



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

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	July 9, 2024
<b>SUBJECT/REPORT NO:</b>	Recommendation to Enter into a Heritage Conservation Easement or Covenant for 84 York Boulevard, Hamilton (Philpott Memorial Church), under Part IV of the <i>Ontario Heritage Act</i> (PED2424077(a)) (Ward 2)
<b>WARD(S) AFFECTED:</b>	Ward 2
<b>PREPARED BY:</b>	Ken Coit (905) 546-2424 Ext. 7557
<b>SUBMITTED BY:</b>	Anita Fabac Acting Director, Planning and Chief Planner Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the General Manager of Planning and Economic Development Department be given the delegated authority to enter into a heritage conservation easement agreement or covenant under Section 37(1) of the *Ontario Heritage Act* with the owner of 84 York Boulevard, Hamilton, to be registered on title, satisfactory to the City Solicitor, to:
  - (i) Maintain the building through occupancy or daily monitoring and undertake any required interim repairs to ensure the building is heated, secure, and structurally sound and that there is no further deterioration to the cultural heritage value and heritage attributes of the property as identified in the Cultural Heritage Impact Assessment, prepared by MacNaughton Hermsen Britton Clarkson Planning Limited and dated October 2023, to the satisfaction of the Director of Planning and Chief Planner, until such time that this easement or covenant is released;
  - (ii) Provide an estimate to cover the costs of heating, securing, maintaining and monitoring the building for a period of four years, and provide securities to the city to cover these costs to be in place until such

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time that the easement or covenant is released, to the satisfaction of the Director of Planning and Chief Planner;

- (iii) Require that a Conservation Plan is submitted and approved as part of the Site Plan Control application process, including conditions of Site Plan approval to salvage and safely store the heritage attributes identified in the Cultural Heritage Impact Assessment, prepared by MacNaughton Hermsen Britton Clarkson Planning Limited dated October 2023, to allow for inspections of the stored attributes, to provide securities, and to integrate the attributes and provide commemoration and interpretation into a new development on the property before this easement or covenant is released;
- (b) That the Director of Planning and Chief Planner be authorized to release the heritage conservation easement agreement or covenant, executed as per Recommendation (a) of Report PED24077(a), and that the terms for the release of the easement or covenant, to be included in the heritage conservation easement agreement, are such that it may not be released until Site Plan Control and building permit have been issued and shoring or foundation work has begun for a new development on the site that:
  - (i) Provides a minimum of 600 new residential units, of which a minimum of 25% of the units provided shall be two and three bedroom units that support families and 5% of which shall be affordable units that meet the definition of Affordable Housing as defined by the City of Hamilton Municipal Housing Facilities By-law No. 16-233, to the satisfaction of the Director of Planning and Chief Planner;
  - (ii) Provides a podium design that is compatible with the character of the existing heritage buildings in the surrounding area through the use of brick or stone and appropriate proportions, to the satisfaction of the Director of Heritage and Urban Design;
  - (iii) Provides a high-quality design for the proposed towers in keeping with the landmark scale of the development that will enhance the character of the future entertainment precinct, to the satisfaction of the Director of Heritage and Urban Design;
  - (iv) Incorporates sustainable design features, to the satisfaction of the Director of Heritage and Urban Design;

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- (v) Allows for commercial uses at grade along York Boulevard and Park Street that will animate the street and support the future entertainment precinct, to the satisfaction of the Director of Heritage and Urban Design;
- (vi) Provides publicly accessible indoor and outdoor space at grade through the use of courtyards, porticos or other features to accommodate patios for commercial uses to animate the public realm enhancing the character of the street to support the future entertainment precinct, and to allow the public to view the retained heritage features, to the satisfaction of the Director of Heritage and Urban Design;
- (c) That the heritage conservation easement agreement or covenant, executed as per Recommendations (a) and (b) to Report PED24077(a), be reviewed by staff if construction on site has not commenced by July 31, 2027, to determine progress and report back to Council on possible designation;
- (d) That the Director of Planning and Chief Planner, be authorized and directed to negotiate and execute agreement(s) with the current owner, any subsequent owner and were possible any potential developer of 84 York Boulevard, Hamilton, to extend the 120-day timeline for passing of a designation by-law under Part IV of the *Ontario Heritage Act*, as permitted by Section 2.(1) (1.) of Ontario Regulation 385/21 and in a form satisfactory to the City Solicitor;
- (e) That the draft By-law attached as Appendix "B" to Report PED24077(a), to allow the City to enter into a heritage covenant or easement agreement pursuant to section 37(1) of the *Ontario Heritage Act* with the owner of the lands described as PT BLK 13 PL 39 PT 1, 2, 3 62R12184 & AS IN VM147689; CITY OF HAMILTON being all of PIN 17586-0075 (LT) and municipally addressed as 84 York Boulevard in the City of Hamilton, for conservation of the structure and of certain heritage elements/attributes/features from the structure known as Philpott Memorial Church, be adopted;
- (f) That staff be directed to report back to Council with an update on whether a heritage conservation easement agreement or covenant has been entered prior to the expiry of any extension period negotiated pursuant to Recommendation (d) of Report PED24077(a).

