

**Pilon, Janet**

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**Subject:** Legal Lapses in Council Governance Requiring Further Action

**From:** Bob Maton

**Sent:** Friday, October 22, 2021 12:25 PM

**To:** [clerk@hamilton.ca](mailto:clerk@hamilton.ca)

**Subject:** Legal Lapses in Council Governance Requiring Further Action

Bob Maton, PhD, President  
Ancaster Village Heritage Community

October 22, 2021

Dear Madam Clerk:

In the Council Meeting on October 13, 2021, City Council passed the Planning Committee Report 21-015 (b), approving the Heritage Permit for moving 398 Wilson St E with 11 in favour, 1 against and 1 abstention.

Ancaster Village Heritage Community (AVHC) asks Council for a thorough review of the decision but particularly the process that led to this vote as we see remarkable and repeated lapses in governance.

AVHC is a vibrant community organization working to protect heritage and promote positive development and intensification.

This matter affects the streetscape in our community, but our concern is city-wide as other village cores like Dundas, Stoney Creek and Waterdown are threatened if a process similar to what Council did with this application is followed.

Regardless of the decision on a matter, citizens expect Council to strictly adhere to legislation and policies. That is not the case in this process. Further, an application to move a heritage designated building in a designated heritage area surely demands an even higher standard than most decisions that affect the streetscapes that define our communities. Did all Councillors see the well researched, in-depth report submitted to the Heritage Committee by Director of Planning, Steve Robichaud?

Attached for reference is a copy of PED21196, and a document that sets out the key points in an easier to read format.

We hope this document will bring AVHC concerns into sharp focus and raise the same questions in your mind that we have—how this background and recommendations from staff, the Heritage Permit Review Committee and the Heritage Committee can be dismissed.

The best solution would be for Council to re-consider this decision BEFORE the November 4, 2021 deadline for a Decision under the Ontario Heritage Act, and seek a legal opinion on our request. AVHC believes strongly that it is not up to citizens to bear significant costs when there is a question about City conduct, however, AVHC also believes the City needs to be held to account when there are lapses in rules of procedure or application of legislation.

AVHC believes that the decision is illegal for the following reasons:

1. The City did not act in accordance with the process set out in the Ontario Heritage Act Section 34 for applications to demolish registered heritage properties (removing a registered structure from the streetscape is considered a demolition).
2. The Approval is contrary to Provincial Policy 2021. (see PED21196).
3. The Approval is contrary to the Urban Hamilton Official Plan. (see PED21196).
4. The Approval is contrary to the Ancaster Wilson Street Secondary Plan. (see PED21196).
5. Information material to the decision to approve the Heritage Permit was not on the public record. The statement by Councillor Danko prior to the vote on the Planning Committee motion that he had seen a full environmental report and an engineering report, neither of which were provided at any point in the approval process, is a remarkable breach of procedure. How can material not on the public record be considered by Council at the last possible moment, and then only on the say-so of a Councillor?

AVHC is willing to provide the detail behind our concerns. We trust Council shares our view that we are all best served by open and fair processes with decisions that have significant impacts on our community. That is all we ask for in this matter. In a spirit of full disclosure Ancaster Village Heritage Community is seeking other possible remedies and will follow up media stories on the approval.

Sincerely,

Bob Maton, PhD, President  
Ancaster Village Heritage Community  
330 Lodor Street  
Ancaster, ON L9G 2Z2



330 Lodor Street, Ancaster L9G 2Z2

Mayor Fred Eisenberger  
Members of City Council  
clerk@hamilton.ca

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Did all Councillors see the well researched, in-depth report submitted to the Heritage Committee by Director of Planning, Steve Robichaud? Attached for reference is a copy of PED21196, and a document that sets out the key points in an easier to read format. We hope this document will bring AVHC concerns into sharp focus and raise the same questions in your mind that we have—how this background and recommendations from staff, the Heritage Permit Review Committee and the Heritage Committee can be dismissed.

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Sincerely

A handwritten signature in black ink, appearing to read 'Bob Maton', written over a horizontal line.

Bob Maton, PhD  
President

## **A LOOK AT THE STAFF REPORT**

### **ON THE MOVE/DEMOLITION OF 398 WILSON STREET E ANCASTER**

#### **NO OPINIONS OTHER THAN THOSE EXPRESSED BY CITY OF HAMILTON STAFF PED21196—THE BACKGROUND STAFF REPORT FOR THE APPLICATION**

*Methodology is simply cutting and pasting without change material from the Staff Report used in this application. These excerpts of PED21196 are in alignment with the overall direction of the Staff Report and the staff, Heritage Permit Review Committee and Hamilton Municipal Heritage Committee decision to recommend denial of the application. You can easily compare these excerpts with the full report as page references to the original report are provided. The ONLY addition is attributes to source paragraphs where the source is not clear. These are identified inside square brackets. Paragraph numbers added for ease of use. PED21196 is publicly available. Document author is Stacey Kursikowski, Cultural Heritage Planner, City of Hamilton.*

