



Committee of the Whole Report

Report Number:	ED2023-005
Meeting Date:	March 7, 2023
Title:	Bill 23 Heritage Impacts and Designation Priorities
Description:	Changes and amendments to the Ontario Heritage Act through Bill 23 and their impact on City processes
Author and Title:	Emily Turner, Economic Development Officer – Heritage Planning

Recommendation:

That Report ED2023-005, **Bill 23 Heritage Impacts and Designation Priorities**, be received for information; and

That this recommendation be brought forward to Council for consideration at the next Regular Council Meeting.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

In November 2022, the provincial government passed Bill 23, the More Homes, Built Faster Act. This Act introduces sweeping changes to land use planning across Ontario and includes amendments to several distinct pieces of legislation related to the land use planning process. Schedule 6 of the Bill includes amendments to the Ontario Heritage Act which make changes to a number of processes related to heritage properties. The majority of these amendments came into force on January 1, 2023 and municipalities are required to comply with these changes. The amendments impact nearly all aspects of heritage conservation across Ontario and will significantly challenge the ability of municipalities to conserve their heritage resources.

The changes and their impact on the City are summarized below. Items which will be brought forward to Council have been identified.

Listing

Listed properties are properties which have been evaluated, deemed to have cultural heritage value and included on the City's Heritage Register but are not formally designated under Parts IV or V of the Ontario Heritage Act. There are no restrictions placed on these properties with regard to alterations except that the owner must provide the City with 60-days notice prior to demolishing the property and the City may deny the application to demolish based on the property's cultural heritage value. At present, the City has 287 listed properties.

Changes related to listed properties are as follows:

- Listed properties will now be required to be removed from the Heritage Register after two years from the date of listing, or the date of the amendments coming into force, unless a Notice of Intention to Designate has been issued for the property.
 - Listed properties on the Heritage Register will need to be reviewed and properties designated by Council under Part IV of the Act. See strategic discussion below for a more detailed outline of this item.
- Municipalities must also remove a listed property from the Register if Council issues a Notice of Intention to Designate and withdraws it or does not pass a by-law within the timeframe prescribed by the Act (120 days).

- No immediate action required. Staff will address this issue and bring it forward to Council if and when required.
- Listed properties cannot be added back onto the Register for five years after being removed when the two-year period has elapsed, once a notice of intention is withdrawn, or a by-law is not passed within 120 days.
 - No action required at this time. The City will need to keep detailed records of which properties were listed and removed at what time in order to re-list properties when allowable. Properties which are removed from the Register under other circumstances (i.e. an owner objection or Council direction) may be added back onto the Register with no limitations.
- Properties must fulfil one criteria under Ontario Regulation 9/06 in order to be eligible for listing. This does not apply retroactively. Previously, listed properties did not require formal evaluation.
 - This has already been the City's practice for several years to ensure consistency between designation and listing processes. No action required.
- The objection process for listing will now apply to all listed properties no matter when they were listed. Previously, this process applied only when a property had been listed after the amendments to the Act from Bill 108, More Homes More Choice Act (2019) came into effect (July 1, 2021).
 - An amendment will be required to the Heritage Applications Policy (CP2021-040) to reflect this change. An amendment will also be required to By-law 2021-194 (Heritage Fees By-law) which enacts portions of the Heritage Applications Policy. The relevant amendments will be brought forward by the end of Q2 2023. City procedures are already in place to address this process.
- Heritage Registers must now be available online. This amendment comes into force on July 1, 2023.
 - The City's Heritage Register is already available online. No action required.

Individual Property Designation

Properties may be designated individually under Part IV of the Ontario Heritage Act. These properties are formally evaluated through a heritage evaluation report and are designated by by-law. Designated property owner must apply for a heritage permit to make certain types of alterations to their properties through the City's heritage permit application process. Currently, the City has 90 designated properties.

Changes related to individual property designation are as follows:

- When a property is subject to a prescribed event (certain Planning Act applications), a notice of intention to designate may only be issued if the property is already listed until the application is disposed of.
 - Staff will need to be proactive in identifying and bringing forward properties for listing which may be subject to a development application. Generally, identification will take place during Preconsultation, which is confidential, or Planning inquiries. Properties will now be brought forward to Council for listing on a case by case basis as appropriate, as opposed to in large groups as has been the City's practice in the past. An amendment to the Heritage Applications Policy may be required to reflect this change. An amendment will be brought forward by the end of Q2 2023.
- Properties must now meet two or more criteria under Ontario Regulation 9/06 to be eligible for designation under Part IV of the Act. This does not apply retroactively. Previously, properties were required to meet one or more criteria.
 - No action required. This will reduce the number of properties eligible for designation, but evaluations will be undertaken in the same way as prior to the amendments.

