

Niagara-on-the-Lake Council & Municipal Heritage Committee Heritage Training Session



March 21, 2023

DSHC with contributions from LHC Heritage Planning & Archaeology Inc.

Today we will look at:

- Heritage and Conservation
- Heritage as Public Policy
- The Role of Government
- Municipal Heritage Tool Kit
- New Provincial Requirements
- NOTL Municipal Heritage Advisory Committee
- NOTL Challenges and Opportunities

Heritage and Conservation

What is Heritage?

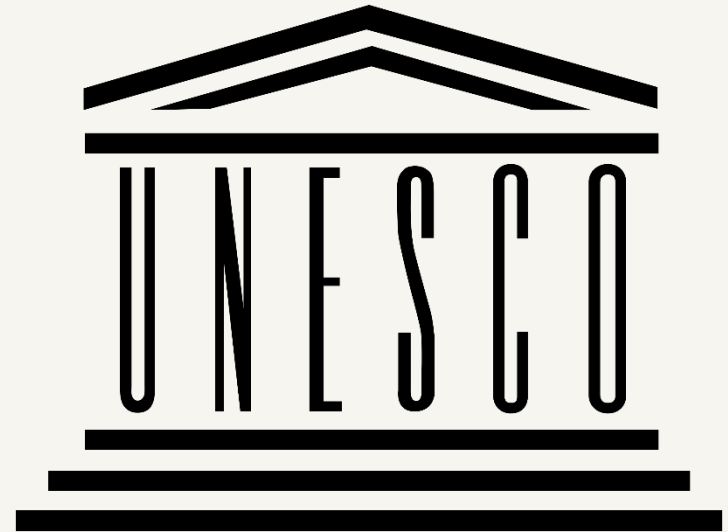
While human or cultural heritage is our focus, cultural heritage is inextricably linked with our natural environment — just think of almost any landscape!



Source: Canadian Society of Landscape Architects

What is Cultural Heritage?

- Cultural heritage is the entire spirit of a people in terms of its values, actions, works, institutions, monuments and sites (UNESCO)
- Cultural heritage is everything from the past that a community values in the present and wishes to pass on to the future (Province of Ontario)



Source: https://commons.wikimedia.org/wiki/File:UNESCO_logo.svg



Source: <https://www.kings.uwo.ca/about-kings/visitor-info/calendar-of-events/visit-to-mohawk-institute-residential-school-woodland-cultural-centre/>

What is Cultural Heritage?

Cultural heritage is both tangible and intangible and falls into three main types:

- immovable heritage or real property, such as buildings and landscapes
- movable heritage or personal property, such as objects, documents, artifacts
- intangible heritage such as customs, traditions, stories, names

What is Cultural Heritage?

These types are often connected, overlapping and shifting

- Think of a ceremony (intangible) associated with a place (immovable) that has archaeological artifacts (movable)
- Or a building that is moved!



What is Cultural Heritage?

It is immovable or real property that is subject to our land use planning and heritage property protection systems. This includes many different kinds of cultural heritage property. To name some:

- Buildings of all types
- Gardens / Landscapes
- Structures such as bridges and fences
- Monuments and statues
- Cemeteries
- Ruins and archaeological sites
- Spiritual or sacred sites
- Streetscapes

Why are Heritage Places Important?

Our heritage tells us who we are, where we have come from and what we have accomplished.

- Heritage places provide a sense of place and identity for our communities
- Old architecture and design creates character – distinctive buildings and landscapes are a source of local pride and draw strong tourism interest



