



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Hamilton Municipal Heritage Committee
COMMITTEE DATE:	February 24, 2023
SUBJECT/REPORT NO:	Response to <i>Bill 23, Schedule 6, More Homes Built Faster Act, 2022</i> , and its Changes to the <i>Ontario Heritage Act</i> and its Regulations (PED22211(a)) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Alissa Golden (905) 546-2424 Ext. 1202
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That, as a result of the *Bill 23* changes to the *Ontario Heritage Act*, the Council-approved process for designating properties under Part IV of the *Ontario Heritage Act*, including the City of Hamilton: Cultural Heritage Evaluation Criteria and staff designation work plan, as outlined in Report PED08211, be rescinded;
- (b) That the Candidates for Part IV Designation list, attached as Appendix “A” to Report PED22211(a), be approved;
- (c) That Cultural Heritage Planning staff, be directed to update the Candidates for Part IV Designation list, as required, to identify properties of cultural heritage value or interest worthy of further review for potential designation under Part IV of the *Ontario Heritage Act*, and that the list be reported to the Hamilton Municipal Heritage Committee quarterly and be made publicly available;
- (d) That Cultural Heritage Planning staff be directed to review the high priority properties of cultural heritage value or interest, identified in Appendix “B” attached to Report PED22211(a), and report back to Council with

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recommendations to designate individual properties under Part IV of the *Ontario Heritage Act*, and that this work be completed no later than January 1, 2025;

- (e) That, pursuant to Subsection 27(11) of the *Ontario Heritage Act*, Council require that any notice of intention to demolish or remove any building or structure on a property included on either the Candidates for Part IV Designation list attached as Appendix “A” to Report PED22211(a) or the High Priority Candidates for Part IV Designation list attached as Appendix “B” to Report PED22211(a), include a Cultural Heritage Impact Assessment report prepared to the satisfaction and approval of the Director of Planning and Chief Planner;
- (f) That Cultural Heritage Planning staff be directed to report back to Council with a Heritage Conservation District Strategy and Work Plan by Q4 2023;
- (g) The following items be considered dealt with and removed from the Outstanding Business List:
 - (i) Item 12B - Request to Designate 437 Wilson Street East (Ancaster) Under Part IV of the *Ontario Heritage Act* (PED12166);
 - (ii) Item 14A - Adding 206, 208, 210 King Street East to the Register of Property of Cultural Heritage Value or Interest;
 - (iii) Item 21Q – HMHC Report 21-005 RE: cost recoveries related to multiple Register removal requests from owners;
 - (iv) Item 17B - Designation of the Gore District as a Heritage Conservation District;
- (h) That staff report back on the creation of a standardized “Notice of Intention to Demolish” process, including an application form, for the consideration of the Hamilton Municipal Heritage Committee and Council in Q2 2023.

EXECUTIVE SUMMARY

The changes to the *Ontario Heritage Act* through *Bill 23, More Homes Built Faster Act, 2022*, proclaimed on January 1, 2023, affect the City’s existing heritage designation process. The existing process includes a multi-year work plan of 166 properties for review into 2039 and listing work plan properties on the Municipal Heritage Register (Register) to provide them with interim protection from demolition until they are comprehensively reviewed for designation. *Bill 23* changes to how municipalities can use the Register as a tool for heritage conservation, effectively making it a placeholder

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for individual Part IV designation only and will result in the automatic de-listing of all of the 2,345 non-designated properties currently listed on the Register on January 1, 2025. These properties are prohibited to be re-listed until January 1, 2030. This Report recommends that a new heritage designation process be implemented to address the *Bill 23* changes, including:

- Rescinding the existing Council-adopted heritage designation process;
- Implementing a new publicly accessible list of Candidates for Part IV Designation based off of the existing designation work plan list; and,
- Prioritizing 60 of the existing work plan properties for review for Part IV designation by January 1, 2025.