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**EXECUTIVE SUMMARY**

At its meeting of June 26, 2024, Council provided the following direction to staff:

“That Item 9, respecting the Notices of Objection to the Notice of Intention to Designate 84 York Boulevard, Hamilton, under Part IV of the *Ontario Heritage Act* (PED24077) (Ward 2) (Item 11.2) of Planning Committee Report 24-009, be amended, as follows:

9. Notices of Objection to the Notice of Intention to Designate 84 York Boulevard, Hamilton, under Part IV of the *Ontario Heritage Act* (PED24077) (Ward 2) (Item 11.2)
  - (i) That the consideration of Item 9 (b) and (c) of Planning Committee Report 24-009 be deferred to the July 9, 2024 meeting of the Planning Committee to allow for continuing discussions between the City, Philpott leadership and their development partners with the goal of reaching a multiparty agreement that would allow for the proposed development of 700 new residential dwelling units, recognize and include heritage features of the existing structure, address the financial interests of the Philpott congregation and secure the City’s interest that development is achieved within a reasonable timeline; and to hold the implementing by-law in abeyance until such time as staff report back on July 9th, 2024.”

This Report recommends that the City enter into a heritage conservation easement agreement or covenant with the owner of 84 York Boulevard that will protect the existing building and heritage features until such time that a redevelopment proposal for housing on the site is approved and under construction. It also sets out a series of conditions for the redevelopment of the site to be part of the agreement or covenant such as requiring a minimum of 600 residential units be provided including two and three bedroom units and affordable housing units, and design features of the new development to be secured through the Site Plan Control process. When the conditions of the easement or covenant are satisfied it will be released allowing for the demolition of the existing church building.

Council’s adoption of the recommendations in this report would provide clear direction to the church and its development partners that the existing church building may be demolished as per the conditions outlined in the recommendations of this report and is in keeping with the approach requested by the applicant and the church. It also allows staff to work with the applicant through the planning approvals process to further develop the design for new housing on the site and does not preclude maintaining parts

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of or the entire heritage building and incorporating it into the new development. If the new development were not to go forward the heritage building will remain in place for future reuse.

Staff met with representatives of Philpott Memorial Church, Armstrong Planning on behalf of the ownership group of the developer HC EC 89 Park LP, and Rafael + Bigauskas Architects on July 3, 2024, to discuss the potential to negotiate a heritage easement agreement or covenant. Both Philpott Memorial Church and Armstrong Planning have agreed to extend the 120-day designation period for an additional 120 days to December 11, 2024, to allow for the easement or covenant to be finalized as per the extension agreement attached as Appendix "C" to Report PED24077(a). If the easement cannot be finalized in the 120-day period, Council may revisit the designation of Philpott Memorial Church.

Both parties are generally supportive of the terms of the easement agreement or covenant outlined in this report.

If construction has not begun on site by July 31, 2027, staff will report back to Council on the status of the easement or covenant and the proposed development.

**Alternatives for Consideration – See page 9**

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: N/A

Staffing: N/A

Legal: Section 29(8) of the *Ontario Heritage Act* requires that a by-law be passed within 120 days after the date of publication of a notice of intention to designate under Part IV of the Act, or if a prescribed circumstance exists, within such other period of time as may be prescribed for the circumstance. Section 2(1) of Ontario Regulation 385/21 of the *Ontario Heritage Act* outlines the prescribed circumstances, including:

- “1. If, before the end of the 120-day period referred to in paragraph 1 of subsection 29(8) of the Act, the council and the owner of the property agree to extend the period of time set out in that paragraph, the period of time for the purposes of that paragraph is the period that the council and the owner have agreed upon.”

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Section 37(1) of the *Ontario Heritage Act* enables municipalities to enter into easements or covenants with an owner to conserve properties of cultural heritage value or interest if its municipal heritage committee has been consulted and if the council passes by-laws providing for entering into such agreements.

## **HISTORICAL BACKGROUND**

The subject property located at 84 York Boulevard, Hamilton, as shown in Appendix “A” attached to Report PED24077(a), is comprised of a place of worship known as Philpott Memorial Church. The church building is sited along the property boundary at the corner of York Boulevard and Park Street North, with the parking lot on the north side of the building abutting Park Street North and Vine Street. The building was constructed in two initial phases in 1901 and 1906. A subsequent smaller contemporary addition was added in the 1960s to the west, and the original brick masonry on the front (east) and side (south) facades are now clad in a contemporary stone veneer attached with a cement-based mortar.

