

REPORT TO: Heritage Kitchener

DATE OF MEETING: February 7, 2023

SUBMITTED BY: Garrett Stevenson, Interim Planning Director, 519-741-2200 ext. 7070

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WARD(S) INVOLVED: N/A

DATE OF REPORT: January 20, 2023

REPORT NO.: DSD-2023-053

SUBJECT: Heritage Kitchener Committee Work Plan 2022-2024

RECOMMENDATION:

For information.

REPORT HIGHLIGHTS:

- The purpose of this report is to inform the Heritage Kitchener Committee of the implications of *More Homes Built Faster Act 2022* (Bill 23) on cultural heritage conservation and what the focus of the Committee and staff will be moving forward.
- The key finding of this report is that heritage planning staff and the Committee will need to prioritize on the evaluation of non-designated properties of cultural heritage value at least for the next year and recommend whether these properties should be designated under Part IV of the *Ontario Heritage Act*.
- There are no financial implications associated with this report.
- Community engagement included consultation with the Heritage Kitchener Committee.
- This report supports the delivery of core services.

BACKGROUND:

The *More Homes Built Faster Act, 2022* (Bill 23) received Royal Assent on November 28, 2022. As part of this omnibus Bill, a number of changes were implemented to various pieces of legislation, including but not limited to, *The Planning Act*, *The Development Charges Act*, *The Conservation Authorities Act*, and *The Ontario Heritage Act*.

REPORT:

Heritage conservation in the City of Kitchener has typically been guided through the policies and guidelines of *The Ontario Heritage Act* (OHA), Official Plan, and principles and practices that have been formulated and advocated for over the years by heritage specialists. These include international charters and principles of practice established at national, provincial, and local levels. In addition to these codes, the *Standards and Guidelines for the*

Conservation of Historic Places in Canada is another important resource that is used by staff in conserving Kitchener's cultural heritage. The principles that underpin the *Standards and Guidelines* include:

- employing research to understand historical places;
- conducting integrated, long-term planning before conservation work begins;
- finding viable uses for historic places; and
- using a conservation approach that respects and sympathizes with the value of historic places.

Although the *Standards and Guidelines* form the basis of good conservation practice in Canada, local heritage conservation efforts must also answer and balance the demands of many stakeholders. Achieving a balance among the complex and often conflicting range of social, cultural and economic values is central to the sustainable conservation of heritage resources and in achieving best practice solutions locally. In addition to the *Standards and Guidelines*, staff also rely on the OHA, and the policies and guidelines within the City of Kitchener's Official Plan, which guide development and inform the processes required for the City's cultural heritage conservation.

Ontario Heritage Act

The OHA is the legal framework that provides municipalities with the means to identify and protect cultural heritage resources and sets out procedures to manage change. The conservation tools included with the Ontario Heritage Act include:

- *Listing of non-designated property on the Municipal Heritage Register* – These are properties which have been deemed to have cultural heritage significance but have not been formally and legally recognized as such. Through the City's 4-step listing process, from 2007 to 2015 over 1000 properties were evaluated, resulting in Council formally listing 236 properties (also known as listed properties).
- *Designation under Part IV and V of the Ontario Heritage Act* – These are properties which have been formally designated as having cultural heritage significance and value. As of the date of this report, the City has over 95 individually designated properties in Kitchener. The City has also designated over 1000 properties located in four (4) Heritage Conservation Districts.
- *Heritage Easements* – The City has entered several heritage easements with property owners in applying a higher level of heritage protection to significant cultural heritage resources.
- *Heritage Permit Process* - According to the Ontario Heritage Act, all properties designated under Part IV and V are subject a heritage permit to address changes on the property. The City first established a heritage permit process in 1990s and has since adapted the process to address changing expectations (e.g. - shortened processing timelines through delegated approval authority).

In addition to the OHA, the City also relies on other legislation and initiatives to ensure ongoing conservation of Kitchener's cultural heritage resources. These include:

- *Property Standards* - In 2008, Council prescribed the minimum standards for the maintenance of vacant designated property through the adoption of a property standards by-law.

- *Heritage Tax Refund Program* - Kitchener was one of the first municipalities in the Province to establish a heritage tax refund program in 2003. The program (enabled under The Municipal Act) offers a reduction in property tax to qualifying designated property owners.
- *Designated Heritage Property Grant Program* - In 2002, the City established the Designated Heritage Property Grant Program to provide funding of half of eligible repair and restoration work for a maximum of \$3,000 to property owners.