This Report also recommends that staff report back to Council with a Heritage Conservation District (HCD) Strategy and Work Plan to address areas with concentrations of properties of cultural heritage value or interest that will be automatic de-listed from the Register in two years, as well as a new focus for the City's proactive Built Heritage Inventory Strategy work moving forward.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The *Bill 23* amendments to the *Ontario Heritage Act* will have financial implications in terms of the staff time and resources required to address the candidates for designation listed on the Register at an accelerated rate. The Planning Division will be hiring two full-time temporary two-year Cultural Heritage Planning Technician positions to address this accelerated work, which will be funded from Capital Project ID Account No. 8121255620 in 2023 and referred to the 2024 Operating Budget.

Staffing: The full extent of the implications of *Bill 23* on staff resource are not known at this time. However, staff anticipate additional resources and time will be required to:

- Track Register listing and removal dates and five-year restrictions on re-listing;
- Accurately maintain the publicly accessible Register to reflect the changing statuses;
- Notify owners of Register removals;
- Liaise with owners, members of the public, HMHC and staff in other departments to confirm and explain the changing heritage status of properties;

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- Prepare listing recommendations triggered by Formal Consultation Applications in advance of subsequent Prescribed Events under the *Planning Act*;
- Prepare emergency designations triggered by Formal Consultation Applications and Prescribed Events under the *Planning Act*;
- Prepare notifications to owners on the existing staff work plan of the expedited review for designation; and,
- Process approximately 60 new heritage designations before January 1, 2025.

Staff anticipate there will be a reduction in resources and time required to address owner requests for removal from the Register.

Staff do not currently have the capacity to address the preliminary impacts outlined above. The two new temporary Cultural Heritage Planning Technician positions to be hired will focus primarily on the research and evaluation of heritage properties on the high priority designation list (see Appendix “B” attached to Report PED22211(a)) and would also address work triggered by Prescribed Events under the *Planning Act*. It is estimated that each contract staff could prepare approximately 15 designations per year.

Staff will report back to Council at the end of the temporary contracts on the effectiveness of the positions to address the designation work plan and to advise if a permanent position(s) is required to continue to support the designation work triggered by Prescribed Events and / or the list of Candidates for Part IV Designation (see Appendix “A” attached to Report PED22211(a)).

Legal: The *Bill 23* amendments to the *Ontario Heritage Act* are anticipated to require additional Legal resources and staff time to:

- Provide support interpreting and implementing the *Ontario Heritage Act* changes;
- Assist with the preparation of reports, by-laws, and agreements, and registration of the documents to comply with the new requirements; and,
- Represent the City at the Ontario Land Tribunal (OLT) as staff anticipate a higher number of OLT appeals to designations triggered by Prescribed Events under the *Planning Act* and to address the listed properties on staff’s designation work plan before they are automatically removed from the Register on January 1, 2025.

HISTORICAL BACKGROUND

The City's existing heritage designation process, adopted by Council in 2008 as part of Report PED08211, provides a framework to address heritage designation requests and prioritize a staff work plan for designating individual properties under Part IV of the *Ontario Heritage Act*. The City's Built Heritage Inventory Strategy and Work Plan, as outlined in Report PED20133, is an initiative to proactively identify cultural heritage resources to facilitate informed decision-making and priority-based planning from staff and Council. Since the Built Heritage Inventory (BHI) work began in 2011, over 2,000 properties have been added to the Municipal Heritage Register, providing interim 60-day protection from demolition and the opportunity for staff to discuss conservation or salvage options with the owner, or for Council to protect the property if it is a significant heritage resource worthy of designation under Part IV of the *Ontario Heritage Act*. The BHI work has also resulted in the identification of over 80 candidate properties for designation that have been added to staff's designation work plan for more comprehensive review and assessment.

On July 1, 2021, *Bill 108, More Homes, More Choice Act, 2019*, was proclaimed, which amended the *Ontario Heritage Act* (OHA). The amendments included changes to the process for designating properties, including restricting designations within 90 days of a Prescribed Event under the *Planning Act* and placing the final decision on designation appeals with the OLT instead of Council (see Report PED19125(c) for further discussion).