*The full Council did not see PED21196. The motion they voted on is attached for convenience.*

1. Page 2: Staff have reviewed the documentation submitted with the application and have concluded that the proposal as submitted is premature as there is insufficient evidence and/or missing information to support the relocation of the building
2. Page 2: Given the proposal seeks to remove the building and its heritage attributes from the limitations of the designated parcel of land, the proposal would be classified and interpreted as a demolition.
3. Page 3: The *Ontario Heritage Act*, in addition to the Council approved Heritage Permit Process (Report PED05096), does not allow for the delegation of Council's authority to consent to demolition or removal of a building or structure, nor Council's authority to deny an application.
4. Page 5: Section 2.6 of the Provincial Policy Statement (PPS) pertains to Cultural Heritage and Archaeology. Subsection 2.6.1 states that "significant built heritage resources and significant cultural heritage landscapes shall be conserved".
5. Page 5: Volume 1, Section 3.4 - Cultural Heritage Resources Policies of the Urban Hamilton Official Plan (UHOP) states that the City shall "protect and conserve the tangible cultural heritage resources of the City, including archaeological resources, built heritage resources, and cultural heritage landscapes" (Policy B.3.4.2.1(a)). While establishing a list of goals to ensure the care, protection and management of heritage resources within the City including Policy B.3.4.1.3 that states "all new development, site alterations, building alterations and additions are contextually appropriate and maintain the integrity of all on-site or adjacent cultural heritage resources".

6. Page 6: Within these downtown areas, the City shall conserve individual cultural heritage properties and areas of heritage value, including streetscape features [UHOP]
7. Page 6: The City shall “encourage the retention and conservation of significant built heritage resources in their original locations. [UHOP]
8. Page 6: These policies demonstrate Council’s commitment to the identification, protection, and conservation of the cultural heritage resources. [AWSSP]
9. Page 7: To date, no *Planning Act* applications have been submitted for the proposed redevelopment of the entirety of the site, nor has a Site Plan Control application been submitted for the proposed relocation of the Marr House as is required for a commercial building.
10. Page 7: The applicant proposed to redevelop the lands to include a six-storey, mixed-use building with 122 residential units and 1,256.2 square metres of commercial floor space at grade. A total of 223 parking spaces were proposed, of which, 175 were proposed to be in a single level of below grade parking. All existing buildings on the site were proposed to be demolished, with the exception of the Marr House, which was proposed to be relocated to 15 Lorne Avenue to be used as private amenity space for the [prepared Heritage Report] redevelopment.
11. Page 9: Due to the complexities associated with relocating a random rubble stone structure of this vintage, the potential risk of adverse reactions that could result in damage to the structure is high and could be irreversible.
12. Page 9: The relocation would result in changes to the setting of the historic building, away from the Wilson Street streetscape which is a defining feature. As such, based on the contents of the designating By-law No. 78-87 and the information submitted, it is in staff’s opinion that the cultural heritage value of this significant built heritage resource would not be conserved as a result of the proposal.
13. Page 10: The CHIA [Cultural Heritage Impact Assessment] notes that GBCA [GBCA Architects Inc]prepared report] visited the site in April of 2021 to conduct a high-level visual review of the building’s exterior, noting they obtained only limited access to all exterior parts of the building facades. Assessment was limited from the ground level only as no boom lift was utilized for higher areas such as the gables, second floor windows, soffit and roof. [Note: no other inspection was done by the consultant]

14. Page 11: Based on staff's review, the CHIA is deficient as follows:

- Assessing the building's foundation from the interior or providing interior photographs;
- Assessing the property against the policies of the City of Hamilton's Urban Hamilton Official Plan and Ancaster Wilson Street Secondary Plan;
- Assessing the proposal against criteria from Ontario Regulation 9/06, as set out by the Province or the City of Hamilton Framework for Cultural Heritage Evaluation;
- Assessing other alternatives or mitigation strategies in detail;
- Assessing the overall impact of the future development of the site; and,
- Providing a draft Statement of Cultural Heritage Value or Interest for the proposal.

15. Page 11: The proposal to relocate the Marr House is primarily based on the need to remediate the site due to contamination. However, the submitted documentation does not provide sufficient evidence or justification that would allow staff to make an informed decision or provide alternatives to addressing the contamination or remediation.

16. Page 11: Based on the above review, and the information provided to date, Staff are not supportive of the request to relocate the Marr House to 15 Lorne Avenue as requested through the Heritage Permit. The proposal is not in keeping with the intent of the designation By-law. The submitted documentation does not adequately assess the impact or potential impacts of the relocation on the heritage resource against the required criteria set out by the Province of Ontario and the City of Hamilton. Given the significance of the building's presence on the Wilson Street streetscape and the applicable Official Plan and Secondary Plan policies, staff are unable to adequately assess the proposal without a wholesome understanding of the implications it may have on the cultural heritage value of the building, or on the surrounding community, the streetscape and the future of the entirety of the site that would normally be done as part of an application for Official Plan Amendment and rezoning.