Source: <https://hotcore.info/babki/downtown-niagara-falls-ontario.html>

Source: <https://www.ontarioaway.com/things-to-do-in-niagara-on-the-lake/>

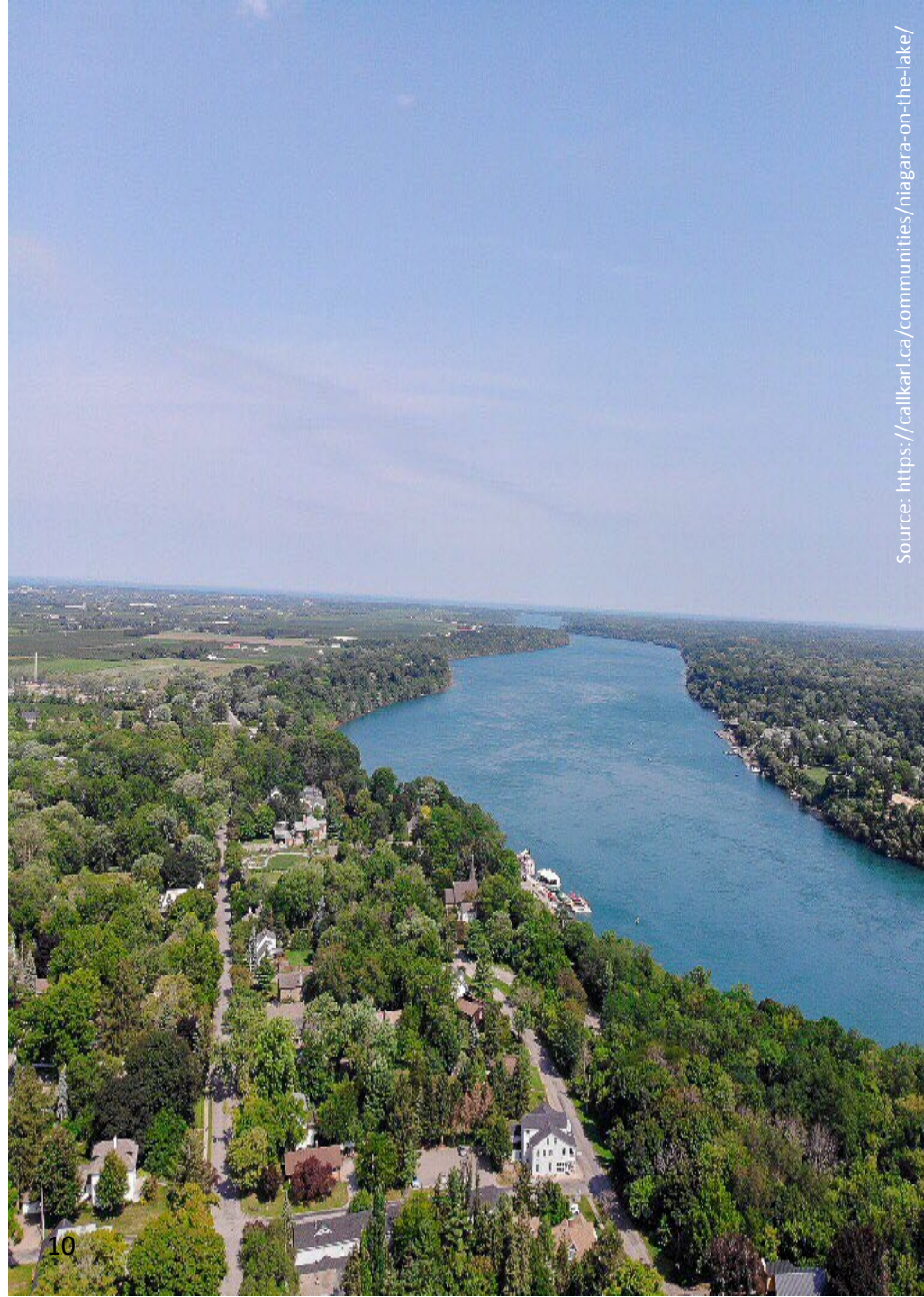


Why are Heritage Places Important?

(cont'd)

Our heritage helps us build a better, more sustainable future

- “New ideas must use old buildings” (Jane Jacobs) – older buildings attract entrepreneurs and are often the first home for small businesses
- Retaining older buildings and neighbourhoods offers important environmental benefits and combats climate change



What is Cultural Heritage Value?

Cultural heritage value *is what a community values about a place*

- The community is usually geographical – local, provincial, national or even international (UNESCO's World Heritage Sites)
- Can also include communities of interest, such as BIPOC communities
- A place may have more than one heritage value – physical value, historical value, contextual value – and be valued for different or even conflicting reasons by different communities
- The value of a place may change over time as the understanding of its history develops and the community itself evolves (reflecting greater diversity for example)

What is Heritage Conservation?

Conservation is about preserving the heritage value of a place and extending its life. Conservation can be seen as a process:

- **Identify** (a heritage place)
- **Evaluate** (determine its heritage value and the physical features that manifest that value)
- **Protect** (by repair or restoration work, and also legally by appropriate measures)
- **Use** (give the place a function in the life of the community), and
- **Interpret and celebrate** (make the place known and understandable)

What Heritage Conservation Isn't

Conservation is **not** about pickling a place so it can't be changed. It is about managing the inevitable need for change so that the use of a place can evolve while safeguarding its heritage value and features.