City of Kitchener Official Plan

Certain provisions under the Planning Act and the Provincial Policy Statement (PPS 2014) provide municipalities with the means to address conservation of cultural heritage resources, the most significant of these being the adoption of heritage policies in the Official Plan. These policies address the identification, protection and promotion of cultural heritage resources in Kitchener. The City of Kitchener's Official Plan includes policies that address requirements for Heritage Impact Assessments and Conservation Plans, Cultural Heritage Landscapes, and requesting of financial securities in the development process.

All these tools together help staff in ongoing efforts to conserve, maintain, protect, and promote Kitchener's cultural heritage resources.

More Homes Built Faster Act, 2022, (Bill 23)

On November 28, 2022, Bill 23, *the More Homes Built Faster Act*, received Royal Assent and was approved. This bill amended several key pieces of legislation related to heritage, natural heritage, and the land-use planning and development processes. Some statutes which were amended include the *Conservation Authorities Act*, *Development Charges Act*, *Municipal Act*, *Ontario Heritage Act*, *Ontario Land Tribunal Act*, and the *Planning Act*. The purported intent of Bill 23 is to increase housing supply in the province to support the objectives of the Ontario Housing Supply Action Plan.

Schedule 6 of Bill 23 amends the OHA and came into force and effect January 1, 2023. These amendments include but are not limited to; changes to a municipalities authority to use a municipal heritage register, additional prescribed criteria to designate a property, new timelines for the designation of listed properties, and the ability to amend or repeal a Heritage Conservation District By-law or Plan per a prescribed process. *Ontario Regulation 569/22* (O. Reg. 569/22) has replaced *Ontario Regulation 9/06* (O. Reg 9/06) and lays out the criteria for determining cultural heritage value or interest. Regulations to implement other policy changes are still being released.

Implications of Bill 23

The changes proposed to the OHA due to Bill 23 and its corresponding implications have been summarized below (Table 1). Please note that not all changes to the OHA have been summarized, but the ones that would most impact the work staff do to conserve Kitchener's cultural heritage resources.

Table 1: Implications of Schedule 6 of OHA.

<i>Change Proposed</i>	<i>Implications for cultural heritage conservation</i>
Accessibility to the Municipal Heritage Register (MHR) (Section 27 of the OHA)	Changes include having an accessible MHR online which can be accessed by the public. This change should be implemented by July 1, 2023. Kitchener already posts the MHR online, but it will need to be routinely updated.
Objection to listing of a non-designated property of cultural heritage value or interest. (Section 27 of the OHA)	According to the changes proposed by Bill 23, owners of properties that have been listed on the City's MHR as non-designated properties of cultural heritage value or interest can now object to their properties being listed, regardless of when they were added. The City is still waiting on provincial direction regarding what criteria would need to be met to remove a property due to the owner's objection.
Designation of listed properties within 2 years of being included on the Municipal Heritage Register (Section 29 of the OHA)	Where previously properties could be put on the MHR for an unlimited period of time, changes proposed to the OHA due to Bill 23 include those properties on the MHR must now be designated under Part IV of the OHA within 2 years of being included on the MHR. For the City, it means that properties that were already on the Register when Bill 23 came into effect, those properties must now be designated within 2 years i.e. – by January 1, 2025. If they are not designated, they will be removed from the Register and cannot be re-listed for the next five (5) years.
Limitations regarding issuing a Notice of Intention of Designate (NOID) for properties not listed on the Register when certain Planning Applications are submitted (Section 29 of the OHA)	Under the changes proposed to the OHA, municipalities will only be able to issue a NOID on properties which are already on the MHR on the date when a municipality has provided notice to the applicant of a Zoning By-law Amendment, Official Plan Amendment Application, or Draft Plan of Subdivision Application. The council will not be able to give a NOID once 90 days have elapsed since the municipality has provided notice.
Repeal or amendment of Heritage Conservation District bylaw and plans (Section 39 of the OHA)	One of the changes proposed to the OHA is introducing provisions for the amendment or repeal of Heritage Conservation District bylaw and plans, which was previously not included within the OHA.
Criteria for determining cultural heritage value or significance	Changes have been introduced to the criteria for determining cultural heritage value for individual properties through <i>Ontario Regulation 569/22</i> , which will

	replace <i>Ontario Regulation 9/06</i> (Attachment A). Furthermore, the property would have to satisfy one or more criteria included in <i>O. Reg. 569/22</i> to be included as a non-designated property of cultural heritage value on the MHR. However, properties would have to satisfy two or more criteria to be eligible for designation under Part IV of the OHA.
Change in criteria for determining cultural heritage value or significance for Heritage Conservation Districts.	Changes have also been introduced to the criteria for determining cultural heritage value for Heritage Conservation Districts. According to these changes, at least 25% of the properties being considered within a Heritage Conservation District would have to satisfy two or more criteria of <i>O. Reg. 569/22</i> .