17. Page 12: From a technical perspective, the proposal to relocate a 180-year old random rubble stone structure is complex. Staff are of the opinion that the supporting documentation submitted does not adequately assess the proposal nor provide sufficient justification that the relocation is feasible and/or the most appropriate option. A report assessing the building's current structural stability or technical details on the process to stabilize, lift and relocate the building by qualified personnel (structural engineer and building moving company) was not submitted. Only a high-level overview of the level of contamination was provided. As a result of the limited time frames associated with a Heritage Permit application, peer reviews on the submitted documentation were not conducted to confirm the accuracy or explore alternative options. The proposed relocation could result in impacts to the integrity of the heritage resource, and as such, more extensive supporting documentation should be provided and assessed by qualified experts.

18. Page 12: A proposal of this nature requires review, consultation and consideration from other internal departments and external agencies in various fields of expertise. Given the complexities with this proposal, as well as other concerns and requirements previously provided by various departments and agencies during the initial Formal Consultation application in 2019, an application of this magnitude should be reviewed in its entirety through formal *Planning Act* applications in conjunction with the Heritage Permit application.

**PLANNING COMMITTEE REPORT 21-015—OCTOBER 5, 2021**

**SECTION REGARDING APPROVAL OF PLANNING COMMITTEE MOTION REGARDING 398  
WILSON STREET E—PHILLIPO HOUSE**

**Heritage Permit Application HP2021-033, under Part IV of the *Ontario Heritage Act* for the  
relocation of 398 Wilson Street East, Ancaster (PED21196) (Ward 12)**

(a) That Council approve Heritage Permit HP2021-033 for 398 Wilson Street East, Ancaster, as submitted, with the following conditions:

- (i) That any minor changes to the plans and elevations following approval shall be submitted, to the satisfaction and approval of the Director of Planning and Chief Planner, prior to submission as part of any application for a Building Permit and / or the commencement of any alterations;
- (ii) That the installation of the alterations, in accordance with this approval, shall be completed no later than July 31, 2023. If the alterations are not completed by July 31, 2023, then this approval expires as of that date and no alterations shall be undertaken without a new approval issued by the City of Hamilton;
- (iii) That an Archaeological Assessment for the entirety of the site be submitted to the satisfaction of the Director of Planning and Chief Planner;
- (iv) That a full Building Condition Assessment by a qualified professional Structural Engineer with experience in heritage buildings be prepared to the satisfaction of the Director of Planning and Chief Planner;
- (v) That a signed letter from a Professional Engineer with experience in historic stone structures confirming the feasibility of relocation on the site be submitted to the satisfaction of the Director of Planning and Chief Planner;
- (vi) That a signed letter from an experienced building moving company with experience in relocating historic stone buildings be submitted to the satisfaction of the Director of Planning and Chief Planner;
- (vii) That a full Phase II ESA for the entirety of the site be submitted to the satisfaction of the Director of Planning and Chief Planner;



- (viii) That a revised Cultural Heritage Impact Assessment, assessing the proposal against required criteria and a new Statement of Cultural Heritage Value and Interest be submitted to the satisfaction and approval of the Director of Planning and Chief Planner;
- (ix) That the designating By-law No. 78-87 be repealed in accordance with the requirements of the Ontario Heritage Act at the expense of the owner;
- (x) That a new designation By-law be prepared in accordance with the requirements of the Ontario Heritage Act for the building's new location at the expense of the owner;
- (xi) That a new Survey be prepared to accompany a new designation By-law indicating the boundaries to which the designation applies;
- (xii) That a Conservation Plan in accordance with the City's Guidelines for Conservation Plans be submitted to the satisfaction and approval of the Director of Planning and Chief Planner;
- (xii) That the applicant enters into a Heritage Easement Agreement with the City to the satisfaction and approval of the Director of Planning and Chief Planner prior to the issuance of any Building Permit for demolition or new construction, and that this agreement is registered on title;
- (xiii) That a Letter of Credit be provided to be held by the City based on the cost estimates for 100% of the total cost of securing, protecting, stabilizing, relocating, monitoring for a period of three years and the total cost of restoration. Such cost estimates shall be in a form satisfactory to the Director of Planning and Chief Planner;
- (xiv) That any technical studies may be subject to Peer Review at the expense of the owner where deemed necessary.
- (xv) That if the building is to be relocated prior to site plan approval for the redevelopment of 392, 398, 400, 402, 406 and 412 Wilson Street East and 15 Lorne Avenue, then the owner shall apply for and receive approval of a Minor Site Plan Application (MDA), and any other relevant Planning Act applications for the proposed relocation.
- (xvi) That the owner submit an Official Plan Amendment and Zoning By-law Amendment for the redevelopment of 392, 398, 400, 402, 406 and 412 Wilson Street East and 15 Lorne Avenue or alternatively the owner provide written confirmation to the Director of Planning and Chief Planner that they will be proceeding in accordance with the existing zoning in effect for these lands.