On October 25, 2022, *Bill 23, More Homes Built Faster Act, 2022* was introduced at the Ontario Legislature and subsequently received Royal Assent on November 28, 2022. Schedule 6 of *Bill 23* proposes changes to the *Ontario Heritage Act* and anticipated future changes to its regulations. On November 15, 2022, the Hamilton Municipal Heritage Committee (HMHC) received Information Report PED22211, notifying them of *Bill 23* and the proposed changes to the *Ontario Heritage Act*. Planning staff prepared comments on the proposed changes to the *Ontario Heritage Act* as part of a report to Council on all of the relevant legislative changes proposed through *Bill 23*, which was presented to Planning Committee on November 29, 2022, as part of Report PED22207.

On December 15, 2022, *Ontario Regulation 569/22* was introduced (see Appendix "C" attached to Report PED22211(a)) to amend *Ontario Regulation 9/06 – Criteria for Determining Cultural Heritage Value or Interest*. Schedule 6 of *Bill 23* was proclaimed on January 1, 2023.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Recommendations of this Report are consistent with Provincial and Municipal

legislation, policy and direction, including:

- Ensuring significant cultural heritage resources are conserved (*Provincial Policy Statement*, 2020, Sub-section 2.6.1);
- Protecting and conserving the tangible cultural heritage resources of the City, including built heritage resources for present and future generations (Urban Hamilton Official Plan, Volume 1, Chapter B, 3.4.2.1(a));
- Identifying cultural heritage resources through a continuing process of inventory, survey and evaluation, as the basis for wise management of these resources (Urban Hamilton Official Plan, Section B.3.4.2.1(b)); and,
- Designating properties of cultural heritage value under Part IV of the *Ontario Heritage Act* (Urban Hamilton Official Plan, Section B.3.4.2.3).

RELEVANT CONSULTATION

External

- Ontario Association of Heritage Professionals

Internal

- Planning and Economic Development Department, Tourism and Culture Division, Heritage Resource Management; and,
- Corporate Services Department, Legal Services Division, Legal and Risk Management Services.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The cumulative changes to the *Ontario Heritage Act* over the past few years, implemented by *Bill 108* and *Bill 23*, as well as the *Planning Act* changes implemented by *Bill 109*, will require a substantial shift in how the City of Hamilton identifies and protects significant cultural heritage resources and a reallocation of staff resources. The existing heritage designation process and BHI Strategy have focused on: the proactive identification of heritage resources; comprehensive and defensible evaluations of the heritage value or interest of properties; informed prioritization of how staff resources are being used to protect identified heritage resources; early and ongoing consultation with property owners; and a strong component of community engagement and education.

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The key *Bill 23* changes to the *Ontario Heritage Act* that will affect the City of Hamilton's Heritage Planning work, conducted by the Planning Division and Tourism and Culture Division, include:

- Limitations on the use of Register listings, including:
 - Expiry of non-designated properties currently listed on a Register on January 1, 2025 (two years from the time of proclamation of *Bill 23* on January 1, 2023);
 - Expiry of any new Register listings added after *Bill 23* proclamation, two years from their listing date; and,
 - 5-year restrictions on re-listing properties after expiry.
- New restrictions on designating as part of *Planning Act* applications, requiring a property to be listed prior to a Prescribed Event to be able to designate the property.

Note: *Bill 108* previously introduced a 90-day timeframe to issue a Notice of Intention to Designate a property subject to a Prescribed Event under the *Planning Act*.

- New thresholds for determining cultural heritage value or interest, as per *Ontario Regulation 9/06*, amended by *Ontario Regulation 569/22* (attached as Appendix "C" to Report PED22211(a)), including:
 - 2 criteria required instead of one for Part IV designation; and,
 - 1 criteria required for listing non-designated properties on the Register.
- New powers to exempt public bodies from complying with Provincial Standards and Guidelines for Conservation.
- Expansion of owner objection rights for properties listed on the Register prior to *Bill 108* proclamation on July 1, 2021.