Heritage Conservation Districts

Heritage conservation districts are groups of properties with shared cultural heritage value and are designated as a group under Part V of the Ontario Heritage Act. Heritage conservation districts are designated by by-law and a heritage conservation district plan is adopted to guide future growth in the area through policies and design guidelines. Properties located in a heritage conservation district must apply for a heritage permit to make certain types of alterations to their properties through the City's heritage permit application process. Currently, the City has two heritage conservation districts comprised of approximately 160 properties.

Changes related to heritage conservation districts are as follows:

- New criteria under Ontario Regulation 9/06 have been developed to evaluate heritage conservation districts. The regulations require that at least 25% of the properties in a heritage conservation district to meet at least two of the criteria.
 - These criteria will need to be used for future HCD designation. The Old Mill HCD Study will also need to be revised and adopted again to include evaluation using these criteria. An amendment to the study to reflect this change will be brought forward by the end of Q2 2023. A draft Heritage

Conservation District Strategy, to be presented to Council by the end of Q3, is currently in preparation by staff and will be developed to reflect the new regulations.

- Bill 23 also included the authority to prescribe, through regulation, the processes to amend or repeal an HCD plan and by-law. These regulations have not yet been written. The province has indicated that they will be released and come into force at some point in 2023.
 - No action at this time. Staff will bring forward the regulations and recommendations when they are available. It is likely that new policies or processes will need to be put into place to implement the new regulations.
- The outstanding amendments to the Act through Bill 108 which changed the definition of demolish to include the removal of a heritage attribute in relation to properties designated under Part V of the Act will now come into force.
 - This change in definition already applies to properties designated under Part IV of the Act and, as a result, has already been integrated at a high level into City policy and by-laws. The Heritage Applications Policy and By-law 2019-154 (Heritage Delegated Authority By-laws) will both require minor amendments to ensure that relevant sections apply to both properties designated under Part IV and Part V of the Act. Relevant amendments will be brought forward by the end of Q2 2023.

A number of general housekeeping amendments have also been made, as well as changes to the Standards and Guidelines for the Conservation of Provincial Heritage Properties which do not apply to municipalities. Responsibility for the Ontario Heritage Act has now been changed from the Ministry of Tourism, Culture and Sport to the Ministry of Citizenship and Multiculturalism.

There are a number of changes to Planning Act processes and requirements which also impact heritage properties, particularly with regard to site plan applications. These issues will be addressed through amendments to the Heritage Applications Policy, the Heritage Fees By-law, and the Heritage Delegated Authority By-law. A report will be brought forward to Council with the amended policy and by-laws responding to these items and those identified above by the end of Q2.

These changes will require a number of actions as outlined above. These will be brought forward to Council for discussion and recommendations throughout 2023. The most significant change to the Act is with regard to the new requirements regarding limiting how long a property may remain on the Heritage Register without designating

it. This will require all municipalities in Ontario to review their registers and begin to designate their listed properties; this is the direction which has been received from the province. Those already on the Register must be designated within the next two years or they will be removed as listed properties from the Register. This report provides recommendations regarding a strategy for doing so as well as relevant background information with regard to conformity to provincial policy and the process for owner consultation and objections.

At its meeting of January 12, 2023, the Kawartha Lakes Municipal Heritage Committee reviewed and discussed the strategy proposed by staff for undertaking the designation of listed properties, as outlined below in this report, and passed the following motion:

KLMHC2023-004

Moved By I. McKechnie

Seconded By T. Richards

That Report KLMHC2023-006, **Summary of Changes to the Ontario Heritage Act through Bill 23**, be received;

That the presentation from staff regarding Bill 23 be received; and

That the identified strategic priorities regarding the implementation of the bill be forwarded to Council for approval.

Carried

While recognizing the significant challenges posed by the amendments to the Act, the Committee is supportive of the direction proposed by staff as the most effective to address concerns regarding development and demolition of listed properties through prioritizing certain types of properties for designation.