(b) That staff be directed to report back to the Planning Committee before July 2022 on how the above Conditions (a) (i) to (xvi) have been cleared.

**NOTE:** There are 17 conditions, not 16. Numbering error repeats (xii).



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Planning Division**

<b>TO:</b>	Chair and Members Hamilton Municipal Heritage Committee
<b>COMMITTEE DATE:</b>	September 24, 2021
<b>SUBJECT/REPORT NO:</b>	Heritage Permit Application HP2021-033, under Part IV of the <i>Ontario Heritage Act</i> for the relocation of 398 Wilson Street East, Ancaster (PED21196) (Ward 12)
<b>WARD(S) AFFECTED:</b>	Ward 12
<b>PREPARED BY:</b>	Stacey Kursikowski 905-546-2424 Ext. 1202
<b>SUBMITTED BY:</b>	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That Heritage Permit application HP2021-033, for the relocation of the Part IV designated heritage building at 398 Wilson Street East, Ancaster, under section 34 of the *Ontario Heritage Act*, be deemed to be premature and therefore be **denied**;
- (b) That appropriate notice of the Council decision be served on the owner of 398 Wilson Street East, Ancaster, and the Ontario Heritage Trust, as required under Section 34 of the *Ontario Heritage Act*.

**EXECUTIVE SUMMARY**

The subject property is located at 398 Wilson Street East on the east side of Wilson Street East, north of Academy Street in the Ancaster Village Core (see Appendix "A" attached to Report PED21196). The property was designated in 1978 under Part IV of the *Ontario Heritage Act* by By-law No. 78-87 (see Appendix "B" to attached Report PED21196). The property is located within the Ancaster Village Core Cultural Heritage Landscape Inventory and is part of an amalgamated parcel of land which is comprised of 392, 398, 400, 406 and 412 Wilson Street East and 15 Lorne Avenue.

The agent representing the owner of 398 Wilson Street East submitted a Heritage Permit application to relocate the two-storey stone building (hereinafter referred to as the 'Marr House'), from the subject property to an alternate location at the rear of the amalgamated parcel of land (see Appendix "C" attached to Report PED21196).

Staff have reviewed the documentation submitted with the application and have concluded that the proposal as submitted is premature as there is insufficient evidence and/or missing information to support the relocation of the building. The Heritage Permit Review Subcommittee of the Hamilton Municipal Heritage Committee (HMHC) were consulted and advised that the application as submitted consider the application to be premature and there be refused.

According to the application and submitted documentation, the requirement for the proposed relocation is to address groundwater and subsurface soil contamination around and below the Marr House as a result of a former gas station that existed adjacent to the site. No additional information or details pertaining to the future use of the site were included with the submission and no *Planning Act* applications have been submitted to date.

Staff concur with the advice of the Heritage Permit Review Subcommittee and recommend that Heritage Permit application HP2021-033 to relocate 398 Wilson Street East, Ancaster be denied.

***Alternatives for Consideration – See Page 12***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: None.

Staffing: None.

Legal: Given the properties designation under Part IV of the *Ontario Heritage Act*, this Heritage Permit application has been processed and considered within the context of the applicable legislation, as per the date in which the application was submitted to the City of Hamilton (June 4, 2021). Given the proposal seeks to remove the building and its heritage attributes from the limitations of the designated parcel of land, the proposal would be classified and interpreted as a demolition.

Section 34 (1) of the *Ontario Heritage Act* states that:

"No owner of property designated under section 29 shall demolish or remove a building or structure on the property or permit the demolition or removal of

a building or structure on the property unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal”.

Section 34 (1.2) of the *Ontario Heritage Act* states that  
“The council, on receipt of an application under subsection (1) together with any information it may require under subsection (1.1), shall serve a notice of receipt on the applicant”.

Section 34 (2) of the *Ontario Heritage Act* states that:  
“Within 90 days after the notice of receipt is served on the applicant under subsection (1.2) or within such longer period as is agreed upon by the owner and the council, the council, after consultation with its municipal heritage committee, if one is established,

- (a) may,
  - (i) consent to the application,
    - (i.1) consent to the application, subject to such terms and conditions as may be specified by the council, or
  - (ii) refuse the application;
- (b) shall give notice of its decision to the owner and to the Trust; and,
- (c) shall publish its decision in a newspaper having general circulation in the municipality.”

The *Ontario Heritage Act*, in addition to the Council approved Heritage Permit Process (Report PED05096), does not allow for the delegation of Council’s authority to consent to demolition or removal of a building or structure, nor Council’s authority to deny an application.

The Heritage Permit application was received on June 4, 2021 and the Notice of Receipt was issued on August 6, 2021 following a meeting between City staff and the applicant’s project team. The *Ontario Heritage Act* requires that Council make a decision on a Heritage Permit application within 90 days of the issuance of a Notice of Receipt. If no decision is reached within the 90-day timeframe, Council shall be deemed to consent to the application. The subject application’s 90-day timeframe will be reached on November 4, 2021.

