property.*

Importance of Thorough Public Consultation

A councillor asked that City staff undertake thorough public consultation with owners affected by the Bill 23 exercise so that Council has a clear idea of the balance of opinion.

Request for More Communication with Owners about Heritage Status

A councillor recommended that staff should make more effort to communicate with owners on the Heritage Register to ensure that no owner is surprised to learn their heritage status when an exercise like this is done.

Concerns about Involuntary Designation

A councillor expressed concerns about the City designating properties without the owner's cooperation. In the councillor's view, designation is an expropriation of value, an encumbrance to the owner and is undemocratic. The councillor recommended that staff continue to seek out owners who were willing to designate their properties voluntarily.

Options Considered

Option 1- Approve alternative shortlist substituting properties at higher risk of redevelopment for those identified as being at low risk (Not Recommended)

Below are eight properties that one or more councillors recommended be removed from the shortlist.

1. 2137 Lakeshore Road- The Sewage Pumping Station
2. 451 Elizabeth Street- The Iron Duke
3. 1406 Ontario Street- The Robert John Allen House
4. 1419 Ontario Street- The O'Brien-Connell House
5. 461 Elizabeth Street- Knox Presbyterian Church
6. 472 Locust Street- L'Eglise St Philippe Originally Calvary Baptist Church
7. 2464 Dundas Street- St. John's Anglican Church

8. 2066 Kilbride Street- The Kilbride United Church (To be studied by staff)

The church congregation who owns 2066 Kilbride St. Council are supportive of designation and were not included in the list of 23 properties approved for study by a consultant. Council could approve an alternate shortlist of heritage designation candidates by substituting seven properties from the Heritage Register with medium to high density development permissions under the Official Plan.

Rank	Address	Property Name	Official Plan Designation	Permissions
32	1134 Plains Rd E	The Davis Homestead	Mixed Use Corridor-Commercial Corridor	Medium Density (2-6 Storey's)
36	513 Locust Ave	Different Drummer Books	Downtown Core Precinct	Medium Density (4-8 Storeys)
44	242 Plains Rd E	The Roelfson House	Residential-Medium Density	Medium Density (Townhouses, rowhouses, back-to-back townhouses)
52	444 Plains Rd E	The John Horne House	Mixed Use Corridor-General	Medium Density (2-6 Storey's)
61	2022 Victoria Ave	The Bell Orchards Farmhouse	Downtown Core Precinct	Medium Density (4-8 Storeys)
91	1421 Lakeshore Rd	The Graham House	Downtown Residential - Medium and/or High Density Precincts	Medium or High Density
99	590 Brant Street	The Phil C. Patriarcho House	Downtown Core Precinct	Medium Density (4-8 Storeys)

This is a viable option for Council that introduces some outstanding designation candidates to the shortlist, but staff recommend that the original shortlist be maintained because it has a more diverse range of property types than the revised list. All seven alternative candidates are single family homes. At least two of the properties that would be removed from the list (Knox Presbyterian Church and the Iron Duke) have generous

density permissions in the Official Plan that would put them at risk of demolition if the property were sold to a different owner in future. However, if Council supports an alternate list, staff have provided some proposed wording:

Direct the Director of Community Planning to substitute the list of heritage designation candidates included in report PL-35-23 with the below amended list of heritage designation candidates to be studied by a consultant over the next year:

1. 482 Elizabeth Street
2. 451 Nelson Avenue
3. 518 Hager Avenue
4. 562 Maple Avenue
5. 458 Elizabeth Street
6. 490 Elizabeth Street
7. 2003 Lakeshore Road
8. 390 John Street
9. 2437 Dundas Street
10. 368 Brant Street
11. 550 Hurd Avenue
12. 2280 No. 2 Side Road
13. 6414 Walker's Line
14. 367 Torrance Street
15. 1433 Baldwin Street
16. 380 Brant Street
- 17. 1134 Plains Road East**
- 18. 513 Locust Avenue**
- 19. 242 Plains Road East**
- 20. 444 Plains Road East**
- 21. 2022 Victoria Avenue**
- 22. 1421 Lakeshore Road**
- 23. 590 Brant Street**