## **Notice of Intention to Designate**

On March 27, 2024, Council directed staff to issue a Notice of Intention to Designate the significant heritage property located at 84 York Boulevard, Hamilton, in accordance with Part IV of the *Ontario Heritage Act* (see Report PED24007, Hamilton Municipal Heritage Committee Report 23-009 and Planning Committee Report 24-003).

The Notice of Intention to Designate was published in the Hamilton Spectator on April 15, 2024, and served on the registered owners of 84 York Boulevard and the Ontario Heritage Trust. The legislated objection period ended on May 15, 2024. The City Clerk received five notices of objection to the Notice of Intention to Designate as outlined in Report PED24077.

## **Referral to July 9, 2024 Planning Committee**

On June 26, 2024, Council considered Planning Committee’s recommendation in staff Report PED24077 to not withdraw the Notice of Intention to Designate. Given the unique set of circumstances surrounding the purchase and sale agreement that has yet to close, the congregation actively planning a renovation and relocation to a new site downtown, the proposal to add housing to the site and staff’s recommendation to Designate a building that meets 8 out of 9 Ontario Regulation 9/06 Criteria for determining cultural heritage value, Council directed that the consideration of this item be deferred to the July 9, 2024, Planning Committee. This would allow for continuing

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discussions between the City, Philpott leadership and their development partners with the goal of reaching a multiparty agreement that would allow for the proposed development of up to 700 new residential dwelling units, recognize and include heritage features of the existing structure, address the financial interests of the Philpott congregation, and secure the City's interest that development is achieved within a reasonable timeline.

Following Council's direction, staff met with representatives of Philpott Memorial Church, Armstrong Planning on behalf of the ownership group HC EC 89 Park LP, and Rafael + Bigauskas Architects on July 3, 2024, to discuss the potential to negotiate a heritage conservation easement agreement or covenant in lieu of designation, an alternative identified in Report PED24077. Both Philpott Memorial Church and Armstrong Planning have agreed to extend the 120-day designation period for an additional 120 days to December 10, 2024, to allow for the heritage conservation easement agreement or covenant to be finalized as per the letter attached as Appendix "D" to Report PED24077(a). Both parties are supportive of the terms of the agreement outlined in this report. The agreement to extend the 120-day designation period was signed on July 5, 2024, and is attached as Appendix "C" to Report PED24077(a).

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The recommendations of this Report are consistent with Provincial and Municipal legislation, policy and direction as outlined in Report PED24077.

## **RELEVANT CONSULTATION**

### **External**

- Agent for HC EC 89 Park LP - Armstrong Planning;
- Philpott Memorial Church Leadership – Lead Pastor Russell Bartlett; and,
- Representative of Rafael + Bigauskas Architects.

### **Internal**

- Corporate Services Department, Legal and Risk Management Division, Legal Services.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The intent of negotiating a heritage conservation easement or covenant is to ensure that the existing building is maintained, and the cultural heritage attributes are protected

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while the required *Planning Act* applications for the site are processed. If the proposed development does not move forward, this would ensure that the existing building and cultural heritage attributes remain protected.

A heritage easement or covenant under Section 37 of the *Ontario Heritage Act* is a voluntary legal agreement between a property owner and the City of Hamilton that protects significant heritage features of a property, which in this case would be the heritage attributes identified for salvage and commemoration within the proposed development on the subject property and the structure until such time that the attributes may be salvaged. The terms of the easement or covenant would be registered on title and apply to the current property and all future owners of the property. However, the easement or covenant could be removed following completion of the project or as per the terms of the agreement. As per Section 37(1) of the *Ontario Heritage Act*, the Hamilton Municipal Heritage Committee was consulted at their meeting on January 26, 2024, on the proposed negotiation of a heritage easement agreement or covenant for the property as part of the alternative recommendation in Report PED24007 and as part of the delegation by the agent for the developer.

The submission package provided by the agent on November 13, 2023, included a memo titled “Heritage Easement and Protection of Attributes”, attached as Appendix “D” to Report PED24077(a). The memo outlines an alternative to designation: the negotiation of a heritage easement agreement or covenant, which would provide binding legal protection of the property to ensure that the heritage attributes identified in the Cultural Heritage Impact Assessment are salvaged and reintegrated into a new development as part of a future Site Plan Control application process. This agreement, as noted in Recommendation (a) of Report PED24077(a), will also require maintenance of the existing building and ongoing protection of the heritage attributes until such time that final Site Plan Control and building permits have been issued and shoring or foundation work has begun for a new development on the site and requires that a Conservation Plan be submitted and approved through conditions of Site Plan Control approval per Recommendation (b) of Report PED24077(a).