## **HISTORICAL BACKGROUND**

The Marr House is a three-bay, two-storey random rubble stone house with a gabled-roof running north and south (see Appendix “D” attached to Report PED21196). The exterior composition and architecture of the building is significant to the historical value of the property, as is its location on Wilson Street. Schedule “B” – Reasons for Designation as attached to By-law No. 78-87 states that the structure is a:

“well-preserved and charming Georgian stone house dating from circa 1850, although some stylistic details suggest an earlier date. The use of stone as a construction material relates the building to several other important buildings on Wilson Street. For these reasons the building is of great importance to the Wilson Street streetscape”.

An overview of the exterior of the structure as it exists today is summarized below:

- The west façade facing Wilson Street East is symmetrical with a central door recessed into the wall with a five-pane top light/transom. There is a window to either side of the door on the ground floor, while the upper-storey has three windows, slightly smaller than those on the ground floor. Each of the windows on this elevation consist of twelve panes and sit below a stone flat arch, which is also visible over the central door;
- The north façade consists of three windows, each with twelve panes below stone flat arches. In the upper east side of the façade, a remnant fourth window opening is visible however, it was blocked prior to the designation of the building;
- The south façade is blank with no openings; and,
- The east façade originally resembled the west façade however a one-storey tail addition with an east-west gable roof was constructed at some point following designation. Three upper-storey twelve pane windows and one one-over-one window are visible on the rear façade, below stone flat arches. The later addition, clad in board and batten, conceals a minimum of two original openings and extends outwards towards the rear of the property. The addition is not included in the designation by-law or cultural heritage value or significance of the structure.

According to the Cultural Heritage Assessment prepared in support of the 1978 Part IV designation, the building was originally constructed as a residence for Adam Marr, a local cabinet-maker. Following that, John Phillip, a stone-mason, proprietor and village constable resided on the property. Over time, the use of the building has changed to commercial uses which have continued to the present day.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

### **Provincial Policy Statement (2020)**

Section 2.6 of the Provincial Policy Statement (PPS) pertains to Cultural Heritage and Archaeology. Subsection 2.6.1 states that “significant built heritage resources and significant cultural heritage landscapes shall be conserved”.

The subject property has been recognized as a significant built heritage resource that has been designated under Part IV of the Ontario Heritage Act. The conservation of built heritage resources, as defined in the PPS, relates to their identification, protection, management and use in a manner that ensures their cultural heritage value or interest is retained under the *Ontario Heritage Act*.

Subsection 2.6.2 states that “development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved”.

In response to a 2019 Formal Consultation application, Cultural Heritage staff advised that the subject property met six of the ten criteria used by the City of Hamilton and Ministry of Heritage, Sport, Tourism and Culture Industries for determining archaeological potential and required that an Archaeological Assessment be completed for the entirety of the site and submitted with any future application. To date, staff have not received an Archaeological Assessment or confirmation from the Ministry. As such, Municipal interest in the archaeological potential of this site has not been satisfied.

### **Urban Hamilton Official Plan**

Volume 1, Section 3.4 - Cultural Heritage Resources Policies of the Urban Hamilton Official Plan (UHOP) states that the City shall “protect and conserve the tangible cultural heritage resources of the City, including archaeological resources, built heritage resources, and cultural heritage landscapes” (Policy B.3.4.2.1(a)). While establishing a list of goals to ensure the care, protection and management of heritage resources within the City including Policy B.3.4.1.3 that states “all new development, site alterations, building alterations and additions are contextually appropriate and maintain the integrity of all on-site or adjacent cultural heritage resources”.

The Official Plan recognizes the importance that location plays on the value of heritage and the many unique districts, communities and neighbourhoods, including historic downtown areas such as Ancaster throughout the City and states that:

- The City shall “conserve the character of areas of cultural heritage significance, including designated heritage conservation districts and cultural heritage landscapes, by encouraging those land uses, development and site alteration activities that protect, maintain and enhance these areas within the City” (Policy B.3.4.2.1(h));
- The City shall “recognize and consider these differences when evaluating development proposals to maintain the heritage character of individual areas” (Policy B.3.4.2.2);
- “Within these downtown areas, the City shall conserve individual cultural heritage properties and areas of heritage value, including streetscape features, traditional circulation patterns, and important views, and ensure that new development respects and reflects the design of surrounding heritage buildings” (Policy B.3.4.3.2); and,
- The City shall “encourage the retention and conservation of significant built heritage resources in their original locations. In considering planning applications under the *Planning Act*, R.S.O., 1990 c. P.13 and heritage permit applications under the *Ontario Heritage Act*, there shall be a presumption in favour of retaining the built heritage resource in its original location” (Policy B.3.4.5.2).