Conservation is **not** about nostalgia and NIMBYism. It is about a community's best efforts to keep, fix and use/reuse its heritage assets.



Heritage as Public Policy

Why Heritage as Public Policy?

Heritage places are non-renewable resources. Once gone, they are lost forever.

Heritage is vulnerable and often threatened – by neglect, by insensitive or inappropriate alteration, and by demolition and replacement by new development.

To address the public and community interest in heritage places, governments at all levels have responded with policies and programs.

What is the Government's Role?

In Canada, our constitution gives provinces / territories responsibility for “property and civil rights”

- The province is primarily responsible for setting the legal and policy framework for heritage conservation
- The federal government has a more limited role – identifying national historic sites, setting national conservation standards, creating federal incentive programs (income tax credits, etc.)
- Municipalities are responsible for community heritage policies and programs and implementing provincial direction

Provincial Framework

- The provincial framework for heritage conservation includes:
 - The Ontario Heritage Act (OHA)
 - The Planning Act and Provincial Policy Statement (PPS)
 - The Municipal Act
 - The Environmental Assessment Act (“environment” includes buildings and structures)
 - Funeral, Burial, and Cremation Services Act

Main Provincial Government Players

- Ministry of Citizenship and Multiculturalism (MCM)
 - lead responsibility for cultural heritage
 - The OHA and its regulations
 - PPS heritage policies (with Ministry of Municipal Affairs and Housing)
 - Licensing archaeologists
 - Heritage Property Tax Relief (HPTR) legislation
 - The Ontario Heritage Tool Kit guides and advice

Main Provincial Government Players

(cont'd)

- Ministry of Municipal Affairs and Housing (MMAH) – lead responsibility for land use planning
 - The Planning Act and the PPS
- Ontario Heritage Trust – an agency of MCM
 - Owns properties (e.g. Niagara Apothecary), holds heritage easements (e.g. NOTL courthouse), hosts Ontario Heritage Register, runs Ontario's Doors Open program
- Ontario Land Tribunal – now hears all heritage appeals under the OHA as well as appeals under the Planning Act

Provincial Legal/Policy Framework

The Ontario Heritage Act (OHA)

- Proclaimed in 1975; comprehensive amendments in 2005
- Recent changes in last 2 years: Bill 108 and Bill 23
- Administered by MCM; provides governing legislation for the Ontario Heritage Trust; gives MCM authority over archaeological licenses / practices; mandates conservation of provincially-owned heritage property, which is exempt from designation
- Parts IV and V of the OHA are enabling legislation for local municipalities – councils *may* designate property, list property, hold heritage easements, make grants, etc. (Note: authority for HPTR programs is in Municipal Act, not OHA)

Provincial Framework (cont'd)

The OHA (cont'd)

- Part IV – listing and designation of individual property
- Part V – designation of heritage conservation districts (HCDs) and adoption of HCD plans
- Allows municipality to control alteration / demolition / new construction on designated property *but not use*
- Provides owners with rights of appeal to OLT; states that no compensation is required to be paid by municipalities for designations

Provincial Framework (cont'd)

The Planning Act

- Governs land use planning and development in Ontario
- Sets out matters of provincial interest, including the conservation of cultural heritage
- Provides for the PPS – provincial and municipal planning decisions “shall be consistent with” PPS policies

Provincial Framework (cont'd)

The Provincial Policy Statement 2020

- Provides policy direction on matters of provincial interest in land use planning – contains a broad array of social, environmental, and economic policies
- All relevant policies are to be applied in making planning decisions
- Has strong language supporting conservation:

Long-term economic prosperity should be supported by: ...

d) maintaining and, where possible, enhancing the vitality and viability of downtowns and mainstreets;

e) encouraging a sense of place, by promoting well-designed built form and cultural planning, and by conserving features that help define character, including built heritage resources and cultural heritage landscapes

Provincial Framework (cont'd)

The PPS 2020 (cont'd)

The PPS also has five specific policies on cultural heritage:

- The first directs that significant built heritage resources and cultural heritage landscapes “shall be conserved”
- The second prohibits development unless significant archaeological resources and areas of archaeological potential are conserved
- Another prohibits development on lands *adjacent* to a protected heritage property unless it has been demonstrated that the heritage attributes of the property will be conserved

What is the Municipality's Role in Heritage Conservation?