Bill 23 changes to how municipalities can use the Register as a tool for heritage conservation and effectively make it a placeholder for individual Part IV designation only.

Changes to the Heritage Designation Process

The existing Council-approved process for designating properties under Part IV of the *Ontario Heritage Act*, as outlined in Report PED08211, allows staff to list properties on the Register and prioritize future assessment work for designation years into the future. The current work plan includes 166 properties, anticipates approximately four properties

being reviewed per year (with some clusters of properties being reviewed concurrently) with work projected into 2039. With property listings now expiring automatically after two years, this work plan and prioritization process is not viable as properties will no longer have interim protection from demolition by listing on the Register until a recommendation to designate can be brought forward at a later date.

The *Bill 23* changes also present an opportunity to address the unsustainable nature of the City's existing designation work plan, which originally proposed low, medium and high priority categories that would be addressed within 5 years and has now grown to over 166 properties requiring over 40 years of work.

Staff recommend that the existing process be rescinded as a result of the legislative changes as part of *Bill 23*, including the request process, staff designation work plan, City of Hamilton: Cultural Heritage Evaluation Criteria and the review of draft Cultural Heritage Evaluation reports by the Inventory and Research Working Group (see Recommendation (a) of this Report).

List of Candidates for Part IV Designation

A new heritage designation process is proposed to be implemented which includes a list of Candidates for Designation under Part IV of the *Ontario Heritage Act* maintained by staff, to be accessible to the public (see Recommendation (b) of this Report). The new list of designation candidates, attached as Appendix "A" to Report PED22211(a), includes properties on the existing staff designation work plan to be rescinded, as well as additional properties inventoried and identified as Significant Built Resources that have not yet been added to the work plan. These 120 properties are not considered to be a high priority for designation because they were flagged proactively as part of the City's Built Heritage Inventory Strategy work, are generally stable residential properties and have a lower risk of potential change or demolition.

A staff review for designation may be prioritized if one of the following types of events occur:

- A Building Permit Application to demolish;
- A Formal Consultation Application that involves demolition or significant alteration of the potential heritage resource(s);
- A Prescribed Event under the *Planning Act*;
- An owner request for designation; or,
- If staff resources permit.

Notices will be sent to the owners of all the properties to notify them of the change in status from being on the designation work plan to the new list of candidates for designation.

High Priority Candidates for Part IV Designation

In addition to the list of designation candidates, there are 60 properties on the existing work plan that are recommended to be given high priority for staff review for designation. Staff identified the property as a high priority for review by January 1, 2025 (see Appendix “B” attached to Report PED22211(a)) if:

- There was a perceived or immediate risk to the property with respect to demolition, removal or substantial alteration; or,
- Designation was originally requested by the owner or a third party (e.g. it was not proactively identified as part of the BHI Strategy work).

Staff note that a handful of work plan properties that were added by Council motion or HMHC request have not been included in the high priority list because they were found to be generally stable residential or City-owned property with low risk of demolition or removal, or their potential for Part IV designation has not yet been evaluated.

It is recommended that staff review the high priority properties for Part IV designation prior to January 1, 2025, when they will automatically be removed from the Register (see Recommendation (d) of this Report). Any properties on the high priority list not addressed by January 1, 2025, would be added to the Candidates for Part IV Designation list. Notices will be sent to the property owners to notify them of the change in status from being on the designation work plan to the new list of high priority designation candidates.

Proactive Designation Triggered by Prescribed Events

In addition to the high priority designation candidates for review by January 1, 2025, the City will also need to address designations that may be triggered by Prescribed Events under the *Planning Act*. This work will be reactionary in nature and staff will need to be able to undertake property evaluations and bring forward recommendations to designate triggered by Formal Consultation Applications in a timely manner due to the limitations imposed on the municipality by *Bill 108* and *Bill 23*, respectively, to designate a property within 90 days of a Prescribed Event. On average, the City has received approximately 150 Formal Consultation Applications per year, which would mean staff may need to prepare as many recommendations for listing and/or Notices of Intention to Designate, if warranted, before Prescribed Events are triggered.