### **Ancaster Wilson Street Secondary Plan (OPA 24)**

The subject property is located within the Village Core area of the Ancaster Wilson Street Secondary Plan (Volume 2, Section 2.8) within the Urban Hamilton Official Plan (UHOP) which outlines a vision for the picturesque and historic community, one of the oldest in Ontario, rich in history, manifesting itself in a wealth of cultural and natural heritage features and its unique character. The Secondary Plan seeks to create a complete community while continuing to respect the history and character that creates its unique sense of place, while enhancing and protecting heritage and cultural resources. The Secondary Plan encompasses the historic downtown area of Ancaster and recognizes the importance in maintaining and enhancing the overall character of the area, which includes preserving older buildings, varied street fronts, and a distinct look and feel, while ensuring that future development or redevelopment is in keeping with the direction of current planning policy.

These policies demonstrate Council’s commitment to the identification, protection, and conservation of the cultural heritage resources.

## **RELEVANT CONSULTATION**

### **Previous Applications**

In 2019, a Formal Consultation application (FC-19-019) was submitted for the subject property (392-412 Wilson Street East and 15 Lorne Avenue). The applicant proposed to redevelop the lands to include a six-storey, mixed-use building with 122 residential units and 1,256.2 square metres of commercial floor space at grade. A total of 223 parking spaces were proposed, of which, 175 were proposed to be in a single level of below grade parking. All existing buildings on the site were proposed to be demolished, with the exception of the Marr House, which was proposed to be relocated to 15 Lorne Avenue to be used as private amenity space for the redevelopment.

As part of that process, internal staff and external agencies advised the applicants of the requirements and provided initial comments pertaining to the proposed redevelopment. It was noted that several *Planning Act* applications and studies were required in order to assess the proposal (Official Plan Amendment, Rezoning Application and Site Plan Application). To date, no *Planning Act* applications have been submitted for the proposed redevelopment of the entirety of the site, nor has a Site Plan Control application been submitted for the proposed relocation of the Marr House as is required for a commercial building.

### **Heritage Permit Review Subcommittee**

Pursuant to section 34 of the *Ontario Heritage Act* and the Council approved Heritage Permit Process (Report PED05096), the Hamilton Municipal Heritage Committee advises and assists Council on matters relating to Part IV and V of the *Ontario Heritage Act*. The Heritage Permit Review Subcommittee (HPRS) of the Hamilton Municipal Heritage Committee reviewed the subject application at a special meeting held on August 31, 2021.

The HPRS posed a number of questions during the meeting regarding the proposed location, the future intent of the site, the technical components associated with a relocation and contamination and potential risks associated with the proposed relocation given the age and construction of the building. The following is a summary of key questions and/or comments provided by the HPRS:

- The significance of the building's location on Wilson Street as it relates to its cultural heritage value. As a result, the building should not be moved away from Wilson Street;
- The proposed location is a hiding spot away from the streetscape and public view;
- How long is the building safe in its current position/location/state;



- What are the risks associated with relocating the building and impacts it could have on the building;
- Why can the building not be lifted, soil remediated, new foundation built and then set back down? Is there no example in the world where a site has been remediated without relocating or demolishing a building;
- What are alternative options and locations for relocating – further north along Wilson Street or south to the corner of Wilson and Academy;
- What is the scope and timing of the remediation process;
- How was the level of contamination determined;
- Does all the contaminated soil have to be removed? This is not the first time there is contamination below a building;
- Official Plan and Secondary Plan policies as it relates to keeping historic buildings in their original location;
- What is really driving the relocation; and,
- What are the intended future plans for the site and streetscape.

Following a discussion with the applicant and their consultants, the advice of HPRS is that the application, as submitted, be refused.

Staff have provided the applicant with a summary of the questions and comments provided by HPRS, as well as additional questions from staff, as outlined in the Analysis and Rationale for Recommendation Section of this Report.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

### **(1) Heritage Permit Application**

The application is seeking approval to relocate the two-storey stone building and remove the rear wing addition. In support of the application, the following documents were submitted (see Appendix “E” attached to Report PED21196):

- Covering letter prepared by GSP Group, dated June 4, 2021;
- Heritage Building Sketch;
- Remediation Measures and Building Structure Location Letter, prepared by Landtek Limited Consulting Engineers, prepared on April 30, 2021 (the “environmental letter”);
- Preliminary Landscape Sketch, prepared by Whitehouse Urban Design Landscape Architects & Urban Designers, dated February 19, 2021; and,
- Cultural Heritage Impact Assessment, prepared by GBCA Architects Inc., dated June 4, 2021 (the “CHIA”).

The applicant indicated they are requesting to relocate the building to:

- Permit the remediation of the site; and,
- Provide for the comprehensive redevelopment of the site, while providing for the long-term conservation of the building.

Key factors that are considered in the evaluation of any change affecting a heritage resource are:

- **Displacement effects:** those adverse actions that result in the damage, loss, or removal of valued heritage features; and,
- **Disruption effects:** those actions that result in detrimental changes to the setting or character of the heritage feature.

The subject property is designated by By-law No. 78-87, which recognizes the building as a well-preserved and charming Georgian stone house dating from circa 1850, although some stylistic details suggest an earlier date. That along with the use of stone as a construction material relates it to several other important buildings on Wilson Street, making it of great importance to the Wilson Street streetscape.