The local municipality is on the front lines in conserving heritage places

- Follow provincial legislation and policy direction in making planning decisions – Official Plan policies, zoning, development approvals, etc.
- Integrate heritage planning into planning processes
- Utilize OHA, Planning Act, and other tools to conserve heritage places through regulation, incentives, and promotion
- Work with local communities, businesses, builders, private owners, and other organizations and agencies

NOTL Municipal Players

Here in NOTL, the
key municipal
players are:

- Town Council
- Municipal
Heritage
Committee
(MHC)
- Town staff
- Town Historian



Source: https://www.tripadvisor.ca/Attractions-g154999-Activities-c57-Niagara_on_the_Lake_Ontario.html



Source: <https://www.planetware.com/canada/top-rated-things-to-do-in-niagara-on-the-lake-cdn-1-324.htm>

Instruments / Tools for Heritage Conservation

A successful municipal heritage program will include tools or measures of three broad types:

- Regulatory approaches, such as designation;
- Incentive programs, such as grants; and,
- Awareness / education and promotion approaches, such as guidance material and interpretive signage.

The Municipal Heritage Tool Kit – OHA Tools

Inventories and Listing

Identification and evaluation are the first steps in conserving heritage places.

- A baseline inventory is the foundation of heritage planning
- From this “raw” database properties can be selected for formal listing under the OHA
- Listing a property puts it on the official municipal register of heritage properties that the Town is required to keep
- Listing is “designation lite” requiring relatively little legal process – owners must be notified and given an opportunity to request their property not be listed, with council considering the request

Listing (cont'd)

- To be listed a property must meet one of the provincial criteria for cultural heritage value found in Ontario Regulation 9/06
- Owners of listed properties must give the Town 60 days notice before applying for a demolition permit
- There may be some PPS/Official Plan requirements triggered
- Listings can be one-offs but are usually done in batches

Part IV Designation

Anyone can request a designation, but council must consult with the MHC before designating a property.

- To be designated, a property must satisfy 2 of the prescribed criteria
- Two core pieces of the notice of intention to designate (NOID) and the final designation by-law:
 - 1) A statement of the property's cultural heritage value or interest
 - 2) A description of the heritage attributes of the property
- Designation controls kick in as of the date of the publication of the NOID. Alteration to the heritage attributes requires council's consent, as does any demolition on the property.
- The owner can appeal the designation to the OLT on the grounds that the criteria are not met.

Listing/Designation Criteria

The 9 criteria, set out in Ontario Regulation 9/06, are of three types:

- Physical / Design – the property's significance for its architectural or other character or design
- Historical / Associative – the property's associations with significant themes, people, or events
- Contextual – the property's importance as part of its context or surroundings

At least 1 of the 9 criteria must be met for listing; 2 for designation.

Part V Designation

Since 2005, district designations have required an HCD plan. The plan must include:

- A statement of the district's cultural heritage value and description of its heritage attributes
- Policies and guidelines for managing changes in the district
- Types of alterations that are minor and don't require a permit

Part V Designation (cont'd)

Post-2005 plans are very strong: The municipality's by-laws, including zoning, and public works must be consistent with the plan. (Old, pre-2005 plans don't have these strengths and are considered guidance only.)

- The OHA also provides for interim controls for a year while an area is being studied for designation.
- Part V designations may be appealed to the OHT.

Part IV/V Delegation Powers

- Council can delegate certain approval powers
- Approval of alterations to Part IV or Part V properties can be delegated by by-law to municipal staff members
- The by-law must specify the types of alterations for which authority is delegated
- Council must consult with the MHC on the by-law specifics
- The delegate must consult with the MHC (as the OHA requires) in exercising the delegated authority
- Note that approval of demolition/removal of buildings cannot be delegated

Other OHA Protection Tools

- Municipality can enact special property standards for designated heritage property – used to forestall demolition by neglect. (NOTL's by-law was passed in 2019.)
- Municipality can acquire heritage easements on property with the owner's agreement – often used as a condition of funding assistance or development approvals.