Given that Philpott leadership and the ownership group HC EC 89 Park LP are supportive of the heritage conservation easement or covenant, and that both parties have signed the agreement to extend the 120-day designation period, attached as Appendix “C” to Report PED24077(a), staff recommend pursuing protection of the cultural heritage resource through the heritage conservation easement or covenant. Should the terms of the heritage conservation easement or covenant not be agreeable to all parties, including the City, Council will still have the option to Designate the property, which is explained further in the Alternatives Section of this Report.



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Upon approval of the recommendations in this Report staff will meet with the church and their development partner to review the draft easement agreement or covenant provided by the applicant and add any additional requirements and conditions to comply with the council direction outlined in this report to the satisfaction of the General Manager of Planning and Economic Development Department. Once the easement or covenant is executed and registered on title staff will work with the applicant through the Site Plan Control process to advise on and approve a development for the site that satisfies City development standards and polices in addition to the requirements and conditions of the easement or covenant. Staff will provide Conditional Site Plan approval within 60 days of receiving a complete Site Plan Control application. Final Site Plan approval can typically be granted within four months to a year of conditional approval depending on the complexities of required studies and the timing and quality of applicant submissions. This application will be offered a concurrent review Conditional Site Plan approval which will allow for review of drawings by the Building Division to begin while the Site Plan is being finalized.

If construction on site has not commenced by July 31, 2027, staff will review the application to determine progress and report back to Council on possible designation, release of the easement, or other measures.

## **ALTERNATIVES FOR CONSIDERATION**

Under Section 29 (6) of the *Ontario Heritage Act*, City Council may decide whether or not to withdraw the notice of intention to designate the property.

### **Designation in Lieu of a Heritage Conservation Easement or Covenant**

After considering the recommendation to negotiate a heritage conservation easement or covenant, if Council is not satisfied that this option will achieve the desired objectives, Council may decide to pass a by-law to designate the property within the prescribed notice of intention to designate period. Given that staff determined that the property meet 8 of 9 Ontario Regulation 9/06 criteria in Report PED24007, warranting designation under Part IV of the *Ontario Heritage Act*, staff recommend the following for approval for this alternative to designate:

That the draft By-law to designate 84 York Boulevard, Hamilton under Part IV of the Ontario Heritage Act, attached as Appendix "E" to Report PED24077(a), which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

### **Deemed Withdrawal and Re-issuance of a New Notice of Intention to Designate**

If a designation by-law is not passed or an easement agreement or covenant cannot be finalized before the end of the prescribed notice of intention to designate period, the notice will be deemed withdrawn and the property will be automatically removed from the Municipal Heritage Register. Staff do not recommend this alternative as the City would be unable to protect the heritage attributes of the property in the interim while redevelopment of the site is being considered and it would not fulfil the expectations established by existing municipal and provincial policies.

After the deemed withdrawal, Council may issue a new notice of intention to designate the property, as per Section 29 (10) of the *Ontario Heritage Act*, which states: “the deemed withdrawal of a notice of intention to designate a property under subsection (9) does not prevent the council from giving a new notice of intention to designate the property in accordance with this section.”

### **Notice of Withdrawal**

By withdrawing the Notice of Intention to Designate, a Notice of Withdrawal would be served, and the property would be removed from the Municipal Heritage Register. Staff do not recommend this alternative as the City would be unable to protect the identified heritage attributes of the property in the interim while redevelopment of the site is being considered and it would not fulfil the expectations established by existing municipal and provincial policies.

The City would also be unable to provide long-term, legal protection to this significant cultural heritage resource (designation provides protection against inappropriate alterations and demolition) and would not fulfil the expectations established by existing municipal and provincial policies. Without designation, the property would not be eligible for the City’s financial incentives for heritage properties, including development charge exemption and grant and loan programs. Designation alone does not restrict the legal use of property, prohibit alterations and additions, restrict the sale of a property, and has not been demonstrated to affect its resale value. However, designation does allow the municipality to manage change to the heritage attributes of a property through the Heritage Permit process.

### **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” to Report PED24077(a) – Location Map

Appendix “B” to Report PED24077(a) – Draft By-law to Enter into a Heritage Covenant or Easement Agreement

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Appendix "C" to Report PED24077(a) – Signed 120 day Extension Agreement  
Appendix "D" to Report PED24077(a) – Letter on Heritage Easement and Protection of Attributes  
Appendix "E" to Report PED24077(a) – Draft By-law to Designate 84 York Boulevard, Hamilton under Part IV of the *Ontario Heritage Act*

KC/sd