Additionally, according to By-law No. 78-87 the following features of the premises should be preserved:

- The four façades of the building, including the exposed stonework construction;
- The roof and chimneys (since removed) and return eaves; and,
- The five-pane top light over the front door; the surviving northeast ground-floor window in the east façade with its 12-over-12 sash should be preserved for reference in case the owner should desire to return the present two-over-two sashes to their original organization (since covered by addition).

The subject application would result in the displacement of the entire structure and all features from its designated location. Due to the complexities associated with relocating a random rubble stone structure of this vintage, the potential risk of adverse reactions that could result in damage to the structure is high and could be irreversible. The relocation would result in changes to the setting of the historic building, away from the Wilson Street streetscape which is a defining feature. As such, based on the contents of the designating By-law No. 78-87 and the information submitted, it is in staff's opinion that the cultural heritage value of this significant built heritage resource would not be conserved as a result of the proposal.

**(2) Staff Assessment:**

The applicant has proposed to relocate the Marr House to 15 Lorne Avenue, the northeast corner of an amalgamated parcel of land. Given the building's Part IV designation under the *Ontario Heritage Act*, a Heritage Permit is required for the proposed works.

**(a) Cultural Heritage Impact Assessment (CHIA)**

A Cultural Heritage Impact Assessment (CHIA), prepared by GBCA Architects Inc. (GBCA), was submitted with the subject application. GBCA was retained by the owners to evaluate the impacts on a heritage property from the relocation of a designated heritage property on a newly assembled lot. The CHIA notes that GBCA visited the site in April of 2021 to conduct a high-level visual review of the building's exterior, noting they obtained only limited access to all exterior parts of the building facades. Assessment was limited from the ground level only as no boom lift was utilized for higher areas such as the gables, second floor windows, soffit and roof.

The CHIA:

- Assesses the proposal based on the understanding that the land is contaminated as per the Environmental Letter and the understanding of the desired location in the northeast corner of the property at 15 Lorne Avenue;
- Advises that the building overall remains fairly intact and no major losses of material are visible given the building's robust construction;
- Notes that areas of the south elevation have settled and deteriorated and will continue to do so unless action is taken to resolve the issues;
- Assesses the potential impacts on the heritage resource against resources such as the Ontario Heritage Toolkit, Standards and Guidelines for the Conservation of Historic Places in Canada, and the International Standards for Heritage Conservation;
- Provides a list of anticipated actions required to the exterior for conservation and stabilization following relocation;
- Provides a list of interior features recommended for preservation; and,
- Advises that additional professionals including structural engineers and building mover with experience in heritage structures are required to be consulted to provide specifications and scope of work for the proposed relocation.

The CHIA concluded that the relocation proposal will result in a number of changes to the existing property and its heritage attributes but is considered a necessary intervention for the remediation of the site and for the long-term conservation of the heritage resource, while reducing the impacts from multiple moves.

The CHIA acknowledges that while relocating a heritage structure is not the desired option, this proposal would balance demands for intensification with those of heritage preservation, thereby allowing for the proposed redevelopment of the site.

Based on staff's review, the CHIA is deficient as follows:

- Assessing the building's foundation from the interior or providing interior photographs;
- Assessing the property against the policies of the City of Hamilton's Urban Hamilton Official Plan and Ancaster Wilson Street Secondary Plan;
- Assessing the proposal against criteria from Ontario Regulation 9/06, as set out by the Province or the City of Hamilton Framework for Cultural Heritage Evaluation;
- Assessing other alternatives or mitigation strategies in detail;
- Assessing the overall impact of the future development of the site; and,
- Providing a draft Statement of Cultural Heritage Value or Interest for the proposal.

#### **(b) Environmental Letter**

The Environmental Letter submitted with the application indicates that based on environmental investigations that have been completed to date, there are subsurface soil and groundwater impacts on the subject property, including beneath the Marr House at depths of approximately six to eight metres.

The letter does not provide options to address the contamination or alternative methods for remediation. No Environmental Site Assessment (ESA) was submitted for the property. A City of Hamilton ERASE Grant was previously approved to conduct a Phase II ESA of the subject lands.

The proposal to relocate the Marr House is primarily based on the need to remediate the site due to contamination. However, the submitted documentation does not provide sufficient evidence or justification that would allow staff to make an informed decision or provide alternatives to addressing the contamination or remediation.

#### **(3) Conclusions:**

Based on the above review, and the information provided to date, Staff are not supportive of the request to relocate the Marr House to 15 Lorne Avenue as requested through the Heritage Permit. The proposal is not in keeping with the intent of the designation By-law. The submitted documentation does not adequately assess the impact or potential impacts of the relocation on the heritage resource against the required criteria set out by the Province of Ontario and the City of Hamilton. Given the significance of the building's presence on the Wilson Street streetscape and the

applicable Official Plan and Secondary Plan policies, staff are unable to adequately assess the proposal without a wholesome understanding of the implications it may have on the cultural heritage value of the building, or on the surrounding community, the streetscape and the future of the entirety of the site that would normally be done as part of an application for Official Plan Amendment and rezoning.