Option 2- Leave all Churches on the List

Council could choose to leave the three churches on the list based on the recent enactment of *Bill 139, The Less Red Tape, More Common Sense Act, 2023* (“Bill 139”) and make only four substitutions for the following properties:

1. 2137 Lakeshore Road- The Sewage Pumping Station
2. 451 Elizabeth Street- The Iron Duke
3. 1406 Ontario Street- The Robert John Allen House
4. 1419 Ontario Street- The O’Brien-Connell House

Bill 139 amends the *Ontario Heritage Act* to require a municipal Council to unconditionally approve a heritage permit to alter a designated place of worship if the part of the building to be altered is used for religious practices and the alteration of the heritage attribute is required for religious practices. This legislative change gives faith congregations increased control over their buildings and the discretion to alter them to suit changing needs. If Council is satisfied that this would give congregations who operate the three churches on the list an adequate level of discretion and control, it could choose to leave the three church sites on the Bill 23 shortlist.

Option 3- Confirm Support for Original Shortlist (Recommended)

The original shortlist reflects a set of objective criteria that resulted in a diverse list containing a variety of building types, located in highly populated areas. The shortlist was endorsed by the Heritage Burlington Advisory Committee. Although the Official Plan development permissions are a risk criterion, any property not protected by a heritage designation bylaw is at some risk of redevelopment or significant alteration, as current uses and ownership are subject to change at any time. Given that the Bill 23 legislation prohibits a property from being added back to the Heritage Register for a period of five (5) years, staff remain of the opinion that the original recommended shortlist provides the best opportunity to protect a diverse list of valued cultural heritage resources within the City, in light of the significant challenges presented by Bill 23.

Financial Matters:

Funding to study the Bill 23 shortlist was approved and discussed in report [PL-35-23](#).

Total Financial Impact

Not applicable.

Source of Funding

Not applicable.

Other Resource Impacts

Not applicable.

Climate Implications:

Not applicable.

Engagement Matters:

At their Dec. 13, 2024 meeting, the Heritage Burlington Advisory Committee made the following motion recommending that Council direct staff to engage owners over the next year to identify those willing to designate their properties voluntarily and save the City spending money on studies for these properties:

Heritage Burlington advises City Council to direct staff to undertake an ongoing engagement and consultation process, with potential heritage designated property owners, in order to avoid incurring expenses for full heritage studies where the owner is agreeable to voluntary designation of their property under the Ontario Heritage Act unless a further detailed heritage assessment, by a qualified professional, is recommended by Heritage Planning staff.

Staff will incorporate this feedback into the Bill 23 exercise by ensuring there is a robust consultation process, but do not believe that it is likely that many voluntary designation candidates will be found. Staff do not recommend making further adjustments to the Bill 23 shortlist because of the risk of further delays.

Conclusion:

Staff received valuable feedback from councillors about consultation and communication during the Bill 23 exercise and will factor this into the work in the next year. Councillors also highlighted eight properties on the original proposed shortlist that are considered at low-risk for redevelopment, one of which (2066 Kilbride St.) is willing to be heritage designated voluntarily and is actively working on a statement of significance for their property. Council has the option of removing the seven that were to be studied by a consultant from the list and substituting them with seven properties where significant development is permitted by the Official Plan.

Respectfully submitted,

John O'Reilly, MCIP RPP CAHP
Supervisor of Site Plan Review
Community Planning

Appendices:

- A. Alternative List of Bill 23 Heritage Designation Candidates (PL-14-24)
- B. Recommended List of Heritage Designation Candidates (PL-35-23 & PL-14-24)

Notifications:

Owners of the following properties:

- 1134 Plains Road East
- 513 Locust Avenue
- 242 Plains Road East
- 444 Plains Road East
- 2022 Victoria Avenue
- 590 Brant Street
- 1421 Lakeshore Road

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.