New Provincial Requirements

Recent OHA changes make it harder to protect what communities value and treasure

- OHA regulatory tools more restricted in application
 - OHA processes made more complex
- **Bill 108: OHA amendments and a new OHA regulation (O. Reg. 385/21) took effect July 1/22**
- **Bill 23: OHA amendments and changes to O. Reg. 9/06 took effect January 1/23**

New Provincial Requirements (Cont'd)

Listing

- Owners of newly listed properties must be given notice and are able to request the property be taken off the Register, which council must consider (notice was previously a best practice only); owners of currently listed properties can request de-listing at *any* time
- Expiry date for listings when they must be removed from the Register: 2 years from Jan. 1/23 for existing listings or 2 years from date of new ones; can't list property again for 5 years
 - only way to protect the property is to designate within the 2 year period
 - note: NOTL has ~ 200 listed properties

New Provincial Requirements (Cont'd)

Designation

- New requirements for content of designation by-laws
 - Designations must now satisfy at least 2 (rather than 1) of the O. Reg. 9/06 criteria for heritage value
 - Owners now have 2 cracks at objections/appeals to designation:
 - objection (within 30 days of the notice of intention to designate) triggers a mandatory reconsideration by council before the by-law is passed; and
 - appeal of the by-law (within 30 days of notice of passage) to the Ontario Land Tribunal for a final decision
- (Note: the Conservation Review Board has been axed)

New Provincial Requirements (Cont'd)

Designation (cont'd)

- New requirements if a municipality wants to begin a heritage designation in cases where an owner is making a Planning Act application for development on the property
 - property must already be listed
 - notice of intention to designate must be given within 90 days

Heritage Conservation Districts (Part V Designation)

- At least 25% of properties in a proposed HCD must now satisfy at least 2 of the O. Reg. 9/06 criteria
- Province working on new regulations for amending or repealing HCDs



The Municipal Heritage Tool Kit – Planning Tools

Planning Policies and Other Tools

Planning tools that can support heritage objectives include:

- Official Plan
- Secondary Plans
- Zoning
- Community Improvement Plans
- Community Design Guidelines
- Sign By-laws
- Conservation Plans

Heritage Impact Assessment (HIA)

HIAs (also called Heritage Impact Statements) are cited in the definition of “conserved” in the PPS.

- HIA is a study to determine if and how heritage resources are impacted by a development proposal and what might be done to avoid or mitigate impacts
- HIA is widely used as a pre-condition of approval of development on
 - designated or listed property
 - property adjacent to a designated or listed property

Cultural Heritage Landscapes and Character Areas

A cultural heritage landscape (CHL), as defined in the PPS, can include buildings, structures, spaces, views, and archaeological sites or natural areas *that are valued together*.

Many Ontario municipalities have developed an inventory of their cultural heritage landscapes (e.g. Caledon, which has 12 so far).

While official identification of a CHL confers no direct protection, it can inform planning and protection measures including HCD designation and decisions on infrastructure and public works.

Municipal Incentives

Financial and other incentives are a key part of municipal heritage programs. These take a variety of forms:

- Grants, usually for work on designated property
- Façade improvement grants or loans for commercial areas
- HPTR – Municipal Act allows municipality to provide property tax relief to designated property owners of 10-40%
 - Can be targeted to certain areas or classes of property
 - Province shares in cost by funding the education portion
 - In two-tier structure requires upper-tier to adopt companion measure if owners are to get full benefit
- Non-financial incentives (e.g. signage, plaquing, parties!)

Municipally-Owned Heritage Property

Municipalities themselves own or control heritage properties. In NOTL these include the Old Courthouse and Simcoe Park.

The Town can lead-by-example by demonstrating good stewardship of municipally-owned heritage assets.



Source: <https://www.notl.com/recreation-events/facilities/facility-rentals>

Source: https://www.exploringniagara.com/places_to_explore/parks_beaches/simcoe_park.html



Archaeological Framework

Part VI of the Ontario Heritage Act

- archaeological sites are automatically protected
- illegal for anyone but a licensed archaeologist to knowingly alter or disturb an archaeological site; province (MCM) licenses archaeologists and sets standards and guidelines for archaeologists

PPS policies

- includes prohibition on development and site alteration on lands containing archaeological resources or areas of archaeological potential unless resources have been conserved according to a standard archaeological assessment process

Municipalities

- implement provincial rules by requiring archaeological assessment as part of development approval process
- also incorporate archaeology conservation policies in planning documents