Heritage Kitchener Committee and Staff Action Plan

Objective

The City of Kitchener aims to conserve its cultural heritage resources through their identification, protection, use, and/or management in such a way that their heritage values, attributes, and integrity are retained. To meet this objective while responding to the amendments introduced to the OHA through Bill 23, the City is looking to streamline its designation process. Through the work plan proposed in this report the City aims to evaluate and recognize listed properties that are most worthy of designation. With consideration to the number of listed properties, the time the process takes, and staff resources, Heritage Staff are looking to have at least 80 properties reviewed and a decision made to designate or not designate by January 1, 2025.

Tasks

The designation of an individual property under Section 29 of the OHA involves six steps, which are:

- Identifying the property;
- Researching and evaluating the property;
- Listing the property on the MHR;
- Serving a Notice of Intention to Designate (NOID);
- Passing and registering the heritage designating by-law;
- Adding the property on the Municipal Heritage Register of Designated Properties; and
- Including the property on the Provincial Register of Heritage Properties.

The first step – identifying the property as a potential candidate for designation – has been completed for the properties on the MHR of Non-designated Properties (also known as listed properties). Now further research and evaluation is required to determine if the listed properties meet the criteria of *O. Reg 569/22* for designation. This is proposed to be the focus of the Heritage Kitchener Committee's work for the 2023-2024 time period and would require the joint efforts of all Committee members. Therefore, it is recommended that the independent work of the Sub-Committees be incorporated with this work.

At present there are approximately 230 properties on the Kitchener Municipal Register, which was last reviewed in 2017. With the limited timeframe and the number of properties to be reviewed, heritage planning staff propose that the focus of the work be on properties most worthy of designation, or which may face the most development pressure. It is the staff's recommendation that all properties within the Downtown core, and other strategic areas, be evaluated first.

Previous work of the Sub-Committees is incorporated into this task. The Heritage Designation Sub-Committee has completed the assessment of 30 listed properties. This Committee will not be required to re-evaluate those properties, as staff will be overlooking further review for those properties. For the other listed properties, staff are requesting the committee's support in conducting evaluations to assess the cultural heritage significance of these properties and whether they should be considered for designation.

To complete the assessments, Heritage Staff have updated and revised the Cultural Heritage Evaluation Form. This form includes the criteria of *O. Reg. 569/22* as well as additional criteria. This criterion also includes the research and suggestions of the Decolonizing the Heritage Process Sub-Committee. Through this reassessment of listed properties, staff see an opportunity to include additional criteria that contribute towards a more diverse and equity-driven evaluation of cultural heritage value. Staff have attached the draft updated evaluation form and are requesting the Committee's input regarding the updated evaluation form (Attachment B). This evaluation form will then be finalized and be used to assess the listed properties by Heritage Kitchener.

Staff may also request aid or recommendations from the previous members of the Promoting Cultural Heritage Sub-Committee. This work could include informing property owners of the work the City and Committee will be undertaking within the next year, and educating and the promoting the benefits of designation as having the support and cooperation of the concerned property owners will be vital for completing the identified tasks and meeting the objective in the prescribed timeframe.

Timing and Implementation

Given the volume of work to be completed in the next two years, it is recommended that work commence as soon as possible. Heritage Staff aim to start conducting property evaluations using the new Cultural Heritage Evaluation Form in February of 2023, with the completed evaluations to be brought to the March 7, 2023, Heritage Kitchener Committee Meeting as examples. Heritage Staff request that the Committee begin assisting after this March meeting. It is proposed that five to ten properties be reviewed every month and brought to the following Heritage Kitchener Meeting for discussion and recommendation. A minimum of four should be reviewed every month to meet the objective of designating 80 properties by January 1, 2025.

STRATEGIC PLAN ALIGNMENT:

This report supports the delivery of core services.

FINANCIAL IMPLICATIONS:

Capital Budget – The recommendation has no impact on the Capital Budget.

Operating Budget – The recommendation has no impact on the Operating Budget.

COMMUNITY ENGAGEMENT:

INFORM – This report has been posted to the City's website with the agenda in advance of the Heritage Kitchener committee meeting.

PREVIOUS REPORTS/AUTHORITIES:

- *Ontario Heritage Act, 2022*

APPROVED BY: Justin Readman, General Manager, Development Services

ATTACHMENTS:

Attachment A – Ontario Regulation 569/22 for determining cultural heritage value

Attachment B – Draft Cultural Heritage Evaluation Form - 2023