From a technical perspective, the proposal to relocate a 180-year old random rubble stone structure is complex. Staff are of the opinion that the supporting documentation submitted does not adequately assess the proposal nor provide sufficient justification that the relocation is feasible and/or the most appropriate option. A report assessing the building's current structural stability or technical details on the process to stabilize, lift and relocate the building by qualified personnel (structural engineer and building moving company) was not submitted. Only a high-level overview of the level of contamination was provided. As a result of the limited time frames associated with a Heritage Permit application, peer reviews on the submitted documentation were not conducted to confirm the accuracy or explore alternative options. The proposed relocation could result in impacts to the integrity of the heritage resource, and as such, more extensive supporting documentation should be provided and assessed by qualified experts.

A proposal of this nature requires review, consultation and consideration from other internal departments and external agencies in various fields of expertise. Given the complexities with this proposal, as well as other concerns and requirements previously provided by various departments and agencies during the initial Formal Consultation application in 2019, an application of this magnitude should be reviewed in its entirety through formal *Planning Act* applications in conjunction with the Heritage Permit application.

Staff have reviewed the documentation submitted with the application and have concluded there is insufficient evidence to support the relocation of the building as proposed. Staff recommend that Council deem the application to be premature and deny the application pursuant to subsection 34(2)(a)(ii) of the *Ontario Heritage Act*.

## **ALTERNATIVES FOR CONSIDERATION**

### **(1) Approve the Heritage Permit with no conditions.**

Council may approve the Heritage Permit as submitted with no conditions. This alternative decision would not be consistent with the advice of staff, the HPRS or the HMHC.

**(2) Approve the Heritage Permit with conditions.**

Council may approve the Heritage Permit as submitted with additional conditions. This alternative decision would not be consistent with the advice of staff, the HPRS or the HMHC. Should Council seek to approve the Heritage Permit as submitted, staff would recommend the following conditions:

- That any minor changes to the plans and elevations following approval shall be submitted, to the satisfaction and approval of the Director of Planning and Chief Planner, prior to submission as part of any application for a Building Permit and / or the commencement of any alterations;
- Installation of the alterations, in accordance with this approval, shall be completed no later than July 31, 2023. If the alterations are not completed by July 31, 2023, then this approval expires as of that date and no alterations shall be undertaken without a new approval issued by the City of Hamilton;
- That an Archaeological Assessment for the entirety of the site be submitted to the satisfaction of the Director of Planning and Chief Planner;
- That a full Building Condition Assessment by a qualified professional Structural Engineer with experience in heritage buildings be prepared to the satisfaction of the Director of Planning and Chief Planner;
- That a signed letter from a Professional Engineer with experience in historic stone structures confirming the feasibility of relocation on the site be submitted to the satisfaction of the Director of Planning and Chief Planner;
- That a signed letter from an experienced building moving company with experience in relocating historic stone buildings be submitted to the satisfaction of the Director of Planning and Chief Planner;
- That a full Phase II ESA for the entirety of the site be submitted to the satisfaction of the Director of Planning and Chief Planner;
- That a revised Cultural Heritage Impact Assessment, assessing the proposal against required criteria and a new Statement of Cultural Heritage Value and Interest be submitted to the satisfaction and approval of the Director of Planning and Chief Planner;
- That the designating By-law No. 78-87 be repealed in accordance with the requirements of the *Ontario Heritage Act* at the expense of the owner;
- That a new designation By-law be prepared in accordance with the requirements of the *Ontario Heritage Act* for the building's new location at the expense of the owner;
- That a new Survey be prepared to accompany a new designation By-law indicating the boundaries to which the designation applies;

- That a Conservation Plan in accordance with the City's Guidelines for Conservation Plans be submitted to the satisfaction and approval of the Director of Planning and Chief Planner;
- That the applicant enters into a Heritage Easement Agreement with the City to the satisfaction and approval of the Director of Planning and Chief Planner prior to the issuance of any Building Permit for demolition or new construction, and that this agreement is registered on title;
- That a Letter of Credit be provided to be held by the City based on the cost estimates for 100% of the total cost of securing, protecting, stabilizing, relocating, monitoring for a period of three years and the total cost of restoration. Such cost estimates shall be in a form satisfactory to the Director of Planning and Chief Planner;
- That a Site Plan application, and any other relevant *Planning Act* applications for the proposed relocation be submitted and approved for the relocation; and,
- That any technical studies may be subject to Peer Review at the expense of the owner where deemed necessary.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Healthy and Safe Communities**

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

### **Culture and Diversity**

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" attached to Report PED21196 - Location Map

Appendix "B" attached to Report PED21196 - By-law No. 78-87

Appendix "C" attached to Report PED21196 - Relocation Plan

Appendix "D" attached to Report PED21196 - Site Photographs from GBCA Architects Inc. CHIA

Appendix "E" attached to Report PED21196 - Heritage Permit Submission Documents

SK:sd