NOTL Municipal Heritage Committee

Municipal Heritage Committees

- Statutory committees created under section 28.1 of the OHA
- Currently about 150 MHCs in Ontario
- Council passes a by-law to establish the committee, appoints its members, determines the mandate/terms of reference, and provides staff support and resources/budget
- Chief benefits of MHCs:
 - Harness local volunteer talent and expertise to assist council
 - Build relationships with and recognize the efforts of property owners
 - Committee/group decision-making on heritage evaluation and impact questions tends to be more considered and objective

NOTL MHC

The MHC's Terms of Reference

- This is what the committee does — and doesn't do
- Important to keep up-to-date as provincial/municipal policies and practices shift
- Consider how the committee:
 - might be structured to handle workload of priority initiatives, e.g. use standing committees, working groups
 - reviews permit applications — what types it needs to see and what types it doesn't

Town Historian

The Town Historian is not a Town employee. Under the current Terms of Reference for the Town Historian:

- Mandate is to support the Town Planning staff by researching properties being considered for designation and writing articles for local media about the Town's history, buildings, events, or people
- The Historian may be a person or group appointed by council for a four-year term concurrent with council's

Town Historian (cont'd)

Consider better integrating the Town Historian's role into the Town's heritage planning processes.

- Discuss with the Museum to clarify this role
- May require updating of the ToR and/or establishing an MOU between the Town and the museum board



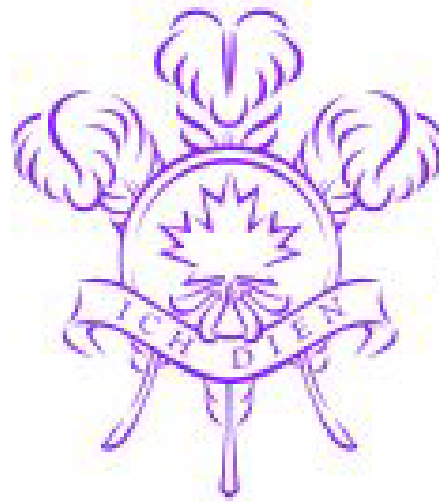
NOTL Heritage Issues and Opportunities

Growing Pains / Development Pressures

How to be better prepared for growth and change

- NOTL has a rare and enviable wealth of heritage resources
- NOTL also faces ever-greater development pressures
- The province is also pushing for greater intensification and housing supply
- At the same time heritage tourism, agritourism, and agriculture are the pillars of the Town's economy and future prosperity
- Failure to conserve the Town's distinctive character and heritage places threatens NOTL's identity, appeal, and tourism brand

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<https://www.municipalworld.com/articles/town-of-niagara-on-the-lake-wins-prince-of-wales-prize/>

Growing Pains / Development Pressures (cont'd)

While much has been done there is a pressing need to implement further planning and heritage protection measures:

- Will help the Town get “out in front” of issues, avoiding reactive and contentious efforts to curtail unsuitable development proposals including costly hearings before the Ontario Land Tribunal
- Developers will have greater clarity about what rules apply and where
- Bill 23 and other legislative changes present challenges for the Town’s listing and designation programs

Old Town HCD Update and Expansion

Rethinking the Old Town Heritage Conservation District

- The existing 1986 HCD plan (with minor changes in 2010) needs to be reviewed and updated to ensure it continues to serve its intended purpose.
- Strong case for expanding the HCD in all directions (it is much smaller than the federal National Historic District)
- Expansion / updating of the HCD is already on the Town's priority items list
 - A huge undertaking that can proceed in phases
 - Consider creating a council / MHC / staff steering committee to tackle

Other Heritage Initiatives

Other important heritage initiatives to be considered:

- Updating NOTL's heritage register by adding new listed properties
- In light of Bill 23, prioritizing listed properties for designation – what selection criteria should be used?
- Undertaking a Cultural Heritage Landscape / Heritage Character Area inventory, which could also identify potential new HCDs (e.g. Queenston, St. Davids)
- Implementing the HPTR incentive program
- Consider developing a carbon impacts program to incentivize building retrofits and disincentivize demolitions and landfill waste
- Others?

Council Direction/Commitment on Heritage Initiatives

Council will need to:

- Set clear priorities for heritage initiatives/projects, and
- Commit funding and set budgets for those priority projects



Thank you!

DSHC with contributions from LHC Heritage Planning & Archaeology Inc.