Proactive Listing Prior to Prescribed Events

The amended *Ontario Heritage Act* now requires that a property be listed on the Register prior to a Prescribed Event in order for a municipality to be able to issue a notice of intention to designate within the 90-day restricted window. As such, staff anticipate reporting to the HMHC, as required, with a list of non-designated properties of cultural heritage value or interest flagged as part of the Formal Consultation process for listing on the Register and/or addition to the list of Candidates for Part IV Designation. There are two gaps in this process of proactive listing prior to Prescribed Events that should be highlighted:

- Properties currently listed on the Register will be automatically removed from the Register (de-listed) two years after the *Bill 23* amendments to the OHA are proclaimed on January 1, 2023. If a Formal Consultation Application is received after a property of heritage value or interest has been removed from the Register in accordance with the new provisions, then the City would not be able to re-list it for five years from its removal, making it vulnerable during the redevelopment process; and,
- If a property is newly listed on the Register as a result of a Formal Consultation Application process, it could be de-listed and not be able to be listed again for five years if the Prescribed Event is not triggered or if a Notice of Intention to Designate is not issued within two years of listing, making it vulnerable during the redevelopment process.

In both of the above situations, the requirement for an owner to enter into a heritage easement or covenant agreement as a condition of approval of their application may be a solution for ensuring a significant heritage resource is conserved as part of the *Planning Act* process.

New Designation Requests

New requests for Part IV designation may be submitted by a property owner, a third party, the Hamilton Municipal Heritage Committee and / or directed by Council. Staff will review new designation requests against the provincial criteria for determining cultural heritage value or interest and report to HMHC for their advice on the recommended action under the *Ontario Heritage Act*, such as temporary listing on the Municipal Heritage Register or recommendations for Part IV designation. Staff will notify the subject property owner(s) and the local Councillor of the request and include any feedback or comment received from them into the applicable report to the HMHC for reference.

Owner requested designations will be evaluated directly by staff and, if determined to meet the provincial criteria for designation, a recommendation to designate will be brought forward in a timely manner, as staff resources permit. In situations where designation requests are received by a third party, the HMHC and / or directed by Council, and where staff do not perceive an immediate risk of demolition, removal or substantial alteration to a property, staff may advise the HMHC that the property be added to the list of Candidates for Part IV Designation for future review and consideration, as outlined above.

Staff do not recommend listing properties of cultural heritage value or interest on the Register unless they are under immediate threat of potential demolition or removal or are anticipated to trigger a Prescribed Event under the *Planning Act*. A strategic approach to listing will need to be followed to limit situations where properties are de-listed and unable to be listed again for five years, limiting the municipality's ability to designate if Prescribed Events are triggered.

Amendments to Existing Pre-2005 Designation By-laws

As a result of the *Bill 23* amendments, and to ensure that properties of potential heritage significance are not left unprotected, staff recommend prioritizing new designations over amendments to existing Part IV designation by-laws passed prior to 2005 that may need to be updated to be in conformity with the *Ontario Heritage Act*. Amendments to existing by-laws should only be prioritized when there are no new designations that need to be addressed, if requested by the owner, or if required as part of a *Planning Act* or *Ontario Heritage Act* process.

Requirements for Notices of Intention to Demolish

Listing on the Municipal Heritage Register under Section 27(3) of the *Ontario Heritage Act* requires that Council be given 60 days' notice in writing of the intention to demolish or remove any building or structure on the property, as per Section 27(9) of the *Act*. Council may require that the notice of intention be accompanied by such plans and information as they deem necessary, as provided by Section 27(11) of the *Act*.

In 2017, Council passed a resolution to require that an owner of a listed property on staff's existing designation work plan submit a Cultural Heritage Impact Assessment report, to the satisfaction and approval of the Director of Planning and Chief Planner, as part of their notice of intention to demolish any building or structure on a property (see Report PED17092). In light of Recommendation (a) of this Report to rescind the existing designation work plan, staff recommend that this requirement be applied to all listed properties on the new Candidates for Part IV Designation and High Priorities for Part IV Designation lists moving forward, as per Recommendation (e) of this Report.