Rationale:

The major change to the Act – the requirement to designate listed properties identified on the City’s Heritage Register – is a substantial undertaking that the City does not have the staff or financial resources to fully undertake. There are nearly 300 listed properties on the City’s Register and staff only have the capacity to designate a limited number per year. For example, in 2022, the City designated 5 properties under Part IV of the Act. All of these properties were at the request of the property owner and did not

include any lengthy appeal processes. While the pace of designations can be increased, it is not feasible to designate all of the City's listed properties by the end of 2024. Realistically, staff have the capacity to bring forward between 10 and 20 designations per year, depending on the complexity of the properties and any objections received, while also ensuring that the City's other legislated heritage obligations are fulfilled. As a result, the City must prioritize what properties it designates and staff have developed a strategy for prioritizing properties for designation and for identifying whether properties are best protected through an individual designation under Part IV of the Act or as part of a heritage conservation district (HCD) under Part V of the Act. The legislation suggests that municipalities should be pursuing Part IV rather than Part V designation, but there is no prescription against pursuing a Part V designation, should it make more sense. The strategy staff are proposing is as follows:

Priorities for Part IV Designation

Staff are proposing to prioritize properties which have the highest chance of redevelopment and for which a Planning Act application might be received. This intent of this direction is to ensure that heritage properties are protected as the province moves to more closely align heritage designation with wider land use planning goals and processes. These types of properties include:

- Properties where there is a known or anticipated risk of demolition and redevelopment
- Commercial and industrial properties
- Institutional properties
- Landmark and unique properties with extremely high and demonstrable cultural heritage value
- Properties owned by the City of Kawartha Lakes

Pursuing residential properties for Part IV designation has not been identified as a priority, although residential properties should be considered if they fulfil one of the above criteria, if it is requested by the property owner, or if the above noted categories are fully exhausted. Residential structures form the majority of properties on the City's Heritage Register, but generally also have the lowest risk of demolition and redevelopment. These properties may also be designated at a later date; while the Act now stipulates that a property must be removed from the Register after two years and may not be listed for another five, there is no prohibition against designating properties

after they have been removed from the Register unless a Planning Act application has been received for them.

Recommendations regarding the designation of four City-owned listed properties will be brought forward to Council at the end of Q1 2023 and recommendations and heritage evaluation reports regarding prioritized properties on the Register will be brought forward throughout 2023 and 2024. Staff are working with the Municipal Heritage Committee to identify which properties are most suitable for prioritization. The designation of listed properties will follow the prescribed process for designation as outlined in Section 29 of the Ontario Heritage Act.

Priorities for Part V Designation

Part V designation (heritage conservation districts) should be pursued where a group of listed properties is in close proximity to one another and, taken together, form a cohesive cultural heritage landscape, in addition to whatever cultural heritage value the properties hold as individuals. As with Part IV designations, priority will be given to commercial areas and those, which have a high degree of cultural heritage value and are unique to Kawartha Lakes. Residential areas will be considered a low priority, unless they have a very high degree of cultural heritage value and are unique within the City. As noted above, residential areas generally have the lowest risk of demolition and redevelopment; should a residential property with a high degree of cultural heritage value be threatened with imminent redevelopment, a Part IV designation will be pursued. These areas will have to also fulfil the new criteria under Ontario Regulation 9/06 regarding heritage conservation district designation. Three primary areas have been identified as having potential for HCD designation and which fulfil the above criteria:

- Bobcaygeon Market Square
- Downtown Omemee
- Sturgeon Point

These three areas all have a high concentration of listed properties with significant cultural heritage value both individually and as a group. In addition, a community request to designate Bobcaygeon Market Square as an HCD has already been received and staff are in the process of undertaking preliminary background research. A recommendation regarding initiating a study for this area will be presented to Council by the end of 2023.

Additional areas may be identified and designated as HCDs at a future time as the amendments to the Act do not preclude a municipality from doing so. The designation of areas as HCDs is a multi-year process which includes extensive community consultation and will follow the processes prescribed in Sections 40 and 41 of the Ontario Heritage Act.

Alignment with Provincial Policy

In addition to the legislative framework imposed by the Ontario Heritage Act, heritage preservation in Ontario is guided and directed by provincial land use planning policy. Although heritage preservation has not always been discussed as a land use planning issue, it is framed as such in both the Provincial Policy Statement (2020) and the Growth Plan for the Greater Golden Horseshoe (2019) and needs to be considered in this way. The amendments made under Bill 23 further serve to integrate heritage preservation with wider land use planning and decision-making processes.

The protection of heritage resources is required by policies contained in both the PPS and the Growth Plan. Section 2.6 of the Provincial Policy Statement (Cultural Heritage and Archaeology) requires municipalities to conserve significant built heritage resources and significant cultural heritage landscapes as part of the land use planning process, stating that “Significant built heritage resources and significant cultural heritage landscapes shall be conserved.” Similarly, Section 4.2.7 (Cultural Heritage Resources) of the Growth Plan requires municipalities to conserve their significant cultural heritage resources as part of the land use planning process “in order to foster a sense of place and benefit communities”. Significant built heritage resources are defined as those which have been determined to have cultural heritage value or interest as established by the criteria under the Ontario Heritage Act which are contained in Ontario Regulation 9/06.

From a municipal perspective, this means that municipalities must identify, evaluate and protect heritage properties from the wider perspective of community benefit and development pressures, as opposed to simply fulfilling requests from property owners. Historically, Kawartha Lakes has achieved this through the more light-touch approach of listing properties with the understanding that listed properties would remain as such in perpetuity and could be designated at a later date if and when required. With the amendments made to the Act through Bill 23, this approach is not longer possible due to the time limitations placed on listed properties in the Act. This means that

municipalities must begin to pursue designations more aggressively in order to fulfil their obligations under provincial policy. This is significant change of approach for the City, but is required in light of direction from the province.

Consultation with Property Owners

The Ontario Heritage Act does not require consent from or consultation with an owner of a property for designation to occur. The purpose of the Act in the designation of individual property is to balance the interests of the public and the community, with the ability of the owner to object to a proposed heritage designation. As discussed above, provincial policy requires municipalities to conserve their significant heritage resources because of the community benefit from the preservation of historic properties. Similarly, the direction received from the province and timeline imposed on reviewing a municipality's Heritage Register make conversations in advance of designation unfeasible. This has not generally been the City's practice as most designations undertaken in the past have involved extensive conversations with property owners in advance of Council receiving a heritage evaluation report which is not required under the Act. In order to respond to the Bill 23 amendments and to fulfil its legislated and policy-directed obligations, this can no longer occur.

In 2003, an Ontario Divisional Court held in the case of Tremblay vs. Lakeshore (Town) that requiring an owner's consent for the designation of property was not consistent with the intent of the Act, indicating that a Council of a municipality should consider a request for designation whether or not an owner supports it. This request may come from any party, including a community group or member of the public, although realistically the vast majority of designations going forward will be initiated by staff and the Municipal Heritage Committee in response to Bill 23. Effectively, consideration for designation should be based solely on whether or not a property fulfils the criteria for heritage designation (Ontario Regulation 9/06) and can be considered a significant cultural heritage resource. Council may not request or require consent from a property owner prior to considering a designation.

Should the owner object to the designation, there is a clear notification and objection process outlined in the Act. This process allows for the owner to voice their concerns and objections to the proposed designation while still taking into account the heritage evaluation for the property. The owner's objection is first heard by Council and, if a resolution cannot be achieved, then proceeds to the Ontario Lands Tribunal. In

considering any objections received, Council must consider its obligations with regard to provincial policy while evaluating the concerns raised by the owner. Objections may also be raised by third-parties, but these types of objections are rare.

Other Alternatives Considered:

There are no recommended alternatives. The City is required to comply with and respond to the direction from the province through the amendments to the Ontario Heritage Act.

Alignment to Strategic Priorities

The protection of heritage properties, including through designation under Part IV of the Ontario Heritage Act, supports the following goals from the Council-adopted Strategic Plan:

- A Vibrant and Growing Economy
- An Exceptional Quality of Life

The identification and protection of heritage assets in the community through designation promotes an exceptional quality of life by supporting and promoting arts, culture and heritage within the municipality. Designation, in particular, provides long term protection and management for key heritage resources in the municipality and recognizes their importance to the community.

The protection of heritage resources in the municipality also assists in the growth of the local economy in general by identifying, protecting, and celebrating places where people want to live, work and visit and can be a significant aspect of place-making initiatives in areas with heritage resources. It encourages investment in local communities by ensuring and promoting attractive places for residents and businesses to be. It also has a direct impact on developing local tourism through the preservation of sites and promoting a sense of place.

Financial/Operation Impacts:

There are costs associated with the publication of public notices, provision of notice to property owners, and registration of by-laws for the designation of properties under Part IV of the Ontario Heritage Act. These costs are covered under the existing heritage planning budget.

There is the potential for both owner-initiated and third-party appeals to the Ontario Land Tribunal for any designations to listed properties. The potential cost for the City to respond to these appeals is unknown as the scope and number of these appeals is not certain.

Any designation of new heritage conservation districts will have budget implications, whether they are completed in house by City staff or contracted to an external heritage consultant. When these processes are initiated, a separate report will be presented to Council outlining specific budget implications.

Consultations:

Municipal Heritage Committee
Director, Development Services
Director, Community Services
Manager, Economic Development
Ministry of Citizenship and Multiculturalism
Ontario Heritage Planners Network

Attachments:

N/A

Department Head email: rholy@kawarthalakes.ca

Department Head: Richard Holy, Director of Development Services