For all other listed properties not currently included on the designation work plan, staff does not have the delegated authority of Council to require any plans or information be submitted with a notice of intention to demolish under Section 27(11). In some cases where a Building Permit Application to demolish has been submitted, these applications have served as notice. Staff will report back on a standard “Notice of Intention to Demolish” process, including an application form, for the consideration of the Hamilton Municipal Heritage Committee and Council in Q2 2023 (see Recommendation (h) of this Report).

Heritage Conservation District Strategy and Work Plan

The *Bill 23* amendments to the *Ontario Heritage Act* substantially changes the effectiveness of the Register as a tool for heritage conservation; by limiting its use it will become a placeholder for designation. Now that Schedule 6 of *Bill 23* has been proclaimed on January 1, 2023, the City will have 2 years to address the 2,345 listed properties of heritage value or interest before they are automatically removed from the Register on January 1, 2025. Some of candidates for designation that are listed on the Register are located in concentrations or clusters of properties that may be worthy of study as Heritage Conservation Districts. In addition, the remaining 2,179 listed properties may not be candidates for individual designation but could be part of cultural heritage landscapes worthy of protection through Heritage Conservation District designation and / or planning policy or zoning provisions. Potential Heritage Conservation Districts in areas with concentrations of listed properties include:

- Ancaster Village, Wilson Street East, Ancaster;
- Charlton-Hughson-Forest-John Block, Hamilton;
- Gore Park, King Street East, Hamilton
- James Street North, Hamilton;
- Waterdown Village, Flamborough; and,
- Ravenscliffe Avenue, Hamilton.

There are also several potential Heritage Conservation Districts that have been previously identified and deferred to a future Cultural Heritage Landscape Inventory and Management Plan study. These include Mineral Springs Road (Ancaster) and the Strathcona Neighbourhood (Hamilton). Additional areas of heritage interest included on the Cultural Heritage Landscape Inventory may be candidates for district designation subject to further review, including historic streetscapes, neighbourhoods and settlement areas across the City.

With the changes to how the Register can be used, the focus of the Built Heritage Inventory Strategy work will need to be realigned. The baseline of the work would remain the same, but instead of prioritizing Register listings, the focus will need to be

designating significant built heritage resources under Part IV of the *Ontario Heritage Act* and identifying concentrated areas of properties of heritage value or interest for further Heritage Conservation District Study. This would streamline the individual survey work and owner engagement that has been required to date as part of the Register listing process but would also require additional resources to initiate and project manage new HCD Studies, public engagement around those projects and the development of HCD Plans.

It is recommended that staff report back with a Heritage Conservation District Strategy and Work Plan to address these areas of heritage interest and to identify other areas that might be worthy of review for district designation (see Recommendation (f) of Report PED22211(a)).

Outstanding Business List Items

Several Outstanding Business List (OBL) items have been addressed by the recommendations of this report or are no longer relevant in light of the *Bill 23* amendments to the *Ontario Heritage Act*. Recommendation (g) of this Report would remove the following items from the OBL list:

- Addition of 437 Wilson Street East (Ancaster) to staff's designation work plan (Item 12B);
- Listing of 206, 208, 210 King Street East to the Register (Item 14A);
- Designation of the Gore District as a Heritage Conservation District (Item 17B); and,
- A report on cost recoveries related to multiple Register removal requests from owners (Item 21Q).

ALTERNATIVES FOR CONSIDERATION

Not applicable.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

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" to Report PED22211(a) – Candidates for Designation under Part IV of the
Ontario Heritage Act

Appendix "B" to Report PED22211(a) – High Priority Candidates for Designation under
Part IV of the *Ontario Heritage Act*

Appendix "C" to Report PED22211(a) – *Ontario Regulation 569/22*

AG:sd